



● **Board of Directors**  
***Legislation, Regulatory Affairs, and Communications Committee***

7/11/2023 Board Meeting

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9-2

**Subject**

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Governor Newsom's Infrastructure Trailer Bill Package

**Executive Summary**

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Governor Newsom issued an executive order and proposed several budget trailer bills to implement his infrastructure permitting and project review reform plan to assist the state in meeting its climate goals. Metropolitan may be able to directly benefit from three of the streamlining proposals: California Environmental Quality Act (CEQA) administrative record preparation, expedited CEQA judicial review for qualifying water-related infrastructure projects, and a new permitting pathway for incidental take of fully protected species. Three may indirectly affect Metropolitan: progressive design-build authority for the California Department of Transportation (Caltrans) and California Department of Water Resources (DWR), green financing programs for federal Inflation Reduction Act (IRA) funding, and equity in workforce development. These proposals are discussed below.

On June 29, Metropolitan issued a letter in support of the infrastructure package. This letter highlighted the importance of infrastructure streamlining and the urgency of bringing projects online as quickly as possible to combat the effects of climate change, while noting that there are elements in the package that need additional work. Out of the proposals outlined that apply directly or indirectly to Metropolitan, two of them (expedited CEQA judicial review and permitting for incidental take of fully protected species) were amended to include extensive compliance requirements and create vulnerabilities to litigation. However, the overall package provides advantages and potential financial benefits that could accrue to the district.

The Legislature approved the streamlining package on July 5. It now awaits the Governor's signature.

**Details**

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**Background**

Climate resilience is a top priority for Governor Newsom and the Legislature. On May 19, 2023, Governor Newsom issued Executive Order N-8-23 (**Attachment 1**), proposing a number of measures to streamline projects to expedite construction across the state, accelerating the building of clean infrastructure. The measures are intended to facilitate and streamline project approval and completion to maximize California's share of federal infrastructure dollars and expedite the implementation of projects that meet the state's economic, climate, and social goals.

To advance the package, the Legislature introduced a series of budget trailer bills (**Attachment 2**). The original proposed package would have applied streamlining provisions to the Delta Conveyance Project and included specific amendments to the Delta Reform Act; however, those provisions are not part of the final package.

Among the bills that the Legislature agreed to move forward, three could affect Metropolitan projects directly, and three others could affect the district indirectly through state infrastructure and workforce development programs.

Metropolitan's Board adopted 2023 Legislative Priorities and Principles include support for administrative and legislative actions and funding to expedite the development of new local resources (including recycled water and direct potable reuse, groundwater, stormwater, and desalination projects) without compromising the operational, financial, water quality, regulatory, environmental, and customer interests of water and wastewater agencies.

### **Proposals with Direct Application to Metropolitan**

#### **Fully Protected Species Permitting – SB 147**

This proposal maintains Fully Protected Species (FPS) provisions while establishing an alternative process to authorize the incidental take of FPS. The proposal goes beyond California Endangered Species Act incidental take permit requirements and includes meeting the conservation standard in the Natural Community Conservation Planning Act, among other requirements. The bill also removes certain animals as fully protected, including the American peregrine falcon, brown pelican, and thickettail chub because the first two are recovered, and the third is extinct.

FPS are found in the Delta, in portions of Metropolitan's service area (notably near the Foothill Feeder), and in and along the Lower Colorado River. Authorizing the California Department of Fish and Wildlife to issue permits that would minimize and fully mitigate impacts to FPS would, as a practical matter, allow for more options to address the needs of fully protected species than the current legal regime while reducing risks for permittees.

While this alternative may have benefits over current FPS regulations, the requirements are extensive and may make permit terms infeasible or cost prohibitive and could create other litigation risks for permittees. Combined, these aspects make it unlikely Metropolitan would seek to use this process, but amendments could address those concerns.

#### **CEQA Administrative Record Preparation – SB 149**

The administrative record comprises the CEQA documents (a negative declaration, mitigated negative declaration or EIR, findings, mitigation plans, and any statement of overriding considerations), all comments, and every record the lead CEQA agency relied upon in preparing its CEQA document. Ordinarily, the administrative record is the entirety of the evidentiary record in CEQA litigation. Under existing law, a plaintiff may elect to prepare the administrative record. After which, the lead agency lodges the certified record with the court, which is the first step toward adjudicating the merits. When petitioners elect to prepare the record, it often delays the litigation, which can significantly expand the workload and time required.

SB 149 would authorize a lead agency to cancel the plaintiff's election and prepare the record itself if the lead agency agrees to bear all costs to prepare the record and cannot recover those costs even if it prevails in the litigation.

Further, SB 149 would amend the definition of the administrative record to exclude internal agency communications that are "logistical in nature," including meeting invitations and scheduling communications. It would also mandate that any records subject to any Evidence Code privilege (including attorney-client communications and attorney work product) and any records exempted from disclosure under the Public Records Act (PRA) (including records subject to the deliberative process privilege) "shall not be included" in the administrative record consistent with existing law.

Overall, the provisions above would be beneficial to Metropolitan as they could lower CEQA litigation costs and shorten litigation timelines. However, mandating that privileged and PRA-exempt records not be included precludes lead agencies from voluntarily waiving privileges or PRA exemptions. While waiver is rare, there is no policy reason to mandate exclusion.

#### **CEQA Option for Expedited Judicial Review – SB 149**

This CEQA amendment would provide expedited judicial review for qualifying, governor-certified infrastructure projects, and require that any litigation, including any appeals, must be resolved within 270 days of litigation being filed, if feasible. Certain water-related infrastructure projects may qualify for certification, including

recycled water, repairs to canals (e.g., the California Aqueduct subsidence repair), and some Prop 1 Water Storage Infrastructure Projects. The bill expressly excludes the Delta Conveyance Project and ocean water desalinization projects from qualifying.

The governor cannot certify a project unless it meets the following requirements:

- The applicant must agree to pay all trial court and court of appeal costs in hearing and deciding any case challenging the lead agency's action on a certified project under CEQA;
- The applicant must agree to pay the costs to prepare the administrative record concurrent with the CEQA review process and cannot recover those costs even if the plaintiffs lose;
- For a project for which environmental review has commenced, the applicant must demonstrate that the administrative record is being prepared in accordance with a specified process for preparing the administrative record (explained below); and
- The greenhouse gas emissions from the project must be mitigated to the extent feasible, which goes beyond CEQA's requirement to mitigate only if impacts are significant, and then only to less than significant (if feasible).

In addition, the project applicant must avoid or mitigate significant environmental impacts in any disadvantaged community (DAC), which goes beyond CEQA's requirements, and enter into a binding and enforceable agreement to comply prior to certification of the EIR.

The process for preparing the administrative record for any governor-certified infrastructure project must follow certain onerous and potentially costly specifications, including preparing the administrative record concurrently with the environmental review process. It requires the posting of all documents and other materials on the lead agency's internet website in a "readily accessible format" commencing with the release date of the draft EIR, necessitating comments also be submitted in a "readily accessible" electronic format. While expedited judicial review is beneficial in concept, unless amended, the prerequisites may make this option infeasible or costly to implement.

### **Proposals with Indirect Application to Metropolitan**

#### **Green Financing Programs for Federal IRA Funding – SB 124**

This proposal would allow DWR to work through the California Infrastructure and Development Bank (IBank)<sup>1</sup> to access federal funding provided in the IRA to supplement or subsidize financing of projects that reduce greenhouse gas emissions.

This program enables IBank to use its financing tools to facilitate the use of tax credits under the IRA for the benefit of clean energy/renewable projects in collaboration with municipally owned assets. For the State Water Project (SWP), DWR's direct investment in qualifying projects could lower its capital costs, which would ultimately be passed on to Metropolitan and other SWP contractors.

This bill makes it clear that when DWR makes an investment, either for the SWP or the Strategic Reserve, any benefits derived from direct pay (i.e., cash payment) will serve to the benefit of the program making the investment. The approach ensures that the investing program actually sees the discounted cost of procurement and that the intended beneficiaries of the investment receive all of the benefits of that investment. In the case of the State Water Project, the funds come from the State Water Contractors, and the benefits of direct pay would offset SWP costs.

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<sup>1</sup> IBank is the State of California's general purpose financing authority. The Legislature created IBank in 1994 to finance public infrastructure and private development that promote a healthy climate for jobs, contribute to a strong economy, and improve the quality of life in California communities.

**Progressive Design-Build Authority for Caltrans and DWR – SB 146**

This bill would revise existing law that allows the Department of General Services to use a progressive design-build (PDB) procurement process through January 1, 2025, for the construction of up to three capital outlay projects, as-determined by the Department of General Services and the Department of Finance. SB 146 would allow Caltrans and DWR to use PDB for the construction of up to eight public works projects per department estimated to exceed \$25 million. The bill would extend the sunset date to December 31, 2033.

By utilizing PDB and awarding a project contract prior to the completion of all design work, DWR can potentially reduce overall costs and execute shorter project delivery schedules. This could lead to reduced costs for SWP-related projects-resulting in cost savings being passed on to Metropolitan.

**Equity in Workforce Development – SB 150**

This bill is intended to help develop procurement models to enhance the state’s training and access pipeline for jobs while ensuring community benefits on infrastructure and manufacturing investments.

The bill authorizes state agencies to enter into or require a project labor agreement for projects with total construction costs over \$35 million if the agreement also includes provisions to address community benefits through partnerships with existing construction careers programs, local hire goals, coordination with job fairs for construction apprenticeship programs, or other methods agreed upon to promote employment and training opportunities for veterans and individuals in disadvantaged communities.

This bill is aligned with Metropolitan’s values and would benefit the district by building the next generation of the state’s construction workforce.

**Policy**

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By Minute Item 53051, 2023 Metropolitan Legislative Priorities and Principles, Legislative Priority A.1 and Legislative Principles II.B, III.B., IV.A.8, V.D.1

**Fiscal Impact**

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Unknown at this time.

  
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Susan Sims  
Group Manager, External Affairs  
7/6/2023  
Date

  
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Adel Hagekhalil  
General Manager  
7/7/2023  
Date

**Attachment 1 – Executive Order N-8-23, dated May 19, 2023**

**Attachment 2 –Budget Trailer Bills**

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-8-23**

**WHEREAS** California is poised to become the fourth largest economy in the world, and our continued growth and prosperity depends on our ability to create quality jobs, accelerate our transition to clean energy, urgently address the climate crisis, and build a transportation network for the 21st century; and

**WHEREAS** modernizing our energy, water, transportation, and communications infrastructure will deliver improvements to benefit all Californians for decades to come, and will require that the State move forward on major projects with speed and determination; and

**WHEREAS** President Joseph R. Biden and the 117th Congress enacted historic laws supporting infrastructure modernization, including by providing roughly \$1.2 trillion through 2026 in the Infrastructure Investment and Jobs Act (IIJA), and \$391 billion over ten years for climate-related investments in the Inflation Reduction Act (IRA); and

**WHEREAS** California has augmented these federal investments with over \$50 billion in state funding for infrastructure and will invest more than \$180 billion over the next ten years, creating over 400,000 jobs; and

**WHEREAS** major infrastructure projects have too often been bogged down in regulatory processes and a siloed approach to permitting and regulatory approvals; and

**WHEREAS** California has launched an all-of-government approach, working across agencies to deliver projects at the scale and pace necessary to maximize federal investment and deliver the benefit from that investment to all California communities, especially those that historically have not shared equitably in the benefits of infrastructure investment or have borne disproportionate burdens of development projects; and

**WHEREAS** disasters caused by climate change—including extreme heat, wildfires, flooding, and drought—pose unprecedented stress to the State's energy infrastructure, and accelerating California's progress towards 100 percent clean electricity, as well as meeting our carbon neutrality goal, by 2045 necessitates modernizing our electric grid and building out a safe, reliable, resilient, affordable, and clean energy system of the future; and

**WHEREAS** the changing climate requires adaptation and innovation to diversify water supplies, expand our water sources, and efficiently use existing water sources to permanently strengthen California's water resiliency, and State agencies must coordinate their efforts to provide equitable benefits from water infrastructure improvements to present and future generations; and

**WHEREAS** much of California's multimodal transportation system was constructed decades ago and requires modernization, and my Executive Orders N-19-19 and N-79-20, and the subsequent California Climate Action Plan for Transportation Infrastructure (CAPTI), provide an investment framework prioritizing clean and sustainable transportation for people and goods through

mass transit, rail, bicycle, and pedestrian transportation, as well as zero-emission vehicles; and

**WHEREAS** my Executive Order N-19-21 directs State agencies to develop programs that support efficient port operations and goods movement in order to enhance the State's economic prosperity and competitiveness; and

**WHEREAS** reliable, affordable highspeed broadband is critical to full participation in California's society and economy, and an estimated 675,000 Californians are unserved, and 2 million Californians are underserved, by reliable, affordable, highspeed broadband service; and

**WHEREAS** recent historic infrastructure investments by the State and federal government provide an opportunity to enhance the State's training pipeline for quality jobs through apprenticeships and high-road training partnerships, and California has made significant investments to promote new plans and strategies to diversify local economies and develop sustainable industries that create high-quality, broadly accessible jobs, including a \$600 million community economic resilience fund; and

**WHEREAS** in 2021 President Biden signed Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, establishing the Justice40 Initiative with a goal that 40 percent of the overall benefits of certain federal investments, in the aggregate across all covered programs, flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution, and all Justice40-covered programs are required to engage in stakeholder consultation to ensure that community stakeholders are meaningfully involved in determining program benefits; and

**WHEREAS** California has sought to be a national leader in advancing equity and opportunity, including by supporting communities that have suffered inequitable infrastructure development, reaping limited benefits while shouldering a disproportionate share of the burdens of such development, and will therefore strive to exceed the federal goal of 40 percent of the overall benefits flowing to disadvantaged communities for Justice40-covered programs; and

**WHEREAS** California was one of the first states to recognize environmental justice as a factor in the planning process, directing governmental entities to engage meaningfully with, and provide technical assistance to, populations and communities most impacted by pollution in all phases of the environmental and land use decision-making process, including low-income and disadvantaged communities that have traditionally been most impacted by environmental harms and have not shared equitably in the economic opportunities that accompany major infrastructure projects; and

**WHEREAS** Executive Order B-10-11 and my Executive Order N-15-19 require State agencies to engage in consultation with California Native American tribes regarding policies that may affect tribal communities, and Executive Order N-16-22 directs State agencies to update their strategic plans to reflect the use of data analysis and inclusive practices to more effectively advance equity and to respond to identified disparities, and to take additional actions to embed equity considerations in policies and practices, including by engaging with historically disadvantaged communities impacted by the agency's work.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, do hereby issue the following order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. The Senior Counselor on Infrastructure shall convene an Infrastructure Strike Team (Strike Team) to work across State agencies to maximize federal and state funding opportunities for California innovation and infrastructure projects. The Strike Team shall be composed of the Director of Finance, the Director of the Governor's Office of Business and Economic Development, the Director of the Office of Planning and Research, the Tribal Affairs Secretary, the Secretary of Transportation, the Secretary of the Natural Resources Agency, the Secretary of Business, Consumer Services, and Housing, the Secretary of Food and Agriculture, the Secretary of Labor and Workforce Development, the Secretary for Environmental Protection, and the Secretary of Government Operations. The President of the California Public Utilities Commission is requested to participate on the Strike Team.
2. The Strike Team shall:
  - a. Identify projects on which to focus streamlining efforts, particularly those presenting significant challenges but also significant opportunities for infrastructure and job creation, and hold departments and agencies accountable to deliver results in an expedited and effective fashion; and
  - b. Support coordination between federal, state, tribal, and local government, as well as among State agencies, on project review, permitting, and approvals; and
  - c. Support infrastructure in a particular sector by prioritizing complementary investments in adjacent sectors (e.g., transportation and energy investments that support housing projects); and
  - d. Share challenges and best practices across agencies, and identify opportunities for improvement.

The Strike Team shall track the status of individual projects identified pursuant to this Paragraph as they move through design, permitting, and construction phases, and use common metrics to measure progress and identify opportunities for streamlining government operations.

3. The Strike Team shall create working groups focused on each of the following issues: transportation, energy, hydrogen, environmental remediation, broadband, water, the CHIPS and Science Act, and zero-emission vehicles. The working groups shall focus on prioritizing funding for projects that achieve multiple benefits. The working groups shall:
  - a. Establish dashboards to track progress, including number of projects, project locations, schedules, milestones, funding, federal application and encumbrance deadlines, awards

- received, workforce development, and progress toward equity goals; and
- b. Coordinate among agencies to facilitate fast and effective project delivery, eliminating duplication, avoiding conflicting assessments, and shortening permitting timelines through concurrent versus sequential processes and reviews, as well as identify opportunities to align program criteria and achieve cross-sectoral goals; and
  - c. Identify potential statutory and regulatory changes to facilitate and streamline project approval and completion, and elevate proposed changes to the Strike Team for consideration; and
  - d. Identify opportunities to leverage state and federal funding to address workforce needs and accelerate the retraining and upskilling of workers, especially those most at risk of job displacement; and
  - e. Raise awareness of available state and federal funding opportunities, including information about eligibility, program and application requirements, and application deadlines, among appropriate tribal, local, regional, non-profit, and community-based partners, including historically disadvantaged partners.
4. The California State Transportation Agency (CalSTA) shall establish an interagency Task Force on Third Parties, with participation from the California High Speed Rail Authority, the California Department of Transportation, the California Department of Water Resources, the California Department of Fish and Wildlife, and other state agencies as appropriate to, upon direction from the Strike Team and utilizing existing resources, assist major infrastructure projects by working with private parties to obtain approvals and facilitate agreements necessary to relocate utilities or mitigate project impacts and allow construction to commence sooner, along with appropriate community engagement and tribal consultation. The California Public Utilities Commission is requested to participate in the interagency Task Force on Third Parties.
  5. The Governor's Office of Business and Economic Development, in collaboration with the California Energy Commission, the California Air Resources Board, and other State agencies as appropriate, shall identify opportunities to support local permitting of clean energy infrastructure and zero emission vehicle infrastructure, along with appropriate community engagement and tribal consultation, including, but not limited to, sharing and encouraging the adoption of best practices, connecting local governments to technical resources to support permit approval, and enhancing state and local collaboration. The California Public Utilities Commission is requested to collaborate on this effort.
  6. State agencies subject to my authority shall implement the directives in this Order consistent with the directives in Executive Order N-16-22 on embedding equity, increasing opportunities for all, and addressing disparities, including, but not limited to, any action plans developed under Paragraph 3 of that Order to increase access to the grant or contract selection process for IJA investments for small and

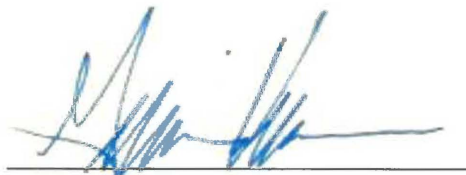


disadvantaged business enterprises and to meaningfully engage with Tribal governments, nonprofits, and community organizations, where applicable.

**I FURTHER DIRECT** that as soon as hereafter possible, this Order be filed with the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of May 2023.



GAVIN NEWSOM  
Governor of California

**ATTEST:**

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SHIRLEY N. WEBER, PH.D.  
Secretary of State

AMENDED IN ASSEMBLY JUNE 26, 2023

**SENATE BILL**

**No. 124**

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**Introduced by Committee on Budget and Fiscal Review**

January 18, 2023

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~~An act relating to the Budget Act of 2023.~~ *An act to amend Sections 63048.93 and 63048.95 of the Government Code, to amend Sections 25355.5, 25371.3, 25373, and 25792 of the Public Resources Code, to amend Sections 454.53, 712, 712.1, and 712.8 of, and to add Section 913.20 to, the Public Utilities Code, and to amend Sections 80400, 80710, and 80720 of, and to add Sections 12935.5 and 80700.5 to, the Water Code, relating to energy, and making an appropriation therefor, to take effect immediately, bill related to the budget.*

LEGISLATIVE COUNSEL'S DIGEST

SB 124, as amended, Committee on Budget and Fiscal Review.  
~~Budget Act of 2023.~~ *Energy.*

*(1) The Bergeson-Peace Infrastructure and Economic Development Bank Act establishes the California Infrastructure and Economic Development Bank (I-Bank) in the Governor's Office of Business and Economic Development, governed by a board of directors. The act, among other things, authorizes the I-Bank to make loans, issue bonds, and provide financial assistance for various types of projects that qualify as economic development or public development facilities.*

*The Climate Catalyst Revolving Loan Fund Act of 2020 authorizes the I-Bank, under the Climate Catalyst Revolving Loan Fund Program, to provide financial assistance to any eligible sponsor or participating party for eligible climate catalyst projects, as defined, either directly to the sponsor or participating party or to a lending or financial institution, as specified. The act, beginning in the 2021–22 fiscal year,*

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*requires the I-Bank to adopt a climate catalyst financing plan, as specified, after meeting and conferring with authorized consulting agencies concerning specific categories of climate catalyst projects. The act establishes the Climate Catalyst Revolving Loan Fund, a continuously appropriated fund, in the state treasury for the purpose of implementing the objectives and provisions of act.*

*This bill, beginning in the 2023–24 fiscal year, would require a climate catalyst financing plan to authorize the I-Bank to provide financial assistance and to use all financing authorities provided under the Bergeson-Peace Infrastructure and Economic Development Bank Act in its implementation of a climate catalyst financing plan. The bill would additionally authorize specified state agencies to provide consultation on climate catalyst projects to leverage federal funding available under the United States Environmental Protection Agency’s Greenhouse Gas Reduction Fund, as provided, and would authorize the Climate Catalyst Revolving Loan Fund to receive moneys from the federal government and funds sourced from federal appropriations, as specified. The bill would require use of the moneys and funds to comply with specified criteria.*

*(2) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) and the State Air Resources Board, on or before December 31, 2024, to prepare a Transportation Fuels Transition Plan and requires the Energy Commission and the state board to prepare the plan in consultation with the state’s fuel producers and refiners and a multistakeholder, multiagency workgroup, including the California Environmental Protection Agency and the Natural Resources Agency, that is convened by the Energy Commission and the state board.*

*This bill would instead require the Energy Commission, the state board, the California Environmental Protection Agency, and the Natural Resources Agency to convene the multistakeholder, multiagency workgroup and would require the workgroup to consist of members representing specified interests and groups, including the state’s fuel producers and refiners.*

*Existing law, beginning on June 26, 2023, establishes the Independent Consumer Fuels Advisory Committee within the Energy Commission to advise the Energy Commission and the Division of Petroleum Market Oversight. Existing law specifies that the committee has access to all information submitted to the Energy Commission or to the division necessary to fulfill its duties.*

*This bill would instead specify that the committee has access to aggregated or otherwise anonymized information submitted to the Energy Commission or to the division necessary to fulfill its duties under conditions as the Energy Commission determines necessary to ensure that public disclosure of specific information does not result in an unfair competitive disadvantage to the person supplying the information or adversely affect market competition.*

*(3) Existing law creates the Demand Side Grid Support Program, and requires the Energy Commission to implement and administer the program to incentivize dispatchable customer load reduction and backup generation operation as on-call emergency supply and load reduction for the state's electrical grid during extreme events. Existing law requires entities with generation or load reduction assets that are incentivized pursuant to the Distributed Electricity Backup Assets Program to participate in the program, and requires all energy produced as a result of the program to be settled at a relevant reference energy price.*

*This bill would delete the requirements that those entities participate in the program and the produced energy be settled at a relevant reference energy price.*

*(4) Existing law requires the PUC to convene or continue, until August 26, 2025, an independent peer review panel to conduct an independent review of enhanced seismic studies and surveys of the Diablo Canyon Units 1 and 2 powerplant, as specified. Existing law also establishes the Independent Safety Committee for Diablo Canyon until, at least, the United States Nuclear Regulatory Commission operating permit for the Diablo Canyon powerplant has ceased.*

*This bill would require that the independent peer review panel continue until August 26, 2030. The bill would require that the Independent Safety Committee for Diablo Canyon continue until the Diablo Canyon powerplant has ceased operations and make other changes related to that committee.*

*(5) Existing law establishes the California Water Resources Development Bond Fund and continuously appropriates moneys in the fund to the Department of Water Resources to provide for the acquisition, construction, and completion of certain state water facilities and for additions to the State Water Resources Development System, as specified. Existing law requires the department to procure eligible renewable energy resources and zero-carbon resources to satisfy the state agency obligations imposed on the system, as specified.*

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*The federal Inflation Reduction Act of 2022, among other things, authorizes specified entities, including the state and any political subdivision of the state, to elect to receive direct payments, rather than credits, for their participation in, or actions related to, certain federal incentives.*

*This bill would establish the California Water Resources Development Bond Account within the fund, and would continuously appropriate all moneys in the account to the department to provide for the acquisition, construction, and completion of certain state water facilities and for additions to the State Water Resources Development System, as specified. By establishing a continuously appropriated account, the bill would make an appropriation. The bill would require the department, if it elects to receive a direct payment, rather than a credit, pursuant to the federal Inflation Reduction Act in connection with its procurement of eligible renewable energy resources and zero-carbon resources, as described above, to deposit those payments directly into the account, as specified. The bill would require use of the payments to comply with specified criteria.*

*(6) Existing law establishes the Department of Water Resources Electricity Supply Reliability Reserve Fund and continuously appropriates moneys in the fund to the department for purposes of implementing projects, purchases, and contracts to carry out specified purposes, constructing, owning, and operating, or contracting for the construction and operation of, contracting for the purchase of electricity from, or financing actions to secure resources for summer reliability or to preserve the option to extend the life of specified facilities, and reimbursing electrical corporations for the value of imported energy or import capacity products that were delivered or capable of being delivered between July 1, 2022, and on or before September 30, 2022, and were procured at above-market costs or in excess of procurement authorizations set by the PUC and above the requirements needed to serve the electrical corporation's bundled customers in support of summer electric service reliability.*

*The bill would authorize the department, for activities it undertakes for the purposes described above, to obtain applicable credits pursuant to the federal Inflation Reduction Act of 2022. If the department elects for direct payment of those applicable credits, the bill would require that those payments be deposited directly into the Department of Water Resources Electricity Supply Reliability Reserve Fund, as specified,*

thereby making an appropriation. The bill would require use of the payments to comply with specified criteria.

(7) This bill would make legislative findings and declarations as to the necessity of a special statute for the Diablo Canyon powerplant.

(8) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the PUC is a crime.

Because certain of the above provisions would be part of the act and a violation of a PUC action implementing this bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(9) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2023.~~

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 63048.93 of the Government Code is  
2 amended to read:

3 63048.93. (a) The bank is hereby authorized and empowered  
4 to provide financial assistance under the Climate Catalyst  
5 Revolving Loan Fund Program to any eligible sponsor or  
6 participating party either directly or to a lending or financial  
7 institution, in connection with the financing or refinancing of a  
8 climate catalyst project, in accordance with an agreement or  
9 agreements, between the bank and the sponsor or participating  
10 party, including, but not limited to, tribes, either as a sole lender  
11 or in participation or syndication with other lenders.

12 (b) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
13 Division 3 of Title 2 does not apply to any climate catalyst  
14 financing plan or any criteria, priorities, and guidelines adopted  
15 by the bank in connection with the Climate Catalyst Revolving

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1 Loan Fund Program or any other program of the bank. However,  
2 any climate catalyst financing plan shall be posted on the bank's  
3 internet website in a conspicuous location at least 30 calendar days  
4 before a bank board meeting at which the climate catalyst financing  
5 plan will be considered for approval.

6 (c) (1) Repayments of financing made under the Climate  
7 Catalyst Revolving Loan Fund Program shall be deposited into  
8 the appropriate account created within the Climate Catalyst  
9 Revolving Loan Fund.

10 (2) The bank shall establish a separate account for each category  
11 of climate catalyst projects identified by each paragraph of  
12 subdivision (f). For purposes of paragraph (3) of subdivision (f),  
13 the Clean Energy Transmission Financing Account is hereby  
14 created in the Climate Catalyst Revolving Loan Fund.

15 (d) (1) (A) Beginning in the ~~2021-2022~~ 2021-22 fiscal year,  
16 the bank shall meet and confer with the consulting agencies  
17 concerning the specific categories of climate catalyst project  
18 corresponding to each agency as provided in subdivision (f).  
19 Thereafter, the bank board shall adopt, by majority vote of the  
20 bank board, a climate catalyst financing plan. Before the bank  
21 board meeting in which the bank board will first consider adoption  
22 of the financing plan, each consulting agency shall submit a letter  
23 to the bank board discussing any areas of support and any areas  
24 of disagreement with the financing plan under consideration.

25 (B) *Beginning in the 2023-24 fiscal year, adoption of a climate*  
26 *catalyst financing plan by the bank board shall authorize the bank*  
27 *to provide financial assistance and to use all financing authorities*  
28 *provided under this division in its implementation of a climate*  
29 *catalyst financing plan.*

30 (2) Following bank board approval, the climate catalyst  
31 financing plan shall be posted on the bank's internet website.

32 (3) If the bank board has not approved a climate catalyst  
33 financing plan, then a climate catalyst financing plan shall not be  
34 in effect until approved by the bank board.

35 (e) (1) A climate catalyst financing plan shall remain in effect  
36 until superseded by a revised climate catalyst financing plan.  
37 Commencing the first fiscal year following adoption of the initial  
38 climate catalyst financing plan, and in each fiscal year thereafter,  
39 the bank shall contact each consulting agency to discuss potential  
40 revisions to the climate catalyst financing plan last approved by

1 the bank board. Following each consultation, the bank board shall  
2 consider adopting, by majority vote, a revised climate catalyst  
3 financing plan reflecting any material revisions to the prior climate  
4 catalyst financing plan.

5 (2) A modified climate catalyst financing plan shall only be  
6 considered for approval if no consulting agencies propose material  
7 revisions to the financing plan then in effect.

8 (3) If the bank board does not adopt a proposed revised climate  
9 catalyst financing plan, the existing climate catalyst financing plan  
10 shall remain in effect.

11 (f) Beginning with the ~~2021–2022~~ 2021–22 fiscal year, the  
12 consulting agencies and corresponding areas of climate catalyst  
13 projects they will provide consultation on shall be as follows:

14 (1) The Natural Resources Agency for climate catalyst projects  
15 that relate to sustainable vegetation management, forestry practices,  
16 and timber harvesting products. Eligible climate catalyst project  
17 categories include, but are not limited to, all of the following:

18 (A) Clean energy production, except combustion biomass  
19 conversion.

20 (B) Advanced construction materials.

21 (C) Forestry equipment needed to achieve the state’s goals for  
22 forest and vegetation management treatments.

23 (2) The Department of Food and Agriculture for climate catalyst  
24 projects that relate to agricultural improvements that enhance the  
25 climate or lessen impacts to the climate resulting from in-force  
26 agricultural practices. Eligible climate catalyst project categories  
27 include, but are not limited to, all of the following:

28 (A) Onfarm and food processing renewable energy, including  
29 both electricity and fuels, and bioenergy, to be used or distributed  
30 onsite.

31 (B) Energy, water, and materials efficiency.

32 (C) Methane reduction projects, using best practice approaches  
33 consistent with state policy goals, excluding dairy digesters and  
34 biogas unless used or distributed onsite.

35 (D) Energy storage or microgrids.

36 (E) Equipment replacement.

37 (3) (A) The State Energy Resources Conservation and  
38 Development Commission and the Public Utilities Commission  
39 for climate catalyst projects that are clean energy transmission  
40 projects. If multiple projects seek funding, the consulting agencies



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1 shall prioritize, based on state policy, potential projects that meet  
2 the conditions in subparagraph (B), and on financial considerations  
3 as determined by the bank. Eligible climate catalyst project  
4 categories in this paragraph shall comply with the conditions set  
5 forth in this paragraph, and include, but are not limited to, both of  
6 the following:

7 (i) Clean energy transmission project infrastructure that is  
8 necessary to connect the transmission project into the applicable  
9 California balancing authority area.

10 (ii) Other necessary technical elements of transmission  
11 infrastructure, including but not limited to, environmental planning,  
12 permitting, and preconstruction costs for a project.

13 (B) The initial climate catalyst project or projects funded under  
14 this paragraph shall support the development of a new transmission  
15 line or transmission lines to deliver to the system operated by the  
16 Independent System Operator zero-carbon, firm electricity from  
17 new resources located in the Salton Sea region.

18 (C) Eligible projects shall meet all of the following conditions:

19 (i) Have at least one interconnection point within a California  
20 balancing authority area.

21 (ii) The applicant or its affiliates have previously completed a  
22 transmission project in California.

23 (iii) Will primarily deliver electricity to the Independent System  
24 Operator balancing authority area from clean resources located in  
25 identified resource areas that do not have adequate deliverability  
26 to a California balancing authority area.

27 (iv) Support new high voltage, defined as 200 kilovolts or  
28 higher, transmission projects or upgrades of existing transmission  
29 lines and substations to high voltage that are consistent with the  
30 state's reliability and greenhouse gas policy objectives.

31 (v) Priority shall be given to transmission projects that have not  
32 already been approved through the Independent System Operator's  
33 transmission planning process or projects that have not been  
34 recently studied in the Independent System Operator's transmission  
35 planning process and found to be unneeded or uneconomical.

36 (vi) Financial considerations as determined by the bank.

37 (vii) Consistency with state policy as determined by the  
38 consulting agencies.

39 (D) The bank shall not finance a project unless the entity  
40 completing the transmission project has entered into a project labor

1 agreement that, at a minimum, meets the requirements of Section  
2 2500 of the Public Contract Code and includes all of the following:

3 (i) Provisions requiring payment of prevailing wages, in  
4 accordance with Article 1 (commencing with Section 1720) of  
5 Chapter 1 of Part 7 of Division 2 of the Labor Code, to all  
6 construction workers employed in the construction of the project  
7 and for enforcement of that obligation through an arbitration  
8 procedure.

9 (ii) Targeted hiring provisions, including a targeted hiring plan,  
10 on a craft-by-craft basis to address job access for local,  
11 disadvantaged, or underrepresented workers, as defined by a  
12 relevant local agency.

13 (iii) Apprenticeship utilization provisions that commit all parties  
14 to increasing the share of work performed by state-registered  
15 apprentices above the state-mandated minimum ratio required in  
16 Section 1777.5 of the Labor Code.

17 (iv) Apprenticeship utilization provisions that commit all parties  
18 to hiring and retaining a certain percentage of state-registered  
19 apprentices that have completed the Multi-Craft Core  
20 preapprenticeship training curriculum referenced in subdivision  
21 (t) of Section 14005 of the Unemployment Insurance Code.

22 (E) Consultation on a potential transmission project does not  
23 constitute approval of that project by the Public Utilities  
24 Commission or the State Energy Resources Conservation and  
25 Development Commission under their decisionmaking authority,  
26 if that authority exists.

27 (F) Consultation on, or evaluation of, a transmission project by  
28 the bank does not indicate the bank's approval. The bank shall  
29 consider the credit and financial aspects of the project before  
30 determining whether to approve and finance the project.

31 (4) (A) The State Energy Resources Conservation and  
32 Development Commission or the Public Utilities Commission for  
33 climate catalyst projects to leverage federal financing funds that  
34 relate to projects that avoid, reduce, use, or sequester air pollutants  
35 or anthropogenic emissions of greenhouse gases as defined in  
36 Section 16513 of Title 42 of the United States Code, as amended.

37 (B) Projects described in subparagraph (A) shall not be funded  
38 until the United States Department of Energy is able to finance  
39 projects that do not meet the criteria in Section 16513(a)(2) of

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1 Title 42 of the United States Code. This subparagraph shall become  
2 inoperative on July 1, 2024.

3 (5) (A) *The Governor's Office of Business and Economic*  
4 *Development, Treasurer's Office, State Energy Resources*  
5 *Conservation and Development Commission, California*  
6 *Environmental Protection Agency, State Air Resources Board,*  
7 *Public Utilities Commission, Natural Resources Agency,*  
8 *Department of Conservation, Department of Resources Recycling*  
9 *and Recovery, and other relevant agencies, as determined by these*  
10 *agencies, for climate catalyst projects to leverage federal funding*  
11 *available under the United States Environmental Protection*  
12 *Agency's Greenhouse Gas Reduction Fund (Section 7434 of Title*  
13 *42 of the United States Code) and related implementing statutes*  
14 *and regulations.*

15 (B) *Eligible climate catalyst project categories shall comply*  
16 *with the climate and equity goals in the state's climate change*  
17 *scoping plan developed pursuant to Section 38561 of the Health*  
18 *and Safety Code.*

19 (g) (1) The bank may engage in outreach activities to inform  
20 disadvantaged participating parties and disadvantaged sponsors  
21 of the categories of financial assistance potentially available within  
22 the Climate Catalyst Revolving Loan Fund Program. The outreach  
23 efforts may include, but are not limited to, all of the following:

24 (A) Conferring with the consulting agencies.

25 (B) Conferring with the Governor's Office of Business and  
26 Economic Development.

27 (C) Direct contact with existing bank clients and customers that  
28 operate within the boundaries of a disadvantaged community.

29 (D) Consulting with governmental entities, individuals, and  
30 business entities engaged in providing, or assisting the obtaining  
31 of, financial assistance for disadvantaged sponsors or participating  
32 parties, including, but not limited to, business and industrial  
33 development corporations and minority enterprise small business  
34 investment companies. The executive director, on behalf of the  
35 bank, may enter into service contracts for this purpose. Section  
36 10295 and Article 4 (commencing with Section 10335) of Chapter  
37 2 of Part 2 of Division 2 of the Public Contract Code do not apply  
38 to those service contracts.

39 (2) The criteria, priorities, and guidelines adopted for the  
40 Climate Catalyst Revolving Loan Fund Program may include

1 potential options for applying interest rate or fee subsidies for  
2 disadvantaged participating parties or disadvantaged sponsors  
3 seeking financial assistance from the bank under the Climate  
4 Catalyst Revolving Loan Fund Program. The bank may offer  
5 reduced application fees to disadvantaged sponsors or participating  
6 parties seeking financial assistance under the Climate Catalyst  
7 Revolving Loan Fund Program.

8 (3) The bank may offer technical assistance to disadvantaged  
9 sponsors or participating parties potentially seeking financial  
10 assistance under the Climate Catalyst Revolving Loan Fund  
11 Program. The executive director, on behalf of the bank, may enter  
12 into service contracts to provide, or assist with the provision of,  
13 the technical assistance. Section 10295 and Article 4 (commencing  
14 with Section 10335) of Chapter 2 of Part 2 of Division 2 of the  
15 Public Contract Code do not apply to those service contracts.

16 (h) All financial assistance under the Climate Catalyst Revolving  
17 Loan Fund Program approved by the bank board shall be consistent  
18 with the climate catalyst financing plan then in effect.

19 (i) (1) The bank shall prepare, and the bank board shall approve  
20 by majority vote of the board, criteria, priorities, and guidelines  
21 for the provision of financial assistance under the Climate Catalyst  
22 Revolving Loan Fund Program. The bank board's approval of any  
23 financial assistance for a climate catalyst project shall take into  
24 consideration those criteria, priorities, and guidelines together with  
25 the climate catalyst financing plan currently in effect. The criteria,  
26 priorities, and guidelines shall include, as factors for determining  
27 whether to approve the provision of financial assistance, the ability  
28 of the sponsor or participating party potentially receiving financial  
29 assistance to satisfy any obligation incurred and the return of capital  
30 to the Climate Catalyst Revolving Loan Fund.

31 (2) The bank board may consider additional factors when  
32 determining whether to approve financial assistance for a climate  
33 catalyst project, taking into consideration the climate catalyst  
34 financing plan.

35 (3) The bank shall consider applications for financial assistance  
36 as they are received, on an ongoing basis, if there are available  
37 moneys remaining within the Climate Catalyst Revolving Loan  
38 Fund to provide that financial assistance. The bank board's  
39 determination of whether to approve applications for financial

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1 assistance shall be based on the climate catalyst financing plan in  
2 effect at the time the bank received the application.

3 (j) The bank shall provide financial assistance only for climate  
4 catalyst projects that the bank board approved before July 1, 2025.

5 (k) The bank is hereby authorized and empowered to enter into  
6 an agreement with the consulting agencies, or any other state  
7 agency as approved by the bank's board, to operate a program to  
8 provide financial assistance to any eligible sponsor or participating  
9 party either directly or to a lending or financial institution, in  
10 connection with the financing or refinancing of an eligible project,  
11 in accordance with such agreement or agreements. Information  
12 shared among consulting agencies and the bank, or between any  
13 consulting agency and the bank, does not constitute the waiver of  
14 any Public Records Act exemption applicable to each entity.

15 *SEC. 2. Section 63048.95 of the Government Code is amended*  
16 *to read:*

17 63048.95. (a) (1) There is hereby created in the State Treasury  
18 the Climate Catalyst Revolving Loan Fund for the purpose of  
19 implementing the objectives and provisions of this article. The  
20 Climate Catalyst Revolving Loan Fund shall be separate from any  
21 other fund or account created under this division.

22 (2) Obligations of the bank incurred in connection with the  
23 activities authorized under this article shall be payable solely from  
24 moneys within the Climate Catalyst Revolving Loan Fund. No  
25 other fund or account of the bank shall be available or shall be  
26 used for the payment of obligations incurred in connection with  
27 this article.

28 (3) Within the Climate Catalyst Revolving Loan Fund there  
29 shall also be established a Climate Catalyst Revolving Loan  
30 Account, a Climate Catalyst Guarantee and Credit Enhancement  
31 Account, a Climate Catalyst Securities Acquisition Account, and  
32 additional accounts and subaccounts that the bank may establish.

33 (b) (1) (A) Notwithstanding Section 13340, moneys, except  
34 as provided in subparagraphs (B) and (C), in the Climate Catalyst  
35 Revolving Loan Fund are continuously appropriated, without  
36 regard to fiscal year, for the support of the bank and shall be  
37 available for expenditure for the purposes as stated in this article.

38 (B) Moneys in the Climate Catalyst Revolving Loan Fund  
39 received pursuant to a federal appropriation are available for  
40 expenditure only upon appropriation by the Legislature.

1 (C) Moneys in the Climate Catalyst Revolving Loan Fund shall  
2 be available for expenditure to support administrative costs only  
3 upon appropriation by the Legislature.

4 (2) This subdivision shall not limit the authority of the bank to  
5 expend funds directly related to the servicing of approved debt,  
6 payments on credit enhancements or guarantees, acquisition of  
7 securities of any sponsor or participating party in connection with  
8 a climate catalyst project, or any other purpose in connection with  
9 providing financial assistance to a sponsor or participating party  
10 in connection with a climate catalyst project as set forth in this  
11 article.

12 (c) Not more than 5 percent of any bond proceeds administered  
13 by the bank in connection with the activities of the bank authorized  
14 under this article may be expended to cover the costs of issuance,  
15 as that terminology is defined under Section 147(g) of the Internal  
16 Revenue Code (26 U.S.C. Sec. 147(g)).

17 (d) (1) (A) *Notwithstanding any other provision of this division,*  
18 *the Climate Catalyst Revolving Loan Fund may receive moneys*  
19 *from the federal government and funds sourced from federal*  
20 *appropriations.*

21 (B) *Use of the moneys and funds described in subparagraph*  
22 *(A) shall be consistent with all of the following:*

23 (i) *The money and funds shall be expended for a purpose that*  
24 *is consistent with state law.*

25 (ii) *Acceptance of the moneys and funds does not impose on the*  
26 *state any requirement to commit or expend new state funds for any*  
27 *program or purpose.*

28 (iii) *The use of the moneys and funds shall be consistent with*  
29 *the priorities described in subdivision (a) of Section 38590.1 of*  
30 *the Health and Safety Code.*

31 (2) *Within 10 days of any nonstate moneys and funds being*  
32 *deposited in the Climate Catalyst Revolving Loan Fund, the bank*  
33 *shall provide written notice to the Joint Legislative Budget*  
34 *Committee, who shall provide a copy of the notice to the relevant*  
35 *policy committees. The notice shall include the source, purpose,*  
36 *timeliness, and other relevant information as determined by the*  
37 *bank.*

38 *SEC. 3. Section 25355.5 of the Public Resources Code, as*  
39 *added by Section 5 of Chapter 1 of the Statutes of 2023, First*  
40 *Extraordinary Session, is amended to read:*

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1 25355.5. (a) For purposes of this section, the following  
2 definitions apply:

3 (1) “Gross gasoline refining margin excluding state program  
4 costs” means the amount, expressed in dollars per barrel and  
5 calculated by the commission on a monthly basis, equal to the  
6 volume-weighted average rack price of wholesale gasoline sold  
7 by a refiner in the state, less the volume-weighted fees or estimated  
8 valuations of costs embedded in all of the refiner’s wholesale  
9 gasoline sales associated with the low carbon fuel standard and  
10 the cap and trade cap-at-the-rack program, less the refiner’s  
11 volume-weighted average acquisition cost.

12 (2) “Maximum gross gasoline refining margin” means the  
13 maximum amount of gross gasoline refining margin excluding  
14 state program costs established under subdivision (b).

15 (3) “Volume-weighted average acquisition cost” means the  
16 combined volume-weighted average of the refiner’s  
17 volume-weighted average crude oil acquisition cost and the  
18 refiner’s volume-weighted cost of acquiring refined gasoline  
19 imported to California or received from an entity other than the  
20 refiner.

21 (4) “Volume-weighted average rack price of wholesale gasoline”  
22 means the combined volume-weighted average of the refiner’s  
23 rack price of the branded and unbranded rack sales reported under  
24 paragraph (5) of subdivision (b) of Section 25355.

25 (5) “Volume-weighted average crude oil acquisition cost” means  
26 the amount reported as required by paragraph (2) of subdivision  
27 (b) of Section 25355.

28 (b) The commission may, by regulation or order at a business  
29 meeting, subject to the requirements of subdivision (f), set a  
30 maximum gross gasoline refining margin.

31 (c) (1) If the commission sets a maximum gross gasoline  
32 refining margin under subdivision (b), it shall also establish a  
33 penalty for exceeding that maximum margin, by regulation or order  
34 at a business meeting, subject to the requirements of subdivision  
35 (f), that may be the same meeting described in subdivision (b).

36 (2) The penalty shall be a percentage of the amount by which  
37 the refiner’s gross gasoline refining margin excluding state program  
38 costs exceeds the maximum gross gasoline refining margin,  
39 converted from dollars per barrel to dollars per gallon, multiplied  
40 by the number of gallons sold by the refiner during the calendar

1 month for all transactions described in paragraph (6) of subdivision  
2 (b) of Section 25355.

3 (3) Subject to subdivision (j), the penalty shall be tiered, such  
4 that the penalty percentage shall increase with the amount by which  
5 the refiner's gross gasoline refining margin excluding state program  
6 costs exceeds the maximum gross gasoline refining margin, as  
7 follows:

8 (A) Amounts earned by a refiner that exceed the maximum  
9 gross gasoline refining margin by less than ten cents (\$0.10) per  
10 gallon shall be subject to the base penalty percentage set by the  
11 commission.

12 (B) Amounts earned by a refiner that exceed the maximum gross  
13 gasoline refining margin ~~between by more than~~ ten cents (\$0.10)  
14 ~~and less than or equal to~~ twenty cents ~~(\$0.20)~~ (\$0.20), *inclusive*,  
15 per gallon shall be subject to a penalty percentage higher than the  
16 base penalty percentage.

17 (C) Amounts earned by a refiner that exceed the maximum gross  
18 gasoline refining margin by more than twenty cents (\$0.20) per  
19 gallon shall be subject to a penalty percentage higher than the  
20 penalty percentage set under subparagraph (B).

21 (d) In establishing a maximum gross gasoline refining margin  
22 and penalty, the commission shall consider information reported  
23 under subdivision (b) of Section 25355 and any other public data  
24 and reports that it determines will assist its analysis. The  
25 commission shall also consider confidential information submitted  
26 pursuant to Sections 25354 and 25355. A refiner may submit  
27 additional information and facts for the commission to consider  
28 under an application for confidential designation pursuant to  
29 Section 25364.

30 (e) The commission shall not set a maximum gross gasoline  
31 refining margin or accompanying penalty under subdivisions (b)  
32 and (c), respectively, unless it finds that the likely benefits to  
33 consumers outweigh the potential costs to consumers. In making  
34 that determination, the commission shall consider all factors that  
35 in its discretion it deems relevant, including at a minimum all of  
36 the following factors, although no one factor shall be determinative:

37 (1) Whether it is likely that the maximum gross gasoline refining  
38 margin and penalty will lead to a greater imbalance between supply  
39 and demand in the California transportation fuels market than  
40 would exist without the maximum margin and penalty.



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1 (2) Whether it is likely that the maximum gross gasoline refining  
2 margin and penalty will lead to higher average prices at the pump  
3 on an annual basis than would exist without the maximum margin  
4 and penalty.

5 (3) Whether case-by-case exemptions from the gross gasoline  
6 refining maximum margin will be sufficient to ensure that  
7 individual refiners have an opportunity to demonstrate the need  
8 for a greater margin before they make decisions about production.

9 (f) Decisions of the commission under subdivision (b) to adopt  
10 a regulation or order setting a maximum gross gasoline refining  
11 margin, under subdivision (c) to adopt a regulation or order  
12 establishing a penalty for exceeding the maximum gross gasoline  
13 refining margin, under subdivision (e) regarding the benefits and  
14 costs to consumers, and under subdivision (k) regarding  
15 adjustments to, or rescission of, the maximum gross gasoline  
16 refining margin or penalty, shall be made in accordance with all  
17 of the following procedures:

18 (1) A notice and draft decision, regulation, or order shall be  
19 posted publicly at least 30 days before the business meeting at  
20 which adoption of the decision, regulation, or order will be  
21 considered.

22 (2) The commission shall receive written comments on the draft  
23 decision, regulation, or order.

24 (3) The commission shall hear public comment on the draft  
25 decision, regulation, or order at its business meeting.

26 (g) If the commission has set a maximum gross gasoline refining  
27 margin and penalty, the margin and penalty shall take effect 60  
28 days following the commission's regulation or order establishing  
29 the margin and penalty pursuant to subdivisions (b) and (c),  
30 respectively. Within 15 days of the regulation or order establishing  
31 a maximum gross gasoline refining margin and penalty, the  
32 commission shall notify refiners by a means determined by the  
33 commission that may include, but is not limited to, mail, email,  
34 or internet website posting.

35 (h) If the commission has set a maximum gross gasoline refining  
36 margin under subdivision (b), it shall be a violation of this section  
37 for a refiner to exceed the maximum gross gasoline refining  
38 margin.

1 (i) In addition to any other remedy that may be available, the  
2 commission may petition a court to enjoin a refiner from violating  
3 this section.

4 (j) The commission may impose an administrative civil penalty  
5 for a violation of this section in the amounts established pursuant  
6 to subdivision (c).

7 (k) The commission may, by regulation or order, at a business  
8 meeting, subject to the requirements of subdivision (f), rescind or  
9 adjust the maximum gross gasoline refining margin and the penalty  
10 percentages and amounts specified in subdivisions (b) and (c) to  
11 ensure that a sufficient, affordable, and fairly priced supply of  
12 gasoline is available to Californians. A refiner may submit  
13 information and facts for the commission to consider in support  
14 of any rescission or adjustment under an application for  
15 confidential designation pursuant to Section 25364. Rescission of,  
16 or adjustments to, the maximum gross gasoline refining margin  
17 and the penalty percentages and amounts specified in subdivisions  
18 (b) and (c), respectively, pursuant to this subdivision shall be  
19 effective on the first day of the calendar month at least 15 days  
20 after the commission gives public notice of the rescission or  
21 adjustment, unless the commission orders otherwise.

22 (l) Notwithstanding Section 25901 and except as provided in  
23 subdivision (n), a petition for writ of mandate pursuant to Section  
24 1085 of the Code of Civil Procedure shall be the exclusive remedy  
25 available to challenge any regulation, order, decision, rule,  
26 guideline, or adjudication of an exemption request adopted by the  
27 commission under this section. The court's review shall be limited  
28 exclusively to the record before the commission. Any petition shall  
29 be filed within 30 days of the commission's decision.

30 (m) (1) The commission shall consider a refiner's request for  
31 an exemption from the maximum gross gasoline refining margin  
32 and shall grant the exemption upon a showing by the refiner, based  
33 on competent and reliable evidence and subject to the commission's  
34 review, examination, and investigation of the evidence, that an  
35 application of the maximum gross gasoline refining margin would  
36 be unconstitutional as applied to the refiner. The commission may,  
37 in its discretion, grant a request for an exemption upon a showing  
38 by the refiner of good cause for an exemption, subject to alternative  
39 maximum margins or other conditions as the commission may set.

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1 (2) Any refiner seeking an exemption shall, at a minimum, file  
2 a statement with the commission, signed under penalty of perjury,  
3 setting forth the facts that form the basis for the request for  
4 exemption. A refiner may submit information and facts under an  
5 application for confidential designation pursuant to Section 25364  
6 to support its application for an exemption.

7 (n) (1) Before imposing the administrative civil penalty under  
8 subdivision (j), the executive director of the commission shall issue  
9 and serve a complaint on the refiner, and the commission shall  
10 hold a hearing, adopt a decision, and require payment of the penalty  
11 in accordance with the procedures described in subdivisions (a)  
12 to (d), inclusive, of Section 25534.1.

13 (2) Judicial review and enforcement of an order imposing an  
14 administrative civil penalty under subdivision (j) may be had in  
15 accordance with the procedures described in subdivisions (a) and  
16 (b) of Section 25534.2.

17 (3) Penalties collected under this section shall be deposited into  
18 the Price Gouging Penalty Fund, which is hereby created in the  
19 State Treasury and shall be used, upon appropriation by the  
20 Legislature, to address any consequences of price gouging on  
21 Californians.

22 (4) The commission shall make public, on a quarterly basis, the  
23 name and address of each refiner that has exceeded the maximum  
24 gross gasoline refining margin for any month during the previous  
25 quarter, and the amount of administrative civil penalty to be  
26 assessed.

27 (o) The Administrative Procedure Act (Chapter 3.5  
28 commencing with Section 11340) of Part 1 of Division 3 of Title  
29 2 of the Government Code) does not apply to any regulation, order,  
30 decision, rule, guideline, adjudication of an exemption request, or  
31 adjustment of the maximum gross gasoline margin, adopted by  
32 the commission under this section.

33 (p) The California State Auditor shall begin, no earlier than  
34 January 1, 2032, and complete, no later than March 1, 2033, an  
35 audit and performance review of the maximum gross gasoline  
36 refining margin and penalty set pursuant to this ~~section, if the~~  
37 ~~commission has set a maximum gross gasoline refining margin~~  
38 ~~and penalty.~~ *section*. The California State Auditor shall make  
39 determinations in a report to the Legislature and the commission,  
40 by no later than June 1, 2033, as to whether this section is achieving

1 the intended goal to reduce gasoline price spikes and stabilize the  
2 gasoline fuel supply market for California consumers. Within 60  
3 days of the issuance of the report, the commission shall hear from  
4 the California State Auditor at a business meeting of the  
5 commission. If the California State Auditor concludes that the  
6 maximum gross gasoline refining margin and penalty should be  
7 terminated, then the commission shall cease implementing the  
8 maximum gross gasoline refining margin and penalty provisions  
9 no later than 180 days after the issuance of the report, unless the  
10 Legislature has enacted subsequent legislation to extend the  
11 maximum gross gasoline refining margin and penalty provisions  
12 in the meantime.

13 *SEC. 4. Section 25371.3 of the Public Resources Code, as*  
14 *added by Section 10 of Chapter 1 of the Statutes of 2023, First*  
15 *Extraordinary Session, is amended to read:*

16 25371.3. On or before December 31, 2024, the commission  
17 and the State Air Resources Board, taking into account findings  
18 of the assessment conducted under Section 25371, shall prepare a  
19 Transportation Fuels Transition Plan. The commission and the  
20 State Air Resources Board shall determine the contents of the  
21 report, but the report shall include, at a minimum, a discussion of  
22 how to ensure that the supply of petroleum and alternative  
23 transportation fuels is affordable, reliable, equitable, and adequate  
24 to meet the demand for those transportation fuels described in the  
25 most current scoping plan approved by the State Air Resources  
26 Board under Section 38561 of the Health and Safety Code. The  
27 report shall be prepared in consultation with ~~the state's fuel~~  
28 ~~producers and refiners and~~ a multistakeholder, multiagency  
29 ~~workgroup, including the California Environmental Protection~~  
30 ~~Agency and the Natural Resources Agency, workgroup~~ convened  
31 by the ~~commission~~ *commission, the California Environmental*  
32 *Protection Agency, the Natural Resources Agency, and the State*  
33 *Air Resources Board to identify mechanisms to plan for and*  
34 *monitor progress toward the state's reliable, safe, equitable, and*  
35 *affordable transition away from petroleum fuels in line with*  
36 *declining instate petroleum demand. The workgroup shall consist*  
37 *of members representing interests that include, but are not limited*  
38 *to, environmental justice, labor, environmental protection, land*  
39 *use, and public health, members representing the state's fuel*  
40 *producers and refiners, and members representing relevant state,*

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1 *regional, and local agencies.* The Division of Petroleum Market  
2 Oversight shall provide input to and otherwise support other  
3 divisions of the commission in preparation of the plan.

4 *SEC. 5. Section 25373 of the Public Resources Code, as added*  
5 *by Section 10 of Chapter 1 of the Statutes of 2023, First*  
6 *Extraordinary Session, is amended to read:*

7 25373. (a) The commission and division shall be advised by  
8 the Independent Consumer Fuels Advisory Committee which is  
9 hereby established within the commission. The committee shall  
10 consist of the following members:

11 (1) Six members appointed by the Governor as follows:

12 (A) A member who holds an academic appointment and has  
13 knowledge of economics or business operations of the  
14 transportation fuels market.

15 (B) A member representing the California petroleum fuels  
16 industry.

17 (C) A member representing consumers.

18 (D) A member representing labor.

19 (E) A member with expertise in community, environmental, or  
20 environmental justice issues.

21 (F) A member with expertise in antitrust law.

22 (2) One member appointed by the Speaker of the Assembly.

23 (3) One member appointed by the Senate Committee on Rules.

24 (b) (1) Except for the member described in subparagraph (B)  
25 of paragraph (1) of, or subparagraph (D) of paragraph (1) of,  
26 subdivision (a), no member of the committee shall have been  
27 employed by, contracted with, or received direct compensation  
28 from, a company that produces, refines, distributes, trades in,  
29 markets, or sells any petroleum product in the preceding 12 months.

30 (2) Except for the member described in subparagraph (B) of  
31 paragraph (1) of, or subparagraph (D) of paragraph (1) of,  
32 subdivision (a), before accepting appointment, members of the  
33 committee shall agree, in writing, not to be employed by, contract  
34 with, or receive direct compensation from companies described  
35 in paragraph (1) for the 12 months following the completion of  
36 their service on the committee.

37 (c) Each member of the committee shall receive a per diem of  
38 one hundred dollars (\$100) for each day actually spent in the  
39 discharge of official duties, and shall be reimbursed for traveling

1 and other expenses necessarily incurred in the performance of  
2 official duties.

3 (d) The duties, organization, and schedule of meetings of the  
4 Independent Consumer Fuels Advisory Committee shall be  
5 prescribed by the commission. The commission may delegate the  
6 authority under this subdivision to the executive director of the  
7 commission.

8 (e) The Independent Consumer Fuels Advisory Committee shall  
9 have access to ~~all~~ *aggregated or otherwise anonymized* information  
10 submitted to the commission or to the division necessary to fulfill  
11 its ~~duties~~; *duties under conditions as the commission determines*  
12 *necessary to ensure that any public disclosure of the specific*  
13 *information would not result in unfair competitive disadvantage*  
14 *to the person supplying the information or adversely affect market*  
15 *competition*. The members of the committee shall *also* agree, in  
16 writing, to maintain the confidentiality of all information received.

17 (f) The executive director of the commission shall ensure that  
18 any confidential information shared with the members of the  
19 Independent Consumer Fuels Advisory Committee is subject to a  
20 nondisclosure agreement and is maintained in a way that protects  
21 it from inadvertent disclosure.

22 *SEC. 6. Section 25792 of the Public Resources Code is*  
23 *amended to read:*

24 25792. (a) The Demand Side Grid Support Program is hereby  
25 created. The commission shall implement and administer the  
26 program to incentivize dispatchable customer load reduction and  
27 backup generation operation as on-call emergency supply and load  
28 reduction for the state's electrical grid during extreme events.

29 (b) The commission shall allocate moneys to develop a new  
30 statewide program that provides incentives to reduce customer net  
31 load during extreme events with upfront capacity commitments  
32 and for per-unit reductions in net load. Eligible recipients may  
33 include all energy customers in the state, except those enrolled in  
34 demand response or emergency load reduction programs offered  
35 by entities under the jurisdiction of the Public Utilities  
36 Commission. The commission, in consultation with the Public  
37 Utilities Commission, may adopt additional participation  
38 requirements or limitations. Payments shall be made to any of the  
39 following:

40 (1) Participating individual entities.

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1 (2) Participating aggregators of multiple energy customers.

2 (3) Participating local publicly owned electric utilities and  
3 load-serving entities.

4 ~~(e) Entities with generation or load reduction assets that are  
5 incentivized pursuant to Article 2 (commencing with Section  
6 25791) shall participate in the program under this article.~~

7 ~~(d)~~

8 (c) Participants shall provide load reduction or backup  
9 generation service, or both, in response to a dispatch by an  
10 applicable California balancing authority of a California balancing  
11 authority area in which participants are located during extreme  
12 events.

13 ~~(e)~~

14 (d) The commission, in consultation with California balancing  
15 authorities and the state board, shall adopt guidelines to determine  
16 when to implement the program, including which resources are  
17 dispatched first to minimize local pollution and emissions of  
18 greenhouse gases. The dispatch order of resources in the program  
19 shall follow a loading order that prioritizes, to the maximum extent  
20 feasible to ensure electricity reliability, cost-effective demand  
21 response and efficiency resources, then feasible, cost-effective  
22 renewable and zero-emission resources, and then feasible,  
23 cost-effective conventional resources. The guidelines shall also  
24 consider the anticipated useful life of the resources in relation to  
25 the state's climate and air quality requirements.

26 ~~(f)~~

27 (e) The state board, in consultation with the commission, shall  
28 develop a plan, including determining the funding amounts  
29 allocated after the dispatch of resources participating in the  
30 program, to mitigate impacts from these resources.

31 ~~(g) All energy produced as a result of the program shall be  
32 settled at a relevant reference energy price derived either through  
33 the Independent System Operator market tariff or similar  
34 mechanism established and documented for an applicable  
35 California balancing authority area.~~

36 *SEC. 7. Section 454.53 of the Public Utilities Code is amended*  
37 *to read:*

38 454.53. (a) It is the policy of the state that eligible renewable  
39 energy resources and zero-carbon resources supply 90 percent of  
40 all retail sales of electricity to California end-use customers by

1 December 31, 2035, 95 percent of all retail sales of electricity to  
2 California end-use customers by December 31, 2040, 100 percent  
3 of all retail sales of electricity to California end-use customers by  
4 December 31, 2045, and 100 percent of electricity procured to  
5 serve all state agencies by December 31, 2035. The achievement  
6 of this policy for California shall not increase carbon emissions  
7 elsewhere in the western grid and shall not allow resource  
8 shuffling. The commission and Energy Commission, in  
9 consultation with the State Air Resources Board, shall take steps  
10 to ensure that a transition to a zero-carbon electric system for the  
11 State of California does not cause or contribute to greenhouse gas  
12 emissions increases elsewhere in the western grid, and is  
13 undertaken in a manner consistent with clause 3 of Section 8 of  
14 Article I of the United States Constitution. The commission, the  
15 Energy Commission, the State Air Resources Board, and all other  
16 state agencies shall incorporate this policy into all relevant  
17 planning.

18 (b) The commission, Energy Commission, State Air Resources  
19 Board, and all other state agencies shall ensure that actions taken  
20 in furtherance of subdivision (a) do all of the following:

21 (1) Maintain and protect the safety, reliable operation, and  
22 balancing of the electric system.

23 (2) Prevent unreasonable impacts to electricity, gas, and water  
24 customer rates and bills resulting from implementation of this  
25 section, taking into full consideration the economic and  
26 environmental costs and benefits of renewable energy and  
27 zero-carbon resources.

28 (3) To the extent feasible and authorized under law, lead to the  
29 adoption of policies and taking of actions in other sectors to obtain  
30 greenhouse gas emission reductions that ensure equity between  
31 other sectors and the electricity sector.

32 (4) Not affect in any manner the rules and requirements for the  
33 oversight of, and enforcement against, retail sellers and local  
34 publicly owned utilities pursuant to the California Renewables  
35 Portfolio Standard Program (Article 16 (commencing with Section  
36 399.11) of Chapter 2.3) and Sections 454.51, 454.52, 9621, and  
37 9622.

38 (5) *Not consider the energy, capacity, or any attribute from the*  
39 *Diablo Canyon Unit 1 or Unit 2 powerplant after August 26, 2025,*  
40 *in achieving the policy described in subdivision (a).*



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1 (c) ~~Nothing in this~~ *This section shall does not* affect a retail  
2 seller's obligation to comply with the federal Public Utility  
3 Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.).

4 (d) The commission, Energy Commission, and State Air  
5 Resources Board shall do all of the following:

6 (1) Use programs authorized under existing statutes to achieve  
7 the policy described in subdivision (a).

8 (2) In consultation with all California balancing authorities, as  
9 defined in subdivision (d) of Section 399.12, as part of a public  
10 process, issue a joint report to the Legislature by January 1, 2021,  
11 and at least every four years thereafter. The joint report shall  
12 include all of the following:

13 (A) A review of the policy described in subdivision (a) focused  
14 on technologies, forecasts, then-existing transmission, and  
15 maintaining safety, environmental and public safety protection,  
16 affordability, and system and local reliability.

17 (B) An evaluation identifying the potential benefits and impacts  
18 on system and local reliability associated with achieving the policy  
19 described in subdivision (a).

20 (C) An evaluation identifying the nature of any anticipated  
21 financial costs and benefits to electric, gas, and water utilities,  
22 including customer rate impacts and benefits.

23 (D) The barriers to, and benefits of, achieving the policy  
24 described in subdivision (a).

25 (E) Alternative scenarios in which the policy described in  
26 subdivision (a) can be achieved and the estimated costs and benefits  
27 of each scenario.

28 (3) On or before December 1, 2023, and annually thereafter, in  
29 consultation with California balancing authorities, as defined in  
30 subdivision (d) of Section 399.12, and as part of, or an interim  
31 addendum to, the quadrennial joint report required by paragraph  
32 (2), as applicable, issue a joint reliability progress report that  
33 reviews system and local reliability within the context of the policy  
34 described in subdivision (a), with a particular focus on summer  
35 reliability. The joint reliability progress report shall identify  
36 challenges and gaps, if any, to achieving system and local reliability  
37 and identify the amount and cause of any delays to achieving  
38 compliance with all energy and capacity procurement requirements  
39 set by the commission.

1 (e) ~~Nothing in this~~ *This section authorizes does not authorize*  
2 the commission to establish any requirements on a nonmobile  
3 self-cogeneration or cogeneration facility that served onsite load,  
4 or that served load pursuant to an over-the-fence arrangement if  
5 that arrangement existed on or before December 20, 1995.

6 (f) This section does not limit any entity, including local  
7 governments, from accelerating their achievement of the state's  
8 electric sector decarbonization targets.

9 *SEC. 8. Section 712 of the Public Utilities Code is amended*  
10 *to read:*

11 712. (a) The commission shall convene, ~~or continue, and~~  
12 *continue* until August 26, ~~2025, 2030~~, an independent peer review  
13 panel to conduct an independent review of enhanced seismic  
14 studies and surveys of the Diablo Canyon Units 1 and 2 powerplant,  
15 including the surrounding areas of the facility and areas of nuclear  
16 waste storage.

17 (b) The independent peer review panel shall contract with the  
18 Energy Commission, the California Geological Survey of the  
19 Department of Conservation, the California Coastal Commission,  
20 the Alfred E. Alquist Seismic Safety Commission, the Office of  
21 Emergency Services, and the County of San Luis Obispo to  
22 participate on the panel and provide expertise.

23 (c) The independent peer review panel shall review the seismic  
24 studies and hold public meetings.

25 (d) The commission shall make reports by the independent peer  
26 review panel publicly available on the ~~Internet Web site~~ *internet*  
27 *website* maintained by the commission.

28 *SEC. 9. Section 712.1 of the Public Utilities Code is amended*  
29 *to read:*

30 712.1. (a) The Legislature finds and declares that in  
31 commission Decision 88-12-083 (December 19, 1988) Re Pacific  
32 Gas and Electric Company (30 CPUC.2d 189), the commission  
33 created the Independent Safety Committee for Diablo Canyon to  
34 make recommendations appropriate to enhance the safety of the  
35 operation of the Diablo Canyon powerplant.

36 (b) ~~The Independent Safety Committee for Diablo Canyon is~~  
37 ~~hereby established in the commission and has and~~ shall continue  
38 to have the right of the Independent Safety Committee for Diablo  
39 Canyon established pursuant to ~~commission Decision 88-12-083~~  
40 *rights established pursuant to commission Decision 88-12-083,*

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1 *as amended by Decisions 07-01-028 and 21-09-003*, to conduct  
2 annual examinations of the Diablo Canyon powerplant and make  
3 additional site visits. The committee shall cease operations no  
4 sooner than when the ~~United States Nuclear Regulatory~~  
5 ~~Commission operating permit for the~~ Diablo Canyon powerplant  
6 has ceased *operations* and ~~when~~ all spent nuclear fuel has been  
7 moved to dry storage at the Diablo Canyon Independent Spent  
8 Fuel Storage Installation.

9 (c) The Independent Safety Committee for Diablo Canyon shall  
10 be composed of three experts, one each shall be appointed by the  
11 Governor, the Attorney General, and the Chair of the Energy  
12 Commission, from a list of candidates nominated by the President  
13 of the commission that shall include not more than three qualified  
14 candidates as alternatives to the reappointment of the appointing  
15 authority's designated committee member whose term is expiring,  
16 and which shall also include the incumbent committee member if  
17 the member consents to being an additional candidate. The  
18 incumbent as of August 1, 2022, may continue to serve their current  
19 term until it expires.

20 (d) The commission shall ensure the funding of the Independent  
21 Safety Committee for Diablo Canyon to attract qualified experts  
22 during the period of extended ~~operations of the~~ Diablo Canyon  
23 ~~powerplant~~, *powerplant operations*, as defined by Section 712.8.

24 (e) In addition to the duties and responsibilities set forth in  
25 commission decisions, the Independent Safety Committee for  
26 Diablo Canyon shall do both of the following:

27 (1) Consult with and incorporate into its assessments and  
28 recommendations the independent peer review panel established  
29 pursuant to Section 712.

30 (2) Transmit annually its findings and recommendations for  
31 improved ~~safety~~ *safety, and any response required pursuant to*  
32 *subdivision (f)*, to the Legislature, the Governor, the commission,  
33 the Energy Commission, the United States Nuclear Regulatory  
34 Commission, and the company licensed to operate the Diablo  
35 Canyon Units 1 and ~~2~~: *2 powerplant*. The report transmitted to the  
36 Legislature shall be in accordance with Section 9795 of the  
37 Government Code.

38 (f) The company licensed to operate the Diablo Canyon Units  
39 1 and 2 *powerplant* shall annually respond to the annual report

1 provided for in paragraph (2) of subdivision (e) and distribute its  
2 response to the governmental entities specified in that paragraph.

3 *SEC. 10. Section 712.8 of the Public Utilities Code is amended*  
4 *to read:*

5 712.8. (a) For purposes of this section, the following  
6 definitions apply:

7 (1) “Current expiration dates” has the same meaning as defined  
8 in Section 25548.1 of the Public Resources Code.

9 (2) “Diablo Canyon powerplant operations” has the same  
10 meaning as defined in Section 25548.1 of the Public Resources  
11 Code.

12 (3) “Load-serving entity” has the same meaning as defined in  
13 Section 380.

14 (4) “Operator” has the same meaning as defined in Section  
15 25548.1 of the Public Resources Code.

16 (b) (1) Ordering paragraphs (1) and (14) of commission  
17 Decision 18-01-022 (January 11, 2018) Decision Approving  
18 Retirement of Diablo Canyon Nuclear Power Plant, are hereby  
19 invalidated.

20 (2) The commission shall reopen commission Application  
21 16-08-006 and take other actions as are necessary to implement  
22 this section.

23 (c) (1) (A) Notwithstanding any other law, within 120 days of  
24 ~~the effective date of this section, the September 2, 2022, the~~  
25 commission shall direct and authorize the operator of the Diablo  
26 Canyon Units 1 and 2 to take all actions that would be necessary  
27 to operate the powerplant beyond the current expiration dates, so  
28 as to preserve the option of extended operations, until the following  
29 retirement dates, conditional upon continued authorization to  
30 operate by the United States Nuclear Regulatory Commission:

31 (i) For Unit 1, October 31, 2029.

32 (ii) For Unit 2, October 31, 2030.

33 (B) If the loan provided for by Chapter 6.3 (commencing with  
34 Section 25548) of Division 15 of the Public Resources Code is  
35 terminated under that chapter, the commission shall modify its  
36 order under this paragraph and direct an earlier retirement date.

37 (C) Actions taken by the operator pursuant to the commission’s  
38 actions under this paragraph, including in preparation for extended  
39 operations, shall not be funded by ratepayers of any load-serving  
40 entities, but may be funded by the loan provided for by Chapter

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1 6.3 (commencing with Section 25548) of Division 15 of the Public  
2 Resources Code or other nonratepayer funds available to the  
3 operator. The commission shall not allow the recovery from  
4 ratepayers of costs incurred by the operator to prepare for, seek,  
5 or receive any extended license to operate by the United States  
6 Nuclear Regulatory Commission.

7 (2) (A) No later than December 31, 2023, and notwithstanding  
8 the 180-day time limitation in subdivision ~~(b)~~ (a) of Section  
9 25548.2 of the Public Resources Code, the commission shall direct  
10 and authorize extended operations at the Diablo Canyon powerplant  
11 until the new retirement dates specified in subparagraph (A) of  
12 paragraph ~~(1)~~ of subdivision ~~(e)~~. (1).

13 (B) The commission shall review the reports and  
14 recommendations of the Independent Safety Committee for Diablo  
15 Canyon described in Section 712.1. If the Independent Safety  
16 Committee for Diablo Canyon's reports or recommendations cause  
17 the commission to determine, in its discretion, that the costs of  
18 any upgrades necessary to address seismic safety or issues of  
19 deferred maintenance that may have arisen due to the expectation  
20 of the plant closing sooner are too high to justify incurring, or if  
21 the United States Nuclear Regulatory Commission's conditions  
22 of license renewal require expenditures that are too high to justify  
23 incurring, the commission may issue an order that reestablishes  
24 the current expiration dates as the retirement date, or that  
25 establishes new retirement dates that are earlier than provided in  
26 subparagraph (A) of paragraph (1), to the extent allowable under  
27 federal law, and shall provide sufficient time for orderly shutdown  
28 and authorize recovery of any outstanding uncollected costs and  
29 fees.

30 (C) If the loan provided for by Chapter 6.3 (commencing with  
31 Section 25548) of Division 15 of the Public Resources Code is  
32 terminated under that chapter, the commission may issue an order  
33 that reestablishes the current expiration dates as the retirement  
34 date, or that establishes new retirement dates that are earlier than  
35 provided in subparagraph (A) of paragraph (1), and shall provide  
36 sufficient time for orderly shutdown and authorize recovery of any  
37 outstanding uncollected costs and fees.

38 (D) If the commission determines that new renewable energy  
39 and zero-carbon resources that are adequate to substitute for the  
40 Diablo Canyon powerplant and that meet the state's planning

1 standards for energy reliability have already been constructed and  
2 interconnected by the time of its decision, the commission may  
3 issue an order that reestablishes the current expiration dates as the  
4 retirement date, or that establishes new retirement dates that are  
5 earlier than provided in subparagraph (A) of paragraph (1), and  
6 shall provide sufficient time for orderly shutdown and authorize  
7 recovery of any outstanding uncollected costs and fees.

8 (E) Any retirement date established under this paragraph shall  
9 be conditioned upon continued authorization to operate by the  
10 United States Nuclear Regulatory Commission. If the United States  
11 Nuclear Regulatory Commission does not extend the current  
12 expiration dates or renews the licenses for Diablo Canyon Units  
13 1 or 2 for a period shorter than the extended operations authorized  
14 by the commission, the commission shall modify any orders issued  
15 under this paragraph to direct a retirement date that is the same as  
16 the United States Nuclear Regulatory Commission license  
17 expiration date.

18 (3) The commission shall do all things necessary and appropriate  
19 to implement this section, including, but not limited to, allocating  
20 financial responsibility for the extended operations of the Diablo  
21 Canyon powerplant to customers of all load-serving entities and  
22 ensuring completion of funding of the community impacts  
23 mitigation settlement described in Section 712.7. The commission  
24 shall not require any funds already disbursed or committed under  
25 the community impacts mitigation settlement described in Section  
26 712.7 to be returned because of extended operations of the Diablo  
27 Canyon powerplant.

28 (4) Except as authorized by this section, customers of  
29 load-serving entities shall have no other financial responsibility  
30 for the costs of the extended operations of the Diablo Canyon  
31 powerplant. In no event shall load-serving entities other than the  
32 operator and their customers have any liability for the operations  
33 of the Diablo Canyon powerplant.

34 (5) Consistent with Section 25548.4 of the Public Resources  
35 Code, the commission shall collaborate with the Department of  
36 Water Resources to oversee the operator's actions that are funded  
37 by the loan provided for by Chapter 6.3 (commencing with Section  
38 25548) of Division 15 of the Public Resources Code.

39 (d) The commission shall not increase cost recovery from  
40 ratepayers for operations and maintenance expenses incurred by

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1 the operator during the period from August 1, 2022, to November  
2 2, ~~2025~~, 2024, for Diablo Canyon Unit 1 and from August 1, 2022,  
3 to August 26, 2025, for Diablo Canyon Unit 2, above the amounts  
4 approved in the most recent general rate case for the operator  
5 pursuant to commission proceeding A.21-06-021 (June 30, 2021)  
6 Application of Pacific Gas and Electric Company for Authority,  
7 Among Other Things, to Increase Rates and Charges for Electric  
8 and Gas Service Effective on January 1, 2023.

9 (e) The commission shall order the operator to track all costs  
10 associated with continued and extended operations of Diablo  
11 Canyon Units 1 and 2. The commission shall authorize the operator  
12 to establish accounts as necessary to track all costs incurred under  
13 paragraph (1) of subdivision (c), all costs incurred under the loan  
14 provided for by Chapter 6.3 (commencing with Section 25548) of  
15 Division 15 of the Public Resources Code, all costs to be borne  
16 only by the operator's ratepayers, all costs to be borne by ratepayers  
17 of all load-serving entities, consistent with this section, and any  
18 other costs as determined by the commission. Among these  
19 accounts shall be a Diablo Canyon Extended Operations liquidated  
20 damages balancing account, described in subdivisions (g) and (i).

21 (f) (1) Notwithstanding any approval of extended operations,  
22 the commission shall continue to authorize the operator to recover  
23 in rates all of the reasonable costs incurred to prepare for the  
24 retirement of Diablo Canyon Units 1 and 2, including any  
25 reasonable additional costs associated with decommissioning  
26 planning resulting from the license renewal applications or license  
27 renewals. The reasonable costs incurred to prepare for the  
28 retirement of Diablo Canyon Power Plant Units 1 and 2 shall be  
29 recovered on a fully nonbypassable basis from customers of all  
30 load-serving entities subject to the commission's jurisdiction in  
31 the operator's service territory, as determined by the commission,  
32 except that the reasonable additional costs associated with  
33 decommissioning planning resulting from the license renewal  
34 applications or license renewals shall be recovered on a fully  
35 nonbypassable basis from customers of all load-serving entities  
36 subject to the commission's jurisdiction in the state.

37 (2) The commission shall continue to fund the employee  
38 retention program approved in Decision 18-11-024 (December 2,  
39 2018) Decision Implementing Senate Bill 1090 and Modifying  
40 Decision 18-01-022, as modified to incorporate 2024, 2025, and

1 additional years of extended operations, on an ongoing basis until  
2 the end of operations of both units with program costs tracked  
3 under subdivision (e) and fully recovered in rates. Any additional  
4 funding for the employee retention program beyond what was  
5 already approved in commission Decision 18-11-024 shall be  
6 submitted by the operator in an application for review by the  
7 commission.

8 (3) The commission shall determine the amount or allocation  
9 that the customers of all load-serving entities subject to the  
10 commission's jurisdiction shall contribute towards the reasonable  
11 additional costs of decommissioning planning resulting from the  
12 license renewal applications or license renewals and shall authorize  
13 the operator to recover in rates those costs through a nonbypassable  
14 charge applicable to the customers of all load-serving entities  
15 subject to the commission's jurisdiction in the state as set forth in  
16 paragraph (1) of subdivision (I).

17 (4) The commission shall authorize the operator to recover in  
18 rates all of the reasonable costs incurred to prepare for, respond  
19 to, provide information to, or otherwise participate in or engage  
20 the independent peer review panel under Section 712.

21 (5) In lieu of a rate-based return on investment and in  
22 acknowledgment of the greater risk of outages in an older plant  
23 that the operator could be held liable for, the commission shall  
24 authorize the operator to recover in rates a volumetric payment  
25 equal to six dollars and fifty cents (\$6.50), in 2022 dollars, for  
26 each megawatthour generated by the Diablo Canyon powerplant  
27 during the period of extended operations beyond the current  
28 expiration dates, to be borne by customers of all load-serving  
29 entities, and an additional volumetric payment equal to six dollars  
30 and fifty cents (\$6.50), in 2022 dollars, to be borne by customers  
31 in the service territory of the operator. The amount of the operating  
32 risk payment shall be adjusted annually by the commission using  
33 commission-approved escalation methodologies and adjustment  
34 factors.

35 (6) (A) In lieu of a rate-based return on investment and in  
36 acknowledgment of the greater risk of outages in an older plant  
37 that the operator could be held liable for, the commission shall  
38 authorize the operator to recover in rates a fixed payment of fifty  
39 million dollars (\$50,000,000), in 2022 dollars, for each unit for  
40 each year of extended operations, subject to adjustment in



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1 subparagraphs (B) to (D), inclusive. The amount of the fixed  
2 payment shall be adjusted annually by the commission using  
3 commission-approved escalation methodologies and adjustment  
4 factors.

5 (B) In the first year of extended operations for each unit, the  
6 operator shall continue to receive the full fixed payment during  
7 periods in which a unit is out of service due to an unplanned outage  
8 for nine months or less, and shall receive 50 percent of the payment  
9 for months in excess of nine months that a unit is down.

10 (C) In the second year of extended operations, the operator shall  
11 continue to receive the fixed payment during periods in which a  
12 unit is out of service due to an unplanned outage for eight months  
13 or less, and shall receive 50 percent of the payment for months in  
14 excess of eight months that a unit is down.

15 (D) In each subsequent year of extended operations, the period  
16 in which the full fixed payment is received during periods when  
17 a unit ~~out~~ is *out* of service due to an unplanned outage shall decline  
18 by one additional month.

19 (g) The commission shall authorize and fund as part of the  
20 charge under paragraph (1) of subdivision (I), the Diablo Canyon  
21 Extended Operations liquidated damages balancing account in the  
22 amount of twelve million five hundred thousand dollars  
23 (\$12,500,000) each month for each unit until the liquidated  
24 damages balancing account has a balance of three hundred million  
25 dollars (\$300,000,000).

26 (h) (1) The commission shall authorize the operator to recover  
27 all reasonable costs and expenses necessary to operate Diablo  
28 Canyon Units 1 and 2 beyond the current expiration dates,  
29 including those in subdivisions (f) and (g), net of market revenues  
30 for those operations and any production tax credits of the operator,  
31 on a forecast basis in a new proceeding structured similarly to its  
32 annual Energy Resource Recovery Account forecast proceeding  
33 with a subsequent true-up to actual costs and market revenues for  
34 the prior calendar year via an expedited Tier 3 advice letter process,  
35 provided that there shall be no further review of the reasonableness  
36 of costs incurred if actual costs are below 115 percent of the  
37 forecasted costs. All costs shall be recovered as an operating  
38 expense and shall not be eligible for inclusion in the operator's  
39 rate base.

1 (2) As the result of any significant one-time capital expenditures  
2 during the extended operation period, the commission may  
3 authorize, and the operator may propose, cost recovery of these  
4 expenditures as operating expenses amortized over more than one  
5 year for the purpose of reducing rate volatility, at an amortization  
6 interest rate determined by the commission. The commission shall  
7 allow cost recovery if the costs and expenses are just and  
8 reasonable. Those costs and expenses are just and reasonable if  
9 the operator's conduct is consistent with the actions that a  
10 reasonable utility would have undertaken in good faith under  
11 similar circumstances, at the relevant point in time and with  
12 information that the operator should have known at the relevant  
13 point in time.

14 (3) If, as a result of the annual true-up for extended operations  
15 in paragraph (1), the commission determines that market revenues  
16 for the prior year exceeded the annual costs and expenses, including  
17 those in subdivisions (f) and (g), the commission shall direct that  
18 any available surplus revenues in an account created under  
19 subdivision (e) be credited solely to customers in the operator's  
20 service territory. For customers outside the operator's service  
21 territory, market revenues may be credited up to, but not to exceed,  
22 their respective annual costs and expenses. If excess funds remain  
23 in an account created under subdivision (e) as a result of market  
24 revenues exceeding costs and expenses in the final year of the  
25 extended operating period, after truing up the final operating year's  
26 market revenues against costs and expenses, the remaining funds  
27 shall be the sole source of loan repayment per the requirements  
28 provided under Chapter 6.3 (commencing with Section 25548) of  
29 Division 15 of the Public Resources Code, except that any federal  
30 funds received as described in paragraph ~~(2)~~ (1) of subdivision ~~(b)~~  
31 (c) of Section 25548.3 of the Public Resources Code shall also be  
32 used to repay the loan. Ratepayer funds shall not otherwise be used  
33 in any manner to repay the loan provided for under Chapter 6.3  
34 (commencing with Section 25548) of Division 15 of the Public  
35 Resources Code.

36 (i) (1) During any unplanned outage periods, the commission  
37 shall authorize the operator to recover reasonable replacement  
38 power costs, if incurred, associated with Diablo Canyon powerplant  
39 operations. If the commission finds that replacement power costs  
40 incurred when a unit is out of service due to an unplanned outage

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1 are the result of a failure of the operator to meet the reasonable  
2 manager standard, then the commission shall authorize payment  
3 of the replacement power costs from the Diablo Canyon Extended  
4 Operations liquidated damages balancing account described in  
5 subdivision (g).

6 (2) After commencing payments from the Diablo Canyon  
7 Extended Operations liquidated damages balancing account under  
8 the conditions described in paragraph (1), the commission shall  
9 authorize the replenishment of the Diablo Canyon Extended  
10 Operations liquidated damages balancing account in the amount  
11 of twelve million five hundred thousand dollars (\$12,500,000) for  
12 each unit for each month up to a maximum account balance of  
13 three hundred million dollars (\$300,000,000).

14 (j) If the commission finds that the operator is requesting  
15 recovery of costs that were previously authorized by the  
16 commission or other state or federal agency or paid to the operator  
17 for cost recovery, the commission may fine the operator an amount  
18 up to three times the amount of the penalty provided in Section  
19 2107 for each violation.

20 (k) If at any point during the license renewal process or extended  
21 operations period the operator believes that, as a result of an  
22 unplanned outage, an emergent operating risk, or a new compliance  
23 requirement, the cost of performing upgrades needed to continue  
24 operations of one or both units exceed the benefits to ratepayers  
25 of the continued operation of doing so, the operator shall promptly  
26 notify the commission. The commission shall promptly review  
27 and determine whether expending funds to continue operations is  
28 reasonable, will remain beneficial to ratepayers, and is in the public  
29 interest or direct the operator to cease operations. The operator  
30 shall take all actions necessary to safely operate or maintain the  
31 Diablo Canyon powerplant pending the commission determination.

32 (l) (1) Any costs the commission authorizes the operator to  
33 recover in rates under this section shall be recovered on a fully  
34 nonbypassable basis from customers of all load-serving entities  
35 subject to the commissions's jurisdiction, as determined by the  
36 commission, except as otherwise provided in this section. The  
37 recovery of these nonbypassable costs by the load-serving entities  
38 shall be based on each customer's gross consumption of electricity  
39 regardless of a customer's net metering status or purchase of  
40 electric energy and service from an electric service provider,

1 community choice aggregator, or other third-party source of electric  
2 energy or electricity service.

3 (2) The commission shall establish mechanisms, including  
4 authorizing balancing and memorandum accounts and, as needed,  
5 agreements with, or orders with respect to, electrical corporations,  
6 community choice aggregators, and electric service providers, to  
7 ensure that the revenues received to pay a charge or cost payable  
8 pursuant to this section are recovered in rates from those entities  
9 and promptly remitted to the entity entitled to those revenues.

10 (m) This section does not alter the recovery of costs, including  
11 those previously approved by the commission, to operate Diablo  
12 Canyon Units 1 and 2 until the current expiration dates.

13 (n) The commission shall halt disbursements from the Diablo  
14 Canyon Nuclear Decommissioning Non-Qualified Trust, excluding  
15 refunds to ratepayers.

16 (o) The commission, in consultation with the relevant federal  
17 and state agencies and appropriate California Native American  
18 tribes, shall, in a new or existing proceeding, determine the  
19 disposition of the Diablo Canyon powerplant real property and its  
20 surrounding real properties owned by the applicable public utility  
21 or any legally related, affiliated, or associated companies, in a  
22 manner that best serves the interests of the local community,  
23 ratepayers, California Native American tribes, and the state. It is  
24 the intent of the Legislature that the existing efforts to transfer  
25 lands owned by the operator and Eureka Energy shall not be  
26 impeded by the extension of the Diablo Canyon powerplant.

27 (p) Except as otherwise provided in this section, this section  
28 does not alter or limit any proceeding of the commission relating  
29 to the decommissioning of the Diablo Canyon powerplant.

30 (q) The Legislature finds and declares that the purpose of the  
31 extension of the Diablo Canyon powerplant operations is to protect  
32 the state against significant uncertainty in future demand resulting  
33 from the state's ~~greenhouse-gas-reduction~~ *greenhouse gas*  
34 *reduction* efforts involving electrification of transportation and  
35 building energy end uses and regional climate-related weather  
36 phenomenon, and to address the risk that currently ordered  
37 procurement will be insufficient to meet this supply or that there  
38 may be delays in bringing the ordered resources online on schedule.  
39 Consequently, the continued operation of Diablo Canyon Units 1  
40 and 2 beyond their current expiration dates shall not be factored

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1 into the analyses used by the commission or by load-serving entities  
2 not subject to the commission's jurisdiction when determining  
3 future generation and transmission needs to ensure electrical grid  
4 reliability and to meet the state's ~~greenhouse gas emissions~~  
5 *greenhouse gas emissions* reduction goals. To the extent the  
6 commission decides to allocate any benefits or attributes from  
7 extended operations of the Diablo Canyon powerplant, the  
8 commission may consider the higher cost to customers in the  
9 operator's service area.

10 ~~(r) Notwithstanding Section 10231.5 of the Government Code,~~  
11 ~~in coordination with the Energy Commission, the Independent~~  
12 ~~System Operator, and the Department of Water Resources, the~~  
13 ~~commission shall submit, in accordance with Section 9795 of the~~  
14 ~~Government Code, a report to the Legislature each year on the~~  
15 ~~status of new resource additions and revisions to the state's electric~~  
16 ~~demand forecast, and the impact of these updates on the need for~~  
17 ~~keeping the Diablo Canyon powerplant online.~~

18 ~~(s)~~

19 *(r)* Any sale, mortgage, transfer of operational control, or any  
20 other encumbrance of disposition of the Diablo Canyon powerplant  
21 shall continue to be subject to Article 6 (commencing with Section  
22 851).

23 ~~(t)~~

24 *(s)* (1) The operator shall submit to the commission for its  
25 review, on an annual basis the amount of compensation earned  
26 under paragraph (5) of subdivision (f), how it was spent, and a  
27 plan for prioritizing the uses of such compensation the next year.  
28 Such compensation shall not be paid out to shareholders. Such  
29 compensation, to the extent it is not needed for Diablo Canyon,  
30 shall be spent to accelerate, or increase spending on, the following  
31 critical public purpose priorities:

32 (A) Accelerating customer and generator interconnections.

33 (B) Accelerating actions needed to bring renewable and  
34 zero-carbon energy online and modernize the electrical grid.

35 (C) Accelerating building decarbonization.

36 (D) Workforce and customer safety.

37 (E) Communications and education.

38 (F) Increasing resiliency and reducing operational and system  
39 risk.

1 (2) The operator shall not earn a rate of return for any of the  
2 expenditures described in paragraph (1) so that no profit shall be  
3 realized by the operator's shareholders. Neither the operator nor  
4 any of its affiliates or holding company may increase existing  
5 public earning per share guidance as a result of compensation  
6 provided under this section. The commission shall ensure no double  
7 recovery in rates.

8 ~~(u)~~

9 (t) The commission shall verify at the conclusion of extended  
10 operations that the operator's sole compensation during the period  
11 of extended operations is limited to and in accordance with  
12 paragraphs (5) and (6) of subdivision (f) and shall be in lieu of a  
13 rate-based return on investment in the Diablo Canyon powerplant.  
14 Any excess funds remaining in an account created under  
15 subdivision (e) as a result of market revenues exceeding costs and  
16 expenses across the extended operating period, after truing up the  
17 final operating year's market revenues against costs and expenses,  
18 following loan repayment under paragraph (3) of subdivision (h),  
19 shall not be paid out to shareholders. Instead, such excess funds  
20 shall be returned in full to customers in a manner to be determined  
21 by the commission, except that any funds remaining in the Diablo  
22 Canyon Extended Operations liquidated damages balancing account  
23 specified in subdivisions (g) and (i), shall be returned to customers  
24 in the operator's service territory in a manner to be determined by  
25 the commission.

26 ~~(v)~~

27 (u) The efforts to transfer lands owned by the operator and  
28 Eureka Energy, including North Ranch, Parcel P, South Ranch,  
29 and Wild Cherry Canyon, shall not be impeded by the extension  
30 of the operation of the Diablo Canyon powerplant.

31 ~~(w)~~

32 (v) In the event of a final determination by the United States  
33 Department of Energy that the Diablo Canyon powerplant is not  
34 eligible for the Civil Nuclear Credit Program established by Section  
35 18753 of Title 42 of the United States Code, subdivisions (d) to  
36 (m), inclusive, (p), (q), ~~(t)~~, (s), and ~~(u)~~ (t) shall cease to be  
37 operative, and the commission shall instead undertake ordinary  
38 ratemaking with respect to the Diablo Canyon powerplant.

39 *SEC. 11. Section 913.20 is added to the Public Utilities Code,*  
40 *to read:*

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1 913.20. *Notwithstanding Section 10231.5 of the Government*  
2 *Code, in coordination with the Energy Commission, the*  
3 *Independent System Operator, and the Department of Water*  
4 *Resources, the commission shall submit a report to the Legislature*  
5 *each year on the status of new resource additions and revisions*  
6 *to the state's electric demand forecast, and the impact of these*  
7 *updates on the need for keeping the Diablo Canyon powerplant*  
8 *online.*

9 *SEC. 12. Section 12935.5 is added to the Water Code, to read:*  
10 *12935.5. (a) There is hereby established, within the California*  
11 *Water Resources Development Bond Fund, the California Water*  
12 *Resources Development Bond Account.*

13 *(b) Notwithstanding Section 13340 of the Government Code,*  
14 *all moneys in the account are continuously appropriated, without*  
15 *regard to fiscal year, to the department and shall be available for*  
16 *the purposes provided in Section 12935.*

17 *(c) Pursuant to Section 80400, payments of certain credits*  
18 *received by the department are required to be deposited into the*  
19 *account. The use of the payments shall be consistent with all of*  
20 *the following:*

21 *(1) The payments shall be expended for a purpose that is*  
22 *consistent with state law.*

23 *(2) Acceptance of the payments does not impose on the state*  
24 *any requirement to commit or expend new state funds for any*  
25 *program or purpose.*

26 *(3) The need exists to expend the payments during the 2023–24*  
27 *fiscal year.*

28 *(4) The use of the payments shall be consistent with the priorities*  
29 *described in subdivision (a) of Section 38590.1 of the Health and*  
30 *Safety Code.*

31 *SEC. 13. Section 80400 of the Water Code is amended to read:*

32 *80400. (a) (1) The department shall procure eligible renewable*  
33 *energy resources and zero-carbon resources to satisfy the state*  
34 *agency obligations imposed on the State Water Resources*  
35 *Development System, commonly known as the State Water Project,*  
36 *pursuant to subdivision (a) of Section 454.53 of the Public Utilities*  
37 *Code.*

38 *(2) If the department determines that the full achievement of*  
39 *the state agency obligations imposed on the State Water Resources*  
40 *Development System would require the early termination of an*

1 existing contract to procure fossil generation entered before January  
2 1, 2010, and that early termination would result in significant  
3 uneconomic costs, the department may defer procuring zero-carbon  
4 electricity resource quantities equal to the amount of electricity  
5 provided under the existing contract until no later than December  
6 31, 2040.

7 (3) In the event that extraordinary circumstances, catastrophic  
8 events, considerable supply chain disruptions and equipment  
9 shortages, or threats of significant economic harm render full  
10 achievement of the obligations imposed on the State Water  
11 Resources Development System pursuant to subdivision (a) of  
12 Section 454.53 of the Public Utilities Code infeasible, the Governor  
13 may adjust the applicable deadline for the department's compliance  
14 to the earliest feasible date, but that date shall be no later than  
15 December 31, 2040.

16 (b) The department may satisfy all or a portion of the obligation  
17 on the State Water Resources Development System pursuant to  
18 subdivision (a) of Section 454.53 of the Public Utilities Code by  
19 installing zero-carbon resources or eligible renewable energy  
20 resources behind the meter on ~~the~~ State Water Resources  
21 Development System property or properties to service its load.

22 (c) All resources procured pursuant to subdivision (a) after  
23 February 1, 2022, shall satisfy both of the following criteria:

24 (1) The eligible renewable energy resources and zero-carbon  
25 resources shall either be newly developed as a result of contracting  
26 by the department or constitute incremental production from  
27 existing resources and reach initial commercial operations on or  
28 after January 1, 2023. This requirement may be satisfied if the  
29 resource is newly developed by a local publicly owned electric  
30 utility with the expectation that the output would be sold to the  
31 department in support of the State Water Resources Development  
32 System.

33 (2) The eligible renewable energy resources and zero-carbon  
34 resources shall be located within California or have a first point  
35 of interconnection to a California balancing authority.

36 (d) In conducting procurement pursuant to subdivision (a), the  
37 department shall consider all of the following:

38 (1) Procurement commitments that may yield maximum  
39 long-term employment, stimulate new economic activity, generate



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1 local and state tax revenues, and assist with the development of  
2 new industries.

3 (2) Attributes, including resource adequacy, flexibility, and  
4 integration value, the ability to provide firm clean electricity, and  
5 local air quality benefits.

6 (3) The results of integrated resource planning modeling  
7 conducted by the Public Utilities Commission pursuant to Section  
8 454.52 of the Public Utilities Code.

9 (e) The department shall consider doing all of the following to  
10 reduce the costs of any procurement made pursuant to this section:

11 (1) Coordinate with the California Infrastructure and Economic  
12 Development Bank to make low-cost financing assistance available  
13 to new projects included in any procurement commitments.

14 (2) Coordinate with other state agencies to identify incentives  
15 from existing programs for new projects included in any  
16 procurement commitments.

17 (3) (A) If reasonably expected to provide incremental benefits,  
18 secure an ownership stake or royalties for any project or economic  
19 activity resulting from a contractual commitment.

20 (B) (i) *Incremental benefits of ownership may include the*  
21 *election by the department of payment of applicable credits*  
22 *pursuant to the federal Inflation Reduction Act of 2022 (Public*  
23 *Law 117-169). If the department elects for direct payment of those*  
24 *applicable credits, those payments shall be deposited directly into*  
25 *the California Water Resources Development Bond Account*  
26 *created pursuant to Section 12935.5.*

27 (ii) *Within 10 days of any payments being deposited in the*  
28 *California Water Resources Development Bond Account, described*  
29 *in clause (i), the department shall provide written notice to the*  
30 *Joint Legislative Budget Committee, who shall provide a copy of*  
31 *the notice to the relevant policy committees. The notice shall*  
32 *include the source, purpose, timeliness, and other relevant*  
33 *information as determined by the department.*

34 (f) All resources procured pursuant to this section shall be used  
35 first to meet the department's own electricity needs. A renewable  
36 energy credit, as defined in Section 399.12 of the Public Utilities  
37 Code, associated with the electricity used to satisfy the obligations  
38 of the department and the State Water Resources Development  
39 System under this section shall be retired and shall not be  
40 transferred or resold.

1 (g) The department shall enter into an agreement to procure  
2 energy from a new energy generation facility only if the seller  
3 requires its contractors to use a multicraft project labor agreement,  
4 as defined in paragraph (1) of subdivision (b) of Section 2500 of  
5 the Public Contract Code, for construction of the facility. Those  
6 project labor agreements shall conform to the industry standard  
7 agreements recently used for other similar private projects,  
8 including side letters for high-voltage transmission and related  
9 work.

10 *SEC. 14. Section 80700.5 is added to the Water Code, to read:*

11 *80700.5. This division shall be known, and may be cited, as*  
12 *the Electricity Supply Strategic Reliability Reserve Program.*

13 *SEC. 15. Section 80710 of the Water Code is amended to read:*

14 80710. (a) The department, in consultation with the  
15 commission, shall implement projects, purchases, and contracts  
16 to carry out the purposes of Chapter 8.9 (commencing with Section  
17 25790) of Division 15 of the Public Resources Code, including,  
18 but not limited to, the Distributed Electricity Backup Assets  
19 Program and the Demand Side Grid Support Program.

20 (b) (1) In furtherance of subdivision (a) and notwithstanding  
21 any other law, the department may construct, own and operate, or  
22 contract for the construction and operation of, contract for the  
23 purchase of electricity from, or finance through loans,  
24 reimbursement agreements, or other contracts actions to secure  
25 resources for summer reliability or to preserve the option to extend  
26 the life of only the following facilities:

27 (A) Extension of the operating life of existing nonnuclear  
28 generating facilities planned for retirement.

29 (B) New emergency and temporary power generators of five  
30 megawatts or more. If a generator is operated using diesel fuel,  
31 the department shall not operate it after July 31, 2023.

32 (C) New energy storage systems that are located outside of the  
33 coastal zone and the jurisdiction of the San Francisco Bay  
34 Conservation and Development Commission, of 20 megawatts or  
35 more, that are capable of discharging for at least two ~~hours, and~~  
36 ~~with an operational date no later than December 31, 2024.~~ *hours.*

37 (D) Generation facilities that are located outside of the coastal  
38 zone and the jurisdiction of the San Francisco Bay Conservation  
39 and Development Commission and use clean, zero-emission fuel  
40 technology of any size to produce electricity.

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1 (E) Supporting the development of zero-emission generation  
2 capacity with a point of interconnection at a California balancing  
3 authority, with the majority of its capacity contracted for by a  
4 load-serving entity that has a service area primarily in California,  
5 with an operational date no later than December 31, 2024. For  
6 purposes of this subparagraph, only a facility with a net qualifying  
7 capacity of at least 50 percent of its nameplate capacity, as  
8 estimated at 8:00 p.m. on a date in September, shall be eligible.

9 (2) In furtherance of subdivision (a) of Section 80700, the  
10 department may reimburse electrical corporations, as defined in  
11 Section 218 of the Public Utilities Code, for the value of imported  
12 energy or import capacity products that was (A) delivered or  
13 capable of being delivered between July 1, 2022, and on or before  
14 September 30, 2022, and (B) was procured at above-market costs  
15 or in excess of procurement authorizations set by the Public  
16 Utilities Commission and above the requirements needed to serve  
17 its bundled customers in support of summer electric service  
18 reliability.

19 (c) ~~Facilities~~ *Facilities, except those new energy storage systems*  
20 *described in subparagraph (C) of paragraph (1) of subdivision*  
21 *(b) that charge from the electrical grid but do not otherwise use*  
22 *any form of fossil fuel or fuel derived from fossil fuels, constructed*  
23 *by the department or under a contract with the department pursuant*  
24 *to this division that use any form of fossil fuel shall only operate*  
25 *as necessary to respond to extreme events, as defined in subdivision*  
26 *(b) of Section 25790.5 of the Public Resources Code, and shall*  
27 *not operate at any other time.*

28 (d) Facilities constructed by the department or under a contract  
29 with the department pursuant to this division shall not constitute  
30 State Water Resources Development System facilities under  
31 Chapter 8 (commencing with Section 12930) of Part 6 of Division  
32 6.

33 (e) (1) The department shall consult with the commission, the  
34 Public Utilities Commission, the Independent System Operator or  
35 other applicable California balancing authorities, and the State Air  
36 Resources Board in carrying out the purposes of this division.

37 (2) Beginning October 1, 2022, and at least every three months  
38 thereafter, the department shall provide an update on the  
39 investments made and being considered into the strategic reliability  
40 reserve at a commission business meeting. The President of the

1 Public Utilities Commission or the president's designee and the  
2 President of the Independent System Operator or the president's  
3 designee shall attend the presentation.

4 (3) The department shall prioritize investments that do not  
5 compete with generating facilities already planned for development  
6 and disclosed by load-serving entities or local publicly owned  
7 electric utilities.

8 (4) In fulfilling the requirements of this division to achieve  
9 electricity reliability, the department shall prioritize investments  
10 in feasible, cost-effective zero-emission resources, and then  
11 feasible, cost-effective conventional resources.

12 (f) The department shall develop, execute, and implement  
13 contracts covering power generation, operation and maintenance,  
14 fuel management, site leases, power settlements, invoice  
15 verification, billing, and other associated items. The department  
16 shall also enter into contracts for external services to provide  
17 specialized expertise.

18 (g) (1) Contracts entered into pursuant to this division,  
19 amendments to those contracts during their terms, or contracts for  
20 services reasonably related to those contracts, and entered on or  
21 before December 31, 2023, shall not be subject to competitive  
22 bidding or any other state contracting requirements, shall not  
23 require the review, consent, or approval of the Department of  
24 General Services or any other state department or agency, and are  
25 not subject to the requirements of the State Contracting Manual,  
26 the Public Contract Code, or the personal services contracting  
27 requirements of Article 4 (commencing with Section 19130) of  
28 Chapter 5 of Part 2 of Division 5 of Title 2 of the Government  
29 Code.

30 (2) This subdivision shall not apply to any contract, grant, or  
31 loan entered into for purposes of this chapter that does not directly  
32 contribute to electrical grid reliability by October 31, 2027.

33 (3) This subdivision is inoperative December 1, 2026.

34 (h) For contracts entered into pursuant to this division,  
35 amendments to those contracts during their terms, or contracts for  
36 services reasonably related to those contracts, and executed after  
37 December 31, 2023, Sections 10295, 10297, and 10340 of the  
38 Public Contract Code do not apply to a contract that meets the  
39 conditions established by the department for those contracts.

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1 (i) For contracts entered into pursuant to this division by the  
2 department after October 31, 2022, the department shall notify the  
3 commission *through an investment plan* of the terms, costs, and  
4 scope at a commission business meeting and the commission shall  
5 consider the investment plan for approval in a meeting held  
6 consistent with the terms of Chapter 3 (commencing with Section  
7 25200) of Division 15 of the Public Resources Code. No less than  
8 10 days after the commission approves the ~~contract, grant,~~  
9 ~~investment, or loan,~~ *investment plan*, the executive director of the  
10 commission shall give written notice to the Joint Legislative Budget  
11 Committee of the action.

12 (j) A contract entered into, or an approval granted by, the  
13 department pursuant to this division is not subject to the California  
14 Environmental Quality Act (Division 13 (commencing with Section  
15 21000) of the Public Resources Code) and regulations adopted  
16 pursuant to that act.

17 (k) The department may adopt guidelines to implement this  
18 division. The Administrative Procedure Act (Chapter 3.5  
19 (commencing with Section 11340) of Part 1 of Division 3 of Title  
20 2 of the Government Code) does not apply to any regulation or  
21 guidelines adopted by the department pursuant to this division.

22 *SEC. 16. Section 80720 of the Water Code is amended to read:*

23 80720. (a) There is hereby established in the State Treasury  
24 the Department of Water Resources Electricity Supply Reliability  
25 Reserve Fund.

26 (b) Notwithstanding Section 13340 of the Government Code,  
27 all moneys in the fund are continuously appropriated to the  
28 department, without regard to fiscal years, and shall be available  
29 for the purposes of Chapter 2 (commencing with Section 80710).

30 (c) Obligations authorized and expenses incurred by the  
31 department in administering this division shall be payable solely  
32 from the fund.

33 (d) All revenues payable to the department for activities  
34 undertaken by the department under Chapter 2 (commencing with  
35 Section 80710) shall be deposited into the fund.

36 (e) The fund shall be separate and distinct from any other fund  
37 and moneys administered by the department and any interest earned  
38 on the moneys in the fund shall be used solely for purposes of this  
39 division.

1 (f) When fixed assets procured under the authority of this  
2 division are sold or otherwise disposed of, the revenue from the  
3 sale or disposition, including any gain or loss, measured by the  
4 difference between book value and selling price, shall be deposited  
5 into the fund and available to the department for purposes of  
6 Chapter 2 (commencing with Section 80710). Any remaining  
7 revenue from the sale or other disposition of fixed assets procured  
8 under the authority of this division shall be returned to the General  
9 Fund once all obligations of the department are satisfied after the  
10 wind down of this division and the closure of the fund. While any  
11 obligation of the department incurred under this division remains  
12 outstanding and not fully performed or discharged, the rights,  
13 powers, duties, and existence of the department shall not be  
14 diminished or impaired in any manner that will adversely affect  
15 the interests and rights of the holders of or parties to those  
16 obligations.

17 (g) (1) *For activities undertaken by the department pursuant*  
18 *to Chapter 2 (commencing with Section 80710), the department*  
19 *may obtain applicable credits pursuant to the federal Inflation*  
20 *Reduction Act of 2022 (Public Law 117-169). If the department*  
21 *elects for direct payment of those applicable credits, those*  
22 *payments shall be deposited directly into the fund.*

23 (2) *Within 10 days of any payments being deposited into the*  
24 *fund, described in paragraph (1), the department shall provide*  
25 *written notice to the Joint Legislative Budget Committee, who shall*  
26 *provide a copy of the notice to the relevant policy committees. The*  
27 *notice shall include the source, purpose, timeliness, and other*  
28 *relevant information as determined by the department.*

29 (3) *Use of the payments shall be consistent with all of the*  
30 *following:*

31 (A) *The payments shall be expended for a purpose that is*  
32 *consistent with state law.*

33 (B) *Acceptance of the payments does not impose on the state*  
34 *any requirement to commit or expend new state funds for any*  
35 *program or purpose.*

36 (C) *The need exists to expend the payments during the 2023–24*  
37 *fiscal year.*

38 (D) *The use of the payments shall be consistent with the*  
39 *priorities described in subdivision (a) of Section 38590.1 of the*  
40 *Health and Safety Code.*

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1     *SEC. 17. The Legislature finds and declares that a special*  
2     *statute is necessary and that a general statute cannot be made*  
3     *applicable within the meaning of Section 16 of Article IV of the*  
4     *California Constitution because of the unique circumstances*  
5     *impacting the Diablo Canyon powerplant, as described in Chapter*  
6     *6.3 (commencing with Section 25548) of Division 15 of the Public*  
7     *Resources Code.*

8     *SEC. 18. No reimbursement is required by this act pursuant*  
9     *to Section 6 of Article XIII B of the California Constitution because*  
10    *the only costs that may be incurred by a local agency or school*  
11    *district will be incurred because this act creates a new crime or*  
12    *infraction, eliminates a crime or infraction, or changes the penalty*  
13    *for a crime or infraction, within the meaning of Section 17556 of*  
14    *the Government Code, or changes the definition of a crime within*  
15    *the meaning of Section 6 of Article XIII B of the California*  
16    *Constitution.*

17    *SEC. 19. This act is a bill providing for appropriations related*  
18    *to the Budget Bill within the meaning of subdivision (e) of Section*  
19    *12 of Article IV of the California Constitution, has been identified*  
20    *as related to the budget in the Budget Bill, and shall take effect*  
21    *immediately.*

22    ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
23    ~~changes relating to the Budget Act of 2023.~~

O

AMENDED IN ASSEMBLY JUNE 26, 2023

**SENATE BILL**

**No. 146**

**Introduced by** ~~Committee on Budget and Fiscal Review~~ *Senator Gonzalez and Assembly Member Friedman*

January 18, 2023

An act ~~relating to the Budget Act of 2023~~; *to amend Section 13979.2 of, and to add and repeal Section 13979.4 of, the Government Code, to add and repeal Article 6.7 (commencing with Section 10215) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code, and to add and repeal Article 6.5 (commencing with Section 217) of Chapter 1 of Division 1 of the Streets and Highways Code, relating to public resources, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 146, as amended, ~~Committee on Budget and Fiscal Review~~ *Gonzalez*. ~~Budget Act of 2023~~. *Public resources: infrastructure: contracting.*

(1) *Existing law authorizes the Secretary of Transportation to assume the responsibilities of the United States Secretary of Transportation under the federal National Environmental Policy Act of 1969 (NEPA) and other federal environmental laws for any railroad, public transportation, or multimodal project undertaken by state agencies, as specified. Existing law provides that the State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of these responsibilities. Existing law repeals these provisions on January 1, 2025.*

*This bill would extend the above authorization to December 31, 2033. The bill would additionally authorize the Secretary of Transportation, consistent with, and subject to the requirements of, any memorandum*



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*of understanding between the state and federal government and upon the request of a local or regional agency with the authority to implement transportation projects, to assume responsibilities under the NEPA and other federal environmental laws for any railroad, local public transportation, or multimodal project implemented by the requesting local or regional agency. The bill would impose terms and conditions similar to those with respect to the above-described authority to assume those responsibilities for projects undertaken by state agencies, including providing consent for the jurisdiction of the federal courts, as provided. The bill would require the secretary to report to the transportation policy committees of the Legislature regarding the assumption of responsibilities under the NEPA requested by a local or regional agency by December 31, 2033. The bill would repeal these provisions on December 31, 2033.*

*(2) Existing law authorizes the Director of General Services to use the progressive design-build procurement process for the construction of up to 3 capital outlay projects, as jointly determined by the Department of General Services and the Department of Finance, and prescribes that process. Existing law defines “progressive design-build” as a project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project. Existing law, pursuant to the process, after selection of a design-build entity, authorizes the Department of General Services to contract for design and preconstruction services sufficient to establish a guaranteed maximum price, as defined. Existing law authorizes the department, upon agreement on a guaranteed maximum price, to amend the contract in its sole discretion, as specified. Existing law requires specified information to be verified under penalty of perjury.*

*This bill would authorize the Department of Water Resources and the Department of Transportation (departments) to use the progressive design-build procurement process for the construction of up to 8 public works projects per department for a project that is estimated to exceed \$25,000,000 in total price, and would prescribe that process. The bill would require each design-build entity, as defined, to submit specified information in a statement of qualifications that is to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.*

*This bill would prescribe the process for the departments to determine which design-build entity offers the best value to the public for the*

*design-build project, as defined. The bill would require the selected design-build entity to provide payment and performance bonds and errors and omissions insurance coverage, as specified. The bill would, pursuant to the process, authorize the departments to contract for design and preconstruction services sufficient to establish a guaranteed maximum price, as defined. Upon agreement on a guaranteed maximum price, the bill would authorize the departments to amend a contract, as specified. The bill would also authorize the departments to solicit additional proposals if the departments and the design-build entity are unable to reach an agreement on a guaranteed maximum price. The bill would require the departments to submit, on or before January 1, 2034, to the Legislature a report containing specified information regarding the public works projects, commenced before January 1, 2033, that used the progressive design-build procurement process.*

*This bill would specify that the above provisions do not apply to procurement by the Department of Water Resources for the design or construction of through-Delta conveyance facilities of the Sacramento-San Joaquin Delta or seawater desalination projects.*

*(3) Existing law requires the Department of Transportation to improve and maintain state highways.*

*The State Contract Act generally provides for a contracting process by state agencies for public works of improvement pursuant to a competitive bidding process, under which bids are awarded to the lowest responsible bidder, with specified alternative procurement procedures authorized in certain cases. Other existing law authorizes certain state and local agencies to engage in job order contracting, as prescribed.*

*This bill, until December 31, 2033, would authorize the Department of Transportation to use job order contracting for certain transportation and public works projects, including, among others, those related to highway maintenance, installation of stormwater pollution control devices, and for facilities, systems, and traffic control devices needed to comply with the federal Americans with Disabilities Act of 1990, as provided. The bill would require the department to establish a procedure to prequalify job order contractors and to prepare a set of documents for each job order contract, as provided. The bill would require the department to prepare a request for bids for job order contracts that invites job order contractors to submit sealed bids in the manner prescribed by the department. The bill would also authorize the department, notwithstanding those other procedures, to award job order contracts for contracts within a specified cost range after obtaining*

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written bid submittals from 2 or more certified small businesses or from 2 or more disabled veteran business enterprises, as provided.

This bill would authorize job order contracts to be executed for an initial contract term of no more than 12 months, with the option of extending or renewing the job order contract for 2 additional 12-month periods, as provided. The bill would require job order contractors to possess or obtain sufficient bonding and risk and liability insurance, as provided. The bill would require the department to publish, on or before July 1 of each year, until July 1, 2033, on its internet website regarding the status of all active job order contracts and those job order contracts that expired in the previous year, and to monitor job order contracts for compliance with federal and state labor laws.

This bill would repeal the above-described provisions relating to job order contracting on December 31, 2033.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2023.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 13979.2 of the Government Code is  
2     amended to read:  
3     13979.2. (a) The secretary, on behalf of the agency, and any  
4     department, office, or other unit within the agency with the  
5     authority to implement transportation projects, may assume  
6     responsibilities under the federal National Environmental Policy  
7     Act of 1969 (42 U.S.C. Sec. 4321 et seq.) and other federal  
8     environmental laws, pursuant to Section 327 of Title 23 of the  
9     United States Code, for any railroad, public transportation, or  
10    multimodal project.

1 (b) Before assuming the responsibilities set forth in subdivision  
2 (a) through execution of a memorandum of understanding between  
3 the State of California and the federal government, the secretary  
4 shall submit a copy of the draft memorandum of understanding to  
5 the Joint Legislative Budget Committee. Execution of the  
6 memorandum of understanding shall occur no sooner than 30 days  
7 after the secretary provides the draft memorandum of understanding  
8 to the Joint Legislative Budget Committee, or whatever lesser time  
9 after that notification that the chair of the joint committee, or the  
10 chair's designee, may determine.

11 (c) The State of California consents to the jurisdiction of the  
12 federal courts with regard to the compliance, discharge, or  
13 enforcement of any responsibilities assumed pursuant to  
14 subdivision (a).

15 (d) In any action brought pursuant to the federal laws described  
16 in subdivision (a) for a project for which responsibilities have been  
17 assumed pursuant to subdivision (a), no immunity from suit may  
18 be asserted pursuant to the Eleventh Amendment to the United  
19 States Constitution, and any immunity is hereby waived.

20 (e) No responsibility assumed pursuant to subdivision (a) may  
21 be delegated to any political subdivision of the state, such as a  
22 county, or its instrumentalities.

23 (f) This section does not affect the obligation of the secretary  
24 and all departments, offices, and other units within the agency to  
25 comply with state and federal law.

26 (g) Nothing in this section is intended to repeal or modify  
27 Section 820.1 of the Streets and Highways Code.

28 (h) *This section shall not be construed as changing the*  
29 *requirements of the California Environmental Quality Act (Division*  
30 *13 (commencing with Section 21000) of the Public Resources*  
31 *Code).*

32 ~~(h)~~  
33 (i) This section shall remain in effect only until ~~January 1, 2025,~~  
34 *December 31, 2033*, and as of that date is repealed.

35 SEC. 2. *Section 13979.4 is added to the Government Code, to*  
36 *read:*

37 *13979.4. (a) (1) Consistent with, and subject to the*  
38 *requirements of, any memorandum of understanding between the*  
39 *state and federal government, the secretary, upon the request of*  
40 *a local or regional agency with the authority to implement*

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1 *transportation projects, may assume responsibilities under the*  
2 *federal National Environmental Policy Act of 1969 (42 U.S.C. Sec.*  
3 *4321 et seq.) and other federal environmental laws, pursuant to*  
4 *Section 327 of Title 23 of the United States Code, for any railroad,*  
5 *local public transportation, or multimodal project implemented*  
6 *by the requesting local or regional agency.*

7 *(2) For purposes of this section, “local or regional agency”*  
8 *includes, but is not limited to, a city, county, city and county,*  
9 *special district, or joint powers authority.*

10 *(b) The secretary shall report to the transportation policy*  
11 *committees of the Legislature regarding which local or regional*  
12 *agencies requested that the secretary assume the authority under*  
13 *the federal National Environmental Policy Act of 1969 (42 U.S.C.*  
14 *Sec. 4321 et seq.) by December 31, 2033.*

15 *(3) A report to be submitted pursuant to paragraph (1) shall be*  
16 *submitted in compliance with Section 9795 of the Government*  
17 *Code.*

18 *(c) Before assuming the responsibilities set forth in subdivision*  
19 *(a) through execution of a memorandum of understanding between*  
20 *the State of California and the federal government, the secretary*  
21 *shall submit a copy of the draft memorandum of understanding to*  
22 *the Joint Legislative Budget Committee. Execution of the*  
23 *memorandum of understanding shall occur no sooner than 30 days*  
24 *after the secretary provides the draft memorandum of*  
25 *understanding to the Joint Legislative Budget Committee, or*  
26 *whatever lesser time after that notification that the chair of the*  
27 *joint committee, or the chair’s designee, may determine.*

28 *(d) The State of California consents to the jurisdiction of the*  
29 *federal courts with regard to the compliance, discharge, or*  
30 *enforcement of any responsibilities assumed pursuant to*  
31 *subdivision (a).*

32 *(e) In any action brought pursuant to the federal laws described*  
33 *in subdivision (a) for a project for which responsibilities have*  
34 *been assumed pursuant to subdivision (a), no immunity from suit*  
35 *may be asserted pursuant to the Eleventh Amendment to the United*  
36 *States Constitution, and any immunity is hereby waived.*

37 *(f) No responsibility assumed pursuant to subdivision (a) may*  
38 *be delegated to any political subdivision of the state, such as a*  
39 *county, or its instrumentalities.*

1 (g) *This section does not affect the obligation of the secretary*  
2 *and all departments, offices, and other units within the agency to*  
3 *comply with state and federal law.*

4 (h) *Nothing in this section is intended to repeal or modify*  
5 *Section 820.1 of the Streets and Highways Code.*

6 (i) *This section shall not be construed as changing the*  
7 *requirements of the California Environmental Quality Act (Division*  
8 *13 (commencing with Section 21000) of the Public Resources*  
9 *Code).*

10 (j) *This section shall remain in effect only until December 31,*  
11 *2033, and as of that date is repealed.*

12 *SEC. 3. Article 6.7 (commencing with Section 10215) is added*  
13 *to Chapter 1 of Part 2 of Division 2 of the Public Contract Code,*  
14 *to read:*

15  
16 *Article 6.7. Progressive Design-Build Projects*

17  
18 *10215. For purposes of this article, the following definitions*  
19 *apply:*

20 (a) *“Best value” means a value determined by evaluation of*  
21 *objective criteria that may include, but are not limited to, cost*  
22 *factors, price, features, functions, life-cycle costs, experience, and*  
23 *past performance. A best value determination may involve the*  
24 *selection of the lowest cost proposal meeting the interests of the*  
25 *department and meeting the objectives of the project, or a tradeoff*  
26 *between cost and other specified factors.*

27 (b) *“Construction subcontract” means each subcontract*  
28 *awarded by the design-build entity to a subcontractor that will*  
29 *perform work or labor or render service to the design-build entity*  
30 *in or about the construction of the work or improvement, or a*  
31 *subcontractor licensed by the State of California that, under*  
32 *subcontract to the design-build entity, specially fabricates and*  
33 *installs a portion of the work or improvement according to detailed*  
34 *drawings contained in the plans and specifications produced by*  
35 *the design-build team.*

36 (c) *“Department” means any department of the State of*  
37 *California authorized pursuant to Section 10215.1 to utilize*  
38 *progressive design-build contracting.*

39 (d) *“Design-build entity” means a corporation, limited liability*  
40 *company, partnership, joint venture, or other legal entity that is*

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1 able to provide appropriately licensed contracting, architectural,  
2 and engineering services as needed pursuant to a progressive  
3 design-build contract.

4 (e) “Design-build project” means a capital project using the  
5 progressive design-build construction procurement process  
6 described in this article.

7 (f) “Design-build team” means the design-build entity itself and  
8 the individuals and other entities identified by the design-build  
9 entity as members of its team. Members shall include the general  
10 contractor and, if utilized in the design of the project, all civil,  
11 geotechnical, electrical, mechanical, and plumbing contractors.

12 (g) “Director” means the director of any department of the  
13 State of California authorized pursuant to Section 10215.1 to  
14 utilize progressive design-build contracting, or their designee.

15 (h) “Guaranteed maximum price” means the maximum payment  
16 amount agreed upon by the department and the design-build entity  
17 for the design-build entity to finish all remaining design,  
18 preconstruction, and construction activities sufficient to complete  
19 and close out the project.

20 (i) “Progressive design-build” means a project delivery process  
21 in which the design, preconstruction services, and construction of  
22 a project are procured, in one or more stages, from a single  
23 design-build entity that is selected through a qualifications-based  
24 selection at the earliest feasible stage of the project. However, the  
25 progressive design-build model offers flexibility to retain a different  
26 entity for the construction phase of the project, should the parties  
27 be unable to agree, after a specified portion of the design phase  
28 is complete, on a guaranteed maximum price for the construction  
29 phase.

30 (j) “Qualifications-based selection” means the process by which  
31 the department solicits for services from the design-build entities  
32 and that best value is the basis of the award.

33 10215.1. (a) (1) Notwithstanding any other law, both of the  
34 following departments may procure progressive design-build  
35 contracts for public works projects for which the estimated price,  
36 as determined pursuant to subdivision (a) of Section 10215.2,  
37 exceeds twenty five million dollars (\$25,000,000):

38 (A) The Department of Water Resources as established in  
39 Section 120 of the Water Code.

1 (B) *The Department of Transportation as established under*  
2 *Part 5 (commencing with Section 14000) of Division 3 of Title 2*  
3 *of the Government Code.*

4 (2) *This subdivision does not authorize a design-build-operate*  
5 *contract for any project. A contract pursuant to this article may*  
6 *provide for operations during a training or transitional period,*  
7 *but shall not include long-term operations for any design-build*  
8 *project.*

9 (3) *The progressive design-build authorization in this*  
10 *subdivision shall not include the authority to perform construction*  
11 *inspection services for projects on or interfacing with the state*  
12 *highway system, which shall be performed by the Department of*  
13 *Transportation consistent with Section 91.2 of the Streets and*  
14 *Highways Code.*

15 (4) *The progressive design-build authorization in this*  
16 *subdivision shall not include the authority to perform construction*  
17 *inspection services for projects on the State Water Project or any*  
18 *other state-owned or -operated water resources facility, which*  
19 *shall be performed by the Department of Water Resources*  
20 *consistent with Section 148 of the Water Code.*

21 (5) *A department described in paragraph (1) shall be limited*  
22 *to utilizing progressive-design build contracts for no more than*  
23 *eight design-build projects.*

24 (b) *The director of each department identified in subdivision*  
25 *(a) shall develop guidelines for a standard departmental*  
26 *conflict-of-interest policy, consistent with applicable law, regarding*  
27 *the ability of a person or entity that performs services for the*  
28 *department relating to the solicitation of a progressive design-build*  
29 *project, to submit a statement of qualifications, a proposal, or both*  
30 *as a design-build entity, or to join a design-build team.*

31 (c) *This article does not apply to procurement by the Department*  
32 *of Water Resources for the design or construction of through-Delta*  
33 *conveyance facilities of the Sacramento-San Joaquin Delta or*  
34 *seawater desalination projects.*

35 10215.2. *The procurement process for progressive design-build*  
36 *projects shall progress as follows:*

37 (a) *The department shall determine the scope and estimated*  
38 *price of the design-build project. The determination may include,*  
39 *but need not be limited to, the size, type, and desired design*



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1 *character of the project and any other information deemed*  
2 *necessary to describe adequately the department's needs.*

3 *(b) The department shall prepare and issue a request for*  
4 *qualifications. The request for qualifications shall include, but is*  
5 *not limited to, all of the following elements:*

6 *(1) Identification of the basic scope and needs of the*  
7 *design-build project or contract, the expected cost range, the*  
8 *methodology that will be used by the department to evaluate*  
9 *qualifications, the procedure for final selection of the design-build*  
10 *entity, and any other information deemed necessary by the director*  
11 *to inform interested parties of the contracting opportunity.*

12 *(2) Significant factors that the department reasonably expects*  
13 *to consider in evaluating qualifications, including technical design*  
14 *and construction expertise, and all other nonprice-related factors.*  
15 *The department may require that a cost estimate, including the*  
16 *detailed basis for the estimate, be included in the design-build*  
17 *entities' responses and consider those costs in evaluating the*  
18 *statements of qualifications.*

19 *(3) The relative importance or the weight assigned to each of*  
20 *the factors identified in the request for qualifications.*

21 *(4) A request for a statement of qualifications with a template*  
22 *for the statement that is prepared by the department. The*  
23 *department shall require all of the following information in the*  
24 *statement and indicate, in the template, that all of the following*  
25 *information is required:*

26 *(A) If the design-build entity is a privately held corporation,*  
27 *limited liability company, partnership, or joint venture, a listing*  
28 *of all of the design-build entity's shareholders, partners, or*  
29 *members who, at the time the statement of qualification is*  
30 *submitted, the design-build entity knows will perform work on the*  
31 *design-build project if the design-build entity is selected by the*  
32 *department.*

33 *(B) Evidence that the members of the design-build team have*  
34 *completed, or have demonstrated the experience, competency,*  
35 *capability, and capacity to complete, projects of similar size, scope,*  
36 *or complexity, and that proposed key personnel have sufficient*  
37 *experience and training to competently manage and complete the*  
38 *design and construction of the design-build project, and a financial*  
39 *statement that ensures that the design-build entity has the capacity*  
40 *to complete the design-build project.*

1 (C) *The licenses, registration, and credentials required to design*  
2 *and construct the design-build project, including, but not limited*  
3 *to, information on the revocation or suspension of any license,*  
4 *credential, or registration.*

5 (D) *Evidence that establishes that the design-build entity has*  
6 *the capacity to obtain all required payment and performance*  
7 *bonding, liability insurance, and errors and omissions insurance.*

8 (E) *Information concerning workers' compensation experience*  
9 *history and a worker safety program.*

10 (F) *If the proposed design-build entity is a corporation, limited*  
11 *liability company, partnership, joint venture, or other legal entity,*  
12 *a copy of the organizational documents or agreement committing*  
13 *to form the organization.*

14 (G) *An acceptable safety record. A design-build entity's safety*  
15 *record shall be deemed acceptable if its experience modification*  
16 *rate for the most recent three-year period is an average of 1.00*  
17 *or less, and its average total recordable injury or illness rate and*  
18 *average lost work rate for the most recent three-year period does*  
19 *not exceed the applicable statistical standards for its business*  
20 *category or if the design-build entity is a party to an alternative*  
21 *dispute resolution system as provided for in Section 3201.5 of the*  
22 *Labor Code.*

23 (H) *A full disclosure regarding each of the following, if*  
24 *applicable:*

25 (i) *Any serious or willful violation of Part 1 (commencing with*  
26 *Section 6300) of Division 5 of the Labor Code or the federal*  
27 *Occupational Safety and Health Act of 1970 (Public Law 91-596),*  
28 *settled or otherwise resolved against any member of the*  
29 *design-build team.*

30 (ii) *Any debarment, disqualification, or removal of any member*  
31 *of the design-build team or its owners, officers, or managing*  
32 *employees from a federal, state, or local government public works*  
33 *project.*

34 (iii) *Any instance in which a member of the design-build team,*  
35 *or its owners, officers, or managing employees, submitted a bid*  
36 *on a public works project and were found to be nonresponsive or*  
37 *were found by an awarding body not to be a responsible bidder.*

38 (iv) *Any instance in which any member of the design-build team,*  
39 *or its owners, officers, or managing employees, defaulted on a*  
40 *construction contract.*

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1 (v) Any violations of the Contractors State License Law, as  
2 described in Chapter 9 (commencing with Section 7000) of Division  
3 3 of the Business and Professions Code, by a member of the  
4 design-build team or its owners, officers, or managing employees,  
5 including alleged violations of Federal or state law regarding the  
6 payment of wages, benefits, apprenticeship requirements, or  
7 personal income tax withholding, or federal Insurance Contribution  
8 Act withholding requirements settled against any member of the  
9 design-build entity.

10 (vi) Any bankruptcy or receivership of any member of the  
11 design-build team, including, but not limited to, information  
12 concerning any work completed by a surety.

13 (vii) Any adverse claims, disputes, or lawsuits between the owner  
14 of a public works project and any member of the design-build team  
15 during the five years preceding submission of a bid under this  
16 article, in which the claim, settlement, or judgment exceeded fifty  
17 thousand dollars (\$50,000) and was settled or otherwise resolved  
18 against the design-build entity or any member of the design-build  
19 team. Information shall also be provided concerning any work  
20 completed by a surety during this five-year period.

21 (viii) Any adverse claims, disputes, or lawsuits between any  
22 member of the design-build team and any employee of that entity  
23 during the five years preceding submission of a bid under this  
24 article, in which the claim, settlement, or judgment exceeded fifty  
25 thousand dollars (\$50,000) and was settled or otherwise resolved  
26 against the entity.

27 (5) The information provided by a design-build entity in  
28 response to a request for qualifications shall be certified under  
29 penalty of perjury by the design-build entity and its general  
30 partners or joint venture members.

31 (c) (1) Following the deadline for submission of a statement of  
32 qualifications, the department shall review the submissions. The  
33 department may evaluate submissions based solely upon the  
34 information provided in each design-build entity's statement of  
35 qualifications. The department may also interview some or all of  
36 the design-build entities to further evaluate their qualifications  
37 for the design-build project. The department may also hold  
38 discussions or negotiations with design-build entities using the  
39 process described in the department's request for qualifications.

1 (2) For each request for qualifications, the department shall  
2 generate a final list of qualified design-build entities that  
3 participated in the request for qualifications before entering into  
4 negotiations for the contract or contracts to which the request for  
5 qualifications applies.

6 (3) If submissions in response to a request for qualifications  
7 provide sufficient information to determine which qualified  
8 design-build entity has offered the best value to the public, the  
9 department may enter into negotiations with that entity concerning  
10 contract terms and award a contract for design and  
11 preconstruction services to that entity. Such contract shall provide  
12 for the subsequent negotiation of terms governing the construction  
13 phase of the design-build project. If the department is unable to  
14 negotiate a satisfactory contract with that entity for design and  
15 preconstruction services, the department may undertake  
16 negotiations with a separate qualified design-build entity that  
17 participated in the request for qualifications process.

18 (4) If additional information is necessary to determine which  
19 qualified design-build entity offers the best value to the public, the  
20 department may prepare a further request for proposals, based  
21 on the documents prepared as described in subdivision (a), that  
22 invites qualified design-build entities identified pursuant to  
23 paragraph (2) to submit competitive sealed proposals in the  
24 manner prescribed by the department.

25 (d) Notwithstanding any other provision of this code, upon  
26 issuance of a contract award, the director shall publicly announce  
27 its award, identifying the design-build entity to which the award  
28 is made, along with a statement regarding the basis of the award.  
29 The statement regarding the contract award and the contract file  
30 shall provide sufficient information to satisfy an external audit.

31 10215.3. (a) The design-build entity shall provide payment  
32 and performance bonds for the design-build project in the form  
33 and in the amount required by the director, which are issued by a  
34 California admitted surety. The amount of the payment bond shall  
35 not be less than the amount of the performance bond.

36 (b) The design-build contract shall require errors and omissions  
37 insurance coverage for the design elements of the design-build  
38 project.

39 (c) The department shall develop a standard form of payment  
40 and performance bond for its design-build projects.

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1 10215.4. (a) After selecting a design-build entity for the design  
2 and preconstruction phase, the department may enter into a  
3 contract and direct the design-build entity to begin design and  
4 preconstruction activities sufficient to establish a guaranteed  
5 maximum price for the project.

6 (b) Subject to Section 13332.19 of the Government Code, if  
7 otherwise applicable to the department, upon agreement of the  
8 guaranteed maximum price for the design-build project, the  
9 department, at its sole and absolute discretion, may amend its  
10 contract with the design-build entity, or enter into a new contract,  
11 and direct the entity to complete the remaining design,  
12 preconstruction, and construction activities sufficient to complete  
13 and close out the design-build project, and may add funds not  
14 exceeding the guaranteed maximum price to the contract for these  
15 activities. Any amendment of the existing contract or a new  
16 contract with the design-build entity shall not require any  
17 additional competitive process. This section does not require the  
18 department to amend an existing contract or enter into a new  
19 contract for remaining design, preconstruction, or construction  
20 activities.

21 (c) If the cost for completing all remaining design,  
22 preconstruction, and construction activities sufficient to complete  
23 and close out the design-build project exceeds the guaranteed  
24 maximum price, the costs exceeding the guaranteed maximum  
25 price shall be the responsibility of the design-build entity. If the  
26 cost for these activities is less than the guaranteed maximum price,  
27 the design-build entity shall not be entitled to the difference  
28 between the cost and the guaranteed maximum price. Any savings  
29 provided to the department shall revert to the fund from which the  
30 appropriation was made.

31 (d) If the department and the design-build entity do not reach  
32 an agreement on a guaranteed maximum price or the department  
33 otherwise elects not to have the design-build entity complete some  
34 or all of the remaining work, the department may solicit proposals  
35 to complete some or all of the remaining work from firms that  
36 submitted a statement of qualifications pursuant to subdivision (b)  
37 of Section 10215.2. The department may also, upon written  
38 determination that it is in the best interest of the state to do so,  
39 formally solicit proposals from other entities to complete all or  
40 some of the remaining work, or complete the design-build project

1 *using other delivery methods. Subject to Section 13332.19 of the*  
2 *Government Code, if otherwise applicable to the department, any*  
3 *contract awarded shall be made on a best value basis.*

4 *10215.5. (a) The department, in each request for qualifications*  
5 *or request for proposals, may identify specific types of*  
6 *subcontractors that are required to be included in the design-build*  
7 *entity's statement of qualifications. All construction subcontractors*  
8 *that are identified in the statement of qualifications shall be*  
9 *afforded all the protections of Chapter 4 (commencing with Section*  
10 *4100) of Part 1.*

11 *(b) Following award of the design-build contract, except for*  
12 *those construction subcontractors listed in the statement of*  
13 *qualifications or proposal, the design-build entity shall proceed*  
14 *as follows in awarding construction subcontracts with a value*  
15 *exceeding one-half of 1 percent of the contract price allocable to*  
16 *construction work:*

17 *(1) Provide public notice of availability of work to be*  
18 *subcontracted in accordance with the publication requirements*  
19 *applicable to the competitive bidding process of the department,*  
20 *including a fixed date and time on which qualification statements,*  
21 *bids, or proposals will be due.*

22 *(2) Establish reasonable qualification criteria and standards.*

23 *(3) Award the subcontract either on a best value basis or to the*  
24 *lowest responsible bidder. The process may include*  
25 *prequalification or short-listing.*

26 *(c) Subcontractors awarded construction subcontracts under*  
27 *this subdivision shall be afforded all the protections of Chapter 4*  
28 *(commencing with Section 4100) of Part 1.*

29 *10215.6. (a) Any department authorized by Section 10215.1*  
30 *to utilize progressive design-build contracts pursuant to this article*  
31 *shall prepare and submit to the Legislature a report by January*  
32 *1, 2034, that describes each design-build project awarded under*  
33 *this article that has begun construction by January 1, 2033.*

34 *(b) The report described in subdivision (a) shall include relevant*  
35 *data including, but not limited to, all of the following information:*

36 *(1) The cost of the design-build project.*

37 *(2) The current status or stage of the design-build project.*

38 *(3) If complete, the completion date of the design-build project.*

39 *(4) If incomplete, the estimated completion date of the*  
40 *design-build project.*

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1 (c) The report described in subdivision (a) shall also provide a  
2 comprehensive assessment on the effectiveness of the progressive  
3 design-build project delivery method relative to project cost and  
4 time savings.

5 (d) The report submitted pursuant to subdivision (a) shall be  
6 submitted in compliance with Section 9795 of the Government  
7 Code.

8 10215.7. This article does not affect, expand, alter, or limit  
9 any rights or remedies otherwise available at law.

10 10215.8. This article shall remain in effect only until December  
11 31, 2033, and as of that date is repealed. The repeal of this article  
12 shall not affect the contracts entered into by the department, or  
13 the department's authority to complete the design-build projects  
14 for which a design and preconstruction phase contract has been  
15 entered under this article, before December 31, 2033.

16 SEC. 4. Article 6.5 (commencing with Section 217) is added  
17 to Chapter 1 of Division 1 of the Streets and Highways Code, to  
18 read:

19

20

#### Article 6.5. Job Order Contracting

21

22 217. As used in this article, the following definitions apply:

23 (a) "Adjustment factor" means the job order contractor's  
24 competitively bid adjustment to the department's prices as  
25 published in the unit price catalog.

26 (b) "Job order" means a firm, fixed-priced, lump-sum order  
27 issued by the department to a job order contractor for a definite  
28 project scope or work as compiled from the unit price catalog to  
29 be performed pursuant to a job order contract.

30 (c) "Job order" means a contract, awarded pursuant to this  
31 section, between the department and a licensed, bonded, and  
32 general liability insured contractor in which the contractor agrees  
33 to a fixed-period, fixed-unit price, and indefinite quantity contract  
34 that provides for the use of job orders for public works or  
35 maintenance projects.

36 (d) "Project" means the specific requirements and work to be  
37 accomplished by the job order contractor in connection with an  
38 individual job order.

39 (e) "Unit price catalog" means a book containing specific  
40 construction tasks and the unit prices to install or demolish that

1 *construction. The listed tasks shall be based on generally accepted*  
2 *industry standards and information, where available, for various*  
3 *items of work to be performed by the job order contractor. The*  
4 *prices shall include the cost of materials, labor, and equipment*  
5 *for performing the items of work. The prices shall not include*  
6 *overhead and profit. All unit prices shall be developed using local*  
7 *prevailing wages.*

8 *217.1. (a) It is the intent of the Legislature to enable the use*  
9 *of job order contracting as an option for constructing*  
10 *transportation and public works projects when it is anticipated*  
11 *that the use of this method will reduce procurement costs or*  
12 *expedite project completion in a manner that is not achievable*  
13 *through the design-bid-build method. It is the intent of the*  
14 *Legislature that this contracting method will improve the efficiency*  
15 *and efficacy of contracted work and not supplant work completed*  
16 *by the department's field maintenance employees.*

17 *(b) (1) The department may use the procurement method*  
18 *outlined in this article for job order contracts.*

19 *(2) A job order contract of the department shall be competitively*  
20 *bid and awarded to the lowest bidder providing a qualified*  
21 *responsive bid.*

22 *(c) (1) The department may use job order contracting,*  
23 *consistent with this article, when undertaking the following*  
24 *projects:*

25 *(A) Highway maintenance or safety projects, including, but not*  
26 *limited to, bridge deck sealing, bridge and asphalt pavement*  
27 *overlays, concrete pavement slab work, repair and replacement*  
28 *of active transportation and complete streets facilities, joint seals,*  
29 *installation of new traffic safety devices, rumble strips, and traffic*  
30 *control devices, and other safety, bridge repair, or highway repair*  
31 *projects that are basic and repetitive.*

32 *(B) Traffic management and detection system installation,*  
33 *replacement, and repair.*

34 *(C) Tree removal.*

35 *(D) Clearing and grubbing.*

36 *(E) Culvert installation and repairs.*

37 *(F) Improvements to, removal of, and installation of facilities,*  
38 *systems, and traffic control devices needed to comply with the*  
39 *federal Americans with Disabilities Act of 1990 (Public Law*  
40 *101-336).*



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1 (G) Facility repairs, including, but not limited to, building  
2 maintenance.

3 (H) Installation of stormwater pollution control devices.

4 (I) Safety barriers.

5 (2) No job order contract may be awarded for adding vehicular  
6 travel lanes.

7 (3) The department shall, when undertaking job order  
8 contracting for the projects specified in paragraph (1), establish  
9 a procedure to prequalify job order contractors for projects and  
10 shall prepare a set of documents for each job order contract. The  
11 documents shall include all of the following:

12 (A) A unit price catalog of construction tasks with preestablished  
13 unit prices.

14 (B) Job order contract specifications.

15 (C) Any other information deemed necessary to adequately  
16 describe the department's needs.

17 (4) Based on the documents prepared under paragraph (3), the  
18 department shall develop a system for evaluating job order contract  
19 bids for the award of job order contracts. The award of a job order  
20 contract shall progress as follows:

21 (A) The department shall prepare a request for bids for job  
22 order contracts based on the documents prepared under paragraph  
23 (3) that invites prospective contractors to submit sealed bids in  
24 the manner prescribed by the department.

25 (B) Each bidding contractor shall include in its bid one or more  
26 adjustment factors to the established unit prices provided in the  
27 request for bids based on the advertised technical specifications.

28 (C) Each bidding job order contractor shall identify any  
29 subcontractors to be used for the job orders performed pursuant  
30 to the awarded job order contract pursuant to Chapter 4  
31 (commencing with Section 4100) of Part 1 of Division 2 of the  
32 Public Contract Code.

33 (D) The award of job order contracts, if any, shall be made to  
34 one or more job order contractors that the department determines  
35 to be qualified and responsive based upon preestablished criteria  
36 to be determined by the department.

37 (5) Any job order contractor that is selected for a project  
38 pursuant to this article shall possess or obtain sufficient bonding  
39 to cover the contract amount for construction services and risk  
40 and liability insurance as the department may require.

1 (6) *Nothing in this article is intended to affect, expand, alter,*  
2 *or limit any rights or remedies otherwise available at law.*

3 (d) *Notwithstanding paragraph (3) of subdivision (c) and*  
4 *subparagraph (B) of paragraph (4) of subdivision (c), the*  
5 *department may, in accordance with the requirements of Section*  
6 *14838.7 of the Government Code, award a job order contract*  
7 *pursuant to this article with an estimated value of greater than*  
8 *five thousand dollars (\$5,000) but less than the cost limit, as*  
9 *specified in subdivision (b) of Section 10105 of the Public Contract*  
10 *Code, after obtaining written bid submittals from two or more*  
11 *certified small businesses, including microbusinesses, or from two*  
12 *or more disabled veteran business enterprises.*

13 (e) *Job order contracts may be executed for an initial contract*  
14 *term of no more than 12 months with the option of extending or*  
15 *renewing the job order contract for two 12-month periods. All*  
16 *extensions or renewals shall be priced as provided in the request*  
17 *for bids. An extension or renewal shall be mutually agreed to by*  
18 *the department and the job order contractor.*

19 (f) *On or before July 1 of each year, until July 1, 2033, the*  
20 *department shall publish on its internet website regarding the*  
21 *status of all active job order contracts and those job order*  
22 *contracts that expired in the previous year. The report shall*  
23 *include, but is not limited to, all of the following information:*

24 (1) *A listing of all projects completed under each job order*  
25 *contract.*

26 (2) *The name of each job order contractor awarded a contract.*

27 (3) *The estimated and actual project costs.*

28 (4) *The estimated procurement time savings.*

29 (5) *A description of any written protests concerning any aspect*  
30 *of the solicitation, bid, proposal, or award of the job order*  
31 *contract, including, but not limited to, the resolution of the protests.*

32 (6) *A summary of small business usage.*

33 (7) *A summary of Labor Code violations, including, but not*  
34 *limited to, prevailing wage, apprenticeship, and health and safety*  
35 *statutes to the extent information is readily available.*

36 (8) *The percentage of the project completed by subcontractors*  
37 *certified by the Department of General Services as small business*  
38 *and disabled veteran business enterprise.*

39 (9) *Recommendations regarding the most appropriate uses for*  
40 *the job order contract process.*

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1 (g) *Job order contracts shall be monitored by the department's*  
2 *labor compliance program for compliance with federal and state*  
3 *labor laws.*

4 217.2. *This article shall remain in effect only until December*  
5 *31, 2033, and as of that date is repealed.*

6 SEC. 5. *No reimbursement is required by this act pursuant to*  
7 *Section 6 of Article XIII B of the California Constitution because*  
8 *the only costs that may be incurred by a local agency or school*  
9 *district will be incurred because this act creates a new crime or*  
10 *infraction, eliminates a crime or infraction, or changes the penalty*  
11 *for a crime or infraction, within the meaning of Section 17556 of*  
12 *the Government Code, or changes the definition of a crime within*  
13 *the meaning of Section 6 of Article XIII B of the California*  
14 *Constitution.*

15 SEC. 6. *This act is an urgency statute necessary for the*  
16 *immediate preservation of the public peace, health, or safety within*  
17 *the meaning of Article IV of the California Constitution and shall*  
18 *go into immediate effect. The facts constituting the necessity are:*

19 *To promote environmental protection and safeguard economic*  
20 *development of California's diverse public resources and people,*  
21 *and enhance the state's ability to maximize federal funding to*  
22 *support those efforts, it is necessary for this act to take effect*  
23 *immediately.*

24 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
25 ~~changes relating to the Budget Act of 2023.~~

O

AMENDED IN ASSEMBLY JUNE 26, 2023

**SENATE BILL**

**No. 147**

**Introduced by ~~Committee on Budget and Fiscal Review~~ Senator  
Ashby**

January 18, 2023

~~An act relating to the Budget Act of 2023. An act to amend Sections 395, 3511, 4700, 5050, and 5515 of, and to add Section 2081.15 to, the Fish and Game Code, relating to fully protected species, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 147, as amended, ~~Committee on Budget and Fiscal Review~~ Ashby. ~~Budget Act of 2023. Fully protected species: California Endangered Species Act: authorized take.~~

*The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and to add or remove species from either list if it finds, upon the receipt of sufficient scientific information, as specified, that the action is warranted. The act prohibits the taking of an endangered or threatened species, except in certain situations, including, if specified conditions are met, through the issuance of a permit commonly known as an incidental take permit.*

*Existing law also enumerates fully protected species and prohibits the take of fully protected species, except under limited circumstances.*

*This bill would, until December 31, 2033, authorize the Department of Fish and Wildlife to issue a permit under CESA that would authorize the take of a fully protected species resulting from impacts attributable to the implementation of specified projects if certain conditions are satisfied, including, among others, the conditions required for the*

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*issuance of an incidental take permit. The bill would require the department to develop a plan on or before July 1, 2024, to assess the population status of each fully protected species. The bill would require the department, on or before July 1, 2025, and annually thereafter, to prepare and submit a report to certain committees of the Legislature regarding the implementation of the authorization to issue these permits for the take of fully protected species.*

*The bill would also remove the American peregrine falcon, brown pelican, and thickettail chub as fully protected species.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2023.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 *SECTION 1. Section 395 of the Fish and Game Code is*  
2 *amended to read:*

3 395. (a) The commission may adopt regulations for the  
4 possession or training, and the capture, importation, exportation,  
5 or intrastate transfer, of any bird in the orders Falconiformes and  
6 Strigiformes (birds-of-prey) used in the practice of falconry and  
7 may authorize the issuance and provide for the revocation of  
8 licenses and permits to persons for the practice of falconry.

9 (b) It is unlawful to capture, possess, or train any bird in the  
10 orders Falconiformes and Strigiformes (birds-of-prey) in the  
11 practice of falconry without procuring a falconry license.

12 ~~(c) (1) The capture, possession, and training of an American~~  
13 ~~peregrine falcon in the practice of falconry pursuant to this chapter~~  
14 ~~shall be exempt from the prohibitions in Section 3511.~~

15 ~~(2)~~

16 (c) Regulations shall not be adopted pursuant to subdivision (a)  
17 for the possession, training, capture, importation, exportation, or  
18 intrastate transfer of American peregrine falcons used in the  
19 practice of falconry unless the Legislature provides an  
20 appropriation in the annual Budget Act or another statute for that  
21 purpose.

1     *SEC. 2. Section 2081.15 is added to the Fish and Game Code,*  
2     *to read:*

3     *2081.15. (a) Notwithstanding Sections 3511, 4700, 5050, and*  
4     *5515, and subject to the requirements set forth in subdivisions (c)*  
5     *to (g), inclusive, the department may authorize under this chapter*  
6     *by permit the take of species listed in subdivision (b) of Section*  
7     *3511, subdivision (b) of Section 4700, subdivision (b) of Section*  
8     *5050, and subdivision (b) of Section 5515 resulting from impacts*  
9     *attributable to the implementation of the projects identified in*  
10    *subdivision (b) if all of the following conditions are satisfied:*

11    *(1) The requirements of subdivisions (b) and (c) of Section 2081*  
12    *are satisfied as to the species for which take is authorized.*

13    *(2) The department ensures that all further measures necessary*  
14    *to satisfy the conservation standard of subdivision (d) of Section*  
15    *2805 and take is avoided to the maximum extent possible as to the*  
16    *species for which take is authorized are incorporated into each*  
17    *project.*

18    *(3) The take authorization permit provides for the development*  
19    *and implementation, in cooperation with the department, and*  
20    *federal and state agencies, as applicable, of a monitoring program*  
21    *and an adaptive management plan, approved by the department,*  
22    *that satisfy the conservation standard of subdivision (d) of Section*  
23    *2805 for monitoring the effectiveness of, and amending, as*  
24    *necessary, the measures to minimize and fully mitigate the impacts*  
25    *of the authorized take.*

26    *(4) The applicant pays a permit application fee consistent with*  
27    *Section 2081.2.*

28    *(b) Projects or categories of projects eligible for a take*  
29    *authorization permit pursuant to this section are limited to all of*  
30    *the following:*

31    *(1) A maintenance, repair, or improvement project to the State*  
32    *Water Project, including existing infrastructure, undertaken by*  
33    *the Department of Water Resources.*

34    *(2) A maintenance, repair, or improvement project to critical*  
35    *regional or local water agency infrastructure.*

36    *(3) A transportation project, including any associated habitat*  
37    *connectivity and wildlife crossing project, undertaken by a state,*  
38    *regional, or local agency, that does not increase highway or street*  
39    *capacity for automobile or truck travel.*

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1 (4) A wind project and any appurtenant infrastructure  
2 improvement, and any associated electric transmission project  
3 carrying electric power from a facility that is located in the state  
4 to a point of junction with any California-based balancing  
5 authority.

6 (5) A solar photovoltaic project and any appurtenant  
7 infrastructure improvement, and any associated electric  
8 transmission project carrying electric power from a facility that  
9 is located in the state to a point of junction with any  
10 California-based balancing authority.

11 (c) A permit issued pursuant to subdivision (a) shall cover any  
12 incidental take of a species for which take is authorized that may  
13 occur in the course of implementing mitigation or conservation  
14 actions required in the permit.

15 (d) The permit conditions are subject to amendment when  
16 required by the monitoring program and adaptive management  
17 plan adopted pursuant to paragraph (3) of subdivision (a).

18 (e) (1) This section does not apply to the design or construction  
19 of through-delta water conveyances in the Sacramento-San Joaquin  
20 Delta.

21 (2) This section does not apply to the design or construction of  
22 ocean desalination projects.

23 (f) This section shall not be construed to exempt the projects or  
24 categories of projects identified in paragraphs (1) to (5), inclusive,  
25 of subdivision (b) from any other law.

26 (g) (1) The department shall not issue new take authorization  
27 permits pursuant to this section on or after December 31, 2033.

28 (2) Take authorization permits issued pursuant to this section  
29 before December 31, 2033, shall continue to remain in effect.

30 (h) The department shall develop a plan on or before July 1,  
31 2024, to assess the population status of each fully protected species.  
32 The plan shall include recommendations to the Legislature for  
33 resources necessary to determine the scientific status of each fully  
34 protected species.

35 (i) On or before July 1, 2025, and annually thereafter, the  
36 department shall prepare and submit a report to the relevant policy  
37 and budget committees of the Legislature regarding the  
38 implementation of this section. The report shall include, at a  
39 minimum, all of the following information:

1 (1) For each individual permit issued to take a fully protected  
2 species pursuant to this section, all of the following information:

3 (A) The type and location of the project for which the permit  
4 was issued, including the county in which the project is located.

5 (B) The fully protected species at risk due to the project and  
6 any take of the fully protected species due to the project in the  
7 preceding calendar year.

8 (C) Actions taken to avoid, minimize, and fully mitigate the take  
9 of, and to conserve, the fully protected species.

10 (D) A description of the monitoring program, including  
11 observation frequency, and any adaptive management-driven  
12 modifications to the monitoring program in the preceding calendar  
13 year.

14 (2) The cost to the department of the implementation of this  
15 section in the preceding calendar year broken down by task.

16 SEC. 3. Section 3511 of the Fish and Game Code is amended  
17 to read:

18 3511. (a) (1) Except as provided in this ~~section~~, section or  
19 Section 2081.7, 2081.15, or ~~Section~~ 2835, a fully protected bird  
20 may not be taken or possessed at any time. No provision of this  
21 code or any other law shall be construed to authorize the issuance  
22 of a permit or license to take a fully protected bird, and no permit  
23 or license previously issued shall have any force or effect for that  
24 purpose. However, the department may authorize the taking of a  
25 fully protected bird for necessary scientific research, including  
26 efforts to recover fully protected, threatened, or endangered species,  
27 and may authorize the live capture and relocation of a fully  
28 protected bird pursuant to a permit for the protection of livestock.  
29 Before authorizing the take of a fully protected bird, the department  
30 shall make an effort to notify all affected and interested parties to  
31 solicit information and comments on the proposed authorization.  
32 The notification shall be published in the California Regulatory  
33 Notice Register and be made available to each person who has  
34 notified the department, in writing, of ~~his or her~~ that person's  
35 interest in fully protected species and who has provided an ~~e-mail~~  
36 email address, if available, or postal address to the department.  
37 Affected and interested parties shall have 30 days after notification  
38 is published in the California Regulatory Notice Register to provide  
39 relevant information and comments on the proposed authorization.



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1 (2) As used in this subdivision, “scientific research” does not  
 2 include an action taken as part of specified mitigation for a project,  
 3 as defined in Section 21065 of the Public Resources Code.

4 (3) A legally imported fully protected bird may be possessed  
 5 under a permit issued by the department.

6 (b) The following are fully protected birds:

7 ~~(1) American peregrine falcon (*Falco peregrinus anatum*).~~

8 ~~(2) Brown pelican.~~

9 ~~(3)~~

10 (1) California black rail (*Laterallus jamaicensis coturniculus*).

11 ~~(4)~~

12 (2) California clapper rail (*Rallus longirostris obsoletus*).

13 ~~(5)~~

14 (3) California condor (*Gymnogyps californianus*).

15 ~~(6)~~

16 (4) California least tern (*Sterna albifrons browni*).

17 ~~(7)~~

18 (5) Golden eagle.

19 ~~(8)~~

20 (6) Greater sandhill crane (*Grus canadensis tabida*).

21 ~~(9)~~

22 (7) Light-footed clapper rail (*Rallus longirostris levipes*).

23 ~~(10)~~

24 (8) Southern bald eagle (*Haliaeetus leucocephalus*  
 25 *leucocephalus*).

26 ~~(11)~~

27 (9) Trumpeter swan (*Cygnus buccinator*).

28 ~~(12)~~

29 (10) White-tailed kite (*Elanus leucurus*).

30 ~~(13)~~

31 (11) Yuma clapper rail (*Rallus longirostris yumanensis*).

32 *SEC. 4. Section 4700 of the Fish and Game Code is amended*  
 33 *to read:*

34 4700. (a) (1) Except as provided in this ~~section~~, *section or*  
 35 *Section 2081.7, 2081.15, or Section 2835*, a fully protected  
 36 mammal may not be taken or possessed at any time. No provision  
 37 of this code or any other law shall be construed to authorize the  
 38 issuance of a permit or license to take a fully protected mammal,  
 39 and no permit or license previously issued shall have any force or  
 40 effect for that purpose. However, the department may authorize

1 the taking of a fully protected mammal for necessary scientific  
2 research, including efforts to recover fully protected, threatened,  
3 or endangered species. Before authorizing the take of a fully  
4 protected mammal, the department shall make an effort to notify  
5 all affected and interested parties to solicit information and  
6 comments on the proposed authorization. The notification shall  
7 be published in the California Regulatory Notice Register and be  
8 made available to each person who has notified the department,  
9 in writing, of ~~his or her~~ *that person's* interest in fully protected  
10 species and who has provided an ~~e-mail~~ *email* address, if available,  
11 or postal address to the department. Affected and interested parties  
12 shall have 30 days after notification is published in the California  
13 Regulatory Notice Register to provide relevant information and  
14 comments on the proposed authorization.

15 (2) As used in this subdivision, “scientific research” does not  
16 include an action taken as part of specified mitigation for a project,  
17 as defined in Section 21065 of the Public Resources Code.

18 (3) A legally imported fully protected mammal may be  
19 possessed under a permit issued by the department.

20 (b) The following are fully protected mammals:

21 (1) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).

22 (2) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn  
23 sheep (subspecies *Ovis canadensis nelsoni*) as provided by  
24 subdivision (b) of Section 4902.

25 (3) Northern elephant seal (*Mirounga angustirostris*).

26 (4) Guadalupe fur seal (*Arctocephalus townsendi*).

27 (5) Ring-tailed cat (genus *Bassariscus*).

28 (6) Pacific right whale (*Eubalaena sieboldi*).

29 (7) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).

30 (8) Southern sea otter (*Enhydra lutris nereis*).

31 (9) Wolverine (*Gulo luscus*).

32 *SEC. 5. Section 5050 of the Fish and Game Code is amended*  
33 *to read:*

34 5050. (a) (1) Except as provided in this section, or Section  
35 2081.5, 2081.7, 2081.9, 2081.12, 2081.15, or 2835, a fully  
36 protected reptile or amphibian may not be taken or possessed at  
37 any time. No provision of this code or any other law shall be  
38 construed to authorize the issuance of a permit or license to take  
39 a fully protected reptile or amphibian, and no permit or license  
40 previously issued shall have any force or effect for that purpose.

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1 However, the department may authorize the taking of a fully  
2 protected reptile or amphibian for necessary scientific research,  
3 including efforts to recover fully protected, threatened, or  
4 endangered species. Before authorizing the take of a fully protected  
5 reptile or amphibian, the department shall make an effort to notify  
6 all affected and interested parties to solicit information and  
7 comments on the proposed authorization. The notification shall  
8 be published in the California Regulatory Notice Register and be  
9 made available to each person who has notified the department,  
10 in writing, of that person's interest in fully protected species and  
11 who has provided an email address, if available, or postal address  
12 to the department. Affected and interested parties shall have 30  
13 days after notification is published in the California Regulatory  
14 Notice Register to provide relevant information and comments on  
15 the proposed authorization.

16 (2) As used in this subdivision, "scientific research" does not  
17 include an action taken as part of specified mitigation for a project,  
18 as defined in Section 21065 of the Public Resources Code.

19 (3) A legally imported fully protected reptile or amphibian may  
20 be possessed under a permit issued by the department.

21 (b) The following are fully protected reptiles and amphibians:

22 (1) Blunt-nosed leopard lizard (*Gambelia sila*).

23 (2) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

24 (3) Santa Cruz long-toed salamander (*Ambystoma*  
25 *macrodactylum croceum*).

26 (4) Limestone salamander (*Hydromantes brunus*).

27 (5) Black toad (*Bufo boreas exsul*).

28 *SEC. 6. Section 5515 of the Fish and Game Code is amended*  
29 *to read:*

30 5515. (a) (1) Except as provided in this section or Section  
31 2081.4, 2081.6, 2081.7, 2081.10, 2081.11, 2081.15, 2089.7, or  
32 2835, a fully protected fish shall not be taken or possessed at any  
33 time. No provision of this code or any other law shall be construed  
34 to authorize the issuance of a permit or license to take a fully  
35 protected fish, and no permit or license previously issued shall  
36 have force or effect for that purpose. However, the department  
37 may authorize the taking of a fully protected fish for necessary  
38 scientific research, including efforts to recover fully protected,  
39 threatened, or endangered species. Before authorizing the take of  
40 a fully protected fish, the department shall make an effort to notify

1 all affected and interested parties to solicit information and  
2 comments on the proposed authorization. The notification shall  
3 be published in the California Regulatory Notice Register and be  
4 made available to each person who has notified the department,  
5 in writing, of ~~his or her~~ *that person's* interest in fully protected  
6 species and who has provided an email address, if available, or  
7 postal address to the department. Affected and interested parties  
8 shall have 30 days after notification is published in the California  
9 Regulatory Notice Register to provide relevant information and  
10 comments on the proposed authorization.

11 (2) As used in this subdivision, “scientific research” does not  
12 include an action taken as part of specified mitigation for a project,  
13 as defined in Section 21065 of the Public Resources Code.

14 (3) A legally imported fully protected fish may be possessed  
15 under a permit issued by the department.

16 (b) The following are fully protected fish:

17 (1) Colorado River squawfish (*Ptychocheilus lucius*).

18 ~~(2) Thiektail chub (*Gila crassicauda*).~~

19 ~~(3)~~

20 (2) Mohave chub (*Gila mohavensis*).

21 ~~(4)~~

22 (3) Lost River sucker (*Deltistes luxatus* and *Catostomus luxatus*).

23 ~~(5)~~

24 (4) Modoc sucker (*Catostomus microps*).

25 ~~(6)~~

26 (5) Shortnose sucker (*Chasmistes brevirostris*).

27 ~~(7)~~

28 (6) Humpback sucker (*Xyrauchen texanus*).

29 ~~(8)~~

30 (7) Owens pupfish (*Cyprinodon radiosus*).

31 ~~(9)~~

32 (8) Unarmored threespine stickleback (*Gasterosteus aculeatus*  
33 *williamsoni*).

34 ~~(10)~~

35 (9) Rough sculpin (*Cottus asperrimus*).

36 *SEC. 7. This act is an urgency statute necessary for the*  
37 *immediate preservation of the public peace, health, or safety within*  
38 *the meaning of Article IV of the California Constitution and shall*  
39 *go into immediate effect. The facts constituting the necessity are:*

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1 *To promote environmental protection and safeguard economic*  
2 *development of California's diverse public resources and people,*  
3 *and enhance the state's ability to maximize federal funding to*  
4 *support those efforts, it is necessary for this act to take effect*  
5 *immediately.*

6 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
7 ~~changes relating to the Budget Act of 2023.~~

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AMENDED IN ASSEMBLY JUNE 26, 2023

**SENATE BILL**

**No. 150**

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**Introduced by ~~Committee on Budget and Fiscal Review~~ Senators Durazo, Smallwood-Cuevas, Gonzalez, and Cortese, and Assembly Member Luz Rivas**

January 18, 2023

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~~An act relating to the Budget Act of 2023. An act to add Section 14017 to the Government Code, and to add Section 2500.5 to, and to add Chapter 6.9 (commencing with Section 6990) to Part 1 of Division 2 of, the Public Contract Code, relating to construction, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 150, as amended, ~~Committee on Budget and Fiscal Review~~ Durazo. ~~Budget Act of 2023. Construction: workforce development: public contracts.~~

(1) Existing law establishes the Department of Transportation in the Transportation Agency.

Existing law establishes the California Workforce Development Board as the body responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce investment system and the alignment of the education and workforce investment systems to the needs of the 21st century economy and workforce. Under existing law, the California Workforce Development Board assists the Governor in the administration, promotion, and expansion of high road construction careers.

This bill would require the Department of Transportation to work in partnership with the California Workforce Development Board to support California's high road construction careers program. The bill

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would require the department to reserve a minimum aggregate total of \$50,000,000 of federal funds from the federal Infrastructure Investment and Jobs Act to be allocated over 4 years to support the program.

(2) Existing law authorizes a public entity to use, enter into, or require contractors to enter into, a project labor agreement, as defined, for a construction project only if the agreement includes specified taxpayer protection provisions. Existing law authorizes the members of the governing board of a local public entity to choose by majority vote whether to use, enter into, or require contractors to enter into a project labor agreement that includes taxpayer protection provisions for a specific project or projects.

This bill, on or after January 1, 2026, would authorize a state agency to use, enter into, or require contractors to enter into, a project labor agreement that applies to a project or set of projects with aggregate construction costs in excess of \$35,000,000 only if the agreement also includes provisions to address community benefits, as described.

(3) Existing law establishes specified procedures governing contracts between public entities and their contractors and subcontractors. Existing law also establishes the Labor and Workforce Development Agency, the Government Operations Agency, and the Transportation Agency within state government and sets forth their regulatory duties.

This bill would require the above-described state agencies to convene relevant stakeholders to provide input on recommendations to establish material terms to be included as a material part of a contract. The bill would require these agencies to meet with those stakeholders in the process of developing recommendations, and to consult with specified state entities, including the Civil Rights Department, as prescribed. The bill would require those recommendations to be provided to the Governor and the Legislature by March 30, 2024, and also presented to the California Workforce Development Board in a regularly scheduled public meeting.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2023.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 14017 is added to the Government Code,*  
2 *to read:*

3     *14017. The department shall work in partnership with the*  
4 *California Workforce Development Board to support California's*  
5 *high road construction careers program. The department shall*  
6 *reserve a minimum aggregate total of fifty million dollars*  
7 *(\$50,000,000) of federal funds from the federal Infrastructure*  
8 *Investment and Jobs Act (Public Law 117-58) to be allocated over*  
9 *four years in support of the program.*

10    *SEC. 2. Section 2500.5 is added to the Public Contract Code,*  
11 *to read:*

12    *2500.5. (a) A state agency may use, enter into, or require*  
13 *contractors to enter into, a project labor agreement pursuant to*  
14 *this chapter that applies to a project or set of projects with*  
15 *aggregate construction costs in excess of thirty-five million dollars*  
16 *(\$35,000,000) only if the agreement also includes provisions to*  
17 *address community benefits. Community benefits may include*  
18 *partnerships with high road construction careers programs, as*  
19 *defined in Section 14005 of the Unemployment Insurance Code,*  
20 *local hire goals, coordination with programs that assist veterans*  
21 *in transitioning to civilian employment, job fairs for construction*  
22 *apprenticeship or preapprenticeship programs, or other methods*  
23 *agreed upon by the parties to promote employment and training*  
24 *opportunities for veterans and individuals who reside in*  
25 *economically disadvantaged areas.*

26    *(b) This section shall apply to project labor agreements entered*  
27 *into on or after January 1, 2026.*

28    *SEC. 3. Chapter 6.9 (commencing with Section 6990) is added*  
29 *to Part 1 of Division 2 of the Public Contract Code, to read:*

30

31            *CHAPTER 6.9. EMBEDDING WORKFORCE STANDARDS IN*  
32            *PROCUREMENT AND CONTRACTING*

33

34    *6990. It is the intent of the Legislature, in enacting this chapter,*  
35 *to develop procurement models in alignment with initiatives to*  
36 *enhance the state's training and access pipeline for quality jobs*  
37 *and the application of community benefits on infrastructure and*  
38 *manufacturing investments funded by the federal Infrastructure*



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1 *and Investment Jobs Act, the Inflation Reduction Act, and the*  
2 *CHIPS and Science Act.*

3 *6990.1. (a) The Labor and Workforce Development Agency,*  
4 *the Government Operations Agency, and the Transportation*  
5 *Agency shall do all of the following:*

6 *(1) Convene relevant stakeholders to provide input on*  
7 *recommendations to establish terms to be included as a material*  
8 *part of a contract, including measurable results to ensure that*  
9 *investments maximize benefits to marginalized and disadvantaged*  
10 *communities.*

11 *(2) Meet with those stakeholders no less than three times during*  
12 *the process of developing recommendations described in paragraph*  
13 *(1).*

14 *(3) Consult with the Civil Rights Department, other relevant*  
15 *state agencies, and a research or academic institution for the*  
16 *University of California for purposes of developing*  
17 *recommendations described in paragraph (1).*

18 *(b) The recommendations described in paragraph (1) of*  
19 *subdivision (a) shall be provided to the Governor and the*  
20 *Legislature by March 30, 2024. The recommendations shall also*  
21 *be presented to the California Workforce Development Board in*  
22 *a regularly scheduled public meeting.*

23 *(c) For purposes of this section, relevant stakeholders shall*  
24 *include representatives from local public agencies, labor*  
25 *organizations that represent workers in manufacturing, business*  
26 *organizations, nonprofit organizations that represent women in*  
27 *the construction industry, organizations representing the formerly*  
28 *incarcerated, and organizations that represent populations*  
29 *historically marginalized in the California economy.*

30 *SEC. 4. This act is an urgency statute necessary for the*  
31 *immediate preservation of the public peace, health, or safety within*  
32 *the meaning of Article IV of the California Constitution and shall*  
33 *go into immediate effect. The facts constituting the necessity are:*

34 *To promote environmental protection and safeguard economic*  
35 *development of California's diverse public resources and people,*  
36 *and enhance the state's ability to maximize federal funding to*  
37 *support those efforts, it is necessary for this act to take effect*  
38 *immediately.*

1     ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
2     ~~changes relating to the Budget Act of 2023.~~

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AMENDED IN ASSEMBLY JUNE 28, 2023

AMENDED IN ASSEMBLY JUNE 26, 2023

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**SENATE BILL****No. 149**

**Introduced by Senators Caballero and Becker** *and Assembly Member Robert Rivas*

January 18, 2023

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An act to amend Sections 21167.6, 21181, 21183, 21189.1, and 21189.3 of, and to add Chapter 7 (commencing with Section 21189.80) to Division 13 of, the Public Resources Code, relating to environmental quality, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 149, as amended, Caballero. California Environmental Quality Act: administrative and judicial procedures: record of proceedings: judicial streamlining.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA provides ~~that~~ *that*, in certain specified actions or proceedings, the plaintiff or petitioner may elect to prepare the record of proceedings,

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subject to certification of its accuracy by the public agency. CEQA requires that a copy of the certified record of proceedings be lodged with the court.

This bill would authorize the public agency to deny the request of the plaintiff or petitioner to prepare the record of proceedings, as provided, in which case the bill would require the public agency or the real party in interest to bear the costs of preparation and certification of the record of proceedings and would prohibit the recovery of those costs from the plaintiff or petitioner. The bill would require the court to schedule a case management conference within 30 days of the filing of an action to review the scope, timing, and cost of the record of proceedings. The bill would require that an electronic copy of the certified record of proceedings be lodged with the court.

The Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Leadership Act) authorizes the Governor, before January 1, 2024, to certify projects that meet specified requirements for streamlining benefits related to CEQA, including the requirement that judicial actions challenging the action of a lead agency for projects certified by the Governor be resolved, to the extent feasible, within 270 days after the filing of the record of proceedings with the court, and a requirement that the applicant agrees to pay the costs of preparing the record of proceedings for the project concurrent with review and consideration of the project, as specified. The Leadership Act provides that if a lead agency fails to approve a project certified by the Governor before January 1, 2025, the certification is no longer valid. The Leadership Act provides that it is repealed on January 1, 2026.

This bill would extend the Governor's authority to certify a project to before January 1, 2032. The bill would expressly provide that the cost of preparing the record of proceedings for the project is not recoverable from the plaintiff or petitioner before, during, or after any litigation. The bill would provide that if a lead agency fails to approve a project certified by the Governor before January 1, 2033, the certification is no longer valid. The bill would repeal the Leadership Act on January 1, 2034. Because the bill would extend the duties of the lead agency under the Leadership Act, this bill would impose a state-mandated local program.

This bill would establish procedures for the preparation of the record of proceedings for projects that are certified by the Governor as an infrastructure project, as defined. The bill would require an action or proceeding challenging the certification of an EIR for those projects or

the granting of any project approvals, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 days of the filing of the record of proceedings with the court. The bill would authorize a project applicant to apply to the Governor for the certification of a project as an infrastructure project. The bill would require the lead agency, within 10 days of the certification of a project, to provide a public notice of the certification, as provided. Because the bill would impose additional duties on a lead agency in conducting the environmental review of a certified project, this bill would impose a state-mandated local program. If a lead agency fails to approve a project certified as an infrastructure project before January 1, 2033, the bill would specify that the certification is no longer valid. The bill would repeal the above provisions on January 1, 2034.

This bill would appropriate \$1,000,000 from the General Fund to the Judicial Council for judicial officer training for implementation of the above provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 21167.6 of the Public Resources Code
- 2 is amended to read:
- 3 21167.6. Notwithstanding any other law, in all actions or
- 4 proceedings brought pursuant to Section 21167, except as provided
- 5 in Section 21167.6.2 or those involving the Public Utilities
- 6 Commission, all of the following shall apply:
- 7 (a) At the time that the action or proceeding is filed, the plaintiff
- 8 or petitioner shall file a request that the respondent public agency
- 9 prepare the record of proceedings relating to the subject of the
- 10 action or proceeding. The request, together with the complaint or
- 11 petition, shall be served personally upon the public agency not

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1 later than 10 business days from the date that the action or  
2 proceeding was filed.

3 (b) (1) (A) The public agency shall prepare and certify the  
4 record of proceedings not later than 60 days from the date that the  
5 request specified in subdivision (a) was served upon the public  
6 agency. Upon certification, the public agency shall lodge an  
7 electronic copy of the record of proceedings with the court and  
8 shall serve on the parties notice that the record of proceedings has  
9 been certified and lodged with the court. The parties shall pay any  
10 reasonable costs or fees imposed for the preparation of the record  
11 of proceedings in conformance with any law or rule of court.

12 (B) The court shall schedule a case management conference  
13 within 30 days of the filing of the complaint or petition pursuant  
14 to this division to review the scope, timing, and cost of the record  
15 of proceedings. The parties may stipulate to a partial record of  
16 proceedings that does not contain all the documents listed in  
17 subdivision (e) if approved by the court.

18 (2) The plaintiff or petitioner may elect to prepare the record  
19 of proceedings by providing a notice of the election to the public  
20 agency, or the parties may agree to an alternative method of  
21 preparation of the record of proceedings, subject to certification  
22 of its accuracy by the public agency, within the 60-day time limit  
23 specified in this subdivision.

24 (3) Notwithstanding paragraph (2), the public agency, within  
25 five business days of the receipt of the notice specified in paragraph  
26 (2), may deny the request of the plaintiff or petitioner to prepare  
27 the record of proceedings, in which case the public agency or the  
28 real party in interest shall bear the costs of preparation and  
29 certification of the record of proceedings, and those costs shall not  
30 be recoverable from the plaintiff or petitioner.

31 (c) The time limit established by subdivision (b) may be  
32 extended only upon the stipulation of all parties who have been  
33 properly served in the action or proceeding or upon order of the  
34 court. Extensions shall be liberally granted by the court when the  
35 size of the record of proceedings renders infeasible compliance  
36 with that time limit. There is no limit on the number of extensions  
37 that may be granted by the court, but no single extension shall  
38 exceed 60 days unless the court determines that a longer extension  
39 is in the public interest.

1 (d) If the public agency fails to prepare and certify the record  
2 of proceedings within the time limit established in paragraph (1)  
3 of subdivision (b), or any continuances of that time limit, the  
4 plaintiff or petitioner may move for sanctions, and the court may,  
5 upon that motion, grant appropriate sanctions.

6 (e) The record of proceedings shall include, but is not limited  
7 to, all of the following items:

8 (1) All project application materials.

9 (2) All staff reports and related documents prepared by the  
10 respondent public agency with respect to its compliance with the  
11 substantive and procedural requirements of this division and with  
12 respect to the action on the project.

13 (3) All staff reports and related documents prepared by the  
14 respondent public agency and written testimony or documents  
15 submitted by any person relevant to any findings or statement of  
16 overriding considerations adopted by the respondent agency  
17 pursuant to this division.

18 (4) Any transcript or minutes of the proceedings at which the  
19 decisionmaking body of the respondent public agency heard  
20 testimony on, or considered any environmental document on, the  
21 project, and any transcript or minutes of proceedings before any  
22 advisory body to the respondent public agency that were presented  
23 to the decisionmaking body before action on the environmental  
24 documents or on the project.

25 (5) All notices issued by the respondent public agency to comply  
26 with this division or with any other law governing the processing  
27 and approval of the project.

28 (6) All written comments received in response to, or in  
29 connection with, environmental documents prepared for the project,  
30 including responses to the notice of preparation.

31 (7) All written evidence or correspondence submitted to, or  
32 transferred from, the respondent public agency with respect to  
33 compliance with this division or with respect to the project.

34 (8) Any proposed decisions or findings submitted to the  
35 decisionmaking body of the respondent public agency by its staff,  
36 or the project proponent, project opponents, or other persons.

37 (9) The documentation of the final public agency decision,  
38 including the final environmental impact report, mitigated negative  
39 declaration, or negative declaration, and all documents, in addition  
40 to those referenced in paragraph (3), cited or relied on in the

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1 findings or in a statement of overriding considerations adopted  
2 pursuant to this division.

3 (10) Any other written materials relevant to the respondent  
4 public agency's compliance with this division or to its decision on  
5 the merits of the project, including the initial study, any drafts of  
6 any environmental document, or portions thereof, that have been  
7 released for public review, and copies of studies or other documents  
8 relied upon in any environmental document prepared for the project  
9 and either made available to the public during the public review  
10 period or included in the respondent public agency's files on the  
11 project, and all internal agency communications, including staff  
12 notes and memoranda related to the project or to compliance with  
13 this division, but not including communications that are of a  
14 logistical nature, such as meeting invitations and scheduling  
15 communications, except that any material that is subject to  
16 privileges contained in the Evidence Code, or exemptions contained  
17 in the California Public Records Act (Division 10 (commencing  
18 with Section 7920.000) of Title 1 of the Government Code) shall  
19 not be included in the record of proceedings under this paragraph,  
20 consistent with existing law.

21 (11) The full written record before any inferior administrative  
22 decisionmaking body whose decision was appealed to a superior  
23 administrative decisionmaking body before the filing of litigation.

24 (f) In preparing the record of proceedings, the party preparing  
25 the record of proceedings shall strive to do so at reasonable cost  
26 in light of the scope of the record of proceedings.

27 (g) The clerk of the superior court shall prepare and certify the  
28 clerk's transcript on appeal not later than 60 days from the date  
29 that the notice designating the papers or records to be included in  
30 the clerk's transcript was filed with the superior court, if the party  
31 or parties pay any costs or fees for the preparation of the clerk's  
32 transcript imposed in conformance with any law or rules of court.  
33 Nothing in this subdivision precludes an election to proceed by  
34 appendix, as provided in Rule 8.124 of the California Rules of  
35 Court.

36 (h) Extensions of the period for the filing of any brief on appeal  
37 may be allowed only by stipulation of the parties or by order of  
38 the court for good cause shown. Extensions for the filing of a brief  
39 on appeal shall be limited to one 30-day extension for the  
40 preparation of an opening brief and one 30-day extension for the



1 preparation of a responding brief, except that the court may grant  
2 a longer extension or additional extensions if it determines that  
3 there is a substantial likelihood of settlement that would avoid the  
4 necessity of completing the appeal.

5 (i) At the completion of the filing of briefs on appeal, the  
6 appellant shall notify the court of the completion of the filing of  
7 briefs, whereupon the clerk of the reviewing court shall set the  
8 appeal for hearing on the first available calendar date.

9 SEC. 2. Section 21181 of the Public Resources Code is  
10 amended to read:

11 21181. This chapter does not apply to a project if the Governor  
12 does not certify the project as an environmental leadership  
13 development project eligible for streamlining under this chapter  
14 before January 1, 2032.

15 SEC. 3. Section 21183 of the Public Resources Code is  
16 amended to read:

17 21183. The Governor may certify a leadership project for  
18 streamlining before a lead agency certifies a final environmental  
19 impact report for a project under this chapter if all the following  
20 conditions are met:

21 (a) (1) Except as provided in paragraph (2), the project will  
22 result in a minimum investment of one hundred million dollars  
23 (\$100,000,000) in California upon completion of construction.

24 (2) Paragraph (1) does not apply to a leadership project described  
25 in paragraph (4) of subdivision (b) of Section 21180.

26 (b) The project creates high-wage, highly skilled jobs that pay  
27 prevailing wages and living wages, provides construction jobs and  
28 permanent jobs for Californians, helps reduce unemployment, and  
29 promotes apprenticeship training. For purposes of this subdivision,  
30 a project is deemed to create jobs that pay prevailing wages, create  
31 highly skilled jobs, and promote apprenticeship training if the  
32 applicant demonstrates to the satisfaction of the Governor that the  
33 project will comply with Section 21183.5.

34 (c) (1) For a project described in paragraph (1), (2), or (3) of  
35 subdivision (b) of Section 21180, the project does not result in any  
36 net additional emission of greenhouse gases, including greenhouse  
37 gas emissions from employee transportation. For purposes of this  
38 paragraph, a project is deemed to meet the requirements of this  
39 paragraph if the applicant demonstrates to the satisfaction of the  
40 Governor that the project will comply with Section 21183.6.

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1 (2) For a project described in paragraph (4) of subdivision (b)  
2 of Section 21180, the project does not result in any net additional  
3 emission of greenhouse gases, including greenhouse gas emissions  
4 from employee transportation.

5 (d) The applicant demonstrates compliance with the  
6 requirements of Chapter 12.8 (commencing with Section 42649)  
7 and Chapter 12.9 (commencing with Section 42649.8) of Part 3  
8 of Division 30, as applicable.

9 (e) The applicant has entered into a binding and enforceable  
10 agreement that all mitigation measures required under this division  
11 to certify the project under this chapter shall be conditions of  
12 approval of the project, and those conditions will be fully  
13 enforceable by the lead agency or another agency designated by  
14 the lead agency. In the case of environmental mitigation measures,  
15 the applicant agrees, as an ongoing obligation, that those measures  
16 will be monitored and enforced by the lead agency for the life of  
17 the obligation.

18 (f) The applicant agrees to pay the costs of the trial court and  
19 the court of appeal in hearing and deciding any case challenging  
20 a lead agency's action on a certified project under this division,  
21 including payment of the costs for the appointment of a special  
22 master if deemed appropriate by the court, in a form and manner  
23 specified by the Judicial Council, as provided in the California  
24 Rules of Court adopted by the Judicial Council under Section  
25 21185.

26 (g) The applicant agrees to pay the costs of preparing the record  
27 of proceedings for the project concurrent with review and  
28 consideration of the project under this division, in a form and  
29 manner specified by the lead agency for the project. The cost of  
30 preparing the record of proceedings for the project shall not be  
31 recoverable from the plaintiff or petitioner before, during, or after  
32 any litigation.

33 (h) For a project for which environmental review has  
34 commenced, the applicant demonstrates that the record of  
35 proceedings is being prepared in accordance with Section 21186.

36 SEC. 4. Section 21189.1 of the Public Resources Code is  
37 amended to read:

38 21189.1. If, before January 1, 2033, a lead agency fails to  
39 approve a project certified by the Governor under this chapter,  
40 then the certification expires and is no longer valid.

1 SEC. 5. Section 21189.3 of the Public Resources Code is  
2 amended to read:

3 21189.3. This chapter shall remain in effect until January 1,  
4 2034, and as of that date is repealed unless a later enacted statute  
5 extends or repeals that date.

6 SEC. 6. Chapter 7 (commencing with Section 21189.80) is  
7 added to Division 13 of the Public Resources Code, to read:

8

9

CHAPTER 7. INFRASTRUCTURE PROJECTS

10

11 21189.80. The Legislature finds and declares all of the  
12 following:

13 (a) This division requires that the environmental impacts of  
14 development projects be identified and mitigated.

15 (b) This division also guarantees the public an opportunity to  
16 review and comment on the environmental impacts of a project  
17 and to participate meaningfully in the development of mitigation  
18 measures for potentially significant environmental impacts.

19 (c) Historic federal and state investments in infrastructure will  
20 lead to the development of numerous transportation-related,  
21 water-related, technology, and energy facilities across the state  
22 that would further California's commitments to reducing emissions  
23 of greenhouse gases and protecting its people from the worst  
24 extremes of climate change while also leveraging federal resources  
25 to increase access to quality jobs in our communities.

26 (d) These projects will further generate full-time jobs during  
27 construction and additional jobs once the projects are constructed  
28 and operating.

29 (e) The transportation-related projects would help state, regional,  
30 and local agencies more quickly meet the goals of advancing safety,  
31 rehabilitating the aging transportation infrastructure, and addressing  
32 the impacts of climate change.

33 (f) The transportation-related projects will accelerate critical  
34 state, regional, and local "fix it first" projects supported by a  
35 historic federal and state partnership through Chapter 5 of the  
36 Statutes of 2017, and the federal Infrastructure Investment and  
37 Jobs Act (Public Law 117-58).

38 (g) The purpose of this chapter is to provide unique streamlining  
39 benefits under this division for critical state, regional, and local  
40 investments in climate resiliency, safety, and infrastructure

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1 maintenance while maintaining the environmental and public  
2 engagement benefits of this division for projects that provide the  
3 public benefits, including environmental and climate-related  
4 benefits, described above and to both achieve those benefits and  
5 put people to work as soon as possible.

6 21189.81. For purposes of this chapter, the following  
7 definitions apply:

8 (a) “Applicant” means a public or private entity or its affiliates,  
9 or a person or entity that undertakes a public works project, that  
10 proposes a project and its successors, heirs, and assignees.

11 (b) “Disadvantaged community” means an area identified by  
12 the California Environmental Protection Agency pursuant to  
13 Section 39711 of the Health and Safety Code or an area identified  
14 as a disadvantaged unincorporated community pursuant to Section  
15 65302.10 of the Government Code.

16 (c) “Electrical transmission facility project” means a project for  
17 the construction and operation of an electrical transmission facility  
18 the meets either of the following:

19 (1) An electrical transmission facility project identified by the  
20 Independent System Operator in its annual transmission planning  
21 process that meets either of the following criteria:

22 (A) The project will facilitate delivery of electricity from  
23 renewable energy resources or zero-carbon resources.

24 (B) The project will facilitate delivery of electricity from energy  
25 storage projects.

26 (2) An electrical transmission facility project identified by a  
27 local publicly owned electric utility that would satisfy a  
28 transmission expansion need approved by the governing body of  
29 the local publicly owned electric utility and that meets either of  
30 the following criteria:

31 (A) The project will facilitate delivery of electricity from  
32 renewable energy resources or zero-carbon resources.

33 (B) The project will facilitate delivery of electricity from energy  
34 storage projects.

35 (d) (1) “Energy infrastructure project” means any of the  
36 following:

37 (A) An eligible renewable energy resource, as defined in Section  
38 399.12 of the Public Utilities Code, excluding resources that utilize  
39 biomass fuels.

1 (B) New energy storage systems of 20 megawatts or more, that  
2 are capable of discharging for at least two hours, provided that a  
3 pumped hydro facility may qualify only if it is less than or equal  
4 to 500 megawatts and has been directly appropriated funding by  
5 the state before January 1, 2023.

6 (C) A project for which the applicant has certified that a capital  
7 investment of at least two hundred fifty million dollars  
8 (\$250,000,000) made over a period of five years and the project  
9 is for either of the following:

10 (i) The manufacture, production, or assembly of an energy  
11 storage system or component manufacturing, wind system or  
12 component manufacturing, and solar photovoltaic energy system  
13 or component manufacturing.

14 (ii) The manufacture, production, or assembly of specialized  
15 products, components, or systems that are integral to renewable  
16 energy or energy storage technologies.

17 (D) An electric transmission facility project, provided that  
18 nothing in this chapter affects the jurisdiction of the California  
19 Coastal Commission pursuant to Division 20 (commencing with  
20 Section 30000) to regulate such projects if located in the coastal  
21 zone.

22 (E) An energy infrastructure project does not include projects  
23 utilizing hydrogen as a fuel.

24 (2) Any project to develop a facility within the meaning of  
25 subdivision (b) of Section 25545 shall meet the requirements of  
26 Sections 25545.3.3 and 25545.3.5, except that those requirements  
27 shall also apply to solar photovoltaic and terrestrial wind electrical  
28 generating power plants with a generating capacity of between 20  
29 and 50 megawatts and energy storage projects capable of storing  
30 between 80 and 200 megawatt hours of electrical energy.

31 (e) “Infrastructure project” means a project that is certified  
32 pursuant to Sections 21189.82 and 21189.83 as any of the  
33 following:

34 (1) An energy infrastructure project.

35 (2) A semiconductor or microelectronic project.

36 (3) A transportation-related project.

37 (4) A water-related project.

38 (f) “Semiconductor or microelectronic project” means a project  
39 that meets the requirements related to investment in new or  
40 expanded facilities and is awarded funds under the federal Creating

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1 Helpful Incentives to Produce Semiconductors Act of 2022 (Public  
2 Law 117-167), commonly known as the CHIPS Act of 2022, and  
3 the requirements of Section 21183.5.

4 (g) (1) “Transportation-related project” means a transportation  
5 infrastructure project that advances one or more of, and does not  
6 conflict with, the following goals related to the Climate Action  
7 Plan for Transportation Infrastructure adopted by the  
8 Transportation Agency:

9 (A) Build toward an integrated, statewide rail and transit  
10 network.

11 (B) Invest in networks of safe and accessible bicycle and  
12 pedestrian infrastructure.

13 (C) Include investments in light-, medium-, and heavy-duty  
14 zero-emission vehicle infrastructure.

15 (D) Develop a zero-emission freight transportation system.

16 (E) Reduce public health and economic harms and maximize  
17 community benefits.

18 (F) Make safety improvements to reduce fatalities and severe  
19 injuries of all users towards zero.

20 (G) Assess and integrate assessments of physical climate risk.

21 (H) Promote projects that do not significantly increase passenger  
22 vehicle travel.

23 (I) Promote compact infill development while protecting  
24 residents and businesses from displacement.

25 (J) Protect natural and working lands.

26 (2) Transportation-related projects are public works for the  
27 purposes of Section 1720 of the Labor Code and shall comply with  
28 the applicable provisions of Chapter 1 (commencing with Section  
29 1720) of Part 7 of Division 2 of the Labor Code.

30 (h) (1) “Water-related project” means any of the following:

31 (A) A project that is approved to implement a groundwater  
32 sustainability plan that the Department of Water Resources has  
33 determined is in compliance with Sections 10727.2 and 10727.4  
34 of the Water Code or to implement an interim groundwater  
35 sustainability plan adopted pursuant to Section 10735.6 of the  
36 Water Code.

37 (B) (i) A water storage project funded by the California Water  
38 Commission pursuant to Chapter 8 (commencing with Section  
39 79750) of Division 26.7 of the Water Code.

1 (ii) In addition to clause (i), the applicant shall demonstrate that  
2 the project will minimize the intake or diversion of water except  
3 during times of surplus water and prioritizes the discharge of water  
4 for ecological benefits or to mitigate an emergency, including, but  
5 not limited to, dam repair, levee repair, wetland restoration,  
6 marshland restoration, or habitat preservation, or other public  
7 benefits described in Section 79753 of the Water Code.

8 (C) Projects for the development of recycled water, as defined  
9 in Section 13050 of the Water Code.

10 (D) Contaminant and salt removal projects, including  
11 groundwater desalination and associated treatment, storage,  
12 conveyance, and distribution facilities. This shall not include  
13 seawater desalination.

14 (E) Projects exclusively for canal or other conveyance  
15 maintenance and repair.

16 (2) Water-related projects are public works for the purposes of  
17 Section 1720 of the Labor Code and shall comply with the  
18 applicable provisions of Chapter 1 (commencing with Section  
19 1720) of Part 7 of Division 2 of the Labor Code.

20 (3) “Water-related project” does not include the design or  
21 construction of through-Delta conveyance facilities of the  
22 Sacramento-San Joaquin Delta.

23 21189.82. (a) (1) (A) The Governor may certify a project as  
24 an energy infrastructure project for purposes of this chapter if the  
25 project meets the requirements of subdivision (d) of Section  
26 21189.81.

27 (B) In addition to subparagraph (A), if the applicant is not the  
28 lead agency, the Governor shall ensure all of the following:

29 (i) The applicant agrees to pay the costs of the trial court and  
30 the court of appeal in hearing and deciding any case challenging  
31 a lead agency’s action on a certified project under this division,  
32 including payment of the costs for the appointment of a special  
33 master if deemed appropriate by the court, in a form and manner  
34 as provided in the rule of court adopted by the Judicial Council  
35 under Section 21189.85.

36 (ii) The applicant agrees to pay the costs of preparing the record  
37 of proceedings for the project concurrent with the review and  
38 consideration of the project under this division, in a form and  
39 manner specified by the lead agency for the project.

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1 (iii) For a project for which environmental review has  
2 commenced, the applicant demonstrates that the record of  
3 proceedings is being prepared in accordance with Section 21189.86.

4 (2) (A) The Governor may certify a project as a semiconductor  
5 or microelectronic project for purposes of this chapter if the project  
6 meets the requirements of subdivision (f) of Section 21189.81.

7 (B) In addition to subparagraph (A), if the applicant is not the  
8 lead agency, the Governor shall ensure all of the following:

9 (i) The applicant agrees to pay the costs of the trial court and  
10 the court of appeal in hearing and deciding any case challenging  
11 a lead agency's action on a certified project under this division,  
12 including payment of the costs for the appointment of a special  
13 master if deemed appropriate by the court, in a form and manner  
14 as provided in the rule of court adopted by the Judicial Council  
15 under Section 21189.85.

16 (ii) The applicant agrees to pay the costs of preparing the record  
17 of proceedings for the project concurrent with the review and  
18 consideration of the project under this division, in a form and  
19 manner specified by the lead agency for the project.

20 (iii) For a project for which environmental review has  
21 commenced, the applicant demonstrates that the record of  
22 proceedings is being prepared in accordance with Section 21189.86.

23 (3) The Governor may certify up to 20 transportation-related  
24 projects for purposes of this chapter, including up to 10 state  
25 projects proposed by the Department of Transportation and up to  
26 10 local or regional projects, that meet the requirements of  
27 subdivision (g) of Section 21189.81.

28 (4) (A) The Governor may certify a project as a water-related  
29 project for purposes of this chapter if the project meets the  
30 requirements of subdivision (h) of Section 21189.81.

31 (B) In addition to subparagraph (A), the Governor shall ensure  
32 all of the following:

33 (i) The applicant agrees to pay the costs of the trial court and  
34 the court of appeal in hearing and deciding any case challenging  
35 a lead agency's action on a certified project under this division,  
36 including payment of the costs for the appointment of a special  
37 master if deemed appropriate by the court, in a form and manner  
38 as provided in the rule of court adopted by the Judicial Council  
39 under Section 21189.85.



1 (ii) The applicant agrees to pay the costs of preparing the record  
2 of proceedings for the project concurrent with the review and  
3 consideration of the project under this division, in a form and  
4 manner specified by the lead agency for the project.

5 (iii) For a project for which environmental review has  
6 commenced, the applicant demonstrates that the record of  
7 proceedings is being prepared in accordance with Section 21189.86.

8 (C) In addition to subparagraphs (A) and (B), the Governor may  
9 certify a project as a water-related project for purposes of this  
10 chapter only if the Governor finds that greenhouse gas emissions  
11 resulting from the project will be mitigated to the extent feasible.

12 (b) The Office of Planning and Research may consult with other  
13 state agencies on and may issue guidelines regarding applications  
14 for and the certification of projects under this chapter. Any  
15 guidelines issued under this subdivision are not subject to the  
16 rulemaking provisions of the Administrative Procedure Act  
17 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
18 Division 3 of Title 2 of the Government Code).

19 (c) An applicant for certification of an infrastructure project  
20 under this chapter shall do all of the following:

21 (1) Avoid or minimize significant environmental impacts in any  
22 disadvantaged community.

23 (2) If measures are required pursuant to this division to mitigate  
24 significant environmental impacts in a disadvantaged community,  
25 mitigate those impacts consistent with this division, including  
26 Section 21002. Mitigation measures required under this subdivision  
27 shall be undertaken in, and directly benefit, the affected  
28 community.

29 (3) Enter into a binding and enforceable agreement to comply  
30 with this subdivision in its application to the Governor and to the  
31 lead agency prior to the agency's certification of the environmental  
32 impact report for the project.

33 (d) The Office of Planning and Research shall make evidence  
34 and materials submitted for the certification of a project available  
35 to the public on its internet website at least 15 days before the  
36 certification of the project.

37 (e) The Governor's decision to certify a project shall not be  
38 subject to judicial review.

39 21189.83. (a) In addition to the requirements of Section  
40 21189.82, with respect to any energy infrastructure project or

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1 semiconductor or microelectronic project proposed by a private  
2 entity, the Governor may certify the project pursuant to this chapter  
3 only if the project does not result in any net additional emission  
4 of greenhouse gases, including greenhouse gas emissions from  
5 employee transportation. For purposes of this section, a project is  
6 deemed to meet the requirements of this section if the applicant  
7 demonstrates to the satisfaction of the Governor that the applicant  
8 has a binding commitment that it will mitigate impacts resulting  
9 from the emission of greenhouse gases, if any, in accordance with  
10 Section 21183.6.

11 (b) In addition to the requirements of Section 21189.82, with  
12 respect to any transportation-related project, the Governor may  
13 certify the project pursuant to this chapter only if the project does  
14 not result in any net additional emission of greenhouse gases,  
15 excluding greenhouse gas emissions from employee transportation.  
16 For purposes of this section, a project is deemed to meet the  
17 requirements of this section if the applicant demonstrates to the  
18 satisfaction of the Governor that the applicant has a binding  
19 commitment that it will mitigate impacts resulting from the  
20 emission of greenhouse gases, if any, preferably through direct  
21 emissions reductions where feasible, but where not feasible, then  
22 through the use of offsets that are real, permanent, verifiable, and  
23 enforceable, and that provide a specific, quantifiable, and direct  
24 environmental and public health benefit to the same air pollution  
25 control district or air quality management district in which the  
26 project is located, but if all of the project impacts cannot be feasibly  
27 and fully mitigated in the same air pollution control district or air  
28 quality management district, then remaining unmitigated impacts  
29 shall be mitigated through the use of offsets that provide a specific,  
30 quantifiable, and direct environmental and public health benefit  
31 to the region in which the project is located.

32 ~~(c) In addition to the requirements of Section 21189.82, with~~  
33 ~~respect to any project that is located in whole or in part in a~~  
34 ~~disadvantaged community, the Governor may certify the project~~  
35 ~~pursuant to this chapter only if the project minimizes negative~~  
36 ~~environmental or public health impacts on the disadvantaged~~  
37 ~~community and benefits the disadvantaged community. A project~~  
38 ~~is deemed to meet the requirements of this section if the applicant~~  
39 ~~demonstrates to the satisfaction of the Governor that the applicant~~

1 ~~has a binding commitment that it will minimize the environmental~~  
2 ~~burdens in any disadvantaged community.~~

3 ~~(d)~~

4 (c) The applicant shall be responsible for the costs of preparing  
5 an analysis of the emission of greenhouse gases ~~or the impacts on~~  
6 ~~a disadvantaged community~~ resulting from the project.

7 21189.84. (a) This chapter applies to a project that is certified  
8 by the Governor as an infrastructure project.

9 (b) An applicant may apply to the Governor for certification  
10 and shall provide evidence and materials deemed necessary by the  
11 Governor in making a decision on the application for certification.

12 (c) The Governor shall submit the Governor's proposed  
13 certification, and any supporting information, to the Joint  
14 Legislative Budget Committee for review and concurrence or  
15 nonconcurrence. Within 30 days of receiving the determination,  
16 the Joint Legislative Budget Committee shall concur or nonconcur  
17 in writing on the certification. If the Joint Legislative Budget  
18 Committee fails to concur or nonconcur on a certification within  
19 30 days of the submittal, the project is deemed to be certified.

20 (d) The Office of Planning and Research may charge a fee to  
21 an applicant seeking certification under this chapter for the costs  
22 incurred by the Governor's office in implementing this chapter.

23 21189.85. (a) An action or proceeding brought to attack,  
24 review, set aside, void, or annul the certification of an  
25 environmental impact report for an infrastructure project subject  
26 to this chapter or the granting of any project approvals, including  
27 any potential appeals to the court of appeal or the Supreme Court,  
28 shall be resolved, to the extent feasible, within 270 days of the  
29 filing of the certified record of proceedings with the court.

30 (b) On or before December 31, 2023, the Judicial Council shall  
31 adopt a rule of court to implement this section.

32 21189.86. Notwithstanding any other law, the preparation and  
33 certification of the record of proceedings for an infrastructure  
34 project shall be performed in the following manner:

35 (a) The lead agency for the project shall prepare the record of  
36 proceedings under this division concurrently with the  
37 administrative process.

38 (b) All documents and other materials placed in the record of  
39 proceedings shall be posted on, and be downloadable from, an

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1 internet website maintained by the lead agency commencing with  
2 the date of the release of the draft environmental impact report.

3 (c) The lead agency shall make available to the public in a  
4 readily accessible electronic format the draft environmental impact  
5 report and all other documents submitted to, or relied on by, the  
6 lead agency in preparing the draft environmental impact report.

7 (d) Any document prepared by the lead agency or submitted by  
8 the applicant after the date of the release of the draft environmental  
9 impact report that is a part of the record of proceedings shall be  
10 made available to the public in a readily accessible electronic  
11 format within five days after the document is released or received  
12 by the lead agency.

13 (e) The lead agency shall encourage written comments on the  
14 project to be submitted in a readily accessible electronic format,  
15 and shall make any comment available to the public in a readily  
16 accessible electronic format within five days of its receipt.

17 (f) Within seven days after the receipt of any comment that is  
18 not in an electronic format, the lead agency shall convert that  
19 comment into a readily accessible electronic format and make it  
20 available to the public in that format.

21 (g) Notwithstanding subdivisions (b) to (f), inclusive, documents  
22 submitted to or relied on by the lead agency that were not prepared  
23 specifically for the project and are copyright protected are not  
24 required to be made readily accessible in an electronic format. For  
25 those copyright-protected documents, the lead agency shall make  
26 an index of these documents available in an electronic format no  
27 later than the date of the release of the draft environmental impact  
28 report, or within five days if the document is received or relied on  
29 by the lead agency after the release of the draft environmental  
30 impact report. The index shall specify the libraries or lead agency  
31 offices in which hardcopies of the copyrighted materials are  
32 available for public review.

33 (h) The lead agency shall certify the final record of proceedings  
34 within five days of its approval of the project.

35 (i) Any dispute arising from the record of proceedings shall be  
36 resolved by the superior court. Unless the superior court directs  
37 otherwise, a party disputing the content of the record of  
38 proceedings shall file a motion to augment the record of  
39 proceedings at the time it files its initial brief.

1 (j) The contents of the record of proceedings shall be as set forth  
2 in subdivision (e) of Section 21167.6.

3 (k) The applicant shall pay the costs of preparing the record of  
4 proceedings for the project concurrent with review and  
5 consideration of the project under this division, in a form and  
6 manner specified by the lead agency for the project. The cost of  
7 preparing the record of proceedings for the project shall not be  
8 recoverable from the plaintiff or petitioner before, during, or after  
9 any litigation.

10 21189.87. (a) Within 10 days of the certification of a project  
11 pursuant to Section 21189.82, the lead agency shall, at the  
12 applicant's expense, if applicable, issue a public notice in no less  
13 than 12-point type stating the following:

14 "THE APPLICANT HAS ELECTED TO PROCEED UNDER  
15 CHAPTER 7 (COMMENCING WITH SECTION 21189.80) OF  
16 DIVISION 13 OF THE PUBLIC RESOURCES CODE, WHICH  
17 PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL  
18 ACTION CHALLENGING THE CERTIFICATION OF THE  
19 ENVIRONMENTAL IMPACT REPORT (EIR) OR THE  
20 APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS  
21 SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS  
22 21189.85 AND 21189.86 OF THE PUBLIC RESOURCES CODE.  
23 A COPY OF CHAPTER 7 (COMMENCING WITH SECTION  
24 21189.80) OF DIVISION 13 OF THE PUBLIC RESOURCES  
25 CODE IS INCLUDED BELOW."

26 (b) The public notice shall be distributed by the lead agency as  
27 required for public notices issued under paragraph (3) of  
28 subdivision (b) of Section 21092.

29 21189.88. Except as otherwise provided expressly in this  
30 chapter, this chapter does not affect the duty of any party to comply  
31 with this division.

32 21189.89. The provisions of this chapter are severable. If any  
33 provision of this chapter or its application is held invalid, that  
34 invalidity shall not affect other provisions or applications that can  
35 be given effect without the invalid provision or application.

36 21189.90. If before January 1, 2033, a lead agency fails to  
37 approve an infrastructure project, then the certification is no longer  
38 valid.

39 21189.91. This chapter shall remain in effect only until January  
40 1, 2034, and as of that date is repealed.

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1 SEC. 7. The sum of one million dollars (\$1,000,000) is hereby  
2 appropriated from the General Fund to the Judicial Council for  
3 judicial officer training for implementation of this act. These funds  
4 are available for expenditure through June 30, 2025.

5 SEC. 8. No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 a local agency or school district has the authority to levy service  
8 charges, fees, or assessments sufficient to pay for the program or  
9 level of service mandated by this act, within the meaning of Section  
10 17556 of the Government Code.

11 SEC. 9. This act is an urgency statute necessary for the  
12 immediate preservation of the public peace, health, or safety within  
13 the meaning of Article IV of the California Constitution and shall  
14 go into immediate effect. The facts constituting the necessity are:

15 To promote environmental protection and safeguard economic  
16 development of California's diverse public resources and people,  
17 and enhance the state's ability to maximize federal funding to  
18 support those efforts, it is necessary for this act to take effect  
19 immediately.

O