

Memorandum 2019-33

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

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

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

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

Respectfully submitted,

Kristin Burford
Staff Counsel

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

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

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

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

4. Written comments can be in any form. They should be directed to kburford@clrc.ca.gov. Comments may also be made orally at the upcoming Commission meeting (scheduled for May 30, 2019), which will be open to the public. The agenda is available at http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

CUMULATIVE PRELIMINARY DRAFT
FOR DIVISION 45

Staff Note. This is a work in progress. The material shown below may be changed. For a tentative outline of new Part 2 of Division 45 of the Health & Safety Code, see Memoranda 2019-10, pp. 5-6 and 2019-23, pp. 3. All of the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code unless otherwise indicated.

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

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

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

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

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

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

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

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

Where a Commission Comment is drafted to refer to a section of the recodified law that has not yet been included in the draft, the Comment refers to “Section [6XXXX].” These references will be updated when the relevant provision is drafted.

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

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DRAFT LEGISLATION

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

4 DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

5 PART 1. GENERAL PROVISIONS [RESERVED]

6 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

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

12 CHAPTER 1. GENERAL PROVISIONS

13 Article 1. Preliminary Provisions

14 § 68000. Short title

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

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

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

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

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

31 § 68005. Legislative intent

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

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

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

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

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

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

14 Article 2. Effect of Recodification

15 § 68010. Nonsubstantive reform

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

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

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

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

32 § 68015. Continuation of existing law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§ 68025. Constitutionality**

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

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

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

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

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

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

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

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

23 **§ 68030. Conforming rule change**

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

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

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

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

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

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

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

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

3 Article 3. Definitions

4 **§ 68035. Applicable definitions**

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

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

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

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

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

26 **§ 68040. “Agency”**

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

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

29 **§ 68045. “Contract competitor”**

30 68045. “Contract competitor” means any person competing for a state contract
31 pursuant to **subdivision (c) of Section 25358.3.**

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

34 **§ 68050. “Department”**

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

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

37 **§ 68055. “Director”**

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

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

1 § 68060. “Feasibility study”

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

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

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

9 § 68065. “Federal act”

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

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

14 § 68070. “Federally permitted release”

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

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

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

19 § 68075. “Hazardous substance”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Section 25317(a) currently reads as follows:

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

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

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

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

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

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

35 **§ 68085. “Person”**

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

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

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

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

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

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

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

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

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

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

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

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

3 (a) Sampling and analysis of a site.

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

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

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

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

11 **§ 68100. “Regional board”**

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

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

15 **§ 68105. “Release”**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **§ 68115. “Remedial design”**

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

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

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

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

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

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

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

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

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

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

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

15 (c) Site operation and maintenance.

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

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

20 § 68130. “Removal action work plan”

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

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

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

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

34 § 68135. “Remove” or “removal”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **§ 68150. “Secretary”**

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

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

11 **§ 68155. “Site”**

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

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

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

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

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

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

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

26 **§ 68165. “State account”**

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

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

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

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

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

1 § 68170. “Tier”

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

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

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

8 Article 4. Construction of Part

9 § 68185. Construction as to liability

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

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

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

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

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

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

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

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CHAPTER 2. FINANCIAL PROVISIONS

Article 1. Budget

§ 68200. Items to be scheduled in Budget Act

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

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

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

Article 2. Externally-Funded Positions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Article 3. State Account

5 § 68220. Actions involving state account

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

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

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

9 § 68225. Excess expenditures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **Comment.** Section 68240 continues former Section 25354, with the exception of the first
16 sentence of subdivision (c), without substantive change. The first sentence of subdivision (c) of
17 former Section 25354 is continued without substantive change in Section [6XXXX].

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

21 Article 4. Site Remediation Account

22 § 68260. Site Remediation Account

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

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

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

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

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

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

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

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

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

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

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

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

20 **§ 68280. Short title**

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

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

24 **§ 68285. Definitions**

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

27 (a) “Board” means the department.

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

30 (c) “Director” means the director.

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

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

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

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

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

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

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

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

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

10 ...

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

12 ...”

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

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

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

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

28 § 68290. Application of State General Obligation Bond Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 threatened release of a hazardous substance at a site that is listed in the priority
2 ranking of sites pursuant to **Section 25356** and is the subject of a final remedial
3 action plan issued pursuant to **Section 25356.1**, to the extent that the costs are not
4 paid by responsible parties or are reimbursed by the federal act.

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

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

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

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

19 **§ 68310. Bonds as general obligations of state**

20 68310. (a) All bonds authorized by this article, which are sold and delivered as
21 provided in this article, constitute valid and legally binding general obligations of
22 the State of California, and the full faith and credit of the State of California are
23 hereby pledged for the punctual payment of both the principal of and the interest
24 on the bonds.

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

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

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

36 **§ 68315. Transfers to General Fund**

37 68315. Notwithstanding Section 68345, the money deposited in the fund is
38 available for transfer to the General Fund if money was deposited in the fund
39 pursuant to any provision of law requiring repayments to the state for assistance
40 financed by the proceeds of the bonds issued pursuant to this article. When
41 transferred to the General Fund, that money shall be applied as a reimbursement to

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **§ 68330. Tax-exempt funds**

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

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

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

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

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

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

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

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

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

20 **§ 68345. Uses of bond proceeds**

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

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

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

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

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

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

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

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

10 Article 6. Revolving Loans Fund

11 § 68360. Definitions

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

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

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

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

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

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

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

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

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

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

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

34 § 68365. Revolving Loans Fund

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

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

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

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

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

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

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

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

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

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

24 “(c) The department may expend the moneys in the fund only for the purposes authorized
25 by the brownfield law, as specified in subsection (k) of Section 9604 of Title 42 of the United
26 States Code, including providing financial assistance for both of the following:”
27

28 Article 7. Illegal Drug Lab Cleanup Account

29 § 68370. Illegal Drug Lab Cleanup Account

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

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

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

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
25300	68000(a)
25301	68005
25310	68035
25310.5	68040
25311	68045
25312	68050
25313	68055
25314	68060
25315	68065
25316	68075(a)
25317	68075(b)
25318.5	68080
25319	68085
25319.1	68090
25319.5	68095
25319.6	68100
25320	68105(a)
25321	68105(b)
25322	68125
25322.1	68115
25322.2	68120
25323	68135
25323.1	68130
25323.3	68140
25323.5	68145
25323.9	68155
25324(a)	68165
25325	68070
25326	68110
25326.3	68150
25326.5	68160
25327	68170
25330.2	68265
25330.4	68230
25330.5	68235
25331	68220
25337	68260
25342	68200
25353.5	68210(a)-(f)

25354(a), (b), (c) (2nd-3rd sent.), (d)	68240
25354.5(f)	68370
25357	68225
25366	68185
25385	68280
25385.1	68285
25385.2	68290
25385.4	68295
25385.5	68300
25385.6	68305
25385.7	68310
25386	68315
25386.1	68320
25386.2	68325
25386.25	68330
25386.3	68335
25386.4	68340
25386.5	68345
25395.35	68360
25395.36	68365

DERIVATION OF NEW LAW

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

Proposed New Provision	Corresponding Existing Provision
68000(a)	25300
68000(b)	new
68005	25301
68010	new
68015	new
68020	new
68025	new
68030	new
68035	25310
68040	25310.5
68045	25311
68050	25312
68055	25313
68060	25314
68065	25315
68070	25325
68075(a)	25316
68075(b)	25317
68080	25318.5
68085	25319
68090	25319.1
68095	25319.5
68100	25319.6
68105(a)	25320
68105(b)	25321
68110	25326
68115	25322.1
68120	25322.2
68125	25322
68130	25323.1
68135	25323
68140	25323.3
68145	25323.5
68150	25326.3
68155	25323.9
68160	25326.5
68165	25324(a)
68170	25327
68185	25366
68200	25342

68210(a)-(f).....	25353.5
68210(g).....	new
68220	25331
68225	25357
68230	25330.4
68235	25330.5
68240	25354(a), (b), (c) (2nd-3rd sent.), (d)
68260	25337
68265	25330.2
68280	25385
68285	25385.1
68290	25385.2
68295	25385.4
68300	25385.5
68305	25385.6
68310	25385.7
68315	25386
68320	25386.1
68325	25386.2
68330	25386.25
68335	25386.3
68340	25386.4
68345	25386.5
68360	25395.35
68365	25395.36
68370	25354.5(f)

SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

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

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

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