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GOVERNMENT CODE - GOV

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

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15990.3] (Division 3 added by Stats. 1945, Ch. 111.)

PART 2.5. AGENCIES [12800 - 12896] (Part 2.5 added by Stats. 1961, Ch. 2037.)

CHAPTER 5. Greenhouse Gas Market-Based Compliance Mechanisms and Linkages to the State [12894 - 12896] (Chapter 5 added by Stats. 2012, Ch. 39, Sec. 22.)

12894. (a) (1) The Legislature finds and declares that the establishment of nongovernmental entities, such as the Western Climate Initiative, Incorporated, and linkages with other states and countries by the State Air Resources Board or other state agencies for the purposes of implementing Division 25.5 (commencing with Section 38500) of the Health and Safety Code, should be done transparently and should be independently reviewed by the Attorney General for consistency with all applicable laws.

(2) The purpose of this section is to establish new oversight and transparency over any such linkages and related activities undertaken in relation to Division 25.5 (commencing with Section 38500) of the Health and Safety Code by the executive agencies in order to ensure consistency with applicable laws.

(b) (1) The California membership of the board of directors of the Western Climate Initiative, Incorporated, shall be modified as follows:

(A) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Senate Committee on Rules.

(B) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Speaker of the Assembly.

(C) The Chairperson of the State Air Resources Board or her or his designee.

(D) The Secretary for Environmental Protection or his or her designee.

(2) Sections 11120 through 11132 do not apply to the Western Climate Initiative, Incorporated, or to appointees specified in subparagraphs (C) and (D) of paragraph (1) when performing their duties under this section.

(c) The State Air Resources Board shall provide notice to the Joint Legislative Budget Committee, consistent with that required for Department of Finance augmentation or reduction authorizations pursuant to subdivision (e) of Section 28.00 of the annual Budget Act, of any funds over one hundred fifty thousand dollars (\$150,000) provided to the Western Climate Initiative, Incorporated, or its derivatives or subcontractors no later than 30 days prior to transfer or expenditure of these funds.

(d) The Chairperson of the State Air Resources Board and the Secretary for Environmental Protection, as the California voting representatives on the Western Climate Initiative, Incorporated, shall report every six months to the Joint Legislative Budget Committee on any actions proposed by the Western Climate Initiative, Incorporated, that affect California state government or entities located within the state.

(e) For purposes of this section, "link," "linkage," or "linking" means an action taken by the State Air Resources Board or any other state agency that will result in acceptance by the State of California of compliance instruments issued by any other governmental agency, including any state, province, or country, for purposes of demonstrating compliance with the market-based compliance mechanism established pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code and specified in Sections 95801 to 96022, inclusive, of Title 17 of the California Code of Regulations.

(f) A state agency, including, but not limited to, the State Air Resources Board, shall not link a market-based compliance mechanism established pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code and specified in Sections

95801 to 96022, inclusive, of Title 17 of the California Code of Regulations with any other state, province, or country unless the state agency notifies the Governor that the agency intends to take such action and the Governor, acting in his or her independent capacity, makes all of the following findings:

(1) The jurisdiction with which the state agency proposes to link has adopted program requirements for greenhouse gas reductions, including, but not limited to, requirements for offsets, that are equivalent to or stricter than those required by Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(2) Under the proposed linkage, the State of California is able to enforce Division 25.5 (commencing with Section 38500) of the Health and Safety Code and related statutes, against any entity subject to regulation under those statutes, and against any entity located within the linking jurisdiction to the maximum extent permitted under the United States and California Constitutions.

(3) The proposed linkage provides for enforcement of applicable laws by the state agency or by the linking jurisdiction of program requirements that are equivalent to or stricter than those required by Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(4) The proposed linkage and any related participation of the State of California in Western Climate Initiative, Incorporated, shall not impose any significant liability on the state or any state agency for any failure associated with the linkage.

(g) The Governor shall issue findings pursuant to subdivision (f) within 45 days of receiving a notice from a state agency, and shall provide those findings to the Legislature. The findings shall consider the advice of the Attorney General. The findings to be submitted to the Legislature shall not be unreasonably withheld. The findings shall not be subject to judicial review.

(Amended by Stats. 2012, Ch. 807, Sec. 1. (AB 1532) Effective January 1, 2013.)

12894.5. (a) The Legislature finds and declares both of the following:

(1) California's participation in the Western Climate Initiative, Incorporated, requires that its sole purpose be to provide operational and technical support to California in its implementation of Division 25.5 (commencing with Section 38500) of the Health and Safety Code and to provide support to the greenhouse gas emissions reduction programs of other jurisdictions. Given its limited scope of activities, the Western Climate Initiative, Incorporated, does not have the authority to create policy with respect to any existing or future program or regulation undertaken pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(2) The state recognizes the ongoing efforts of the Western Climate Initiative, Incorporated, have resulted in policies that are consistent with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) and the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), as well as bylaws that meet the requirements of this section.

(b) The California membership of the Board of Directors of the Western Climate Initiative, Incorporated, as established pursuant to Section 12894, shall participate on the board so long as the Western Climate Initiative, Incorporated, maintains policies and bylaws according to all of the following:

(1) An open meetings policy that is and remains consistent with the general policies of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1) and affords the public the greatest possible access consistent with the other duties of the Western Climate Initiative, Incorporated.

(2) A records availability policy that is and remains consistent with the general policies of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) and affords the public access to corporate records consistent with the operating needs and other duties of the Western Climate Initiative, Incorporated, and all applicable legal privileges.

(3) Bylaws that limit the activities of the Western Climate Initiative, Incorporated, to the technical and operational support of the greenhouse gas emissions reduction programs of California and other jurisdictions. These bylaws shall not allow the Western Climate Initiative, Incorporated, to have policymaking authority with respect to these programs.

(c) The State Air Resources Board shall provide notice to the Joint Legislative Budget Committee for all procurements over one hundred fifty thousand dollars (\$150,000) proposed by the Western Climate Initiative, Incorporated, that are expected to result in a contract no later than 30 days prior to the execution of those contracts.

(d) Commencing January 1, 2014, the State Air Resources Board shall include information on all proposed expenditures and allocations of moneys to the Western Climate Initiative, Incorporated, in the Governor's Budget.

(Amended by Stats. 2021, Ch. 615, Sec. 177. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)

12895. (a) There is in the Business, Consumer Services, and Housing Agency a Department of Financial Protection and Innovation, which has the responsibility for administering various laws. In order to effectively support the Department of Financial Protection and Innovation in the administration of these laws, there is hereby established the Financial Protection Fund, as described further in Section 90007 of the Financial Code. All expenses and salaries of the Department of Financial Protection and Innovation shall be paid out of the Financial Protection Fund, upon appropriation by the Legislature for these purposes.

(b) All the duties and responsibilities to be transferred and any remaining balances of the State Corporations Fund and Financial Institutions Fund, upon appropriation by the Legislature, shall be transferred to the Financial Protection Fund, which is hereby created and designated the successor fund. The State Corporations Fund and Financial Institutions Fund are abolished.

(c) Funds appropriated from the Financial Protection Fund and made available for expenditure for any law or program of the Department of Financial Protection and Innovation may come from the following:

(1) Fees and any other amounts charged and collected pursuant to Section 25608 of the Corporations Code, except for fees and other amounts charged and collected pursuant to subdivisions (o) to (r), inclusive, of Section 25608 of the Corporations Code.

(2) Fees collected pursuant to subdivisions (a), (b), (c), and (d) of Section 25608.1 of the Corporations Code.

(d) This section shall not apply to moneys collected or received by the commissioner under Division 5 (commencing with Section 14000) of the Financial Code.

(e) On and after the operative date of this subdivision, any reference in any law to the Financial Institutions Fund shall be deemed a reference to the Financial Protection Fund, and any reference in any law to the State Corporations Fund shall be deemed a reference to the Financial Protection Fund.

(f) On and after the operative date of this subdivision, any reference in any law to the Department of Business Oversight shall be deemed a reference to the Department of Financial Protection and Innovation.

(g) This subdivision shall become operative on the date that an act adding Division 25 (commencing with Section 100000) to the Financial Code takes effect.

(1) On and after the operative date of this subdivision, all the duties, responsibilities and remaining balances of the Debt Collection Licensing Fund shall be transferred to the Financial Protection Fund.

(2) On or after the operative date of this subdivision, fines and penalties collected pursuant to Division 25 (commencing with Section 100000) of the Financial Code shall be made available for expenditure for any law or program of the Department of Financial Protection and Innovation.

(3) On and after the operative date of this subdivision, the Debt Collection Licensing Fund is abolished.

(4) On and after the operative date of this subdivision, any reference to the Debt Collection Licensing Fund shall be deemed a reference to the Financial Protection Fund.

(5) If an act adding Division 25 to the Financial Code does not take effect, this subdivision shall become inoperative and is effectively repealed beginning January 1, 2021.

(Amended by Stats. 2020, Ch. 264, Sec. 6. (AB 107) Effective September 29, 2020. [Note: Subd. (g) purports to conditionally repeal itself on Jan. 1, 2021, but it would only become inoperative on that date.])

12896. (a) This section applies to every action brought in the name of the people of the State of California by the Commissioner of Financial Protection and Innovation before, on, or after the effective date of this section, when enforcing provisions of those laws administered by the Commissioner of Financial Protection and Innovation which authorize the Commissioner of Financial Protection and Innovation to seek a permanent or preliminary injunction, restraining order, or writ of mandate, or the appointment of a receiver, monitor, conservator, or other designated fiduciary or officer of the court, except actions brought against any of the licensees specified in paragraphs (1) through (8), inclusive, of subdivision (b) of Section 300 of the Financial Code that are governed by other law. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate. The court may order that the expenses and fees of the receiver, monitor, conservator, or other designated fiduciary or officer of the court, be paid from the property held by the receiver, monitor, conservator, or other court-designated fiduciary or officer, but neither the state, the Business, Consumer Services, and Housing Agency, nor the Department of Financial Protection and Innovation shall be liable for any of those expenses and fees, unless expressly provided for by written contract.

(b) The receiver, monitor, conservator, or other designated fiduciary or officer of the court may do any of the following subject to the direction of the court:

(1) Sue for, collect, receive, and take into possession all the real and personal property derived by any unlawful means, including property with which that property or the proceeds thereof has been commingled if that property or the proceeds thereof cannot be identified in kind because of the commingling.

(2) Take possession of all books, records, and documents relating to any unlawfully obtained property and the proceeds thereof. In addition, they shall have the same right as a defendant to request, obtain, inspect, copy, and obtain copies of books, records, and documents maintained by third parties that relate to unlawfully obtained property and the proceeds thereof.

(3) Transfer, encumber, manage, control, and hold all property subject to the receivership, including the proceeds thereof, in the manner directed or ratified by the court.

(4) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof to any person who committed, aided or abetted, or participated in the commission of unlawful acts or who had knowledge that the property had been unlawfully obtained.

(5) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof made with the intent to hinder or delay the recovery of that property or any interest in it by the receiver or any person from whom the property was unlawfully obtained.

(6) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof that was made within one year before the date of the entry of the receivership order if less than a reasonably equivalent value was given in exchange for the transfer, except that a bona fide transferee for value and without notice that the property had been unlawfully obtained may retain the interest transferred until the value given in exchange for the transfer is returned to the transferee.

(7) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof made within 90 days before the date of the entry of the receivership order to a transferee from whom the defendant unlawfully obtained some property if (A) the receiver establishes that the avoidance of the transfer will promote a fair pro rata distribution of restitution among all people from whom defendants unlawfully obtained property and (B) the transferee cannot establish that the specific property transferred was the same property which had been unlawfully obtained from the transferee.

(8) Exercise any power authorized by statute or ordered by the court.

(c) No person with actual or constructive notice of the receivership shall interfere with the discharge of the receiver's duties.

(d) No person may file any action or enforce or create any lien, or cause to be issued, served, or levied any summons, subpoena, attachment, or writ of execution against the receiver or any property subject to the receivership without first obtaining prior court approval upon motion with notice to the receiver and the Commissioner of Financial Protection and Innovation. Any legal procedure described in this subdivision commenced without prior court approval is void except as to a bona fide purchaser or encumbrancer for value and without notice of the receivership. No person without notice of the receivership shall incur any liability for commencing or maintaining any legal procedure described by this subdivision.

(e) The court has jurisdiction of all questions arising in the receivership proceedings and may make any orders and judgments as may be required, including orders after noticed motion by the receiver to avoid transfers as provided in paragraphs (4), (5), (6), and (7) of subdivision (b).

(f) This section is cumulative to all other provisions of law.

(g) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(h) The recordation of a copy of the receivership order imparts constructive notice of the receivership in connection with any matter involving real property located in the county in which the receivership order is recorded.

(Amended by Stats. 2022, Ch. 452, Sec. 184. (SB 1498) Effective January 1, 2023.)