

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1646

Introduced by Assembly Member Campos

February 13, 2012

An act to add and repeal Article 6 (commencing with Section 12099) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1646, as amended, Campos. California Demonstration of Emerging Market Opportunities Act.

The Governor's Office of Business and Economic Development serves as the Governor's lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. The office, among others, makes recommendations to the Governor and the Legislature regarding policies, programs, and actions to advance statewide economic goals.

Commencing January 1, 2014, this bill would require the office to implement and administer the California Demonstration of Emerging Market Opportunities Act, which would allow state agencies to enter into ~~partnership~~ *demonstration* agreements, as defined, with specified businesses and nonprofit organizations to test, evaluate, or demonstrate innovative solutions and pilot projects, as defined, ~~in a manner that fulfills specified goals relating to economic development. This bill would establish the California Demonstrated Innovation Seal that the office would grant to selected businesses and nonprofit organizations, as specified. This bill would authorize the Department of General~~

Services to charge a reasonable fee to the business or nonprofit organization receiving the California Demonstrated Innovation Seal to produce the seal. The bill would authorize an agency to assess a fine of up to \$10,000 against a business or nonprofit organization that falsifies or fails to disclose information in connection with a project.

project, as specified. These provisions would ~~remain operative only until be repealed as of January 1, 2019, and as of that date is repealed, unless that date is deleted or extended.~~

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California is home to many of the world’s leading technology
4 companies, and the state seeks to spur economic growth, including
5 job growth, by supporting innovation by these companies.

6 (b) *Despite California leading the nation in innovation and the
7 number of patents filed annually, emerging small technology
8 businesses face a myriad of challenges throughout their
9 development process.*

10 (c) *In order to achieve the desired growth, innovative businesses
11 require support that reaches beyond traditional business incubators
12 and that streamlines the commercialization of innovative products,
13 services, and processes. The state can provide this support by
14 partnering to provide companies with an opportunity to
15 demonstrate their innovative products, services, and processes
16 while also increasing public awareness of these innovative
17 solutions. This may be accomplished by using underutilized state
18 resources.*

19 ~~(b)~~

20 (d) The Governor’s Office of Business and Economic
21 Development has launched a new, forward-thinking Innovation
22 Hub (iHub) initiative in an effort to harness and enhance
23 California’s innovative spirit. The iHub initiative improves the
24 state’s national and global competitiveness by stimulating
25 partnerships, economic development, and job creation around
26 specific research clusters through state-designated iHubs. The
27 iHubs will leverage assets, such as research parks, technology

1 incubators, universities, and federal laboratories, to provide an
2 innovation platform for startup companies, economic development
3 organizations, business groups, and venture capitalists.

4 ~~(e) In order to achieve the desired growth, however, inventive
5 businesses require support that reaches beyond traditional business
6 incubators and that streamlines the commercialization of innovative
7 products, services, and processes. The state can provide this support
8 by partnering to provide companies with an opportunity to
9 demonstrate their innovative products, services, and processes
10 while also increasing public awareness of these innovative
11 solutions.~~

12 ~~(d) The California Demonstration of Emerging Market
13 Opportunities Act will allow the state to take advantage of
14 emerging and innovative technologies, products, and services while
15 providing a new economic development tool that will motivate
16 local companies to excel in technology development and attract
17 new companies to this state.~~

18 *(e) The California Demonstration of Emerging Market
19 Opportunities (CalDEMO) Program shall be designed to provide
20 all of the following:*

21 *(1) Experience engaging with the state in the process of
22 planning, deploying, demonstrating, and maintaining their
23 innovation.*

24 *(2) High profile public exposure for the business or nonprofit
25 organization demonstrating an innovative solution or pilot project.*

26 *(3) Data collection on an innovation's real-time performance
27 in a public setting.*

28 *(4) An opportunity for a business or nonprofit organization to
29 demonstrate successfully that their innovation can be deployed,
30 operated, and maintained in a real-world setting.*

31 *(5) An opportunity for a business or nonprofit organization to
32 demonstrate successfully that it has the capacity to sufficiently
33 plan, deploy, operate, and maintain the innovation in a real-world
34 setting.*

35 *(6) New markets for innovative products.*

36 SEC. 2. Article 6 (commencing with Section 12099) is added
37 to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government
38 Code, to read:

Article 6. California Demonstration of Emerging Market Opportunities Act

12099. Commencing January 1, 2014, the Governor’s Office of Business and Economic Development shall implement and administer the California Demonstration of Emerging Market Opportunities (CalDEMO) Program. The program shall be designed to accomplish all of the following:

(a) ~~Directly aid businesses and nonprofit organizations by developing a public platform to demonstrate their innovative solutions and pilot projects for the purposes of providing:~~

(1) ~~Experience engaging with the state in the process of planning, deploying, demonstrating, and maintaining their innovation.~~

(2) ~~High profile public exposure for the business or nonprofit organization demonstrating an innovative solution or pilot project that addresses an issue of statewide significance.~~

(3) ~~Data collection on an innovation’s real-time performance in a public setting.~~

(4) ~~An opportunity for a business or nonprofit organization to demonstrate successfully that their innovation can be deployed, operated, and maintained in a real-world setting.~~

(5) ~~An opportunity for a business or nonprofit organization to demonstrate successfully that it has the capacity to sufficiently plan, deploy, operate, and maintain the innovation in a real-world setting.~~

(6) ~~Create new markets for innovative businesses and nonprofit organizations.~~

(b) ~~Improve the quality, efficiency, and operation of state services by utilizing innovative solutions and pilot projects.~~

(c) ~~Allow the state to enter into mutually beneficial agreements whereby the state will benefit from the deployment of new technologies.~~

(d) ~~Increase public awareness of innovative solutions and pilot projects being developed and used by businesses and nonprofit organizations in this state.~~

(e) ~~Create new jobs in this state.~~

12099.1. For purposes of this article, the following terms shall be defined as follows:

1 (a) “Demonstration and testing project” means a project
2 involving a request from a business or nonprofit organization to
3 make state resources available as a forum for testing, evaluating,
4 or demonstrating an innovative solution of the business or nonprofit
5 organization before the innovative solution is deployed in the
6 marketplace.

7 (b) “Innovative solution” means a product, process, service, or
8 information technology that is new or improves upon an existing
9 product, process, service, or information technology and is not
10 presently available in the marketplace. An innovative solution
11 shall be expected to deliver identifiable and measurable benefits
12 compared to current practices in the areas of environmental
13 benefits, performance, overall process reliability and control, or
14 economic and social benefits. An innovative solution shall also
15 consist of a specific and identifiable research component.

16 (c) “Mutual development opportunity project” means a
17 ~~partnership~~ *demonstration* agreement that the office has identified
18 as a potential candidate for making a contribution toward economic
19 development in the state or has the potential for a beneficial use
20 by the state.

21 (d) ~~“Partnership—~~“*Demonstration* agreement” means an
22 agreement between a state agency and a business or nonprofit
23 organization to test, evaluate, or demonstrate an innovative solution
24 or pilot project. A ~~partnership~~ *demonstration* agreement shall
25 involve a pilot project, a demonstration and testing project, or a
26 mutual development opportunity project, as specified in the scope
27 of work.

28 (e) “Pilot project” means a product, process, service, or
29 information technology that is currently available in the
30 marketplace and which the state may want to explore for further
31 application to improve state services.

32 12099.2. The Director of the Governor’s Office of Business
33 and Economic Development shall designate a partnerships
34 coordinator, who shall do all of the following:

35 (a) Provide guidance to the office and other state agencies
36 regarding the interpretation and the application of the CalDEMO
37 Program.

38 (b) Review and assist, *as necessary*, in the development of
39 proposed ~~partnership~~ *demonstration* agreements.

1 (c) Track and report on all approved ~~partnership~~ *demonstration*
2 agreements. The partnerships coordinator shall report to the office
3 regarding the implementation and administration of the CalDEMO
4 Program and the status of all approved ~~partnership~~ *demonstration*
5 agreements.

6 (d) Serve as a contact person for inquiries about the CalDEMO
7 Program and serve as a liaison to connect potential partners with
8 appropriate state agencies.

9 ~~(e) Propose regulations, for adoption by the office, that are~~
10 ~~necessary for the implementation of this article.~~

11 *(e) Develop and issue guidelines that are necessary for the*
12 *fulfillment of this article.*

13 ~~12099.3. To ensure the efficient implementation and~~
14 ~~administration of the CalDEMO Program, the office shall do both~~
15 ~~of the following:~~

16 ~~(a) Approve or disapprove applications and proposed partnership~~
17 ~~agreements for the CalDEMO Program based on merit.~~

18 ~~(b) Review applications and proposed partnership agreements~~
19 ~~for consistency with Section 12099.~~

20 ~~12099.4.~~

21 ~~12099.3.~~ (a) The office shall ~~develop an application~~ *issue a*
22 *request from proposals from businesses and nonprofit*
23 *organizations* for the CalDemo Program.

24 (b) ~~The application shall require the business~~ *business's* or
25 ~~nonprofit organization to provide~~ *organization's proposal shall*
26 *include, but is not limited to,* the following information:

27 (1) A description of the business or nonprofit organization.

28 (2) The goals of the business or nonprofit organization and the
29 state, for the purpose of demonstrating that the proposed
30 ~~partnership~~ *demonstration* agreement will be mutually beneficial
31 to the parties to the agreement.

32 (3) A description of the innovative solution or pilot project,
33 including whether the proposed ~~partnership~~ *demonstration*
34 agreement shall be identified as a pilot project, demonstration and
35 testing project, or a mutual development opportunity project.

36 (4) ~~Established performance~~ *Performance* measures that will
37 be used to evaluate the success of the project at the conclusion of
38 the agreement.

39 (5) A list of the state resources that will be used to demonstrate
40 the innovative solution or pilot project, including state-owned land,

1 facilities, equipment, rights-of-way, or data that is reasonably
2 necessary.

3 (6) Any special consideration that should be taken into account.

4 (7) Any other information deemed relevant by the office,
5 including information necessary for the office to prepare the report
6 as required by this section.

7 (8) Identification of a problem the proposed innovative solution
8 or pilot project seeks to address.

9 (9) How the innovative solution or pilot project can benefit the
10 state.

11 ~~(e) The partnerships coordinator shall prioritize applications~~
12 ~~based on the following criteria:~~

13 ~~(1) Consistency of the goals of the proposed partnership~~
14 ~~agreement with the purposes of this act.~~

15 ~~(2) Consistency of the proposed partnership agreement with~~
16 ~~existing laws, regulations, and practices.~~

17 ~~(3) Balance between the potential benefits of the proposed~~
18 ~~partnership agreement to the state and the level of risk assumed~~
19 ~~by the state.~~

20 ~~(10) Identification of all current applicable industry standards,~~
21 ~~laws, and applicable regulations, and whether the innovative~~
22 ~~solution or pilot project meets those standards, laws, or~~
23 ~~regulations.~~

24 ~~(4) Preference~~

25 ~~(c) The office shall provide a preference for startup companies~~
26 ~~based in California. For purposes of this section, “startup~~
27 ~~companies based in California” means a *small* business or nonprofit~~
28 ~~organization, as defined in paragraph (1) of subdivision (d) of~~
29 ~~Section 14837, that has its headquarters in California and produces~~
30 ~~the innovative solution or pilot project to be demonstrated in~~
31 ~~California or a business or nonprofit organization that has an office~~
32 ~~in California and substantially manufactures the innovative solution~~
33 ~~or pilot project in California or substantially develops the research~~
34 ~~for the innovative solution or pilot project to be demonstrated in~~
35 ~~California.~~

36 ~~(5) The ease at which the project can be installed, set up,~~
37 ~~utilized, or integrated for purposes of demonstration.~~

38 (d) The office may charge a fee to the business or nonprofit
39 organization to process the ~~application~~ *proposal* that shall not
40 exceed the ~~reasonable costs to the office.~~

1 12099.4. (a) To ensure the efficient implementation and
 2 administration of the CalDEMO Program, the partnerships
 3 coordinator shall do all of the following:

4 (1) Establish an investment advisory group to review and
 5 comment on proposals.

6 (2) Upon making the determination that the proposal may
 7 proceed forward,

8 12099.5. (a) After an application is submitted to the office,
 9 the partnerships coordinator shall identify the appropriate state
 10 agencies and coordinate and oversee the development of a
 11 ~~partnership demonstration~~ agreement between the state agency
 12 and the business or nonprofit organization. ~~Partnership agreements~~
 13 ~~shall fulfill the goals of Section 12099.~~

14 (b) ~~The business or nonprofit organization participating in the~~
 15 ~~program shall develop a demonstration agreement and scope of~~
 16 ~~work that sets forth details on how the innovative solution or pilot~~
 17 ~~project is to be demonstrated in consultation with the appropriate~~
 18 ~~state agencies. State agencies shall actively engage with the~~
 19 ~~business or nonprofit organization act in good faith to assist in the~~
 20 ~~development of a partnership demonstration agreement. State~~
 21 ~~agencies shall act in good faith to develop a reasonable partnership~~
 22 ~~agreement with the business or nonprofit organization.~~

23 (c) A proposed ~~partnership demonstration~~ agreement shall
 24 include, but is not limited to, the following requirements:

25 (1) The proposed ~~partnership demonstration~~ agreement shall
 26 be identified as a pilot project, demonstration and testing project,
 27 or a mutual development opportunity project.

28 (2) The proposed ~~partnership demonstration~~ agreement shall
 29 include a termination date.

30 (3) The proposed ~~partnership demonstration~~ agreement shall
 31 clearly state the goals of the business or nonprofit organization
 32 ~~and the state~~, for purposes of demonstrating that the proposed
 33 ~~partnership demonstration~~ agreement will be mutually beneficial
 34 to the parties to the agreement.

35 (4) The proposed ~~partnership demonstration~~ agreement shall
 36 include a set of ~~established~~ performance measures that can be used
 37 to evaluate the success of the project at the conclusion of the
 38 agreement.

39 (5) The business or nonprofit organization shall agree to
 40 indemnify the state against any liability or damages that may result

1 from the project. ~~The state agency may agree, in recognition of an~~
2 ~~identifiable public benefit to be received by the state under the~~
3 ~~agreement, to share potential liability after consulting with other~~
4 ~~appropriate state agencies.~~

5 (6) The proposed ~~partnership~~ *demonstration* agreement shall
6 authorize the state agency to discontinue the project if it finds that
7 the business or nonprofit organization has falsified or withheld
8 information that should have been disclosed.

9 (7) ~~The proposed demonstration agreement may require the~~
10 ~~business or nonprofit organization to purchase insurance coverage~~
11 ~~necessary to cover the costs of any risks.~~

12 ~~(7)~~

13 (8) The proposed ~~partnership~~ *demonstration* agreement shall
14 clearly state the costs to be incurred by the state and provide the
15 methodology used to determine the costs.

16 (9) ~~The proposed demonstration agreement shall require the~~
17 ~~business or nonprofit organization to certify that the innovative~~
18 ~~solution or pilot project is safe for demonstration.~~

19 (10) ~~The proposed demonstration agreement shall include~~
20 ~~timelines and other metrics.~~

21 (d) For purposes of a proposed ~~partnership~~ *demonstration*
22 agreement, the state agency may do all of the following:

23 (1) ~~Authorize~~ ~~With approval of the appropriate state agency,~~
24 ~~authorize~~ the temporary use of state-owned land, facilities,
25 equipment, rights-of-way, or data that are reasonably necessary in
26 conjunction with the project.

27 (2) Absorb a portion of the costs to implement the project, in
28 an amount not to exceed the anticipated benefits to the state of
29 participating in the project.

30 (3) Agree to nondisclosure agreements relating to proprietary
31 information that the state acquires from a business or nonprofit
32 organization during the implementation of a ~~partnership~~
33 *demonstration* agreement.

34 (4) Perform a safety assessment of the project. The state agency
35 may enter into a memorandum of understanding with a qualified
36 state entity to provide the safety assessment. If the state agency
37 has reason to believe that the project is unsafe or likely to cause
38 any danger, the state agency shall discontinue the project.

39 ~~12099.6. (a) No later than 60 days after the termination date,~~
40 ~~the state agency shall develop a demonstration report and submit~~

1 it to the office. The demonstration report shall include all of the
2 following:

3 (1) An evaluation of the project, the business or nonprofit
4 organization, and whether the state agency has sufficient reason
5 to believe that the demonstration successfully resulted in a public
6 benefit.

7 (2) Difficulties that arose in demonstrating the project, if any.
8 This includes, but is not limited to, difficulties with the innovative
9 solution or pilot project, and during the installation, setup, or
10 predemonstration phase.

11 (3) An evaluation of whether the project met all of the
12 performance criteria in the partnership agreement.

13 (4) The value of contributions given to the business or nonprofit
14 organization by the state.

15 (5) Other relevant information as necessary or requested by the
16 office.

17 (b) Within 20 days of receiving the demonstration report, the
18 office shall make any changes to the demonstration report as
19 necessary, and post the report on its Internet Web site.

20 12099.7.— (a) The California Demonstrated Innovation Seal is
21 established to recognize a business or nonprofit organization that
22 has developed an exceptional innovative solution or pilot project
23 and successfully deployed and demonstrated its utility. The office
24 shall award the seal to a business or nonprofit organization after
25 the termination of a successful partnership agreement. In making
26 its determination, the office shall consider the demonstration report
27 and any other relevant information.

28 (b) The office's determination shall be posted on its Internet
29 Web site.

30 (c) The Department of General Services shall include innovative
31 solutions and pilot projects that have been awarded the California
32 Demonstrated Innovation Seal in the department's next price book
33 and in an addendum to the existing price book that the department
34 shall provide to all state agencies. It is the intent of the Legislature
35 that the department develop a Demonstrated Innovations catalog
36 which includes innovative solutions and pilot projects that have
37 received the California Demonstrated Innovation Seal.

38 (d) The Department of General Services shall produce the
39 California Demonstrated Innovation Seal. The department may
40 charge a fee, which shall not exceed the reasonable costs to the

1 ~~department, to the business or nonprofit organization receiving~~
2 ~~the seal to produce it.~~

3 *12099.5. (a) Demonstration agreements must be approved by*
4 *all participating state agencies. After receiving approval from the*
5 *participating state agencies, the office must approve of the*
6 *demonstration agreement.*

7 *(b) The office shall post on its Internet Web site a brief*
8 *description of each demonstration agreement. The office shall not*
9 *make available any proprietary information that is subject to a*
10 *nondisclosure agreement under paragraph (3) of subdivision (d)*
11 *of Section 12099.4.*

12 *(c) The office shall report to the Assembly Committee on Jobs,*
13 *Economic Development, and the Economy and the Senate*
14 *Committee on Business, Professions and Economic Development*
15 *biennially on the progress of the program. This report may include*
16 *information on the state of the demonstration agreements,*
17 *challenges to program implementation, and recommendations for*
18 *program improvement.*

19 ~~12099.8.~~

20 *12099.6. (a) The office may enter into a partnership with*
21 *foundations or private sector sponsors to solicit funding for the*
22 *implementation of the CalDEMO Program. It is the intent of the*
23 *Legislature that the office seek private sector sponsors and partners*
24 *and foundations to solicit funding for the implementation of the*
25 *CalDEMO Program consistent with paragraph (f) of Section*
26 *12096.3.*

27 *(b) The office may enter into a memorandum of understanding*
28 *or an interagency agreement to obtain technical, scientific, or*
29 *administrative services or expertise to support the CalDEMO*
30 *Program. It is the intent of the Legislature that state agencies with*
31 *appropriate subject matter expertise provide input to the office*
32 *when requested.*

33 *(c) The office may enter into an agreement, including a*
34 *memorandum of understanding, with another state agency or*
35 *organization for the purpose of implementing the CalDEMO*
36 *Program. The agreement shall be entered into for the purpose of*
37 *reducing costs to the state, reducing or sharing risk, or obtaining*
38 *technical, scientific, or administrative services or expertise. The*
39 *agreement shall also specify, including, but not limited to, the*

1 metrics to be evaluated in determining whether the project is
2 successful.

3 *12099.7. It is the intent of the Legislature that the state shall*
4 *not seek to co-own or procure any share of rights in the intellectual*
5 *property that is developed during participation in the program.*

6 ~~12099.9.~~

7 *12099.8. Any party to a ~~partnership~~ demonstration agreement,*
8 *including employees or potential subcontractors, shall comply with*
9 *all applicable laws, regulations, and any other requirements*
10 *pertaining to the implementation and execution of the ~~partnership~~*
11 *demonstration agreement.*

12 ~~12100.~~

13 *12099.9. If at any time a representative of a business or*
14 *nonprofit organization is found by clear and convincing evidence*
15 *to have falsified or withheld information that should have been*
16 *disclosed, the state agency may discontinue the project and assess*
17 *a fine of up to ten thousand dollars (\$10,000) against the business*
18 *or nonprofit organization for a failure to comply with this section.*

19 ~~12100.1.~~

20 *12100. This article shall remain in effect only until January 1,*
21 *2019, and as of that date is repealed, unless a later enacted statute,*
22 *that is enacted before January 1, 2019, deletes or extends that date.*

23

24

25 **CORRECTIONS:**

26 **Text—Pages 7, 8, 9, and 12.**

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