

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1646**

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**Introduced by Assembly Member Campos**  
*(Coauthors: Assembly Members Alejo and V. Manuel Pérez)*

February 13, 2012

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An act to add and repeal Article 6 (commencing with Section 12099) ~~to~~ of 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 demonstration agreements, as defined, with specified businesses and nonprofit organizations to test, evaluate, or demonstrate innovative solutions *pursuant to demonstration projects* and pilot projects, as defined. 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 ~~project~~ *a project*, as specified. These provisions would be repealed as of January 1, 2019.

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 demonstrate
- 15 their innovative products, services, and processes while also
- 16 increasing public awareness of these innovative solutions. This
- 17 may be accomplished by using underutilized state resources.
- 18 (d) The Governor’s Office of Business and Economic
- 19 Development has launched a new, forward-thinking Innovation
- 20 Hub (iHub) initiative in an effort to harness and enhance
- 21 California’s innovative spirit. The iHub initiative improves the
- 22 state’s national and global competitiveness by stimulating
- 23 partnerships, economic development, and job creation around
- 24 specific research clusters through state-designated iHubs. The
- 25 iHubs will leverage assets, such as research parks, technology
- 26 incubators, universities, and federal laboratories, to provide an
- 27 innovation platform for startup companies, economic development
- 28 organizations, business groups, and venture capitalists.
- 29 ~~(e) The California Demonstration of Emerging Market~~
- 30 ~~Opportunities (CalDEMO) Program shall be designed to provide~~
- 31 ~~all of the following:~~

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

4 ~~(2) High profile public exposure for the business or nonprofit~~  
5 ~~organization demonstrating an innovative solution or pilot project.~~

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

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

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

15 ~~(6) New markets for innovative products.~~

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

19  
20 Article 6. California Demonstration of Emerging Market  
21 Opportunities Act  
22

23 12099. (a) Commencing January 1, 2014, the Governor's  
24 Office of Business and Economic Development shall implement  
25 and administer the California Demonstration of Emerging Market  
26 Opportunities (CalDEMO) Program.

27 (b) *The CalDEMO Program shall be designed to provide*  
28 *businesses and nonprofit organizations with the opportunity to do*  
29 *all of the following:*

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

33 *(2) Obtain high-profile public exposure for the business or*  
34 *nonprofit organization demonstrating an innovative solution or*  
35 *pilot project.*

36 *(3) Obtain data collection on a project's real-time performance*  
37 *in a public setting.*

38 *(4) Demonstrate that their innovation can be deployed, operated,*  
39 *and maintained in a real-world setting.*

1 (5) *Demonstrate that their business or nonprofit organization*  
 2 *has the capacity to sufficiently plan, deploy, operate, and maintain*  
 3 *their innovation in a real-world setting.*

4 (6) *Access new markets for innovative products.*

5 12099.1. For purposes of this article, the following terms shall  
 6 be defined as follows:

7 (a) ~~“Demonstration and testing project”~~ means a project  
 8 involving a request from a business or nonprofit organization to  
 9 make state resources available as a forum for testing, evaluating,  
 10 or demonstrating an innovative solution ~~of the business or nonprofit~~  
 11 ~~organization before the innovative solution is before being~~  
 12 ~~deployed in the marketplace.~~

13 (b) “Innovative solution” means a product, process, service, or  
 14 information technology that is new or improves upon an existing  
 15 product, process, service, or information technology ~~and is not~~  
 16 ~~presently available in the marketplace.~~ An innovative solution  
 17 shall be expected to deliver identifiable and measurable  
 18 ~~environmental, economic, or social benefits compared to current~~  
 19 ~~practices in the areas of environmental benefits, enhanced~~  
 20 ~~performance, or increases to the overall process reliability and or~~  
 21 ~~control, or economic and social benefits.~~ An innovative solution  
 22 shall also consist of a specific and identifiable research component.

23 (c) ~~“Mutual development opportunity project”~~ means a  
 24 ~~demonstration agreement that the office has identified as a potential~~  
 25 ~~candidate for making a contribution toward economic development~~  
 26 ~~in the state or has the potential for a beneficial use by the state.~~

27 (d)

28 (c) “Demonstration agreement” means an agreement between  
 29 a state agency and a business or nonprofit organization to test,  
 30 evaluate, or demonstrate an innovative solution ~~or pursuant to a~~  
 31 ~~demonstration project or pilot project.~~ A demonstration agreement  
 32 shall involve a pilot project, a demonstration and testing project,  
 33 or a mutual development opportunity project, as specified in the  
 34 scope of work.

35 (e)

36 (d) “Pilot project” means a ~~product, process, service, or~~  
 37 ~~information technology project involving a request from a business~~  
 38 ~~or nonprofit organization to make state resources available as a~~  
 39 ~~forum for testing, evaluating, or demonstrating an innovative~~  
 40 ~~solution that is currently available in the marketplace and which~~

1 ~~the state may want to explore for further application to improve~~  
2 ~~state services.~~

3 12099.2. The Director of the Governor’s Office of Business  
4 and Economic Development shall designate ~~a partnerships~~ *an*  
5 *innovation partnership* coordinator, who shall do all of the  
6 following:

7 (a) Provide guidance to the office and other state agencies  
8 regarding the interpretation and the application of the CalDEMO  
9 Program.

10 (b) Review and assist, as necessary, in the development of  
11 proposed demonstration agreements.

12 (c) Track and report on all approved demonstration agreements.  
13 ~~The partnerships~~ *innovation partnership* coordinator shall report  
14 to the office regarding the implementation and administration of  
15 the CalDEMO Program and the status of all approved  
16 demonstration agreements.

17 (d) Serve as a contact person for inquiries about the CalDEMO  
18 Program and serve as a liaison to connect potential *business and*  
19 *nonprofit organization* partners with appropriate state agencies.

20 (e) Develop and issue guidelines that are necessary for the  
21 fulfillment of this article.

22 (f) *Establish in the State Administrative Manual policies and*  
23 *procedures for state agencies to engage with the CalDEMO*  
24 *Program.*

25 12099.3. (a) (1) The office shall, *at least annually*, issue a  
26 request ~~from~~ *for* proposals from businesses and nonprofit  
27 organizations for the CalDemo Program.

28 (2) *A business or nonprofit organization may, at any time, submit*  
29 *a proposal for a demonstration project or pilot project to the office.*  
30 *If the innovation partnership coordinator has the resources, the*  
31 *coordinator shall review the proposal.*

32 (b) The business’s or nonprofit organization’s proposal shall  
33 include, but is not limited to, the following information:

34 (1) ~~A description of~~ *Background on* the business or nonprofit  
35 organization *submitting the proposal.*

36 (2) ~~The goals of the business or nonprofit organization and the~~  
37 ~~state, for the purpose of demonstrating that the proposed~~  
38 ~~demonstration agreement will be mutually beneficial to the parties~~  
39 ~~to the agreement.~~

40 (3)

- 1     ~~(2) A description of the innovative solution or pilot proposed~~  
2     ~~project, including whether the proposed demonstration agreement~~  
3     ~~shall be identified as *project is* a pilot project, demonstration and~~  
4     ~~testing project, or a mutual development opportunity or a~~  
5     ~~*demonstration* project.~~  
6     ~~(3) Identification of a problem that the proposed innovative~~  
7     ~~solution seeks to address.~~  
8     ~~(4) Performance measures that will be used to evaluate the~~  
9     ~~success of the project at the conclusion of the agreement.~~  
10    ~~(5) A list of the requested state resources that will could be used~~  
11    ~~to demonstrate the innovative solution or pilot *implement the*~~  
12    ~~project, including state-owned land, facilities, equipment,~~  
13    ~~rights-of-way, or data that is reasonably necessary.~~  
14    ~~(6) Any special consideration that should be taken into account.~~  
15    ~~(7) Any other information deemed relevant by the office,~~  
16    ~~including information necessary for the office to prepare the report~~  
17    ~~as required by this section.~~  
18    ~~(8) Identification of a problem the proposed innovative solution~~  
19    ~~or pilot project seeks to address.~~  
20    ~~(9) How the innovative solution or pilot project can benefit the~~  
21    ~~state.~~  
22    ~~(10) Identification of~~  
23    ~~(6) Certification that the proposed project meets all current~~  
24    ~~applicable industry standards, laws, and applicable regulations;~~  
25    ~~and whether the innovative solution or pilot project meets those~~  
26    ~~standards, laws, or regulations.~~  
27    ~~(7) Any other information deemed relevant by the office,~~  
28    ~~including information necessary for the office to prepare the report~~  
29    ~~as required by this article.~~  
30    (c) The office shall provide a preference for startup companies  
31    based in California. For purposes of this section, “startup  
32    companies based in California” means a small business, as defined  
33    in paragraph (1) of subdivision (d) of Section 14837, that has its  
34    headquarters in California and produces the innovative solution  
35    or pilot project to be demonstrated in California or a business that  
36    has an office in California and substantially manufactures the  
37    innovative solution or pilot project in California or substantially  
38    develops the research for the innovative solution or pilot project  
39    to be demonstrated in California.

1 (d) The office may charge a fee to the business or nonprofit  
2 organization to process the proposal that shall not exceed the  
3 *reasonable costs to the office.*

4 (e) *The office shall establish guidelines to implement the*  
5 *requirements of this article.*

6 ~~12099.4. (a) To ensure the efficient implementation and~~  
7 ~~administration of the CalDEMO Program, the partnerships~~  
8 ~~coordinator shall do all of the following:~~

9 ~~(1) Establish an investment advisory group to review and~~  
10 ~~comment on proposals.~~

11 ~~(2) Upon making the determination that the proposal may~~  
12 ~~proceed forward,~~

13 ~~12099.5. (a) After an application is submitted to the office,~~  
14 ~~the partnerships coordinator shall identify the appropriate state~~  
15 ~~agencies and coordinate and oversee the development of a~~  
16 ~~demonstration agreement between the state agency and the business~~  
17 ~~or nonprofit organization.~~

18 *12099.4. (a) To ensure the efficient implementation and*  
19 *administration of the CalDEMO Program, the innovation*  
20 *partnership coordinator shall do all of the following:*

21 *(1) Establish an investment advisory group to review and*  
22 *comment on proposals.*

23 *(2) Review proposals, including comments from the advisory*  
24 *group, and make a determination that the proposal meets the*  
25 *threshold requirements of the law and guidelines adopted pursuant*  
26 *to this article.*

27 *(3) Upon making the determination in paragraph (2), the*  
28 *innovation partnership coordinator shall identify and refer the*  
29 *proposal to the appropriate state agency or agencies. If the*  
30 *innovation partnership coordinator determines that it is*  
31 *appropriate to refer the proposal to more than one agency, the*  
32 *coordinator shall identify a lead state agency for the purpose of*  
33 *the review.*

34 *(4) The innovation partnership coordinator shall convene an*  
35 *initial meeting with the business or nonprofit organization and the*  
36 *appropriate state agency or agencies. Following the initial meeting,*  
37 *the appropriate state agency or the lead state agency, in the case*  
38 *of more than one agency, may hold additional meetings and request*  
39 *information from the business or nonprofit organization. The*  
40 *appropriate state agency or lead agency shall keep the innovation*

1 *partnership coordinator informed of its discussions with the*  
2 *business or nonprofit organization.*

3 *(5) If the appropriate state agency or agencies approve of the*  
4 *proposal, the innovation partnership coordinator shall coordinate*  
5 *and oversee the development of a demonstration agreement*  
6 *between the appropriate state agency and the business or nonprofit*  
7 *organization. A state agency shall act in good faith to assist in the*  
8 *development of a demonstration agreement.*

9 *(b) The business or nonprofit organization participating in the*  
10 *program shall, pursuant to guidance provided by the innovation*  
11 *partnership coordinator and appropriate state agencies, develop*  
12 ~~a demonstration agreement and scope of work that sets forth details~~  
13 ~~on how the innovative solution demonstration project or pilot~~  
14 ~~project is to be demonstrated in consultation with the appropriate~~  
15 ~~state agencies implemented. State agencies shall act in good faith~~  
16 ~~to assist in the development of a demonstration agreement.~~

17 *(c) A proposed demonstration agreement shall include, but is*  
18 *not limited to, the following requirements:*

19 *(1) The proposed demonstration agreement shall be identified*  
20 *identify the project as a pilot project, demonstration and testing*  
21 *project, or a mutual development opportunity or demonstration*  
22 *project.*

23 ~~*(2) The proposed demonstration agreement shall include a*~~  
24 ~~*termination date.*~~

25 ~~*(3) The proposed demonstration agreement shall clearly state*~~  
26 ~~*the goals of the business or nonprofit organization, for purposes*~~  
27 ~~*of demonstrating that the proposed demonstration agreement will*~~  
28 ~~*be mutually beneficial to the parties to the agreement.*~~

29 *(2) The proposed demonstration agreement shall describe the*  
30 *project, including, but not limited to, a description of the types of*  
31 *activities to be undertaken, facilities and resources to be used, and*  
32 *relevant timelines, including a start and termination date.*

33 *(3) The proposed demonstration agreement shall identify the*  
34 *participating state agency or agencies.*

35 ~~*(4) The proposed demonstration agreement shall include a set*~~  
36 ~~*of performance measures that can will be used by the business or*~~  
37 ~~*nonprofit organization to evaluate the success of the project at the*~~  
38 ~~*conclusion of the agreement. The data obtained during the*~~  
39 ~~*implementation of the project may assist the state to better manage*~~  
40 ~~*its own resources.*~~

1 (5) The *proposed demonstration agreement shall include a*  
2 *provision that the business or nonprofit organization shall agree*  
3 *agrees to indemnify the state against any liability or damages that*  
4 *may result from the project.*

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

10 (7) The proposed demonstration agreement ~~may require~~ *shall*  
11 *include a provision that the business or nonprofit organization*  
12 *agrees to purchase insurance coverage necessary, as determined*  
13 *by the state, to cover the costs of to the state for any risks.*

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

17 (8) *The proposed demonstration agreement shall include a*  
18 *provision that sets the maximum costs that the state can incur,*  
19 *including the methodology used to determine the costs.*

20 (9) The proposed demonstration agreement shall ~~require the~~  
21 ~~business or nonprofit organization to certify that the innovative~~  
22 ~~solution include a certification that the demonstration project or~~  
23 ~~pilot project is safe for demonstration for state employees and the~~  
24 ~~public.~~

25 (10) The proposed demonstration agreement shall include  
26 ~~timelines and other metrics~~ *other information or provisions*  
27 *determined by the innovation partnership coordinator to be*  
28 *relevant to the successful and safe undertaking of the project.*

29 (d) For purposes of a proposed demonstration agreement, the  
30 state agency may do all of the following:

31 (1) With approval of the appropriate state agency, authorize the  
32 temporary use of state-owned land, facilities, equipment,  
33 rights-of-way, or data that are reasonably necessary in conjunction  
34 with the project.

35 (2) ~~Absorb~~ *To the extent that the state may benefit from a*  
36 *demonstration project or pilot project, the state agency may absorb*  
37 *a portion of the costs to implement the project, in an amount not*  
38 *to exceed the anticipated benefits to the state of participating in*  
39 *the project.*

1 (3) Agree to nondisclosure agreements relating to proprietary  
2 information that the state acquires from a business or nonprofit  
3 organization during the implementation of a demonstration  
4 agreement.

5 (4) Perform *or cause to be performed* a safety assessment of  
6 the project. ~~The state agency may enter into a memorandum of~~  
7 ~~understanding with a qualified state entity to provide the safety~~  
8 ~~assessment.~~ If the state agency has reason to believe that the project  
9 is unsafe or likely to cause any danger, the state agency shall  
10 discontinue the project.

11 12099.5. (a) Demonstration agreements must be approved by  
12 all participating state agencies. After receiving approval from the  
13 participating state agencies, the office ~~must approve~~ *shall provide*  
14 *the final approval* of the demonstration agreement.

15 (b) The office shall post on its Internet Web site a brief  
16 description of each demonstration agreement, *including information*  
17 *on anticipated outcomes*. The office shall not make available any  
18 proprietary information that is subject to a nondisclosure agreement  
19 under paragraph (3) of subdivision (d) of Section 12099.4.

20 (c) The office shall ~~report~~ *biennially post on its Internet Web*  
21 *site information on the progress of the program. Within 30 days*  
22 *of posting this information, the office shall send a letter to the*  
23 *Assembly Committee on Jobs, Economic Development, and the*  
24 *Economy and the Senate Committee on Business, Professions and*  
25 *Economic Development* ~~biennially on the progress of the program~~  
26 ~~notifying the committees that the information is available and~~  
27 ~~where the information is located on the office's Internet Web site.~~  
28 ~~This report~~ *The posted information* may include information on  
29 the state of the demonstration agreements, challenges to program  
30 implementation, and recommendations for program improvement.

31 12099.6. (a) The office may enter into a partnership with  
32 foundations or private sector sponsors to solicit funding for the  
33 implementation of the CalDEMO Program. It is the intent of the  
34 Legislature that the office seek private sector sponsors and partners  
35 and foundations to solicit funding for the implementation of the  
36 CalDEMO Program consistent with paragraph (f) of Section  
37 12096.3.

38 (b) The office may enter into a memorandum of understanding  
39 or an interagency agreement to obtain technical, scientific, or  
40 administrative services or expertise to support the CalDEMO

1 Program. It is the intent of the Legislature that state agencies with  
2 appropriate subject matter expertise provide input to the office  
3 when requested.

4 (c) The office may enter into an agreement, including a  
5 memorandum of understanding, with another state agency or  
6 organization for the purpose of implementing the CalDEMO  
7 Program. The agreement shall be entered into for the purpose of  
8 reducing costs to the state, reducing or sharing risk, or obtaining  
9 technical, scientific, or administrative services or expertise. The  
10 agreement shall also specify, including, but not limited to, the  
11 metrics to be evaluated in determining whether the project is  
12 successful.

13 12099.7. It is the intent of the Legislature that the state shall  
14 not seek to co-own or procure any share of rights in the intellectual  
15 property that is developed during participation in the program.

16 12099.8. Any party to a demonstration agreement, including  
17 employees or potential subcontractors, shall comply with all  
18 applicable laws, regulations, and any other requirements pertaining  
19 to the implementation and execution of the demonstration  
20 agreement.

21 12099.9. If at any time a representative of a business or  
22 nonprofit organization is found by clear and convincing evidence  
23 to have falsified or withheld information that should have been  
24 disclosed, the state agency may discontinue the project and assess  
25 a fine of up to ten thousand dollars (\$10,000) against the business  
26 or nonprofit organization for a failure to comply with this section.

27 12100. This article shall remain in effect only until January 1,  
28 2019, and as of that date is repealed.

O