

## Memorandum 2019-59

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

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

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

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

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

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

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

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

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

## GENERAL DRAFTING APPROACH

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

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

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

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

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

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

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4. Changes the staff made to conform to legislative drafting practice included, where appropriate, eliminating uses of the word "such," changing uses of the word "which" to "that," and standardizing citation formats. In rare cases where making these changes requires additional, conforming adjustments, these changes may be flagged in a Staff Note. See, e.g., Staff Note for proposed Section 70925 (Note 1).

5. See Minutes (April 2019), pp. 3-4. Such changes are discussed, for example, in Comments for proposed Sections 70210 and 70230.

6. See, e.g., Staff Notes for proposed Sections 70305 and 70620 (Notes 1 and 2).

7. See, e.g., Staff Notes for proposed Sections 70230 (Note 2), 70370, and 70490 (Note 1).

8. See, e.g., Staff Notes for proposed Sections 70230 (Notes 1 and 3), 70280, 70490 (Note 2), and 70805 (Note 2).

9. See Staff Note for proposed Article 11 (commencing with Section 70570) of Chapter 10.

10. See page i of attached draft proposed legislation.

## STRUCTURE OF PROPOSED CHAPTERS 10, 11, & 12

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

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

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

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

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

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

## (8) Implementing Rules and Regulations

### PRESUMED CONSENT ITEMS

At the July 2019 Commission meeting, the Commission expressed a preference that the staff use consent procedures to streamline consideration of purely technical and uncontroversial matters.<sup>11</sup> The staff identified the issues discussed below as potential consent items. This memorandum describes these items using the same level of detail as if these matters would be up for discussion at the Commission's meeting, but the staff does not plan to present these items at the meeting.

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

#### **Unused Definitions**

In Chapters 10 and 11, the first article of the chapter includes defined terms for that chapter. In recodifying those definitions, the staff found that some of the defined terms were not used in the relevant chapter.<sup>12</sup> If the term is not used, the definition has no application and appears to be unnecessary.

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

#### **Standard for Emergency Regulations**

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

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11. Minutes (July 2019), p. 2.

12. See Staff Notes for proposed Article 1 (commencing with Section 70200) of Chapter 10 (proposing discontinuing definition for "implementation costs") and Article 1 (commencing with Section 70680) of Chapter 11 (proposing discontinuing definitions for "FAIR" and "unforeseen and unexpected response action costs"). The Staff Note for proposed Article 1 (commencing with Section 70200) of Chapter 10 also discusses discontinuing the definition of "regional board" for a different reason (i.e., term is already defined for the part as a whole in proposed Section 68100).

to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code.

Formerly, this language was a required standard for adoption of emergency regulations in Government Code Section 11349.6.<sup>13</sup> If the Office of Administrative Law determined that regulations did not meet this standard, the office was obligated not to file the emergency regulations with the Secretary of State.<sup>14</sup> Thus, it appears that the purpose of the quoted language was to effectively deem that regulations adopted pursuant to Section 25359.29 qualify for treatment as emergency regulations.

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

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

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

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13. See former Government Code Section 11349.6, as amended by 2000 Cal. Stat. ch. 1060, § 34.

In relevant part, former Government Code Section 11349.6 specifies that the Office of Administrative Law shall not file an emergency regulation “if it determines that the regulation is not necessary for the immediate preservation of the public peace, health and safety, or general welfare, or if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines the agency failed to comply with subdivisions (b) and (c) of Section 11346.1.”

14. See former Gov’t Code § 11349.6, as amended by 2000 Cal. Stat. ch. 1060, § 34.

15. See 2006 Cal. Stat. ch. 713.

16. Gov’t Code § 11349.6(b).

Each of the proposed provisions includes a Staff Note discussing the issue and requesting comment on this proposed change.

In looking at this issue, the staff found that this outdated language was also included in a section addressed earlier in this study, proposed Section 68885.<sup>17</sup> **The staff proposes to make similar conforming changes to the language of proposed Section 68665.**

### **Emergency Regulation Duration**

Multiple provisions in this draft authorize the adoption of emergency regulations.<sup>18</sup> Each of these provisions contains similar language about the duration of emergency regulations. For example, one of the existing provisions provides:

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

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

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

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17. See Cumulative Draft attached to Memorandum 2019-61.

18. See proposed Sections 70620, 70625, and 70870.

19. Section 25395.29(a).

20. Compare former Gov't Code § 11346.1, as amended by 2000 Cal. Stat. ch. 1060, § 21, with Gov't Code § 11346.1.

Under the staff's proposed approach, the provision would be continued without the changes shown in ~~strikeout~~ and underscore below.

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

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

#### COMMISSION DECISION ON THE DRAFT

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

Respectfully submitted,

Kristin Burford  
Staff Counsel





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

**Staff Note.** This is a work in progress. The material shown below may be changed.

All of the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code unless otherwise indicated.

**Comments.** A draft of an official Commission “Comment” follows each proposed code section in the recodification. Such Comments will be included in any final recommendation. The Comments are drafted as if the existing code sections have been repealed and replaced with the proposed legislation. Thus, existing code sections are referred to as “former” sections. The Comments indicate the source of each recodified code section and describe how the recodified code section compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

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

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

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

Staff Notes serve to flag issues requiring special attention or treatment. The staff does not plan to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft, identify any issues of concern, and then raise those issues for discussion at the meeting or express their concerns in writing before the meeting, or both. Where a Staff Note serves as a prompt for public comment, these prompts for comment will typically be continued in the Commission’s tentative recommendation as “Notes” calling for comment. However, where the Commission decides against a staff-proposed restatement and reverts to existing statutory language, the Staff Note would not be continued in future drafts.

**Cross-references.** In some places, the provisions proposed for recodification in this draft cross-refer to provisions contained in Chapter 6.8. Those cross-references were updated to reflect the proposed recodification.

When a cross-reference needs to be updated, but there are questions about the cross-reference or how it should be updated, the cross-reference is shown in bracketed bold text and a Staff Note describes the issue and seeks comment on how the provision should be changed.

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

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DRAFT LEGISLATION

1 **Health & Safety Code §§ 68000-[7XXXX] (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 ...

6 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

7 ...

8 CHAPTER 10. CLEANUP LOANS AND ENVIRONMENTAL ASSISTANCE  
9 TO NEIGHBORHOODS

10 Article 1. Definitions

11 **Staff Note.** Proposed Article 1 restates Section 25395.20(a). Two definitions in that subdivision  
12 were not proposed for continuation. This note identifies those terms and the reason that each  
13 definition was not continued. **The staff welcomes comment on whether either of these**  
14 **definitions should be continued in the proposed recodification.**  
15 (1) Section 25395.20(a)(9) defines “implementation costs.” However, the term is not used  
16 elsewhere in the article. In the absence of any uses of the defined term, this definition appears to  
17 be unnecessary.  
18 (2) Section 25395.20(a)(17) defines “regional board” as “a California regional water quality  
19 control board.” This term is already defined for the part as a whole in proposed Section 68100.  
20 Proposed Section 68100 defines “regional board” for this part as “a California regional water  
21 quality control board.” For this reason, the redundant definition of “regional board” in Section  
22 25395.20(a)(17) was not continued.

23 **§ 70200. Application of definitions**

24 70200. For purposes of this chapter, the definitions contained in this article shall  
25 apply.

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

28 **§ 70205. “Account”**

29 70205. “Account” means the Cleanup Loans and Environmental Assistance to  
30 Neighborhoods Account established pursuant to Section 70350.

31 **Comment.** Section 70205 continues former Section 25395.20(a)(1) without substantive  
32 change.

1 § 70210. “Brownfield”

2 70210. (a) “Brownfield” means property that meets all of the following  
3 conditions:

4 (1) It is located in an urban area.

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

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

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

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

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

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

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

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

23 § 70215. “Cleanup and abatement order”

24 70215. “Cleanup and abatement order” means an order issued by a regional  
25 board pursuant to Section 13304 of the Water Code.

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

28 See Section 68100 (“regional board”).

29 § 70220. “Cleanup Loans and Environmental Assistance to Neighborhoods Program” or  
30 “CLEAN”

31 70220. “Cleanup Loans and Environmental Assistance to Neighborhoods  
32 Program” or “CLEAN” means the loan program established by the department  
33 pursuant to Article 6 (commencing with Section 70450), to finance the  
34 performance of actions necessary to respond to the release or threatened release of  
35 hazardous material on an eligible property.

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

38 See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 70230 (“eligible  
39 property”), 70235 (“hazardous material”).

1 § 70225. “Economic activity”

2 70225. “Economic activity” means a governmental activity, a commercial,  
3 agricultural, industrial, or not-for-profit enterprise, or other economic or business  
4 concern.

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

7 § 70230. “Eligible property”

8 70230. (a) “Eligible property” means a site that is any of the following:

9 (1) A brownfield.

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

12 (3) An underutilized property that is a property located [**in an enterprise zone**  
13 **established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing**  
14 **with Section 7070) of Division 7 of Title 1 of the Government Code), in a**  
15 **project area for which a redevelopment plan has been approved pursuant to**  
16 **Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division**  
17 **24, or in an eligible area, as determined pursuant to paragraph (2) of**  
18 **subdivision (c) of Section 7072 of the Government Code].**

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

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

24 (B) An increase in property taxes paid to the local government that is at least  
25 100 percent greater than the property taxes paid by the property owner before  
26 redevelopment occurred.

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

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

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

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

37 (A) A small business.

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

1 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations  
2 Code).

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

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

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

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

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

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

18 See Sections 68065 (“federal act”), 68155 (“site”), 70210 (“brownfield”), 70225 (“economic  
19 activity”), 70255 (“project”), 70260 (“property”), 70265 (“small business”), 70275  
20 (“underutilized property”).

21 **Staff Notes. (1)** Section 25395.20(a)(6)(B)(ii), which would be continued in proposed Section  
22 70230(a)(3), refers to a property “located in an enterprise zone established pursuant to the  
23 Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of  
24 the Government Code), in a project area for which a redevelopment plan has been approved  
25 pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or  
26 in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of Section 7072 of  
27 the Government Code.”

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

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

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

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

46 (2) Section 25395.20(a)(6)(B)(iii)(IV), which would be continued in proposed Section  
47 70230(a)(4)(D), refers to the definition of “housing for very low, low-, or moderate income



1 households” in “paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.”  
2 The term is defined in paragraph (3), as opposed to paragraph (2). This cross-reference has been  
3 corrected accordingly.

4 (3) Section 25395.20(6)(C)(iii), which would be continued in proposed Section 70230(a)(5)(C),  
5 cross-references two repealed sections related to small business grants and loan guarantees.  
6 Although the cross-referenced sections were repealed, it appears that the legislation repealing  
7 these sections shifted the authority for small business grant and loan guarantee programs. In 2003,  
8 the legislation repealing Gov’t Code Section 15339.3 moved duties related to small business  
9 loans from one agency, which was being abolished, to another agency (the Business,  
10 Transportation and Housing Agency). See Legislative Counsel’s Digest for Assembly Bill 1757  
11 (2003 Cal. Stat. ch. 229). In 2013, the legislation repealing Corporations Code Section 14090  
12 transferred functions of the Business, Transportation and Housing Agency related to small  
13 businesses to a new agency, the California Infrastructure and Economic Development Bank. See  
14 Legislative Counsel’s Digest for Assembly Bill 1247 (2013 Cal. Stat. ch. 537). However, it is  
15 unclear how the small business grant and loan guarantee program may have changed over this  
16 time and whether this provision is obsolete or could be updated to achieve the intended legislative  
17 purpose. **The staff welcomes comment on how this provision should be addressed in the**  
18 **recodification.**

19 In addition, one section in this draft (proposed Section 70275(e)(3)) cross-refers to this  
20 provision. Given the possible need to adjust this provision, it is unclear whether the cross-  
21 reference to it is also in need of changes to achieve its intended purpose. **The staff welcomes**  
22 **comment on whether, in light of possible adjustments needed to proposed Section**  
23 **70230(a)(5), any conforming changes are required in proposed Section 70275(e)(3).**

24 **§ 70235. “Hazardous material”**

25 70235. (a) “Hazardous material” means a substance or waste that, because of its  
26 physical, chemical, or other characteristics, may pose a risk of endangering human  
27 health or safety or of degrading the environment. “Hazardous material” includes,  
28 but is not limited to, all of the following:

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

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

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

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

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

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

40 **Staff Notes.** (1) Section 25395.20(a)(8)(A)(i), which would be continued as proposed Section  
41 70235(a)(1), was restated for clarity. The provision currently provides that “hazardous material”  
42 includes:

43 “A hazardous substance, as defined in Section 25281 or 25316, including the substances  
44 specified in Section 25317.”

1 Reading this provision in isolation, the cross-reference to Section 25317 is somewhat unclear, as  
2 Section 25317 lists substances that are *excluded* from the definition of “hazardous substance”  
3 provided in Section 25316.

4 Because other provisions of this chapter address underground fuel tanks that contain petroleum  
5 (a substance that is excluded from the definition of “hazardous substance” by Section 25317), it  
6 seems reasonably clear that the substances listed in Section 25317 are intended to be “hazardous  
7 materials” for the purpose of this law. See Sections 25299.24, 25395.20(a)(11), 25395.28. To  
8 make that point more clear, the clause that refers to Section 25317 would be recodified in a  
9 separate paragraph (proposed Section 70235(a)(4)). **The staff welcomes comment on this  
10 proposed restatement.**

11 (2) The definition of “hazardous material” in proposed Section 70235 specifically includes “a  
12 waste” as that term is defined in two cited sections. See proposed Section 70235(a)(3).

13 The first cited section, Section 101075, defines the terms “waste” and “hazardous waste.” The  
14 definition of “waste” is very broad, including “[a]ny material for which no use or reuse is  
15 intended and that is to be discarded.”

16 The definition of “waste” in the second cited section, Water Code Section 13050, is also broad,  
17 including “sewage and any and all other waste substances ... associated with human habitation.”

18 Thus, the kinds of “wastes” that are included in this section’s definition of “hazardous  
19 material” seem to include waste that is not hazardous (like nonhazardous household garbage).  
20 That result probably stems from a drafting oversight. Nonetheless, the plain meaning of the  
21 existing language is clear. It does, by its terms, include such waste.

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

25 **§ 70240. “Investigating site contamination program”**

26 70240. “Investigating site contamination program” means the loan program  
27 established by the department pursuant to Article 5 (commencing with Section  
28 70400) to conduct a preliminary endangerment assessment of a brownfield or an  
29 underutilized urban property.

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

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

34 **§ 70245. “Leaking underground fuel tank”**

35 70245. “Leaking underground fuel tank” has the same meaning as “tank,” as  
36 defined in Section 25299.24.

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

39 **§ 70250. “No longer in operation”**

40 70250. “No longer in operation” means an economic activity that is, or  
41 previously was, located on a property that is not conducting operations on the  
42 property of the type usually associated with the economic activity.

43 **Comment.** Section 70250 continues former Section 25395.20(a)(12) without substantive  
44 change.

1 See Sections 70225 (“economic activity”), 70260 (“property”).

2 **§ 70255. “Project”**

3 70255. “Project” means any response action, and the planned future  
4 development, included in an application for a loan pursuant to Article 6  
5 (commencing with Section 70450).

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

8 See Section 68140 (“response”).

9 **§ 70260. “Property”**

10 70260. “Property” means real property, as defined in Section 658 of the Civil  
11 Code.

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

14 **§ 70265. “Small business”**

15 70265. “Small business” means an independently owned and operated business,  
16 that is not dominant in its field of operation, that, together with affiliates, has 100  
17 or fewer employees, and that has average annual gross receipts of ten million  
18 dollars (\$10,000,000) or less over the previous three years, or a business that is a  
19 manufacturer, as defined in Section 14837 of the Government Code, with 100 or  
20 fewer employees.

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

23 **§ 70270. “State board”**

24 70270. “State board” means the State Water Resources Control Board.

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

27 **§ 70275. “Underutilized property”**

28 70275. “Underutilized property” means property that meets all of the following  
29 conditions:

30 (a) It is located in an urban area.

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

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

33 (d) One of the following applies:

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

37 (2) The economic activity on the property employs less than 25 percent of the  
38 property for productive purposes.

1 (3) The structures, infrastructure, and other facilities on the property are  
2 antiquated, obsolete, or in such poor repair that they cannot be used for the  
3 purposes for which they were originally constructed and require replacement in  
4 order to implement the redevelopment proposal.

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

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

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

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

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

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

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

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

25 **§ 70280. “Urban area”**

26 70280. “Urban area” means either of the following:

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

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

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

34 See Section 68085 (“person”).

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

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

41 (1) Before its repeal, Public Resources Code Section 21080.7 cross-referred to “urbanized  
42 areas” designated by the U.S. Census Bureau. See former Pub. Res. Code § 21080.7, as amended  
43 by 1993 Cal. Stat. ch. 1130, § 6. The cross-reference could be updated to incorporate the

1 substance of the former rule (i.e., it could refer to urbanized areas designated by the U.S. Census  
2 Bureau). See, e.g., [https://www.census.gov/programs-surveys/geography/guidance/geo-areas/  
3 urban-rural/2010-urban-rural.html](https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html).

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

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

## 19 Article 2. General Provisions

### 20 § 70300. Governing law

21 70300. Except as provided in Sections 70570 and 70575, any response action  
22 carried out under this chapter shall be conducted in accordance with the  
23 requirements of this part and Chapter 6.65 (commencing with Section 25260) of  
24 Division 20.

25 **Comment.** Section 70300 continues the first sentence of former Section 25395.27(a)(1)  
26 without substantive change.

27 See Section 68140 (“response”).

### 28 § 70305. Administering agency

29 70305. (a)(1) Notwithstanding Section 70300, for purposes of Section 25262,  
30 the administering agency for any site that is the subject of a loan under this chapter  
31 shall either be the department pursuant to this chapter, or a regional board, the  
32 state board, or a local oversight program agency under contract with the state  
33 board pursuant to Article 11 (commencing with Section 70570).

34 (2) A person shall not request that a different agency be designated as an  
35 administering agency for the site under Chapter 6.65 (commencing with Section  
36 25260) of Division 20.

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

1 (2) Upon the approval of a loan under Article 7 (commencing with Section  
2 70480), the department shall notify the Site Designation Committee of the  
3 administering agency for the site.

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

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

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

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

12 “However, for purposes of Section 25262, the administering agency for any site that is  
13 the subject of a loan under this chapter shall either be the department pursuant to this chapter, or a  
14 regional board, the state board, or a local oversight program agency under contract with the state  
15 board pursuant to Section 25395.28, and a person shall not request that a different agency be  
16 designated as an administering agency for the site under Chapter 6.65 (commencing with Section  
17 25260) [of Division 20].”

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

20 **§ 70310. References to “hazardous substance”**

21 70310. For sites that are the subject of a loan under this chapter, all references in  
22 this part to a hazardous substance shall be deemed to be a reference to a hazardous  
23 material.

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

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

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

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

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

40 **§ 70315. Application of part**

41 70315. Except as provided in Sections 70570 and 70575, this part shall apply to  
42 a site that is the subject of a loan under this chapter, regardless of whether the site  
43 is on the list created pursuant to Article 5 (commencing with Section 68760) of  
44 Chapter 4.

1 **Comment.** Section 70315 continues former Section 25395.27(c) without substantive change.  
2 See Section 68155 (“site”).

3 **§ 70320. Construction of chapter**

4 70320. (a) Except as provided in Section 25264, this chapter shall not be  
5 construed to limit the authority of the department, the regional board, or the state  
6 board to take any action otherwise authorized under any other provision of law.

7 (b) This chapter shall not be construed to limit, extend, or affect local land use  
8 and zoning authority.

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

12 **§ 70325. Required posting**

13 70325. (a)(1) The department shall post, and update at least monthly, a list of  
14 loan applications received pursuant to this chapter on the department’s internet  
15 website.

16 (2) The list shall include the name of the applicant, the location of the property  
17 that is the subject of the loan application, the administering agency, and a contact  
18 at the department for further information.

19 (b) The department shall also annually post on that website a summary of the  
20 response action status for each site with a loan approved under Article 7  
21 (commencing with Section 70480).

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

24 **Article 3. Financial Provisions**

25 **§ 70350. Cleanup Loans and Environmental Assistance to Neighborhoods Account**

26 70350. The Cleanup Loans and Environmental Assistance to Neighborhoods  
27 Account is hereby established in the General Fund to provide low-interest loans to  
28 qualified applicants for the purpose of funding preliminary endangerment  
29 assessments and response actions at brownfields and underutilized properties  
30 located in the state pursuant to this chapter, and for any other purpose determined  
31 by the department to stimulate the redevelopment of brownfields and underutilized  
32 properties, if the department determines that the redevelopment will result in the  
33 overall improvement of the community in which the property is located and will  
34 provide a reasonable economic or social benefit, in accordance with Section  
35 70355. All of the following moneys shall be deposited in the account:

36 (a) Funds appropriated by the Legislature for the purposes of this chapter.

37 (b) Notwithstanding Section 16475 of the Government Code, any interest earned  
38 upon money deposited into the account.

39 (c) Proceeds from loan repayments.

1 (d) Proceeds from the sale of property pursuant to this chapter that is the subject  
2 of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1,  
3 and proceeds from the enforcement of any other security interest.

4 **Comment.** Section 70350 continues former Section 25395.20(b) without substantive change.

5 See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 68140  
6 (“response”), 70205 (“account”), 70210 (“brownfield”), 70260 (“property”).

7 **§ 70355. Appropriation and expenditure**

8 70355. (a) Except as provided in subdivision (b), notwithstanding Section 13340  
9 of the Government Code, the money in the account is continuously appropriated  
10 without regard to fiscal years to the department for the purpose of providing loans  
11 pursuant to Articles 5 (commencing with Section 70400) and 6 (commencing with  
12 Section 70450) and for the purpose of providing subsidies for environmental  
13 insurance pursuant to Chapter 11 (commencing with Section 70680), the  
14 California Financial Assurance and Insurance for Redevelopment Program.

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

21 **Comment.** Section 70355 continues former Section 25395.20(c) without substantive change.

22 See Sections 68040 (“agency”), 68050 (“department”), 68100 (“regional board”), 70205  
23 (“account”), 70270 (“state board”).

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

28 Article 4. Loans Generally

29 **§ 70370. Ineligible persons**

30 70370. The following persons are not eligible to apply for a loan under this  
31 chapter:

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

36 (b) A person who has been convicted of a felony or misdemeanor involving  
37 moral turpitude, including, but not limited to, the crimes of fraud, bribery, the  
38 falsification of records, perjury, forgery, conspiracy, profiteering, or money  
39 laundering.



1 (c) A person who is in violation of an administrative order or agreement issued  
2 by or entered into with any federal, state, or local agency that requires response  
3 action at a site or a judicial order or consent decree that requires response action at  
4 a site.

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

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

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

14 **Staff Note.** Section 25395.30 designates persons convicted under “Section 25395.13” as  
15 ineligible for a loan. The cross-referenced section is offered as an example of a criminal law  
16 related to the regulation of hazardous materials. The cross-referenced section was repealed in  
17 2012. See 2012 Cal. Stat. ch. 39, § 73. The cross-reference was updated to refer to the “former”  
18 section and provide a citation to the law repealing that section. Because this cross-reference is  
19 simply an illustrative example, updating it to refer to the former section seems unproblematic.  
20 **Absent comment, the staff will presume this cross-reference update is correct.**

21 **§ 70375. Interest rate for loans**

22 70375. The rate of interest to be applied to loans made pursuant to this chapter  
23 shall be the same rate earned on investments in the Surplus Money Investment  
24 Fund during the loan repayment period. If a loan recipient defaults on a loan, the  
25 rate of interest to be applied to the loan shall be 10 percent from the date of  
26 default, or whatever greater rate is reflected in the agreement entered into pursuant  
27 to subdivision (a) of Section 70520.

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

29 **§ 70380. Reporting on loan program**

30 70380. On or before January 10 of each year when a loan under this chapter is  
31 made or repaid during the previous fiscal year, the secretary shall report to the  
32 Joint Legislative Budget Committee and to the chairs of the appropriate policy  
33 committees of the Senate and the Assembly, and shall post on the internet website  
34 of the agency, all of the following:

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

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

40 (c) The number and dollar amount of loans approved pursuant to Article 7  
41 (commencing with Section 70480), the number and dollar amount of those loans

1 that have been repaid, and the number and dollar amount of those loans that are in  
2 default.

3 (d) The number of preliminary endangerment assessments completed pursuant  
4 to agreements entered into under this chapter.

5 (e) The number of sites where necessary response actions have been completed  
6 pursuant to agreements entered into under this chapter.

7 **Comment.** Section 70380 continues former Section 25395.32 without substantive change.

8 See Sections 68040 (“agency”), 68095 (“preliminary endangerment assessment”), 68140  
9 (“response”), 68150 (“secretary”), 68155 (“site”).

## 10 Article 5. Investigating Site Contamination Program

### 11 § 70400. Establishment of program

12 70400. The department, with the approval of the secretary, shall establish an  
13 Investigating Site Contamination Program to provide loans to eligible persons to  
14 conduct preliminary endangerment assessments of brownfields and underutilized  
15 properties. A loan provided pursuant to this article shall not be used for the cost of  
16 a phase I environmental assessment or the department’s oversight of the  
17 preparation and approval of the preliminary endangerment assessment.

18 **Comment.** Section 70400 continues former Section 25395.21(a) without substantive change.

19 See Sections 68050 (“department”), 68085 (“person”), 68090 (“phase I environmental  
20 assessment”), 68095 (“preliminary endangerment assessment”), 68150 (“secretary”), 68155  
21 (“site”), 70210 (“brownfield”), 70240 (“investigating site contamination program”).

### 22 § 70405. Loan application

23 70405. The department shall develop a loan application form for an  
24 investigating site contamination program loan and shall include, in the form, any  
25 provisions that the department considers to be appropriate. The application form  
26 shall be signed by the loan applicant and shall be submitted to the department with  
27 all of the following documentation:

28 (a) The phase I environmental assessment for the property that is the subject of  
29 the loan application.

30 (b) Information that demonstrates that the property is a brownfield or an  
31 underutilized property.

32 (c) If the owner of the property that is the subject of the loan application is not  
33 the loan applicant, one of the following:

34 (1) Documentation that demonstrates that the owner consents to the performance  
35 of the preliminary endangerment assessment of the property.

36 (2) A copy of an agreement between the property owner and the loan applicant  
37 that gives the loan applicant an option to purchase the property.

38 (3) If the loan applicant is a local government entity, or a developer or  
39 prospective purchaser acting together with a local government entity pursuant to  
40 an enforceable agreement, a demonstration to the department that the local

1 government entity, or developer or prospective purchaser acting together with the  
2 local government entity pursuant to an enforceable agreement, has legal access to  
3 perform the preliminary endangerment assessment at the property, or will have  
4 legal access, prior to receiving loan funds.

5 (d) Any other information the department deems necessary.

6 **Comment.** Section 70405 continues former Section 25395.21(b) without substantive change.

7 See Sections 68050 (“department”), 68090 (“phase I environmental assessment”), 68095  
8 (“preliminary endangerment assessment”), 68155 (“site”), 70210 (“brownfield”), 70240  
9 (“investigating site contamination program”), 70260 (“property”), 70275 (“underutilized  
10 property”).

11 **§ 70410. Decision on loan application**

12 70410. The department shall determine whether to approve a loan application  
13 pursuant to this article based upon the information submitted pursuant to Section  
14 70405. In making a decision regarding whether to approve a loan application, the  
15 department shall approve a loan pursuant to this article for a property only if the  
16 department determines the property is a brownfield or an underutilized property.

17 **Comment.** Section 70410 continues former Section 25395.21(c) without substantive change.

18 See Sections 68050 (“department”), 70210 (“brownfield”), 70260 (“property”), 70275  
19 (“underutilized property”).

20 **§ 70415. Maximum loan amount**

21 70415. The maximum amount of a loan granted pursuant to this article shall not  
22 exceed one hundred thousand dollars (\$100,000).

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

24 **§ 70420. Loan repayment**

25 70420. (a) Except as provided in subdivision (b) and in Section 70425, upon  
26 approval of the loan application by the department, the loan recipient shall execute  
27 an agreement with the department to repay the loan over a period not to exceed  
28 three years.

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

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

39 (d) Notwithstanding subdivision (c), a loan recipient is not required to first use  
40 the money recovered to repay the loan or grant, if the recipient can demonstrate, to

1 the satisfaction of the department, that the recovered money is necessary to, and is  
2 being applied to, the total environmental remediation of the property, and that the  
3 total of the recovered money and the loan amount does not exceed the cost of  
4 remediation.

5 **Comment.** Section 70420 continues former Section 25395.21(e) without substantive change.

6 See Sections 68050 (“department”), 68140 (“response”), 68145 (“responsible party”), 68155  
7 (“site”), 70260 (“property”).

8 **§ 70425. Waiver of loan repayment**

9 70425. If a loan recipient who is not the owner of the property and the  
10 department determine, after the completion of the preliminary endangerment  
11 assessment, that the sum of the cost of remediation and the property purchase price  
12 makes the redevelopment of the property not economically feasible, the  
13 department may waive the repayment of up to 75 percent of the loan, and the  
14 amount waived shall be deemed a grant to the loan recipient. If the department  
15 waives the repayment of part of the loan, the recipient shall repay the remaining  
16 portion of the loan within one year of that waiver.

17 **Comment.** Section 70425 continues former Section 25395.21(f) without substantive change.

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

20 **§ 70430. Oversight agreement**

21 70430. Upon approval of a loan, the recipient shall enter into an agreement with  
22 the department for the department to provide regulatory oversight of the  
23 preparation and approval of the preliminary endangerment assessment.

24 **Comment.** Section 70430 continues former Section 25395.21(g) without substantive change.

25 See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”).

26 **§ 70435. Nonliability for oversight costs**

27 70435. Notwithstanding any requirement of Division 20 or this part regarding  
28 cost recovery or reimbursement for oversight costs, a loan recipient is not liable  
29 for paying the department’s cost associated with the oversight of the preparation  
30 and approval of the preliminary endangerment assessment if the department  
31 determines there are sufficient funds in the account to reimburse the department  
32 for that oversight. If the department determines that the account has insufficient  
33 funds to pay for the oversight costs associated with the oversight of the  
34 preparation and approval of the preliminary endangerment assessment, the loan  
35 recipient shall pay the department the amount of those costs.

36 **Comment.** Section 70435 continues former Section 25395.21(h) without substantive change.

37 See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 70205  
38 (“account”).

1 Article 6. Cleanup Loans and Environmental Assistance to  
2 Neighborhoods Program

3 **§ 70450. Establishment of CLEAN Program**

4 70450. The department, with the approval of the secretary, shall establish a  
5 Cleanup Loans and Environmental Assistance to Neighborhoods Program to  
6 provide loans to finance the performance of any action necessary to respond to the  
7 release or threatened release of hazardous material at an eligible property.

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

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

13 **§ 70455. CLEAN loan application**

14 70455. The department shall develop an application form for a loan under the  
15 CLEAN program and shall include, in the form, any provisions that the  
16 department determines to be appropriate to carry out the CLEAN program. The  
17 application shall be signed by the loan applicant and shall be accompanied by all  
18 of the following:

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

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

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

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

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

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

38 (2) A copy of an agreement between the property owner and the loan applicant  
39 that gives the loan applicant an option to purchase the property.

1 (3) If the loan applicant is a local government entity, or a developer or  
2 prospective purchaser acting in concert with a local government entity pursuant to  
3 an enforceable agreement, a demonstration to the department that the local  
4 government entity, or developer or prospective purchaser acting in concert with a  
5 local government entity pursuant to an enforceable agreement, has legal access to  
6 perform any action necessary to respond to the release or threatened release of  
7 hazardous material at an eligible property, or will have legal access, prior to  
8 receiving loan funds.

9 (f) Any other information the department deems necessary.

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

11 See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 68105  
12 (“release”), 68140 (“response”), 68155 (“site”), 70220 (“Cleanup Loans and Environmental  
13 Assistance to Neighborhoods Program”), 70230 (“eligible property”), 70235 (“hazardous  
14 material”), 70255 (“project”), 70260 (“property”).

15 **§ 70460. Use of CLEAN loan funds**

16 70460. (a) A recipient of a loan to perform an action to respond to a release or  
17 threatened release of a hazardous material at an eligible property that is granted  
18 pursuant to this article may also use the loan funds to pay the premium for  
19 environmental insurance products to facilitate the development of the site, if the  
20 insurance company has an A.M. Best Financial Strength Rating of A+ or better  
21 and an A.M. Best Financial Size Category of FSC X or larger and is authorized to  
22 offer environmental insurance in California.

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

28 **Comment.** Section 70460 continues the second and fourth sentences of former Section  
29 25395.22(a) without substantive change.

30 See Sections 68050 (“department”), 68090 (“phase I environmental assessment”), 68095  
31 (“preliminary endangerment assessment”), 68105 (“release”), 68140 (“response”), 68155 (“site”),  
32 70230 (“eligible property”), 70235 (“hazardous material”).

33 **§ 70465. Use of CLEAN loans by local government**

34 70465. The department shall take those necessary actions to promote the use of  
35 loans under the CLEAN program by local governments.

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

38 See Section 68050 (“department”), 70220 (“Cleanup Loans and Environmental Assistance to  
39 Neighborhoods Program”).

1 Article 7. Review of CLEAN Loan Applications

2 **§ 70480. Approval of CLEAN loans**

3 70480. (a) The department, after consultation with the secretary, the Secretary of  
4 Business, Transportation and Housing, and the Director of the Office of Planning  
5 and Research, may approve loan applications submitted pursuant to Article 6  
6 (commencing with Section 70450).

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

10 **Comment.** Section 70480 continues former Section 25395.23(a) without substantive change.

11 See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 68150  
12 (“secretary”), 70230 (“eligible property”), 70235 (“hazardous material”).

13 **§ 70485. Ranking loan applications**

14 70485. If the department determines, based on estimates of the number of loan  
15 requests that will be submitted in any fiscal year and the amount of loan funds that  
16 will be available during that fiscal year, that sufficient funding to meet the demand  
17 for loans will not be available, the department shall establish a system for ranking  
18 loan applications based on priority scores. Priority scores shall be calculated for  
19 each loan application by scoring the project that is the subject of the loan  
20 application using scales that measure the factors listed in Section 70490. The  
21 department shall approve loans for a project based on its priority scores.

22 **Comment.** Section 70485 continues former Section 25395.23(b) without substantive change.

23 See Section 68050 (“department”), 70255 (“project”).

24 **§ 70490. Factors for ranking loan applications**

25 70490. The system for ranking loan applications pursuant to Section 70485 shall  
26 establish priority scores for projects that are the subjects of the loan applications  
27 using scales that measure all of the following factors:

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

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

37 (c) The potential for the project to provide additional protection of the public  
38 health and safety.

1 (d) The potential for the project to enhance strategic community development,  
2 including, but not limited to, all of the following:

3 (1) The creation of new jobs.

4 (2) Generation of additional tax revenue.

5 (3) The likelihood that the project will stimulate additional redevelopment in  
6 adjacent areas.

7 (4) The degree to which implementation of the project will improve local  
8 property values.

9 (5) The degree to which implementation of the project will result in the  
10 development of new parks.

11 (6) The extent to which the project may have a beneficial effect on the  
12 construction of new schools.

13 (7) The extent to which the project will result in the construction of affordable  
14 inner-city housing.

15 (8) The potential for the project to have a beneficial impact on existing local and  
16 regional infrastructure or projected infrastructure needs, or otherwise promote  
17 infill development.

18 (e) The economic viability of the project, including, but not limited to, an  
19 analysis of the current value of the property as compared to its projected value  
20 after all necessary response actions have been completed.

21 (f) The ability of the loan applicant to successfully perform the response action  
22 at the site and repay the loan if funding is provided.

23 (g) The geographic location of the project, taking into consideration the number  
24 and amounts of loans approved for projects located in that area, as compared to  
25 those approved for other needy areas throughout the state.

26 (h) The degree of likelihood that the response action would not be completed if a  
27 loan pursuant to Article 6 (commencing with Section 70450) is not made,  
28 including whether any necessary response action is already being paid for by a  
29 responsible party pursuant to an administrative order, an agreement issued or  
30 entered into with a federal, state, or local agency, a judicial order, or a consent  
31 decree.

32 (i) The ability to obtain conventional financing absent a loan under this program.

33 **Comment.** Section 70490 restates former Section 25395.23(c) without substantive change.  
34 This section corrects the cross-reference to the Mello-Roos Community Facilities Act of 1982.

35 See Sections 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 70255  
36 (“project”), 70260 (“property”).

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



1 financial support from financing under the Community Redevelopment Law (i.e., could a project  
2 proponent have an enforceable obligation against a former redevelopment agency that entitles the  
3 proponent to continue to receive funds?). **The staff welcomes comment on whether this**  
4 **reference to financing under the Community Redevelopment Law is obsolete.**

5 Article 8. Conditions for Loan Approval

6 § 70500. Maximum loan amount

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

11 **Comment.** Section 70500 continues former Section 25395.24(a) without substantive change.  
12 See Section 68050 (“department”).

13 § 70505. Percentage of debt to future value

14 70505. The department shall not approve a loan pursuant to Article 7  
15 (commencing with Section 70480) if the total debt against the eligible property  
16 subject to the release or threatened release of a hazardous material on which the  
17 response action will be taken exceeds 80 percent of the estimated value of the  
18 property after all necessary response actions are complete.

19 **Comment.** Section 70505 continues former Section 25395.24(b) without substantive change.  
20 See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 70230 (“eligible  
21 property”), 70235 (“hazardous material”), 70260 (“property”).

22 Article 9. Obligations of Loan Recipient

23 § 70520. Obligations

24 70520. Upon the approval of a loan pursuant to Article 7 (commencing with  
25 Section 70480), the loan recipient shall do all of the following:

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

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

33 (2)(A) The agreement shall require that if the loan recipient recovers from a  
34 responsible party any costs incurred in taking a response action at the site that is  
35 the subject of the response action pursuant to the agreement, the loan recipient  
36 shall use the recovered money, except for reasonable costs and the fees incurred to  
37 recover that money, first to satisfy the loan.

1 (B) Notwithstanding subparagraph (A), a loan recipient is not required to first  
2 use the money recovered to repay the loan or grant if the recipient can  
3 demonstrate, to the satisfaction of the department, that the recovered money is  
4 necessary to, and is being applied to, the total environmental remediation of the  
5 property, and that the total of the recovered money and the loan amount does not  
6 exceed the cost of remediation.

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

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

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

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

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

40 (B) The secretary determines that the scope of the response action is limited and  
41 the cost of the premiums of the prenegotiated package of environmental insurance

1 products equals or exceeds the estimated response action costs, or is otherwise not  
2 commercially feasible.

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

4 See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68140  
5 (“response”), 68145 (“responsible party”), 68150 (“secretary”), 68155 (“site”), 70205  
6 (“account”), 70260 (“property”), 70270 (“state board”).

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

15 **(2)** Section 25395.25(c)(2)(A) references the “subsidies authorized pursuant to Section  
16 25395.42.” Section 25395.42 is proposed for recodification as two sections (proposed Sections  
17 70800 and 70805). This cross-reference was updated to refer only to proposed Section 70800,  
18 which authorizes the use of funds to provide subsidies. **Absent comment on this proposed  
19 cross-reference update, it will be presumed correct.**

## 20 Article 10. Security for Loan

### 21 § 70540. Security required

22 70540. (a) A loan approved pursuant to Article 7 (commencing with Section  
23 70480) shall be secured by the property subject to the release or threatened release  
24 of the hazardous material on which the response action will be taken or by another  
25 form of security that the department determines will adequately protect the state’s  
26 interest.

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

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

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

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

35 See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 70205 (“account”),  
36 70235 (“hazardous material”), 70260 (“property”).

### 37 § 70545. Liability of security interest holder

38 70545. (a) The state, the secretary, the department, and the account are not liable  
39 under any state or local statute, regulation, or ordinance because the department  
40 holds the security interest identified in Section 70540 or because the department

1 acquired property through foreclosure or its equivalent in satisfaction of a loan  
2 issued pursuant to this chapter.

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

6 **Comment.** Section 70545 continues former Section 25395.26(b) and (c) without substantive  
7 change.

8 See Sections 68040 (“agency”), 68050 (“department”), 68150 (“secretary”), 70205  
9 (“account”), 70260 (“property”).

10 **§ 70550. Application of other laws**

11 70550. (a) Notwithstanding any other provision of law, no approval or review  
12 shall be required from the Department of General Services to obtain any security  
13 interest or exercise any rights, including, but not limited to, foreclosure, under any  
14 security interest or other agreement made pursuant to this chapter.

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

18 (c) The department shall promptly dispose of any property acquired through the  
19 exercise of any security interest pursuant to this chapter at the property’s current  
20 market value and the disposal of this property is exempt from Section 11011.1 of  
21 the Government Code and Article 8 (commencing with Section 54220) of Chapter  
22 5 of Part 1 of Division 2 of Title 5 of the Government Code.

23 **Comment.** Section 70550 continues former Section 25395.26(d) without substantive change.

24 See Section 68050 (“department”), 70260 (“property”).

25 **Article 11. Administering Agency**

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

31 **§ 70570. Administering agency for leaking underground fuel tank property**

32 70570. (a) Except as provided in subdivision (b) and Section 70575, upon the  
33 request of a regional board or the state board, the administering agency for any site  
34 that is the subject of a loan approved under Article 7 (commencing with Section  
35 70480) shall be a regional board, the state board, or a local oversight program  
36 agency under contract with the state board in accordance with Chapter 6.7  
37 (commencing with Section 25280) of Division 20 and Chapter 6.75 (commencing  
38 with Section 25299.10) of Division 20, if the property is subject to a release from  
39 a leaking underground fuel tank and the release from the leaking underground fuel

1 tank is the principal threat at that property, as determined by the regional board,  
2 the state board, and the department.

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

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

11 **Comment.** Section 70570 continues former Section 25395.28(a) without substantive change.

12 See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68140  
13 (“response”), 68155 (“site”), 70245 (“leaking underground fuel tank”), 70260 (“property”),  
14 70270 (“state board”).

15 **§ 70575. Administering agency for site subject to Water Code orders or agreements**

16 70575. (a) Upon the request of a regional board, the regional board shall be the  
17 administering agency for a property specified in Section 70570, if the site is  
18 subject to one or more of the following orders or agreements under Division 7  
19 (commencing with Section 13000) of the Water Code prior to the date the loan  
20 application was submitted to the department pursuant to Article 6 (commencing  
21 with Section 70450):

22 (1) A cleanup and abatement order.

23 (2) Other cleanup order issued by a regional board.

24 (3) A written voluntary agreement with a regional board.

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

27 **Comment.** Section 70575 continues former Section 25395.28(b) without substantive change.

28 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68155  
29 (“site”), 70215 (“cleanup and abatement order”), 70260 (“property”).

30 **§ 70580. Request for department to be administering agency**

31 70580. Notwithstanding Sections 70570 and 70575, the regional board and the  
32 state board, in consultation with the department, may request the department to be  
33 the administering agency for a property subject to this article.

34 **Comment.** Section 70580 continues former Section 25395.28(c) without substantive change.

35 See Sections 68050 (“department”), 68100 (“regional board”), 70260 (“property”), 70270  
36 (“state board”).

37 **§ 70585. Administering agency for site subject to multiple agreements or orders**

38 70585. Notwithstanding Section 70575, if a regional board has issued a cleanup  
39 order or entered into a written voluntary agreement under Division 7 (commencing  
40 with Section 13000) of the Water Code for a site and the department has issued an

1 order or entered into an enforceable agreement under Chapter 6.5 (commencing  
2 with Section 25100) of Division 20 or this part, the regional board and the  
3 department shall consult and determine which agency shall be the administering  
4 agency for the site under this chapter.

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

7 **§ 70590. Notice of loan application**

8 70590. The department shall provide a written notice of the receipt of a loan  
9 application under Article 6 (commencing with Section 70450), including the name  
10 and address of the loan applicant and the location of the property, to both of the  
11 following:

12 (a) A regional board for any property within that regional board’s jurisdiction.

13 (b) The state board for any property that contains a leaking underground fuel  
14 tank.

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

18 **§ 70595. Election to oversee response action**

19 70595. The regional board or state board shall respond with a written notice to  
20 the department within 20 working days after receipt of the notice or information  
21 provided pursuant to Section 70590 indicating whether the regional board or a  
22 local oversight program agency under contract with the state board will oversee  
23 the response action pursuant to this article. If the regional board or state board  
24 does not provide this notice within that time period, the regional board or state  
25 board shall be deemed to have elected not to oversee the response action.

26 **Comment.** Section 70595 continues former Section 25395.28(f) without substantive change.  
27 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 70270  
28 (“state board”).

29 **§ 70600. Reimbursement for oversight costs**

30 70600. (a) If a regional board or a local oversight program agency under  
31 contract with the state board oversees a response action pursuant to this article, the  
32 department shall reimburse the regional board or state board from the account for  
33 oversight costs, if all of the following occur:

34 (1) The department determines, pursuant to paragraph (2) of subdivision (b) of  
35 Section 70520, that there are sufficient funds in the account.

36 (2) The department receives the report required upon completion of the response  
37 action under Section 70605.

38 (3) The regional board or a local oversight program agency under contract with  
39 the state board, as appropriate, certifies that it is not eligible to be reimbursed for  
40 oversight costs from any other fund or account, including, but not limited to, the

1 Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75 (commencing  
2 with Section 25299.10) of Division 20.

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

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

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

17 See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68140  
18 (“response”), 68155 (“site”), 70205 (“account”), 70270 (“state board”).

19 **§ 70605. Reporting and notification of completion**

20 70605. If the regional board or a local oversight program agency under contract  
21 with the state board serves as the administering agency pursuant to this article, the  
22 regional board or the state board shall do both of the following:

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

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

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

28 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 70270  
29 (“state board”).

30 **§ 70610. Application of article**

31 70610. This article does not apply to any site subject to Chapter 1 (commencing  
32 with Section 17210) of Part 10.5 of Division 1 of Title 1 of the Education Code.

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

34 See Section 68155 (“site”).

35 **Article 12. Emergency Regulations**

36 **§ 70620. Authority to adopt emergency regulations**

37 70620. (a) The department may adopt regulations to implement this chapter as  
38 emergency regulations. The Office of Administrative Law shall consider the

1 situation addressed by those regulations to be an emergency for purposes of  
2 Section 11349.6 of the Government Code.

3 (b) Notwithstanding the time period specified in subdivision (e) of Section  
4 11346.1 of the Government Code, the emergency regulations adopted or amended  
5 pursuant to this section shall be repealed 180 days after the effective date of the  
6 regulations, unless the secretary or the department readopts those regulations, in  
7 whole or in part, in compliance with Chapter 3.5 (commencing with Section  
8 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

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

20 Section 11349.6 was revised to replace this standard for the enactment of emergency  
21 regulations with a requirement that the situation addressed by the regulation be an emergency.  
22 The standard for what constitutes an emergency is now found in Government Code Section  
23 11342.545, which defines “emergency” as “a situation that calls for immediate action to avoid  
24 serious harm to the public peace, health, safety, or general welfare.”

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

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

35 Because the time periods specified in Government Code Section 11346.1(e) and Section  
36 25395.29 are now the same (i.e., 180 days), this provision may be surplus. However, if  
37 Government Code Section 11346.1(e) were to be amended in the future, to provide a different  
38 period of effect for emergency regulations, this provision would once again have its originally  
39 intended effect of providing a 180-day period for emergency regulations adopted under Section  
40 25395.29 (notwithstanding the general rule for emergency regulations). For that reason, the staff  
41 has retained the provision in this draft. **The staff welcomes comment on the proposed  
42 treatment of this provision.**

43 **§ 70625. Authority to adopt emergency regulations for Chapter 548 of the Statutes of 2001**

44 70625. (a) The department may adopt emergency regulations to implement the  
45 changes made by Chapter 548 of the Statutes of 2001. The Office of  
46 Administrative Law shall consider the situation addressed by the regulations



1 adopted pursuant to this section, to be an emergency for purposes of Section  
2 11349.6 of the Government Code.

3 (b) Notwithstanding the time period specified in subdivision (e) of Section  
4 11346.1 of the Government Code, the emergency regulations adopted or  
5 amended pursuant to this section shall be repealed 180 days after the effective  
6 date of the regulations, unless the secretary or the department readopts those  
7 regulations, in whole or in part, in compliance with Chapter 3.5 (commencing  
8 with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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

11 **Staff Notes. (1)** Section 25395.29(b), which would be restated in proposed Section 70625,  
12 appears to be largely a transitional provision, authorizing emergency regulations to address  
13 specified legislative changes. Nearly 20 years have passed since the relevant legislation was  
14 enacted, so it seems likely that the need for emergency regulations has ended. Moreover, the  
15 authority provided by this proposed section appears to be largely redundant. Proposed Section  
16 70620 would appear to provide authority for emergency regulations with respect to nearly all of  
17 the changes in the relevant legislation. See 2001 Cal. Stat. ch. 548 (only Section 25264 appears to  
18 be outside of the scope of proposed Section 70620). **The staff welcomes comment on whether  
19 this provision has continuing effect in practice.**

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

22 • Section 25395.29(b) provides authority to adopt emergency regulations to implement  
23 “changes made by the act of the 2001-02 Regular Session of the Legislature that amends this  
24 section.” This reference was updated to cite to the statute chapter for the relevant legislation (i.e.,  
25 2001 Cal. Stat. ch. 548). **Absent comment, this change will be presumed correct.**

26 • Section 25395.29(b) contains an out-of-date reference to the standard for emergency  
27 regulations. This issue is more fully described in Note #1 to proposed Section 70620. The  
28 language of proposed Section 70625 was restated to better coordinate with the current language  
29 of Government Code Section 11349.6.

30 • Proposed Section 70625 would replace an obsolete reference to a 120-day limit for  
31 emergency regulations. As with proposed Section 70620 and discussed in Note #2 for that  
32 provision, this provision references Government Code Section 11346.1(e), which no longer  
33 provides for a 120-day limitation for emergency regulations. Government Code Section  
34 11346.1(e) now provides for 180 days. The obsolete 120-day language was replaced with a  
35 reference to the “time period specified in” Government Code Section 11346.1(e).

36 CHAPTER 11. CALIFORNIA FINANCIAL ASSURANCE AND INSURANCE  
37 FOR REDEVELOPMENT PROGRAM

38 Article 1. Definitions

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

41 (1) Section 25395.40(f) defines the acronym “FAIR” as “the Financial Assurance and Insurance  
42 for Redevelopment Program...” However, the acronym is not used elsewhere in the article. In  
43 the absence of any uses of the defined term, this definition appears to be unnecessary.

1 (2) Section 25395.40(m) defines “unforeseen and unexpected response action costs.” However,  
2 this term is not used elsewhere in the article. In the absence of any uses of the defined term, this  
3 definition appears to be unnecessary.

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

6 **§ 70680. Application of definitions**

7 70680. For purposes of this chapter, the definitions contained in this article shall  
8 apply.

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

11 **§ 70685. “CLEAN Program”**

12 70685. “CLEAN Program” means the Cleanup Loans and Environmental  
13 Assistance to Neighborhoods Program established pursuant to Section 70450.

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

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

20 **§ 70690. “Cost overrun insurance”**

21 70690. (a) “Cost overrun insurance” means insurance that covers some, or all of  
22 the response costs caused by a known pollution condition at a site, that exceed the  
23 estimated response action costs that have been accepted and approved by the  
24 insurer, based on information from the department and other relevant sources at  
25 the time the insurance is first obtained.

26 (b) Cost overrun insurance shall, at a minimum, provide for all of the following:

27 (1) The response costs in excess of the estimated response action costs that have  
28 been accepted and approved by the insurer.

29 (2) A policy period of sufficient length to cover the duration of the response  
30 activities, not including post-completion operation and maintenance.

31 (3) A self-insured retention amount not to exceed 25 percent of the estimated  
32 response action costs that have been accepted and approved by the insurer.

33 **Comment.** Section 70690 continues former Section 25395.40(b) without substantive change.

34 See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”), 70705 (“estimated  
35 response action costs”), 70720 (“pollution condition”), 70735 (“self-insured retention amount”).

36 **§ 70695. “Eligible property”**

37 70695. “Eligible property” has the same meaning as defined in subdivision (a)  
38 of Section 70230.

39 **Comment.** Section 70695 continues former Section 25395.40(c) without substantive change.

1 § 70700. “Environmental insurance”

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

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

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

13 § 70705. “Estimated response action costs”

14 70705. “Estimated response action costs” means the projected costs of taking a  
15 response action in implementing an approved removal action work plan or  
16 remedial action plan prepared to address a pollution condition at a site.

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

18 See Sections 68125 (“remedy”), 68130 (“removal action work plan”), 68140 (“response”),  
19 68155 (“site”), 70720 (“pollution condition”).

20 § 70710. “Hazardous material”

21 70710. “Hazardous material” means a substance or waste that, because of its  
22 physical, chemical, or other characteristics, may pose a risk of endangering human  
23 health or safety or of degrading the environment. “Hazardous material” includes,  
24 but is not limited to, all of the following:

25 (a) A hazardous substance, as defined in Section 25281 or subdivision (a) of  
26 Section 68075, including the substances specified in subdivision (b) of Section  
27 68075.

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

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

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

32 See Section 68075 (“hazardous substance”).

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

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

1 deem otherwise non-hazardous “waste” as a “hazardous material” for the purpose of this law.  
2 **The staff welcomes comment on how this provision is understood in practice.**

3 **§ 70715. “Insurance company”**

4 70715. “Insurance company” means an insurance company authorized in  
5 California to offer environmental insurance and that has an A.M. Best Financial  
6 Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC  
7 X or larger.

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

10 **§ 70720. “Pollution condition”**

11 70720. “Pollution condition” means a release or threatened release of a  
12 hazardous material and any resulting impact upon the environment.

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

15 **§ 70725. “Pollution liability insurance”**

16 70725. (a) “Pollution liability insurance” means insurance that covers damages  
17 caused by a pollution condition from, or at, a site that is preexisting and unknown,  
18 or was otherwise unknown at the time the insurance is first obtained, and, at a  
19 minimum, provides for all of the following:

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

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

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

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

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

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

37 **Comment.** Section 70725 continues former Section 25395.40(j) without substantive change.  
38 See Sections 68140 (“response”), 68155 (“site”), 70720 (“pollution condition”).

1 § 70730. “Secured creditor insurance”

2 70730. “Secured creditor insurance” means insurance made available to an  
3 insured that covers all of the following:

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

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

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

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

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

20 § 70735. “Self-insured retention amount”

21 70735. “Self-insured retention amount” means response action costs in excess of  
22 the estimated response action costs that have been accepted and approved by the  
23 insurer that the insured is obligated to pay before being eligible to make a claim of  
24 an insurer under a cost overrun insurance policy.

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

28 Article 2. Environmental Insurance Products

29 § 70750. Request for proposal

30 70750. (a) The secretary shall solicit proposals for a package of environmental  
31 insurance products from insurance companies through a competitive bidding  
32 process.

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

36 (2) The request for proposal shall require that the proposal allow a purchaser the  
37 opportunity to pay for additional coverage without losing the lower transaction  
38 costs structure of the prenegotiated policy.

1 (c) The secretary shall hold at least one public workshop in both the northern  
2 and the southern part of the state to present and solicit comments on the request  
3 for proposal prior to receiving any proposals.

4 **Comment.** Section 70750 continues former Section 25395.41(a) without substantive change.  
5 See Sections 68150 (“secretary”), 70700 (“environmental insurance”).

6 **§ 70755. Factors for evaluation of proposals**

7 70755. The secretary shall evaluate the extent to which each proposal submitted  
8 pursuant to Section 70750 meets the objectives of the request for proposal and  
9 shall also evaluate each proposal and interested party using all of the following  
10 factors:

11 (a) Product pricing.

12 (b) Claims history.

13 (c) Underwriting history.

14 (d) Company financial strength and size.

15 (e) Scope of policy coverages, including endorsements and exclusions.

16 (f) Marketing and distribution of the insurance products.

17 (g) Any other factor that the secretary determines will affect the ability of the  
18 selected insurance company to meet the requirements of this chapter and provide  
19 the environmental insurance products in the most effective and efficient manner  
20 and at the least cost to the state and to persons seeking that insurance.

21 **Comment.** Section 70755 continues former Section 25395.41(b)(1) without substantive  
22 change.

23 See Sections 68085 (“person”), 68150 (“secretary”), 70700 (“environmental insurance”),  
24 70715 (“insurance company”).

25 **§ 70760. Selection of state-designated provider**

26 70760. (a) The secretary shall select one or more insurance companies that have  
27 submitted a proposal pursuant to Section 70750 to be the exclusive state-  
28 designated provider of environmental insurance under this chapter for a period of  
29 three years from the date of selection.

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

33 **Comment.** Section 70760 continues the first two sentences of former Section 25395.41(b)(2)  
34 without substantive change.

35 See Sections 68150 (“secretary”), 70700 (“environmental insurance”).

36 **§ 70765. Bidding every three years**

37 70765. Every three years, the secretary shall repeat the competitive bidding  
38 process specified in this article.

39 **Comment.** Section 70765 continues the third sentence of former Section 25395.41(b)(2)  
40 without substantive change.

1 See Section 68150 (“secretary”).

2 **§ 70770. Offer of insurance products**

3 70770. (a) An insurance company selected to provide prenegotiated  
4 environmental insurance products pursuant to Section 70760 shall offer this  
5 prenegotiated package of insurance products to any interested recipient of a loan  
6 under the CLEAN Program.

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

10 **Comment.** Section 70770 continues former Section 25395.41(c) without substantive change.

11 See Sections 68085 (“person”), 68140 (“response”), 70685 (“CLEAN Program”), 70700  
12 (“environmental insurance”), 70715 (“insurance company”).

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

20 **§ 70775. Consultation with state agencies and interested parties**

21 70775. The secretary shall implement this article in consultation with  
22 representatives of other appropriate state agencies, including the Business,  
23 Transportation and Housing Agency, the Office of Planning and Research, the  
24 Pollution Control Financing Authority, the Department of Insurance, the state  
25 board, the department, and with other interested parties, including developers,  
26 lenders, insurers, and representatives from environmental organizations.

27 **Comment.** Section 70775 continues the first sentence of former Section 25395.41(d) without  
28 substantive change.

29 See Sections 68050 (“department”), 68150 (“secretary”).

30 **Staff Note.** Proposed Section 70775 identifies agencies that the secretary must consult in  
31 implementing this article, including the “state board.” “State board” is used here without an  
32 applicable definition. Existing Chapter 6.8 contains a few, limited-application definitions for state  
33 board that define the term as the “State Water Resources Control Board.” See, e.g., Section  
34 25356.1, 25395.20(a)(18). It seems likely that this was the intended definition here. **The staff**  
35 **welcomes comment on this issue.**

36 **§ 70780. Consistency with requirements for state procurement of services**

37 70780. The secretary shall implement this article in a manner that is consistent  
38 with the requirements for state procurement of services set forth in Article 4  
39 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the  
40 Public Contract Code.

41 **Comment.** Section 70780 continues the second sentence of former Section 25395.41(d)  
42 without substantive change.

1 See Section 68150 (“secretary”).

2 Article 3. Subsidies

3 § 70800. Funds for subsidies

4 70800. The secretary shall expend the funds from the Cleanup Loans and  
5 Environmental Assistance to Neighborhoods Account established pursuant to  
6 Section 70350 that are made available in the annual Budget Act for expenditure to  
7 subsidize the cost of the environmental insurance products offered by the  
8 insurance company selected pursuant to Section 70760, in accordance with  
9 Section 70805.

10 **Comment.** Section 70800 continues former Section 25395.42(a) without substantive change.

11 See Sections 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance  
12 company”).

13 **Staff Notes. (1)** Section 25395.42(a) refers to the Cleanup Loans and Environmental Assistance  
14 to Neighborhoods account established pursuant to “Section 25395.20.” Section 25395.20 is  
15 proposed for recodification as multiple provisions (sections contained in proposed Articles 1 and  
16 3 of Chapter 10). The cross-reference was updated to refer only to proposed Section 70350,  
17 which contains language establishing the account. **Absent comment on this proposed cross-  
18 reference update, it will be presumed correct.**

19 **(2)** Section 25395.42(a) also refers to an insurance company selected pursuant to “subdivision (b)  
20 of Section 25395.41.” Section 25395.41(b) is proposed for recodification as multiple sections  
21 (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section  
22 70760, which relates to the selection of a state-designated insurance provider, appears to be  
23 relevant to the reference. For this reason, the reference was updated to refer to “Section 70760.”  
24 **Absent comment on this proposed cross-reference update, it will be presumed correct.**

25 § 70805. Amount of subsidies

26 70805. The secretary shall provide the following subsidies, in accordance with  
27 the application process specified in this article, from the funds made available  
28 pursuant to Section 70800:

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

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

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

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

40 (B) The insured pays, at a minimum, the first 20 percent of the self-insured  
41 retention amount.



1 (C) The secretary determines that the amount of the payment is in the best  
2 interests of the state, taking into account the environmental and economic benefits  
3 of the specified project, as compared to the benefit of conserving funds for  
4 assistance at other sites.

5 **Comment.** Section 70805 continues former Section 25395.42(b) without substantive change.

6 See Sections 68150 (“secretary”), 68155 (“site”), 70690 (“cost overrun insurance”), 70700  
7 (“environmental insurance”), 70735 (“self-insured retention amount”).

8 **Staff Notes. (1)** Section 25395.42(b) cross-references the application process for subsidies  
9 specified in “Section 25395.43.” This article contains multiple proposed provisions that recodify  
10 25395.43, as well as one other section that recodifies Section 25395.42(a). Section 25395.42(a)  
11 does not relate to applications for subsidies. Rather than referring to each of the proposed sections  
12 that recodify Section 25395.43, the cross-reference was updated to refer to “this article.” This is a  
13 nonsubstantive change. **Absent comment on this proposed cross-reference update, it will be**  
14 **presumed correct.**

15 **(2)** Section 25395.42(b) refers to insurance “provided pursuant to subdivision (b) of Section  
16 25395.41.” Section 25395.41(b) is proposed for recodification as multiple provisions (proposed  
17 Sections 70755, 70760, 70765). It is not clear how this cross-reference should be updated, as  
18 Section 25395.41(b) does not seem to relate to the providing of insurance products. Rather it  
19 appears that this cross-reference should instead point to subdivision (c) of Section 25395.41,  
20 which is twice cross-referenced in this proposed section as a provision pursuant to which  
21 insurance products are provided. **The staff welcomes comment on how this cross-reference**  
22 **should be updated.**

### 23 § 70810. Eligibility for subsidies

24 70810. (a) Any person who is conducting a response action at an eligible  
25 property under the oversight of the department or a regional board and who  
26 purchases the prenegotiated environmental insurance products from the insurance  
27 company selected pursuant to Section 70760 may apply to the secretary for the  
28 subsidies that are made available pursuant to this article.

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

33 **Comment.** Section 70810 continues former Section 25395.43(a) without substantive change.

34 See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68140  
35 (“response”), 68150 (“secretary”), 70695 (“eligible property”), 70700 (“environmental  
36 insurance”), 70715 (“insurance company”).

37 **Staff Notes. (1)** Section 25395.43(a) refers to an insurance company selected to offer products  
38 pursuant to “subdivision (b) of Section 25395.41.” Section 25395.41(b) is proposed for  
39 recodification as multiple sections (proposed Sections 70755, 70760, and 70765). Of those  
40 proposed sections, only proposed Section 70760, which relates to the selection of a state-  
41 designated insurance provider, appears to be relevant to the reference. For this reason, the  
42 reference was updated to refer to “Section 70760.” **Absent comment on this proposed cross-**  
43 **reference update, it will be presumed correct.**

1 (2) Section 25395.43(a) also refers to subsidies available “pursuant to Section 25395.42.” This  
2 article contains multiple proposed provisions that recodify Section 25395.42 (proposed Sections  
3 70800 and 70805), as well as proposed sections that recodify the remainder of Section 25395.43.  
4 Rather than referring to each of the proposed sections that recodify Section 25395.42, the cross-  
5 reference was updated to refer to “this article.” This is a nonsubstantive change. **Absent**  
6 **comment on this proposed cross-reference update, it will be presumed correct.**

7 **§ 70815. Information to be provided by applicant**

8 70815. An applicant for a subsidy made available pursuant to this article shall  
9 provide the secretary with all information necessary to demonstrate to the  
10 secretary that the applicant is eligible to receive a subsidy.

11 **Comment.** Section 70815 continues former Section 25395.43(b) without substantive change.  
12 See Section 68150 (“secretary”).

13 **Staff Note.** Section 25395.43(b) refers to subsidies available “pursuant to Section 25395.42.”  
14 This article contains multiple proposed provisions that recodify 25395.42 (proposed Sections  
15 70800 and 70805), as well as proposed sections that recodify the remainder of Section 25395.43.  
16 Rather than referring only to the proposed sections that recodify Section 25395.42, the cross-  
17 reference was updated to refer to “this article.” This is a nonsubstantive change. **Absent**  
18 **comment on this proposed cross-reference update, it will be presumed correct.**

19 **§ 70820. No obligation to provide subsidy funds**

20 70820. The state and the Cleanup Loans and Environmental Assistance to  
21 Neighborhoods Account do not have any obligation to provide funds to any person  
22 that applies for a subsidy pursuant to this chapter.

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

25 See Section 68085 (“person”).

26 **§ 70825. Subsidy availability limited to reserved funds**

27 70825. The secretary shall provide an applicant with a subsidy only to the extent  
28 that money in the Cleanup Loans and Environmental Assistance to Neighborhoods  
29 Account established pursuant to Section 70350 has been reserved in the annual  
30 Budget Act for the purpose of providing environmental insurance and the money  
31 that has been reserved for this purpose is available.

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

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

36 **Staff Note.** Section 25395.43(c) refers to the Cleanup Loans and Environmental Assistance to  
37 Neighborhoods account established pursuant to “Section 25395.20.” Section 25395.20 is  
38 proposed for recodification as multiple provisions (sections contained in proposed Articles 1 and  
39 3 of Chapter 10). The cross-reference was updated to refer only to proposed Section 70350,  
40 which contains language establishing the account. **Absent comment on this proposed cross-**  
41 **reference update, it will be presumed correct.**

Article 4. Liability

§ 70840. Immunity from liability

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

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

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

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

**Comment.** Section 70840 restates former Section 25395.44(a) without substantive change.

See Sections 68040 (“agency”), 68085 (“person”), 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance company”).

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

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

§ 70845. Immunity includes specified acts

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

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

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

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

**Comment.** Section 70845 continues former Section 25395.44(b) without substantive change.

See Sections 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance company”).

**Staff Note.** Section 25395.44(b) refers to an insurance company selected to offer products pursuant to “subdivision (b) of Section 25395.41.” Section 25395.41(b) is proposed for

1 recodification as multiple sections (proposed Sections 70755, 70760, and 70765). Of those  
2 proposed sections, only proposed Section 70760, which relates to the selection of a state-  
3 designated insurance provider, appears to be relevant to the reference. For this reason, the  
4 reference was updated to refer to “Section 70760.” **Absent comment on this proposed cross-  
5 reference update, it will be presumed correct.**

6 **§ 70850. Immunity in addition to other immunities and defenses**

7 70850. The immunity set forth in this article is in addition to other immunities  
8 and defenses otherwise available to the agency, the secretary, the state, their  
9 respective employees and agents, and any of the state’s political subdivisions and  
10 employees thereof.

11 **Comment.** Section 70850 continues former Section 25395.44(c) without substantive change.  
12 See Sections 68040 (“agency”), 68150 (“secretary”).

13 **§ 70855. Application of Insurance Code to acts under this chapter**

14 70855. In implementing this chapter, the agency, the secretary, the state, their  
15 respective employees and agents, and any of the state’s other political subdivisions  
16 and employees thereof, may not:

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

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

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

26 **Comment.** Section 70855 continues former Section 25395.44(d) without substantive change.  
27 See Sections 68040 (“agency”), 68150 (“secretary”).

28 **Article 5. Regulations**

29 **§ 70870. Adoption of regulations**

30 70870. (a) The agency may adopt regulations to implement this chapter pursuant  
31 to this section.

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

34 (2) Notwithstanding the time period specified in subdivision (e) of Section  
35 11346.1 of the Government Code, those emergency regulations may remain in  
36 effect for up to 180 days.

37 **Comment.** Section 70870 continues former Section 25395.45 without substantive change.  
38 See Section 68040 (“agency”).

1 **Staff Note.** Section 25395.45 indicates that, “[n]otwithstanding the 120-day limit specified in”  
2 Government Code Section 11346.1(e), a 180-day period applies for these regulations. The cross-  
3 referenced Government Code provision was later amended to provide for a 180-day limitation  
4 period. For this reason, the quoted language above appears to be obsolete. The obsolete language  
5 was restated to read “[n]otwithstanding the time period specified in” Government Code Section  
6 11346.1.

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

15 CHAPTER 12. COMPENSATION

16 Article 1. Financial Provisions

17 § 70900. Funds for payment of claims

18 70900. (a) Claims approved by the Department of General Services pursuant to  
19 this chapter shall be paid from the state account.

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

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

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

29 See Section 68165 (“state account”).

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

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

39 **The staff welcomes comment on how this provision is understood in practice and whether**  
40 **it needs to be clarified.**

1 § 70905. Funds for administration of program

2 70905. The Department of General Services may expend from the state account  
3 those sums of money as are reasonably necessary to administer and carry out this  
4 chapter.

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

7 Article 2. Claims for Compensation

8 § 70920. Conditions for application for compensation

9 70920. Any person may apply to the Department of General Services pursuant  
10 to Section 70925, for compensation of a loss caused by the release, in California,  
11 of a hazardous substance if any of the following conditions are met:

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

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

20 (c) The person has presented a written demand for compensation, which sets  
21 forth the basis for the claim, to the party that the person reasonably believes is  
22 liable for a loss specified in subdivision (a) of Section 70940 that was incurred by  
23 that person and is compensable pursuant to this chapter, the person has presented  
24 the Department of General Services with a copy of the demand, and, within 60  
25 days after presenting the demand, the party has either rejected, in whole or in part,  
26 the demand to be compensated for a loss specified in subdivision (a) of Section  
27 70940, or has not responded to the demand. Only losses specified in subdivision  
28 (a) of Section 70940 are compensable under a claim filed pursuant to this  
29 subdivision.

30 **Comment.** Section 70920 restates former Section 25372 without substantive change.

31 See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68135  
32 (“remove”), 68140 (“response”).

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

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

1 § 70925. Forms and procedures

2 70925. (a) The Department of General Services shall prescribe appropriate  
3 forms and procedures for claims filed pursuant to this chapter, which shall include,  
4 as a minimum, all of the following:

5 (1) A provision requiring the claimant to make a sworn verification of the claim  
6 to the best of the claimant's knowledge.

7 (2) A full description, supported by appropriate evidence from government  
8 agencies of the release of the hazardous substance claimed to be the cause of the  
9 physical injury or illness or loss of income.

10 (3) Certification by the claimant of dates and places of residence for the five  
11 years preceding the date of the claim.

12 (4) Certification of the medical history of the claimant for the five years  
13 preceding the date of the claim, along with certification of the alleged physical  
14 injury or illness and expenses for the physical injury or illness. The certification  
15 shall be made by hospitals, physicians, or other qualified medical authorities.

16 (5) The claimant's income as reported on the claimant's federal income tax  
17 return for the preceding three years in order to compute lost wages or income.

18 (b) Any person who knowingly gives, or causes to be given, any false  
19 information as a part of any claim pursuant to this chapter shall be guilty of a  
20 misdemeanor and shall, upon conviction, be fined up to five thousand dollars  
21 (\$5,000), or imprisoned for not more than one year, or both.

22 **Comment.** Section 70925 restates former Section 25373 without substantive change.

23 See Sections 68075 ("hazardous substance"), 68085 ("person"), 68105 ("release").

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

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

34 § 70930. Time for presenting claims

35 70930. No claim may be presented to the Department of General Services  
36 pursuant to this chapter later than three years from the date of discovery of the loss  
37 or from January 1, 1982, whichever is later.

38 **Comment.** Section 70930 continues former Section 25376 without substantive change.

1

### Article 3. Compensable Losses

2 **§ 70940. Types of losses**

3 70940. If the Department of General Services makes the determination,  
4 specified in Section 70945, that losses resulted from the claimant's damages,  
5 injury, or disease, only the following losses are compensable pursuant to this  
6 chapter:

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

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

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

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

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

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

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

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

25 (2) The maximum compensation under this subdivision is limited to twenty-five  
26 thousand dollars (\$25,000) per residence and to one hundred thousand dollars  
27 (\$100,000) for five contiguous residential properties. Any compensation provided  
28 shall be reduced by the amount that the remedial action results in a capital  
29 improvement to the claimant's residence.

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

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

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

40 (4) Where compensation is made by the Department of General Services  
41 pursuant to this subdivision, sole ownership of the real property shall be



1 transferred to the state and any proceeds resulting from the final disposition of the  
2 real property shall be deposited into the state account, for expenditure by the  
3 department upon appropriation by the Legislature.

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

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

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

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

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

19 **Comment.** Section 70940 continues former Section 25375(a) without substantive change.

20 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
21 (“remedy”), 68145 (“responsible party”), 68165 (“state account”).

22 **§ 70945. Required findings**

23 70945. A loss specified in Section 70940 is compensable if the Department of  
24 General Services makes all of the following findings, based upon a preponderance  
25 of the evidence:

26 (a) A release of a hazardous substance occurred.

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

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

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

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

38 **Comment.** Section 70945 continues former Section 25375(b) without substantive change.

39 See Sections 68075 (“hazardous substance”), 68105 (“release”).

1 § 70950. Noncompensable claim

2 70950. No money shall be used for the payment of any claim authorized by this  
3 part, where the claim is the result of long-term exposure to ambient concentrations  
4 of air pollutants.

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

6 **Staff Note.** Section 25375(c) refers to a claim authorized by “this chapter” (i.e., Chapter 6.8 of  
7 Division 20). It is not clear why this provision refers to Chapter 6.8 as a whole, as opposed to the  
8 article related to claims for compensation. **The staff welcomes comment on this issue.**

9 In this proposed section, the reference has tentatively been updated to refer to “this part,”  
10 which will include all of the provisions of Chapter 6.8 **Absent comment on this issue, this**  
11 **cross-reference update will be presumed correct.**

12 Article 4. Claim Proceedings

13 § 70970. Applicable law

14 70970. (a) Except as specified in subdivision (b), the procedures specified in  
15 Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of  
16 Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to  
17 the proceedings conducted by the Department of General Services pursuant to this  
18 chapter.

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

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

26 **Comment.** Section 70970 continues former Section 25375.5 without substantive change.  
27 See Section 68085 (“person”).

28 § 70975. Decisions

29 70975. (a) All decisions rendered by the Department of General Services shall  
30 be in writing, with notification to all appropriate parties, and shall be rendered  
31 within 90 days of submission of a claim to the Department of General Services  
32 unless all the parties to the claim agree in writing to an extension of time.

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

36 **Comment.** Section 70975 continues former Section 25374 without substantive change.  
37 See Section 68040 (“agency”).

1

## Article 5. Relationship to Other Remedies

2 **§ 70990. Claim not condition precedent to other remedies**

3 70990. Nothing in this chapter shall require, or be deemed to require, pursuit of  
4 any claim against the Department of General Services as a condition precedent to  
5 any other remedy.

6 **Comment.** Section 70990 continues former Section 25377 without substantive change.  
7 See Section 68125 (“remedy”).

8 **§ 70995. Compensation from other sources**

9 70995. (a) Compensation of any loss pursuant to this chapter shall preclude  
10 indemnification or reimbursement from any other source for the identical loss, and  
11 indemnification or reimbursement from any other source shall preclude  
12 compensation pursuant to this chapter.

13 (b) If a claimant recovers any compensation from a party in a civil or  
14 administrative action for a loss for which the claimant has received compensation  
15 pursuant to this chapter, the claimant shall reimburse the state account in an  
16 amount equal to the compensation that the claimant has received from the state  
17 account pursuant to this chapter. The Attorney General may bring an action  
18 against the claimant to recover the amount that the claimant is required to  
19 reimburse the state account, and until the account is reimbursed, the state shall  
20 have a lien of first priority on the judgment or award recovered by the claimant. If  
21 the state account is reimbursed pursuant to this subdivision, the state shall not  
22 acquire, by subrogation, the claimant’s rights pursuant to Article 7 (commencing  
23 with Section 71030).

24 (c) The Legislature hereby finds and declares that it is the purpose of this section  
25 to prevent double recovery for a loss compensable pursuant to this chapter.

26 **Comment.** Section 70995 continues former Section 25378 without substantive change.  
27 See Section 68165 (“state account”).

28

## Article 6. Nonadmissibility of Evidence in Other Proceedings

29 **§ 71010. Evidence not admissible**

30 71010. (a) The following evidence is not admissible as evidence in any civil or  
31 criminal proceeding, including a subrogation action by the state pursuant to Article  
32 7 (commencing with Section 71030), to establish the liability of any person for  
33 any damages alleged to have been caused by a release of a hazardous substance:

34 (1) A final decision made by the Department of General Services pursuant to  
35 this chapter.

36 (2) A decision made by the Department of General Services to admit or not  
37 admit any evidence.

1 (3) Any finding of fact or conclusion of law entered by the Department of  
2 General Services in a proceeding for a claim pursuant to this chapter.

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

5 (A) Chosen to participate or appear.

6 (B) Chosen not to participate or appear.

7 (C) Failed to appear.

8 (D) Settled or offered to settle the claim.

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

12 **Comment.** Section 71010 continues former Section 25379 without substantive change.

13 See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”).

#### 14 Article 7. State Recovery from Liable Party

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

#### 19 § 71030. State acquisition of claimant’s right to recover

20 71030. Compensation of any loss pursuant to this chapter shall be subject to the  
21 state’s acquiring, by subrogation, all rights of the claimant to recover the loss from  
22 the party determined to be liable for the loss.

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

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

#### 27 § 71035. Action for recovery

28 71035. Upon the request of the Department of General Services, the Attorney  
29 General shall commence an action in the name of the people of the State of  
30 California to recover any amount paid in compensation for any loss pursuant to  
31 this chapter against any party who is liable to the claimant for any loss  
32 compensable pursuant to this chapter in accordance with the procedures set forth  
33 in Chapter 8 (commencing with Section 69650).

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

36 **Staff Note.** Section 25380 specifies that recovery of funds is subject to “the procedures set forth  
37 in Sections 25360 to 25364, inclusive.” The referenced provisions are proposed for  
38 recodification, along with other, unreferenced provisions, in Chapter 8. In particular, Articles 3-7,  
39 inclusive, 11, and 12 are all entirely comprised of referenced provisions. Articles 1 and 9 contain  
40 referenced provisions, but each also contains a single unreferenced provision. Given the

1 impracticality of reproducing this cross-reference exactly, the staff proposes updating this cross-  
2 reference to refer to the entirety of Chapter 8. **The staff welcomes comment on this proposed**  
3 **cross-reference update.**

4 **§ 71040. Deposit of recovered funds**

5 71040. Moneys recovered pursuant to this article shall be deposited in the state  
6 account.

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

9 See Section 68165 (“state account”).

10 Article 8. Implementing Rules and Regulations

11 **§ 71050. Adoption and revision**

12 71050. The Department of General Services shall, in consultation with the  
13 department, adopt, and revise when appropriate, all rules and regulations  
14 necessary to implement this chapter, including methods that provide for  
15 establishing that a claimant has exercised reasonable diligence in satisfying the  
16 conditions specified in Articles 3 (commencing with Section 70940) and 4  
17 (commencing with Section 70970) and Sections 70920 and 70925, and regulations  
18 that specify the proof necessary to establish a loss compensable pursuant to this  
19 chapter.

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

21 See Section 68050 (“department”).

22 **Staff Note.** Section 25381(a) cross-refers to conditions “specified in Sections 25372, 25373,  
23 25375, and 25375.5.” These provisions are proposed for recodification as several sections. The  
24 cross-reference has been updated to refer to two articles and two sections. One of the new articles,  
25 proposed Article 4, contains a section that is not referenced, Section 25374 (proposed Section  
26 70975). Section 25374 does not place any conditions on the claimant, but relates to decisions  
27 rendered by the agency. For this reason, the addition of this section to the reference does not  
28 appear to be a substantive change. **Absent comment on this proposed cross-reference update,**  
29 **it will be presumed correct.**



DISPOSITION OF EXISTING LAW

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

<b>Existing Provision</b>	<b>Corresponding New Provision</b>
25372 .....	70920
25373 .....	70925
25374 .....	70975
25375(a) .....	70940
25375(b) .....	70945
25375(c) .....	70950
25375.5 .....	70970
25376 .....	70930
25377 .....	70990
25378 .....	70995
25379 .....	71010
25380, 1st sent. ....	71030
25380, 2nd sent. ....	71035
25380, 3rd sent. ....	71040
25381(b)-(d) .....	70900
25381(a) .....	71050
25382 .....	70905
25395.20(a)(9) .....	Not cont'd
25395.20(a)(14) .....	70260
25395.20(a), initial cl. ....	70200
25395.20(a)(1) .....	70205
25395.20(a)(2) .....	70210
25395.20(a)(3) .....	70215
25395.20(a)(4) .....	70220
25395.20(a)(5) .....	70225
25395.20(a)(6), (7) .....	70230
25395.20(a)(8) .....	70235
25395.20(a)(10) .....	70240
25395.20(a)(11) .....	70245
25395.20(a)(12) .....	70250
25395.20(a)(13) .....	70255
25395.20(a)(15) .....	70265
25395.20(a)(16) .....	70275
25395.20(a)(17) .....	Not cont'd
25395.20(a)(18) .....	70270
25395.20(a)(19) .....	70280
25395.20(b) .....	70350
25395.20(c) .....	70355

25395.21(a) .....	70400
25395.21(b) .....	70405
25395.21(c) .....	70410
25395.21(d) .....	70415
25395.21(e) .....	70420
25395.21(f) .....	70425
25395.21(g) .....	70430
25395.21(h) .....	70435
25395.22(a), 1st sent. ....	70450
25395.22(b) .....	70455
25395.22(a), 2nd & 4th sent. ....	70460
25395.22(a), 3rd sent. ....	70465
25395.23(a) .....	70480
25395.23(b) .....	70485
25395.23(c) .....	70490
25395.24(a) .....	70500
25395.24(b) .....	70505
25395.25 .....	70520
25395.26(e) .....	70320(b)
25395.26(a) .....	70540
25395.26(b), (c) .....	70545
25395.26(d) .....	70550
25395.27(a)(1), 1st sent. ....	70300
25395.27(a)(1), 2nd sent., (a)(2) .....	70305
25395.27(b) .....	70310
25395.27(c) .....	70315
25395.27(d) .....	70320(a)
25395.27(e) .....	70325
25395.28(a) .....	70570
25395.28(b) .....	70575
25395.28(c) .....	70580
25395.28(d) .....	70585
25395.28(e) .....	70590
25395.28(f) .....	70595
25395.28(g), (h) .....	70600
25395.28(i) .....	70605
25395.28(j) .....	70610
25395.29(a) .....	70620
25395.29(b) .....	70625
25395.30 .....	70370
25395.31 .....	70375
25395.32 .....	70380
25395.40, initial cl. ....	70680
25395.40(a) .....	70685
25395.40(b) .....	70690
25395.40(c) .....	70695
25395.40(d) .....	70700



25395.40(e) .....70705  
25395.40(f) .....Not cont'd  
25395.40(g) .....70710  
25395.40(h) .....70715  
25395.40(i) .....70720  
25395.40(j) .....70725  
25395.40(k) .....70730  
25395.40(l) .....70735  
25395.40(m) .....Not cont'd  
25395.41(a) .....70750  
25395.41(b)(1) .....70755  
25395.41(b)(2), 1st & 2nd sent. ....70760  
25395.41(b)(2), 3rd sent. ....70765  
25395.41(c) .....70770  
25395.41(d), 1st sent. ....70775  
25395.41(d), 2nd sent. ....70780  
25395.42(a) .....70800  
25395.42(b) .....70805  
25395.43(a) .....70810  
25395.43(b) .....70815  
25395.43(c), 1st sent. ....70820  
25395.43(c), 2nd sent. ....70825  
25395.44(a) .....70840  
25395.44(b) .....70845  
25395.44(c) .....70850  
25395.44(d) .....70855  
25395.45 .....70870

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DERIVATION OF NEW LAW

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

<b>Proposed New Provision</b>	<b>Corresponding Existing Provision</b>
70200 .....	25395.20(a), initial cl.
70205 .....	25395.20(a)(1)
70210 .....	25395.20(a)(2)
70215 .....	25395.20(a)(3)
70220 .....	25395.20(a)(4)
70225 .....	25395.20(a)(5)
70230 .....	25395.20(a)(6), (7)
70235 .....	25395.20(a)(8)
70240 .....	25395.20(a)(10)
70245 .....	25395.20(a)(11)
70250 .....	25395.20(a)(12)
70255 .....	25395.20(a)(13)
70260 .....	25395.20(a)(14)
70265 .....	25395.20(a)(15)
70270 .....	25395.20(a)(18)
70275 .....	25395.20(a)(16)
70280 .....	25395.20(a)(19)
70300 .....	25395.27(a)(1), 1st sent.
70305 .....	25395.27(a)(1), 2nd sent., (a)(2)
70310 .....	25395.27(b)
70315 .....	25395.27(c)
70320(a) .....	25395.27(d)
70320(b) .....	25395.26(e)
70325 .....	25395.27(e)
70350 .....	25395.20(b)
70355 .....	25395.20(c)
70370 .....	25395.30
70375 .....	25395.31
70380 .....	25395.32
70400 .....	25395.21(a)
70405 .....	25395.21(b)
70410 .....	25395.21(c)
70415 .....	25395.21(d)
70420 .....	25395.21(e)
70425 .....	25395.21(f)
70430 .....	25395.21(g)
70435 .....	25395.21(h)
70450 .....	25395.22(a), 1st sent.
70455 .....	25395.22(b)

70460	.....25395.22(a), 2nd & 4th sent.
70465	.....25395.22(a), 3rd sent.
70480	.....25395.23(a)
70485	.....25395.23(b)
70490	.....25395.23(c)
70500	.....25395.24(a)
70505	.....25395.24(b)
70520	.....25395.25
70540	.....25395.26(a)
70545	.....25395.26(b), (c)
70550	.....25395.26(d)
70570	.....25395.28(a)
70575	.....25395.28(b)
70580	.....25395.28(c)
70585	.....25395.28(d)
70590	.....25395.28(e)
70595	.....25395.28(f)
70600	.....25395.28(g), (h)
70605	.....25395.28(i)
70610	.....25395.28(j)
70620	.....25395.29(a)
70625	.....25395.29(b)
70680	.....25395.40, initial cl.
70685	.....25395.40(a)
70690	.....25395.40(b)
70695	.....25395.40(c)
70700	.....25395.40(d)
70705	.....25395.40(e)
70710	.....25395.40(g)
70715	.....25395.40(h)
70720	.....25395.40(i)
70725	.....25395.40(j)
70730	.....25395.40(k)
70735	.....25395.40(l)
70750	.....25395.41(a)
70755	.....25395.41(b)(1)
70760	.....25395.41(b)(2), 1st & 2nd sent.
70765	.....25395.41(b)(2), 3rd sent.
70770	.....25395.41(c)
70775	.....25395.41(d), 1st sent.
70780	.....25395.41(d), 2nd sent.
70800	.....25395.42(a)
70805	.....25395.42(b)
70810	.....25395.43(a)
70815	.....25395.43(b)
70820	.....25395.43(c), 1st sent.
70825	.....25395.43(c), 2nd sent.

70840 .....	25395.44(a)
70845 .....	25395.44(b)
70850 .....	25395.44(c)
70855 .....	25395.44(d)
70870 .....	25395.45
70900 .....	25381(b)-(d)
70905 .....	25382
70920 .....	25372
70925 .....	25373
70930 .....	25376
70940 .....	25375(a)
70945 .....	25375(b)
70950 .....	25375(c)
70970 .....	25375.5
70975 .....	25374
70990 .....	25377
70995 .....	25378
71010 .....	25379
71030 .....	25380, 1st sent.
71035 .....	25380, 2nd sent.
71040 .....	25380, 3rd sent.
71050 .....	25381(a)
Not cont'd .....	25395.20(a)(9)
Not cont'd .....	25395.20(a)(17)
Not cont'd .....	25395.40(f)
Not cont'd .....	25395.40(m)

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