

Memorandum 2019-60

**Recodification of Toxic Substance Statutes
(Miscellaneous Provisions)**

In this study, the Commission¹ is undertaking a nonsubstantive reorganization of Chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.² The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.³

This memorandum addresses the remaining provisions from Chapter 6.8 that have not yet been incorporated into the proposed recodification. Earlier in this study, the staff encountered two existing provisions, Sections 25358.6.1 and 25367, for which the appropriate location in the recodification was not clear. At the time, the staff set these provisions aside, so that they could be fit into the recodification once the project was more complete.

Now, the structure of the proposed law is more fully fleshed out. This memorandum proposes a location for these provisions in the recodified law and includes attached draft legislation to implement the proposal.

Each of the two provisions is discussed briefly, in turn, below.

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

SECTION 25358.6.1

Section 25358.6.1 authorizes the Department of Toxic Substances Control to use a special contracting process for “engineering, architectural, environmental, landscape architectural, construction project management, or land surveying

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

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

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

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

services” (hereafter, “professional services”). This process allows the department to establish prequalified lists after requesting statements of qualifications from interested professional services firms; those prequalified lists can then be used in certain situations when the department needs to contract for a professional service.

The staff concluded that Section 25358.6.1 should be recodified in a new article, “Article 10. Contracting,” in “Chapter 3. General Powers and Duties” of Part 2. The attached draft shows proposed legislation to implement this change.

The staff also proposes one clarifying change to the provisions recodifying Section 25358.6.1 — shortening the defined term “engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services” to “professional services.” The original, lengthy defined term made the statutory text somewhat unwieldy and difficult to follow. The staff also found a number of seemingly unintentional minor discrepancies in the use of the term throughout Section 25358.6.1. The use of a shorter term makes it easier to read the statutory language and to maintain its consistency.

SECTION 25367

Section 25367, which is reproduced below, sets civil penalties for certain acts that impede the department’s ability to investigate or take emergency actions. Section 25367 also authorizes the department to issue orders directing compliance with requests for information.

25367. (a) Any person who commits any of the following acts shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate violation, or for continuing violations, for each day during which that violation continues:

(1) Intentionally or negligently makes any false statement or representation in any report or information furnished pursuant to Section 25358.1.

(2) Intentionally or negligently fails to provide any information requested pursuant to Section 25358.1.

(3) Refuses or prevents, without sufficient cause, any activity authorized pursuant to Section 25358.1 or 25358.3.

(b) If a person intentionally or negligently fails to furnish and transmit to any officer or employee of the department, a representative of the director, or a person designated by the director any information required to be disclosed pursuant to Section 25358.1, the department may issue an order directing compliance with the request. The order shall be issued only after

notice and opportunity for consultation as is reasonably appropriate under the circumstances.

For Section 25367, the staff concluded that it would be best to co-locate the provision with the related substantive law (i.e., Sections 25358.1 and 25358.3). Doing so would provide helpful context, allowing a reader to more easily identify the acts subject to penalties and the scope of the department's authority to issue orders.

To implement this approach, Section 25367 is proposed to be recodified as three sections. Two of those sections, proposed Sections 68465 and 68470, would be located with the provisions recodifying Section 25358.1 (in Article 4 of Chapter 3). The third section, proposed Section 68665, would be located with the provisions recodifying Section 25358.3 (in Article 1 of Chapter 4).

APPROVAL OF ATTACHED DRAFT

Does the Commission approve of the proposed recodification of Sections 25358.6.1 and 25367, as shown in the attached draft?

Respectfully submitted,

Kristin Burford
Staff Counsel

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2 ...

3 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

4 ...

5 CHAPTER 3. GENERAL POWERS AND DUTIES

6 ...

7 Article 4. Investigatory Powers

8 ...

9 § 68465. Order directing compliance

10 68465. If a person intentionally or negligently fails to furnish and transmit to
11 any officer or employee of the department, a representative of the director, or a
12 person designated by the director any information required to be disclosed
13 pursuant to this article, the department may issue an order directing compliance
14 with the request. The order shall be issued only after notice and opportunity for
15 consultation as is reasonably appropriate under the circumstances.

16 **Comment.** Section 68465 continues former Section 25367(b) without substantive change.
17 See Sections 68050 (“department”), 68055 (“director”), 68085 (“person”).

18 **Staff Note.** Section 25367(b) references information required to be disclosed pursuant to Section
19 25358.1. This reference was replaced with a reference to “this article.” However, this article
20 would also contain provisions continuing Section 25367. This does not appear to be a problem, as
21 Section 25367 does not relate to the purpose of the reference (i.e., information disclosure).
22 **Absent comment, this proposed cross-reference update will be presumed correct.**

23 § 68470. Penalties for violations

24 68470. Any person who commits any of the following acts shall be liable for a
25 civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each
26 separate violation, or for continuing violations, for each day during which that
27 violation continues:

28 (a) Intentionally or negligently makes any false statement or representation in
29 any report or information furnished pursuant to this article.

1 (b) Intentionally or negligently fails to provide any information requested
2 pursuant to this article.

3 (c) Refuses or prevents, without sufficient cause, any activity authorized
4 pursuant to this article.

5 **Comment.** Section 68470 continues former Section 25367(a), with the exception of part of
6 paragraph (a)(3), which is restated in Section 68665, without substantive change.

7 See Section 68085 (“person”).

8 **Staff Note.** Section 25367(a) refers to information furnished or requested pursuant to Section
9 25358.1, as well as any activity authorized pursuant to Section 25358.1. Section 25358.1 is
10 proposed for continuation, along with Section 25367, in this article. The cross-references to
11 Section 25358.1 were updated to refer to “this article.” **Absent comment, these proposed cross-**
12 **reference updates will be presumed correct.**

13 ...

14 Article 10. Contracting

15 § 68590. Definitions

16 68590. For purposes of this article, the following definitions shall apply:

17 (a) “Firm” means any individual, firm, partnership, corporation, association, or
18 other legal entity permitted by law to practice the profession of engineering,
19 architecture, environmental, landscape architecture, construction project
20 management, or land surveying.

21 (b) “Prequalified list” means a list of professional service firms that possess the
22 qualifications established by the department to perform specific types of
23 professional services, with each firm ranked in order of its qualifications and costs.

24 (c) “Professional services” includes professional services of an engineering,
25 architectural, environmental, landscape architectural, construction project
26 management, land surveying, or similar nature, as well as incidental services that
27 members of these professions and those in their employ may logically or
28 justifiably perform.

29 **Comment.** Section 68590 restates former Section 25358.6.1(a) without substantive change.
30 The defined term “engineering, architectural, environmental, landscape architectural, construction
31 project management, or land surveying services” was simplified to “professional services” and
32 implementing changes were made.

33 See Section 68050 (“department”).

34 **Staff Notes. (1)** Section 25358.6.1(a)(1), which is proposed for recodification as Section
35 68590(c), defines the term “engineering, architectural, environmental, landscape architectural,
36 construction project management, or land surveying services.” This defined term is very lengthy.
37 The repetition of this term through the section impedes readability. For this reason, the staff has
38 replaced the defined term with “professional services.” This change is intended to be
39 nonsubstantive and conforming changes have been made throughout this proposed article. **The**
40 **staff welcomes comment on this proposed change.**

41 **(2)** Section 25358.6.1(a)(3), which is proposed for recodification as Section 68590(b), uses the
42 phrase “engineering, architectural, environmental, landscape architectural, construction project

1 management, or land surveying *firms*” (emphasis added). This is similar to, but slightly different
2 than the defined term in Section 25358.6.1(a)(1), which uses “services” rather than “firms.”
3 However, the difference appears to be immaterial. It seems clear that the phrase is intended to
4 refer to firms that provide these services. For this reason, the existing language has been replaced
5 with the phrase “professional services firms,” which includes the proposed shortened defined
6 term “professional services.” This change is intended to be nonsubstantive. **Absent comment,**
7 **this proposed change will be presumed correct.**

8 **§ 68595. Application of article to contracts less than or equal to \$1,000,000**

9 68595. Notwithstanding Chapter 10 (commencing with Section 4525) of
10 Division 5 of Title 1 of the Government Code, the department may advertise and
11 award a contract, in accordance with this article, for professional services pursuant
12 to this part or Chapter 6.5 (commencing with Section 25100) of Division 20, if the
13 contract is individually in an amount equal to, or less than, one million dollars
14 (\$1,000,000).

15 **Comment.** Section 68595 continues former Section 25358.6.1(b) without substantive change.
16 See Sections 68050 (“department”), 68590 (“firm,” “professional services”).

17 **§ 68600. Prequalified lists**

18 68600. The department may establish prequalified lists of professional services
19 firms in accordance with the following process:

20 (a) For each type of professional services work for which the department elects
21 to use this article for advertising and awarding contracts, the department may
22 request annual statements of qualifications from interested firms. The request for
23 statements of qualifications shall be announced statewide through the California
24 State Contracts Register and publications, internet websites, or electronic bulletin
25 boards of respective professional societies that are intended, designed, and
26 maintained by the professional societies to communicate with their memberships.
27 Each announcement shall describe the general scope of services to be provided
28 within each generic project category for professional services that the department
29 anticipates may be awarded during the period covered by the announcement.

30 (b) The department shall define a generic project category so that each specific
31 project to be awarded within that generic project category is substantially similar
32 to all other projects within that generic project category, may be within the same
33 size range and geographical area, and requires substantially similar skills and
34 magnitude of professional effort as every other project within that generic project
35 category. The generic categories shall provide a basis for evaluating and
36 establishing the type, quality, and costs, including hourly rates for personnel and
37 field activities and equipment, of the services that would be provided by the firm.

38 (c) The department shall evaluate the statements of qualifications received
39 pursuant to subdivision (a) and the department shall develop a short list of the
40 most qualified firms that meet the criteria established and published by the
41 department. The department shall hold discussions regarding each firm’s
42 qualifications with all firms listed on the short list. The department shall then rank

1 the firms listed on the short list according to each firm’s qualifications and the
2 evaluation criteria established and published by the department.

3 (d) The department shall maintain prequalified lists of professional services
4 firms ranked pursuant to subdivision (c) on an ongoing basis, except that no firm
5 may remain on a list developed pursuant to subdivision (c) based on a single
6 qualification statement for more than three years. The department shall include in
7 each prequalified list adopted pursuant to subdivision (c) no less than three firms,
8 unless the department certifies that the scope of the prequalified list is appropriate
9 for the department’s needs, taking into account the nature of the work, that the
10 department made reasonable efforts to solicit qualification statements from
11 qualified firms, and that the efforts were unsuccessful in producing three firms that
12 met the established criteria. A firm may remain on the prequalified list up to three
13 years without resubmitting a qualification statement, but the department may add
14 additional firms to that list and may annually rank these firms. For purposes of
15 annual adjustment to the ranking of firms already on the prequalified list
16 developed pursuant to subdivision (c), the department shall rely on that firm’s
17 most recent annual qualification statement, if the statement is not more than three
18 years old.

19 **Comment.** Section 68600 continues former Section 25358.6.1(c)(1)-(4), inclusive, without
20 substantive change.

21 See Sections 68050 (“department”), 68590 (“firm,” “prequalified list,” “professional
22 services”).

23 **Staff Notes. (1)** The introductory clause of proposed Section 68600 contained the phrase
24 “engineering, architectural, environmental, landscape architectural, construction project
25 management, or land surveying *firms*” (emphasis added). This is similar to, but slightly different
26 than the defined term in Section 25358.6.1(a)(1), which uses “services” rather than “firms.”
27 However, the difference appears to be immaterial. It seems clear that this phrase is intended to
28 refer to firms that provide these services. For this reason, the existing language has been replaced
29 with the phrase “professional services firms,” which includes the proposed shortened defined
30 term “professional services.” This change is intended to be nonsubstantive. **Absent comment,
31 this proposed change will be presumed correct.**

32 **(2)** Proposed Section 68600 relates to the establishment of a “prequalified list” of bidders. In
33 particular, provisions of this proposed section refer to a “prequalified list adopted pursuant to
34 subdivision (c)” or a “prequalified list developed pursuant to subdivision (c).” However, proposed
35 Section 68600(c) uses the term “short list” as opposed to “prequalified list.” It appears that the
36 ranked short list, established pursuant to subdivision (c), is the “prequalified list.” If that is true, it
37 would be helpful to clarify the statute accordingly. **The staff welcomes comment on this issue.**

38 **(3)** Proposed Section 68600(d) replaces the existing language “*civil* engineering, architectural,
39 environmental, landscape architectural, construction project management, or land surveying
40 *firms*” with “professional services firms.” While this phrase differs slightly from the existing,
41 defined term, “engineering, architectural, environmental, landscape architectural, construction
42 project management, or land surveying services,” those differences appear to be immaterial. For
43 this reason, the proposed shortened defined term has been used in this subdivision. This change is
44 intended to be nonsubstantive. **Absent comment, this proposed change will be presumed
45 correct.**

1 § 68605. Contracting using prequalified lists

2 69605. (a) During the term of the prequalified list developed pursuant to
3 subdivision (c) of Section 68600, as specific projects are identified by the
4 department as being eligible for contracting under the procedures adopted pursuant
5 to Section 68610, the department shall contact the highest ranked firm on the
6 appropriate prequalified list to determine if that firm has sufficient staff and is
7 available for performance of the project. If the highest ranked firm is not available,
8 the department shall continue to contact firms on the prequalified list in order of
9 rank until a firm that is available is identified.

10 (b) The department may enter into a contract for the services with a firm
11 identified pursuant to subdivision (a), if the contract is for a total price that the
12 department determines is fair and reasonable to the department and otherwise
13 conforms to all matters and terms previously identified and established upon
14 participation in the prequalified list.

15 (c)(1) If the department is unable to negotiate a satisfactory contract with a firm
16 identified pursuant to subdivision (b), the department shall terminate the
17 negotiations with that firm and the department shall undertake negotiations with
18 the next ranked firm that is available for performance. If a satisfactory contract
19 cannot be negotiated with the second identified firm, the department shall
20 terminate these negotiations and the department shall continue the negotiation
21 process with the remaining qualified firms, in order of their ranking, until the
22 department negotiates a satisfactory contract.

23 (2) The department may award a contract to a firm on a prequalified list that is
24 to be executed, including amendments, for a term that extends beyond the
25 expiration date of that firm’s tenure on the prequalified list.

26 (3) If the department is unable to negotiate a satisfactory contract with a firm on
27 two separate occasions, the department may remove that firm from the
28 prequalified list.

29 (d) Once a satisfactory contract is negotiated and awarded to a firm from any
30 prequalified list for a generic project category involving a site or facility
31 investigation or characterization, a feasibility study, or a remedial design, for a
32 specific response action or corrective action, including, but not limited to, a
33 corrective action carried out pursuant to Section 25200.10, the department shall
34 not enter into a contract with that firm for purposes of construction or
35 implementation of any part of that same response action or corrective action.

36 **Comment.** Section 68605 continues former Section 25358.6.1(c)(5)-(8), inclusive, without
37 substantive change.

38 See Sections 68050 (“department”), 68060 (“feasibility study”), 68115 (“remedial design”),
39 68135 (“remove”), 68140 (“response”), 68155 (“site”), 68590 (“firm,” “prequalified list”).

40 **Staff Note.** Section 25358.6.1(c), which is proposed for continuation as proposed Sections 68600
41 and 68605, contains a series of numbered paragraphs that relate to two distinct issues — the
42 development of prequalified lists and the use of those lists for contracting. Proposed Section
43 68600 continues the provisions related to the development of prequalified lists, while proposed
44 Section 68605 continues the provisions related to the use of those lists for contracting. Section

1 25358.6.1(c) also contains text preceding the paragraphs. That introductory text relates only to the
2 development of the prequalified lists (“[t]he department may establish prequalified lists of
3 [professional services] firms in accordance with the following process...”). For that reason, the
4 introductory text in Section 25358.6.1(c) is only continued in proposed Section 68600. **Absent**
5 **comment, this proposed change will be presumed correct.**

6 **§ 68610. Authority to adopt guidelines or regulations**

7 68610. The department may adopt guidelines or regulations as necessary and
8 consistent with this article, to define the manner of advertising, generic project
9 categories, type, quantity and cost of services, qualification standards and
10 evaluation criteria, content and submittal requirements for statements of
11 qualification, procedures for ranking of firms and administration of the
12 prequalified list, the scope of matters addressed by participation on a prequalified
13 list, manner of notification of, negotiation with, and awarding of contracts to,
14 prequalified firms, and procedures for protesting the award of contracts under this
15 article, or any other matter that is appropriate for implementation of this article.

16 **Comment.** Section 68610 continues former Section 25358.6.1(d) without substantive change.
17 See Sections 68050 (“department”), 68590 (“firm,” “prequalified list”).

18 **§ 68615. Exemption for exigent actions**

19 68615. Any removal or remedial action taken or contracted by the department
20 pursuant to Section 68870 or 68875 is exempt from this article.

21 **Comment.** Section 68615 continues former Section 25358.6.1(e) without substantive change.
22 See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

23 **Staff Note.** Section 25358.6.1(e) refers to a removal or remedial action taken pursuant to
24 “Section 25354.” Section 25354 is proposed for recodification as multiple sections (proposed
25 Sections 68240, 68580, and 68875). Only one of those proposed sections, proposed Section
26 68875, relates to authority to undertake removal or remedial action. For this reason, the cross-
27 reference to Section 25354 was updated to refer only to proposed Section 68875. **Absent**
28 **comment, this proposed cross-reference update will be presumed correct.**

29 **§ 68620. Compliance with Government Code personal services contract rules**

30 68620. This article does not exempt any contract from compliance with Article 4
31 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2
32 of the Government Code.

33 **Comment.** Section 68620 continues former Section 25358.6.1(f) without substantive change.

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CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES

Article 1. General Powers of Director

§ 68665. Penalties for violations

68665. Any person who refuses or prevents, without sufficient cause, any activity authorized pursuant to this article or Section 68870 shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate violation, or for continuing violations, for each day during which that violation continues.

Comment. Section 68665 restates part of former Section 25367(a)(3) without substantive change.

See Section 68085 (“person”).

DISPOSITION OF EXISTING LAW

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

Existing Provision	Corresponding New Provision
25358.6.1(a)	68590
25358.6.1(b)	68595
25358.6.1(c)(1)-(4)	68600
25358.6.1(d)	68610
25358.6.1(e)	68615
25358.6.1(f)	68620
25358.6.1(c)(5)-(8)	68605
25367(b)	68465
25367(a) (except pt. of (a)(3) re Section 25358.3)	68470
25367(a)(3) (pt. re Section 25358.3)	68665

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.

Proposed New Provision	Corresponding Existing Provision
68465	25367(b)
68470	25367(a) (except pt. of (a)(3) re Section 25358.3)
68590	25358.6.1(a)
68595	25358.6.1(b)
68600	25358.6.1(c)(1)-(4)
68605	25358.6.1(c)(5)-(8)
68610	25358.6.1(d)
68615	25358.6.1(e)
68620	25358.6.1(f)
68665	25367(a)(3) (pt. re Section 25358.3)
