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TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 1. GENERAL [8000 - 8899.95] (Division 1 enacted by Stats. 1943, Ch. 134.)

CHAPTER 12.491. Implementation of the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 [8879.50 - 8879.78] (Chapter 12.491 added by Stats. 2007, Ch. 181, Sec. 1.)

ARTICLE 1. General Provisions [8879.50 - 8879.501] (Article 1 added by Stats. 2007, Ch. 181, Sec. 1.)

8879.50. (a) As used in this chapter and in Chapter 12.49 (commencing with Section 8879.20), the following terms have the following meanings:

(1) "Commission" means the California Transportation Commission.

(2) "Department" means the Department of Transportation.

(3) "Administrative agency" means the state agency responsible for programming bond funds made available by Chapter 12.49 (commencing with Section 8879.20), as specified in subdivision (c).

(4) Unless otherwise specified in this chapter, "project" includes equipment purchase, construction, right-of-way acquisition, and project delivery costs.

(5) "Recipient agency" means the recipient of bond funds made available by Chapter 12.49 (commencing with Section 8879.20) that is responsible for implementation of an approved project.

(6) "Fund" shall have the same meaning as in subdivision (c) of Section 8879.20.

(b) Administrative costs, including audit and program oversight costs for agencies, commissions, or departments administering programs funded pursuant to this chapter, recoverable by bond funds shall not exceed 3 percent of the program's cost.

(c) The administrative agency for each bond account is as follows:

(1) The commission is the administrative agency for the Corridor Mobility Improvement Account; the Trade Corridors Improvement Fund; the Transportation Facilities Account; the State Route 99 Account; the State-Local Partnership Program Account; the Local Bridge Seismic Retrofit Account; the Highway-Railroad Crossing Safety Account; and the Highway Safety, Rehabilitation, and Preservation Account.

(2) The Office of Emergency Services is the administrative agency for the Port and Maritime Security Account and the Transit System Safety, Security, and Disaster Response Account.

(3) The department is the administrative agency for the Public Transportation Modernization, Improvement, and Service Enhancement Account.

(d) The administrative agency shall not approve project fund allocations for a project until the recipient agency provides a project funding plan that demonstrates that the funds are expected to be reasonably available and sufficient to complete the project. The administrative agency may approve funding for usable project segments only if the benefits associated with each individual segment are sufficient to meet the objectives of the program from which the individual segment is funded.

(e) Guidelines adopted by the administrative agency pursuant to this chapter and Chapter 12.49 (commencing with Section 8879.20) are intended to provide internal guidance for the agency and shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3), and shall do all of the following:

(1) Provide for the audit of project expenditures and outcomes.

(2) Require that the useful life of the project be identified as part of the project nomination process.

(3) Require that project nominations have project delivery milestones, including, but not limited to, start and completion dates for environmental clearance, land acquisition, design, construction bid award, construction completion, and project closeout, as applicable.

(f) (1) As a condition for allocation of funds to a specific project under Chapter 12.49 (commencing with Section 8879.20), the administrative agency shall require the recipient agency to report, on a semiannual basis, on the activities and progress made toward implementation of the project. If it is anticipated that project costs will exceed the approved project budget, the recipient agency shall provide a plan to the administrative agency for achieving the benefits of the project by either downscoping the project to remain within budget or by identifying an alternative funding source to meet the cost increase. The administrative agency may either approve the corrective plan or direct the recipient agency to modify its plan.

(2) Within six months of the project becoming operable, the recipient agency shall provide a report to the administrative agency on the final costs of the project as compared to the approved project budget, the project duration as compared to the original project schedule as of the date of allocation, and performance outcomes derived from the project compared to those described in the original application for funding. The administrative agency shall forward the report to the Department of Finance by means approved by the Department of Finance.

(Amended by Stats. 2013, Ch. 352, Sec. 225. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

8879.501. (a) A regional or local agency that is a lead applicant agency for a project that may be funded pursuant to Chapter 12.49 (commencing with Section 8879.20), other than a project that may be funded pursuant to paragraph (1) of subdivision (j) of Section 8879.23, may apply to the administrative agency for a letter of no prejudice for the project or a component of the project. The administrative agency may approve the letter of no prejudice for one or more projects or project components that the administrative agency has programmed or otherwise approved for funding. The letter of no prejudice shall reference the project or component thereof and the amount of bond funding that is programmed or otherwise approved for that project or project component or, in the case of a project or project component eligible for funding under subdivision (g) of Section 8879.23, the letter may reference the amount of bond funding targeted to be received by the regional or local agency pursuant to subdivision (f) of Section 8879.72. The administrative agency may approve a letter of no prejudice regardless of whether bond funding has been previously appropriated for purposes of the project or project component.

(b) Expenditures for the costs, up to the amount set forth in the letter of no prejudice, of a project or project component for which a letter of no prejudice has been issued shall be eligible for reimbursement from the applicable bond proceeds fund or account if all of the following apply:

(1) The project or project component for which the letter of no prejudice was requested has commenced and the regional or local expenditures have been incurred.

(2) The expenditures made by the regional or local agency are eligible for reimbursement in accordance with state and federal laws and procedures, and are permitted expenditures under the applicable provisions of Chapter 12.49 (commencing with Section 8879.20). If expenditures made are determined to be ineligible, then the state has no obligation to reimburse for those expenditures.

(3) The regional or local agency complies with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(4) The expenditures were incurred after the project or project component was programmed or otherwise approved for funding by the administrative agency.

(5) There is in the applicable bond proceeds fund or account under Chapter 12.49 (commencing with Section 8879.20) an appropriated amount sufficient to make the reimbursement payment. Nothing in this section requires any bond proceeds fund or account to be funded at any particular time or in any particular amount.

(c) The administrative agency and the regional or local agency may enter into an agreement or agreements governing reimbursement as described in this section.

(d) The administrative agency, in consultation with regional and local agencies, may develop guidelines to implement this section.

(e) Nothing in this section modifies any requirement under Chapter 12.49 (commencing with Section 8879.23).

(f) For purposes of this section, "letter of no prejudice" means an agreement between a regional or local agency and the administrative agency that makes eligible for future reimbursement from bond proceeds the expenditure of funds under the control of

the regional or local agency, subject to availability of bond funds, as provided in this section. The timing and final amount of reimbursement is dependent on the terms of the agreement and the availability of bond funds. The final amount of reimbursement may be less than the amount stated in the letter of no prejudice.

(Added by Stats. 2009, Ch. 463, Sec. 2. (AB 672) Effective January 1, 2010.)