

AMENDED IN ASSEMBLY JUNE 12, 2013

SENATE BILL

No. 74

Introduced by Committee on Budget and Fiscal Review

January 10, 2013

An act relating to the Budget Act of 2013. An act to amend Sections 12838, 12838.1, and 15820.922 of the Government Code, and to amend Sections 6025, 6025.1, 6126, 6126.2, 6126.3, 6126.6, 6129, and 6133 of, and to repeal Section 6131 of, the Penal Code, relating to corrections and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 74, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2013.~~ *Corrections.*

Existing law establishes the Department of Corrections and Rehabilitation to oversee the state prison system. Within the department, existing law establishes 2 undersecretaries, one for administration and offender services and one for operations.

This bill would also establish within the department an Undersecretary for Health Care Services. The bill would establish, under that undersecretary, the Division of Health Care Operations and the Division of Health Care Policy and Administration to be headed by a director, who shall be appointed by the Governor.

Existing law establishes the Board of State and Community Corrections to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, among other duties. Existing law prohibits those members of the board from receiving compensation, but allows them to be

reimbursed for their actual and necessary travel expenses incurred in the performance of their duties.

Existing law prohibits Members of the Legislature and state, county, district, judicial district, and city officers or employees from having a financial interest in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law provides that every officer or person who is prohibited by the laws of this state from making or having an interest in contracts who willfully violates any of the provisions of those laws may be punished by a fine of not more than \$1,000, or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

This bill would, commencing July 1, 2013, add to the Board of State and Community Corrections a chairperson to be appointed by the Governor, subject to Senate confirmation. The bill would require that the chairperson serve full time. The bill would also exclude the chairperson from the provision prohibiting members of the board from receiving compensation and would require the Department of Human Resources to fix the compensation for the chairperson.

This bill would provide that members of a committee created by the Board of State and Community Corrections, including a member of the board in his or her capacity as a member of a committee created by the board, are deemed to have no financial interest in any contract made by the board based upon the receipt of compensation for holding public office or public employment, for purposes of the provisions prohibiting public officers from having a financial interest in any contract made by them in their official capacity, or by any body or board of which they are members.

Existing law creates the Office of the Inspector General, that is responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of the Department of Corrections and Rehabilitation. Existing law requires the Inspector General, when requested by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, to review policies, practices, and procedures of the department. Upon completion of the review, the Inspector General is required to prepare a public written report, as described, to be posted on its Internet Web site and a complete written report to be disclosed in confidence, along with all underlying materials the Inspector General deems appropriate, to the Governor, the Secretary of the Department of Corrections and Rehabilitation, and the appropriate law enforcement agency. Existing law prohibits the

Inspector General from hiring any person known to be directly or indirectly involved in an open internal affairs investigation being conducted by any federal, state, or local law enforcement agency, or the Office of the Inspector General.

This bill would remove the Secretary as a party who would receive a copy of the complete written report, and would instead require the Inspector General to provide the report to the authorized entity that requested the report and the appropriate law enforcement agency. The bill would delete the prohibition on hiring a person who is directly or indirectly involved in an open internal affairs investigation by the Office of the Inspector General, and would instead prohibit hiring someone who is directly or indirectly involved in an open internal affairs investigation by any federal, state, or local agency.

Existing law creates, within the Office of the Inspector General, a Bureau of Independent Review (BIR) subject to the direction of the Inspector General. The BIR is responsible for contemporaneous oversight of the department investigations conducted by its Office of Internal Affairs.

This bill would eliminate the BIR, make the Office of the Inspector General directly responsible for the BIR's duties and responsibilities, and require the Office of the Inspector General to have staff physically colocated with the department's Office of Internal Affairs.

The bill would delete obsolete provisions, and make conforming changes.

The bill would appropriate \$750,000 from the 1990 Prison Construction Fund to the Department of Corrections and Rehabilitation for statewide budget packages and advanced planning in its capital outlay program during the 2013–14 fiscal year, as specified. The bill would require that the funds be available for encumbrance until June 30, 2014, and be allocated by the Department of Corrections and Rehabilitation, upon approval by the Department of Finance.

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 2013.*~~

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

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

1 *SECTION 1. It is the intent of the Legislature in enacting*
 2 *Sections 2 and 3 of this act to demonstrate the state's will, capacity,*
 3 *and leadership in maintaining the improvements made in the*
 4 *delivery of medical services to inmates in prisons by the California*
 5 *Correctional Health Care Services under the leadership of the*
 6 *receiver appointed by the federal court. Furthermore, the*
 7 *Legislature recognizes that the receiver has implemented a*
 8 *well-functioning medical delivery system within prisons. Key*
 9 *contributors to this success have been the specific focus on health*
 10 *care and the ability to develop executive management with health*
 11 *care expertise. To maintain these improvements and retake control*
 12 *of the prison medical care system, it is necessary to create the*
 13 *proper organizational structure within the Department of*
 14 *Corrections and Rehabilitation to support the delivery of medical*
 15 *services to prisoners. Establishing an additional undersecretary,*
 16 *who operates at a peer level with the existing undersecretaries,*
 17 *signifies the organizational importance of health care services*
 18 *and ensures the executive leadership necessary for the mutual*
 19 *success of both the health care and custody operations.*

20 *SEC. 2. Section 12838 of the Government Code is amended to*
 21 *read:*

22 12838. (a) There is hereby created in state government the
 23 Department of Corrections and Rehabilitation, to be headed by a
 24 secretary, who shall be appointed by the Governor, subject to
 25 Senate confirmation, and shall serve at the pleasure of the
 26 Governor. The Department of Corrections and Rehabilitation shall
 27 consist of Adult Operations, Adult Programs, *Health Care Services*,
 28 Juvenile Justice, ~~the Corrections Standards Authority, the Board~~
 29 of Parole Hearings, the State Commission on Juvenile Justice, the
 30 Prison Industry Authority, and the Prison Industry Board.

31 (b) The Governor, upon recommendation of the secretary, may
 32 appoint ~~two~~ *three* undersecretaries of the Department of
 33 Corrections and Rehabilitation, subject to Senate confirmation.
 34 The undersecretaries shall hold office at the pleasure of the
 35 Governor. One undersecretary shall oversee administration and
 36 offender ~~services~~ *services, one undersecretary shall oversee health*
 37 *care services, and ~~the other~~ one* undersecretary shall oversee
 38 operations for the department.

1 (c) The Governor, upon recommendation of the secretary, shall
2 appoint a Chief for the Office of Victim Services, and a Chief for
3 the Office of Correctional Safety, both of whom shall serve at the
4 pleasure of the Governor.

5 *SEC. 3. Section 12838.1 of the Government Code is amended*
6 *to read:*

7 12838.1. (a) There is hereby created within the Department
8 of Corrections and Rehabilitation, under the Undersecretary for
9 Administration and Offender Services, the following divisions:

10 (1) The Division of Enterprise Information Services, the
11 Division of ~~Health Care Services~~, the Division of Facility Planning,
12 Construction, and Management, and the Division of Administrative
13 Services. Each division shall be headed by a director, who shall
14 be appointed by the Governor, upon recommendation of the
15 secretary, subject to Senate confirmation, who shall serve at the
16 pleasure of the Governor.

17 (2) The Division of Internal Oversight and Research. This
18 division shall be headed by a director, who shall be appointed by
19 the Governor, upon recommendation of the secretary, who shall
20 serve at the pleasure of the ~~Governor~~ Governor.

21 (b) *There is hereby created in the Department of Corrections*
22 *and Rehabilitation, under the Undersecretary for Health Care*
23 *Services, the Division of Health Care Operations and the Division*
24 *of Health Care Policy and Administration. Each division shall be*
25 *headed by a director, who shall be appointed by the Governor,*
26 *upon recommendation of the secretary, subject to Senate*
27 *confirmation, who shall serve at the pleasure of the Governor.*

28 ~~(b)~~

29 (c) There is hereby created within the Department of
30 Corrections and Rehabilitation, under the Undersecretary for
31 Operations, the Division of Adult Institutions, the Division of
32 Adult Parole Operations, the Division of Juvenile Justice, and the
33 Division of Rehabilitative Programs. Each division shall be headed
34 by a director, who shall be appointed by the Governor, upon
35 recommendation of the secretary, subject to Senate confirmation,
36 who shall serve at the pleasure of the Governor.

37 ~~(c)~~

38 (d) The Governor shall, upon recommendation of the secretary,
39 appoint four subordinate officers to the Division of Adult
40 Institutions, subject to Senate confirmation, who shall serve at the

1 pleasure of the Governor. Each subordinate officer appointed
2 pursuant to this subdivision shall oversee an identified category
3 of adult institutions, one of which shall be female offender
4 facilities.

5 (d)

6 (e) (1) Unless the context clearly requires otherwise, whenever
7 the term “Chief Deputy Secretary for Adult Operations” appears
8 in any statute, regulation, or contract, it shall be construed to refer
9 to the Director of the Division of Adult Institutions.

10 (2) Unless the context clearly requires otherwise, whenever the
11 term “Chief Deputy Secretary for Adult Programs” appears in any
12 statute, regulation, or contract, it shall be construed to refer to the
13 Director of the Division of Rehabilitative Programs.

14 (3) Unless the context clearly requires otherwise, whenever the
15 term “Chief Deputy Secretary for Juvenile Justice” appears in any
16 statute, regulation, or contract, it shall be construed to refer to the
17 Director of the Division of Juvenile Justice.

18 *SEC. 4. Section 15820.922 of the Government Code is amended*
19 *to read:*

20 15820.922. (a) The board may issue up to five hundred million
21 dollars (\$500,000,000) in revenue bonds, notes, or bond
22 anticipation notes, pursuant to Chapter 5 (commencing with Section
23 15830) to finance the acquisition, design, and construction,
24 including, without limitation, renovation, and a reasonable
25 construction reserve, of approved adult local criminal justice
26 facilities described in Section ~~15820.920~~, 15820.92, and any
27 additional amount authorized under Section 15849.6 to pay for the
28 cost of financing.

29 (b) Proceeds from the revenue bonds, notes, or bond anticipation
30 notes may be used to reimburse a participating county for the costs
31 of acquisition, design, and construction, including, without
32 limitation, renovation, for approved adult local criminal justice
33 facilities.

34 (c) Notwithstanding Section 13340, funds derived pursuant to
35 this section and Section 15820.921 are continuously appropriated
36 for purposes of this chapter.

37 *SEC. 5. Section 6025 of the Penal Code is amended to read:*

38 6025. (a) Commencing July 1, 2012, the Board of State and
39 Community Corrections shall be composed of 12 members, as
40 follows:

1 (1) The Chair of the Board of State and Community Corrections,
2 who shall be the Secretary of the Department of Corrections and
3 Rehabilitation.

4 (2) The Director of the Division of Adult Parole Operations for
5 the Department of Corrections and Rehabilitation.

6 (3) A county sheriff in charge of a local detention facility which
7 has a Corrections Standards Authority rated capacity of 200 or
8 less inmates, appointed by the Governor, subject to Senate
9 confirmation.

10 (4) A county sheriff in charge of a local detention facility which
11 has a Corrections Standards Authority rated capacity of over 200
12 inmates, appointed by the Governor, subject to Senate
13 confirmation.

14 (5) A county supervisor or county administrative officer. This
15 member shall be appointed by the Governor, subject to Senate
16 confirmation.

17 (6) A chief probation officer from a county with a population
18 over 200,000, appointed by the Governor, subject to Senate
19 confirmation.

20 (7) A chief probation officer from a county with a population
21 under 200,000, appointed by the Governor, subject to Senate
22 confirmation.

23 (8) A judge appointed by the Judicial Council of California.

24 (9) A chief of police, appointed by the Governor, subject to
25 Senate confirmation.

26 (10) A community provider of rehabilitative treatment or
27 services for adult offenders, appointed by the Speaker of the
28 Assembly.

29 (11) A community provider or advocate with expertise in
30 effective programs, policies, and treatment of at-risk youth and
31 juvenile offenders, appointed by the Senate Committee on Rules.

32 (12) A public member, appointed by the Governor, subject to
33 Senate confirmation.

34 *(b) Commencing July 1, 2013, the Board of State and*
35 *Community Corrections shall be composed of 13 members, as*
36 *follows:*

37 *(1) The Chair of the Board of State and Community Corrections,*
38 *who shall be appointed by the Governor, subject to Senate*
39 *confirmation.*

1 (2) *The Secretary of the Department of Corrections and*
2 *Rehabilitation.*

3 (3) *The Director of the Division of Adult Parole Operations for*
4 *the Department of Corrections and Rehabilitation.*

5 (4) *The individuals listed in paragraphs (3) to (12), inclusive,*
6 *of subdivision (a), who shall serve or continue to serve terms as*
7 *provided in subdivision (d).*

8 (c) *The Chair of the Board of State and Community Corrections*
9 *shall serve full time.*

10 ~~(b)~~

11 (d) The terms of the members appointed by the Governor shall
12 expire as follows: three on July 1, 2014, and four on July 1, 2015,
13 as specified by the Governor. The term of the member appointed
14 by the Senate Committee on Rules shall expire on July 1, 2014.
15 The term of the member appointed by the Speaker of the Assembly
16 shall expire on July 1, 2015. The term of the member appointed
17 by the Judicial Council shall expire on July 1, 2015. Successor
18 members shall hold office for terms of three years, each term to
19 commence on the expiration date of the predecessor. Any
20 appointment to a vacancy that occurs for any reason other than
21 expiration of the term shall be for the remainder of the unexpired
22 term. Members are eligible for reappointment.

23 ~~(e)~~

24 (e) The board shall select a vice chairperson from among its
25 members, who shall be either a chief probation officer or a sheriff.
26 Seven members of the board shall constitute a quorum.

27 ~~(d)~~

28 (f) When the board is hearing charges against any member, the
29 individual concerned shall not sit as a member of the board for the
30 period of hearing of charges and the determination of
31 recommendations to the Governor.

32 ~~(e)~~

33 (g) If any appointed member is not in attendance for three
34 meetings in any calendar year, the board shall inform the
35 appointing authority, which may remove that member and make
36 a new appointment, as provided in this section, for the remainder
37 of the term.

38 *SEC. 6. Section 6025.1 of the Penal Code is amended to read:*

39 6025.1. (a) Members of the board, *with the exception of the*
40 *Chair of the Board of State and Community Corrections,* shall

1 receive no compensation, but shall be reimbursed for their actual
2 and necessary travel expenses incurred in the performance of their
3 duties. For purposes of compensation, attendance at meetings of
4 the board shall be deemed performance by a member of the duties
5 of his or her state or local governmental employment. *For purposes*
6 *of Section 1090 of the Government Code, members of a committee*
7 *created by the board, including a member of the board in his or*
8 *her capacity as a member of a committee created by the board,*
9 *have no financial interest in any contract made by the board,*
10 *including a grant or bond financing transaction, based upon the*
11 *receipt of compensation for holding public office or public*
12 *employment.*

13 (b) *The Chair of the Board of State and Community Corrections*
14 *shall serve full time. The Department of Human Resources shall*
15 *fix the compensation of the Chair of the Board of State and*
16 *Community Corrections.*

17 SEC. 7. *Section 6126 of the Penal Code is amended to read:*

18 6126. (a) The Inspector General shall be responsible for
19 contemporaneous oversight of internal affairs investigations and
20 the disciplinary process of the Department of Corrections and
21 Rehabilitation, pursuant to Section 6133 under policies to be
22 developed by the Inspector General.

23 (b) When requested by the Governor, the Senate Committee on
24 Rules, or the Speaker of the Assembly, the Inspector General shall
25 review policies, practices, and procedures of the department. The
26 Inspector General, under policies developed by the Inspector
27 General, may recommend that the Governor, the Senate Committee
28 on Rules, or the Speaker of the Assembly request a review of a
29 specific departmental policy, practice, or procedure ~~which~~ *that*
30 *raises a significant correctional issue relevant to the effectiveness*
31 *of the department. When exigent circumstances of unsafe or life*
32 *threatening situations arise involving inmates, wards, parolees, or*
33 *staff, the Inspector General may, by whatever means is most*
34 *expeditious, notify the Governor, Senate Committee on Rules, or*
35 *the Speaker of the Assembly.*

36 (c) (1) Upon completion of a review, the Inspector General
37 ~~shall provide~~ *prepare a response complete written report, which*
38 *shall be held as confidential and disclosed in confidence, along*
39 *with all underlying materials the Inspector General deems*

1 *appropriate, to the requester, requesting entity in subdivision (b)*
2 *and the appropriate law enforcement agency.*

3 *(2) The Inspector General shall also prepare a public report.*
4 *When necessary, the public report shall differ from the complete*
5 *written report in the respect that the Inspector General shall have*
6 *the discretion to redact or otherwise protect the names of*
7 *individuals, specific locations, or other facts that, if not redacted,*
8 *might hinder prosecution related to the review, or where disclosure*
9 *of the information is otherwise prohibited by law, and to decline*
10 *to produce any of the underlying materials. Copies of public*
11 *reports shall be posted on the Office of the Inspector General's*
12 *Internet Web site.*

13 (d) The Inspector General shall, during the course of a review,
14 identify areas of full and partial compliance, or noncompliance,
15 with departmental policies and procedures, specify deficiencies in
16 the completion and documentation of processes, and recommend
17 corrective actions, including, but not limited to, additional training,
18 additional policies, or changes in policy, as well as any other
19 findings or recommendations that the Inspector General deems
20 appropriate.

21 (e) The Inspector General, pursuant to Section 6126.6, shall
22 review the Governor's candidates for appointment to serve as
23 warden for the state's adult correctional institutions and as
24 superintendents for the state's juvenile facilities.

25 (f) The Inspector General shall conduct an objective, clinically
26 appropriate, and metric-oriented medical inspection program to
27 periodically review delivery of medical care at each state prison.

28 (g) The Inspector General shall conduct an objective,
29 metric-oriented oversight and inspection program to periodically
30 review delivery of the reforms identified in the document released
31 by the Department of Corrections and Rehabilitation in April 2012,
32 entitled *The Future of California Corrections: A Blueprint to Save*
33 *Billions of Dollars, End Federal Court Oversight, and Improve the*
34 *Prison System (the blueprint)*, including, but not limited to, the
35 following specific goals and reforms described by the blueprint:

36 (1) Whether the department has increased the percentage of
37 inmates served in rehabilitative programs to 70 percent of the
38 department's target population prior to their release.

39 (2) The establishment of an adherence to the standardized
40 staffing model at each institution.

1 (3) The establishment of an adherence to the new inmate
2 classification score system.

3 (4) The establishment of and adherence to the new prison gang
4 management system, including changes to the department's current
5 policies for identifying prison-based gang members and associates
6 and the use and conditions associated with the department's ~~secured~~
7 *security* housing units.

8 (5) The implementation of and adherence to the Comprehensive
9 Housing Plan described in the blueprint.

10 (h) The Inspector General shall, in consultation with the
11 Department of Finance, develop a methodology for producing a
12 workload budget to be used for annually adjusting the budget of
13 the Office of the Inspector General, beginning with the budget for
14 the 2005–06 fiscal year.

15 *SEC. 8. Section 6126.2 of the Penal Code is amended to read:*

16 6126.2. The Inspector General shall not hire any person known
17 to be directly or indirectly involved in an open internal affairs
18 investigation being conducted by any federal, state, or local ~~law~~
19 ~~enforcement agency or the Office of the Inspector General.~~ *agency.*

20 *SEC. 9. Section 6126.3 of the Penal Code is amended to read:*

21 6126.3. (a) The Inspector General shall not destroy any papers
22 or memoranda used to support a completed review within three
23 years after a report is released.

24 (b) Except as provided in subdivision (c), all books, papers,
25 records, and correspondence of the office pertaining to its work
26 are public records subject to Chapter 3.5 (commencing with Section
27 6250) of Division 7 of Title 1 of the Government Code and shall
28 be filed at any of the regularly maintained offices of the Inspector
29 General.

30 (c) The following books, papers, records, and correspondence
31 of the Office of the Inspector General pertaining to its work are
32 not public records subject to Chapter 3.5 (commencing with Section
33 6250) of Division 7 of Title 1 of the Government Code, nor shall
34 they be subject to discovery pursuant to any provision of Title 3
35 (commencing with Section 1985) of Part 4 of the Code of Civil
36 Procedure or Chapter 7 (commencing with Section 19570) of Part
37 2 of Division 5 of Title 2 of the Government Code in any manner:

38 (1) All reports, papers, correspondence, memoranda, electronic
39 communications, or other documents that are otherwise exempt
40 from disclosure pursuant to the provisions of subdivision (d) of

1 Section 6126.5, Section 6126.6, subdivision (c) of Section 6128,
2 subdivision ~~(a) or (b)~~ (c) of Section ~~6131~~, 6126, or all other
3 applicable laws regarding confidentiality, including, but not limited
4 to, the California Public Records Act, the Public Safety Officers'
5 Procedural Bill of Rights, the Information Practices Act of 1977,
6 the Confidentiality of Medical Information Act of 1977, and the
7 provisions of Section 832.7, relating to the disposition notification
8 for complaints against peace officers.

9 (2) Any papers, correspondence, memoranda, electronic
10 communications, or other documents pertaining to any review that
11 has not been completed.

12 (3) Any papers, correspondence, memoranda, electronic
13 communications, or other documents pertaining to internal
14 discussions between the Inspector General and his or her staff, or
15 between staff members of the Inspector General, or any personal
16 notes of the Inspector General or his or her staff.

17 (4) All identifying information, and any personal papers or
18 correspondence from any person requesting assistance from the
19 Inspector General, except in those cases where the Inspector
20 General determines that disclosure of the information is necessary
21 in the interests of justice.

22 (5) Any papers, correspondence, memoranda, electronic
23 communications, or other documents pertaining to
24 contemporaneous public oversight pursuant to Section 6133.

25 *SEC. 10. Section 6126.6 of the Penal Code is amended to read:*
26 6126.6. (a) Prior to filling a vacancy for warden by
27 appointment pursuant to Section 6050, or superintendent pursuant
28 to Section 1049 of the Welfare and Institutions Code, the Governor
29 shall first submit to the Inspector General the names of candidates
30 for the position of warden or superintendent for review of their
31 qualifications.

32 (b) (1) Upon receipt of the names of those candidates and their
33 completed personal data questionnaires, the Inspector General
34 shall employ appropriate confidential procedures to evaluate and
35 determine the qualifications of each candidate with regard to his
36 or her ability to discharge the duties of the office to which the
37 appointment or nomination is made.

38 ~~Within~~

39 (2) *Within* 90 days of submission by the Governor of those
40 names, the Inspector General shall advise in confidence to the

1 Governor his or her recommendation whether the candidate is
2 exceptionally well-qualified, well-qualified, qualified, or not
3 qualified and the reasons therefore, and may report, in confidence,
4 any other information that the Inspector General deems pertinent
5 to the qualifications of the candidate.

6 (c) In reviewing the qualifications of a candidate for the position
7 of warden or superintendent, the Inspector General shall consider,
8 among other appropriate factors, his or her experience in effectively
9 managing correctional facilities and inmate or ward populations;
10 ability to deal effectively with employees, detained persons and
11 other interested persons in addressing management, confinement,
12 and safety issues in an effective, fair, and professional manner;
13 and knowledge of correctional best practices.

14 (d) The Inspector General shall establish and adopt rules and
15 procedures regarding the review of the qualifications of candidates
16 for the position of warden or superintendent. Those rules and
17 procedures shall establish appropriate, confidential methods for
18 disclosing to the candidate the subject matter of substantial and
19 credible adverse allegations received regarding the candidate's
20 reputation and integrity which, unless rebutted, would be
21 determinative of the candidate's unsuitability for appointment. ~~No~~
22 A rule or procedure shall *not* be adopted that permits the disclosure
23 to the candidate of information from which the candidate may infer
24 the source, and ~~no~~ information shall ~~either~~ *neither* be disclosed to
25 the candidate nor be obtainable by any process ~~which~~ *that* would
26 jeopardize the confidentiality of communications from persons
27 whose opinion has been sought on the candidate's qualifications.

28 (e) All communications, written, ~~verbal~~ *verbal*, or otherwise,
29 of and to the Governor, the Governor's authorized agents or
30 employees, including, but not limited to, the Governor's Legal
31 Affairs Secretary and Appointments Secretary, or of and to the
32 Inspector General in furtherance of the purposes of this section
33 are absolutely privileged from disclosure and confidential, and
34 any communication made in the discretion of the Governor or the
35 Inspector General with a candidate or person providing information
36 in furtherance of the purposes of this section shall not constitute
37 a waiver of the privilege or a breach of confidentiality.

38 (f) When the Governor has appointed a person to the position
39 of warden or superintendent who has been found not qualified by
40 the Inspector General, the Inspector General shall make public

1 that finding, after due notice to the appointee of his or her intention
2 to do so. That notice and disclosure shall not constitute a waiver
3 of privilege or breach of confidentiality with respect to
4 communications of or to the Inspector General concerning the
5 qualifications of the appointee.

6 (g) ~~No~~A person or entity shall *not* be liable for any injury caused
7 by any act or failure to act, be it negligent, intentional,
8 discretionary, or otherwise, in the furtherance of the purposes of
9 this section, including, but not limited to, providing or receiving
10 any information, making any recommendations, and giving any
11 reasons therefore.

12 (h) As used in this section, the term “Inspector General” includes
13 employees and agents of the Office of the Inspector General.

14 (i) At any time prior to the receipt of the review from the
15 Inspector General specified in subdivision (b), the Governor may
16 withdraw the name of any person submitted to the Inspector
17 General for evaluation pursuant to this section.

18 (j) No candidate for the position of warden or superintendent
19 may be appointed until the Inspector General has advised the
20 Governor pursuant to this section, or until 90 days have elapsed
21 after submission of the candidate’s name to the Inspector General,
22 whichever occurs earlier. The requirement of this subdivision shall
23 not apply to any vacancy in the position of warden or
24 superintendent occurring within the 90 days preceding the
25 expiration of the Governor’s term of office, provided, however,
26 that with respect to those vacancies, the Governor shall be required
27 to submit any candidate’s name to the Inspector General in order
28 to provide him or her an opportunity, if time permits, to review
29 and make a report.

30 ~~Nothing in this~~ This section shall *not* be construed as
31 imposing an additional requirement for an appointment or
32 nomination to the position of warden or superintendent, nor shall
33 anything in this section be construed as adding any additional
34 qualifications for the position of warden or superintendent.

35 ~~(l) Wardens who have been appointed but not yet confirmed as~~
36 ~~of July 1, 2005, need not be reappointed to the position after that~~
37 ~~date, but are subject to the review process provided in this section.~~

38 *SEC. 11. Section 6129 of the Penal Code is amended to read:*

1 6129. (a) (1) For purposes of this section, “employee” means
2 any person employed by the Department of Corrections and
3 Rehabilitation.

4 (2) For purposes of this section, “retaliation” means intentionally
5 engaging in acts of reprisal, retaliation, threats, coercion, or similar
6 acts against another employee who has done any of the following:

7 (A) Has disclosed or is disclosing to any employee at a
8 supervisory or managerial level, what the employee, in good faith,
9 believes to be improper governmental activities.

10 (B) Has cooperated or is cooperating with any investigation of
11 improper governmental activities.

12 (C) Has refused to obey an illegal order or directive.

13 (b) (1) Upon receiving a complaint of retaliation from an
14 employee against a member of management at the Department of
15 Corrections and Rehabilitation, the Inspector General shall
16 commence an inquiry into the complaint and conduct a formal
17 ~~review~~ *investigation* where a legally cognizable cause of action is
18 presented. All ~~reviews~~ *investigations* conducted pursuant to this
19 section shall be performed in accordance with Sections 6126.5 and
20 6127.3. The Inspector General may refer all other matters for
21 investigation by the appropriate employing entity, subject to
22 oversight by the Inspector General. In a case in which the
23 employing entity declines to investigate the complaint, it shall,
24 within 30 days of receipt of the referral by the Inspector General,
25 notify the Inspector General of its decision. The Inspector General
26 shall thereafter, conduct his or her own inquiry into the complaint.
27 If, after reviewing the complaint, the Inspector General determines
28 that a legally cognizable cause of action has not been presented
29 by the complaint, the Inspector General shall thereafter notify the
30 complaining employee and the State Personnel Board that a formal
31 ~~review~~ *investigation* is not warranted.

32 (2) When ~~reviewing~~ *investigating* a complaint, in determining
33 whether retaliation has occurred, the Inspector General or the
34 employing entity shall consider, among other things, whether any
35 of the following either actually occurred or were threatened:

36 (A) Unwarranted or unjustified staff changes.

37 (B) Unwarranted or unjustified letters of reprimand or other
38 disciplinary actions, or unsatisfactory evaluations.

39 (C) Unwarranted or unjustified formal or informal investigations.

1 (D) Engaging in acts, or encouraging or permitting other
2 employees to engage in acts, that are unprofessional, or foster a
3 hostile work environment.

4 (E) Engaging in acts, or encouraging or permitting other
5 employees to engage in acts, that are contrary to the rules,
6 regulations, or policies of the workplace.

7 (3) In a case in which the complaining employee has also filed
8 a retaliation complaint with the State Personnel Board pursuant to
9 Sections 8547.8 and 19683 of the Government Code, the State
10 Personnel Board shall have the discretion to toll any investigation,
11 hearing, or other proceeding that would otherwise be conducted
12 by the State Personnel Board in response to that complaint, pending
13 either the completion of the Inspector General's ~~review~~ or the
14 employing entity's investigation, or until the complaint is rejected
15 or otherwise dismissed by the Inspector General or the employing
16 entity. An employee, however, may not be required to first file a
17 retaliation complaint with the Inspector General prior to filing a
18 complaint with the State Personnel Board.

19 (A) In a case in which the complaining employee has filed a
20 retaliation complaint with the Inspector General but not with the
21 State Personnel Board, the limitation period for filing a retaliation
22 complaint with the State Personnel Board shall be tolled until the
23 time the Inspector General or the employing entity either issues
24 its report to the State Personnel Board, or until the complaint is
25 rejected or otherwise dismissed by the Inspector General or the
26 employing entity.

27 (B) In order to facilitate coordination of efforts between the
28 Inspector General and the State Personnel Board, the Inspector
29 General shall notify the State Personnel Board of the identity of
30 any employee who has filed a retaliation complaint with the
31 Inspector General, and the State Personnel Board shall notify the
32 Inspector General of the identity of any employee who has filed
33 a retaliation complaint with the State Personnel Board.

34 (c) (1) In a case in which the Inspector General determines, as
35 a result of his or her own ~~review~~, *investigation*, that an employee
36 has been subjected to acts of reprisal, retaliation, threats, or similar
37 acts in violation of this section, the Inspector General shall provide
38 a copy of the report, together with all other underlying materials
39 the Inspector General determines to be relevant, to the appropriate
40 director or chair who shall take appropriate corrective action. In

1 a case in which the Inspector General determines, based on an
2 independent review of the investigation conducted by the
3 employing entity, that an employee has been subjected to acts of
4 reprisal, retaliation, threats, or similar acts in violation of this
5 section, the Inspector General shall submit a written
6 recommendation to the appropriate director or chair who shall take
7 appropriate corrective action. If the hiring authority initiates
8 disciplinary action as defined in Section 19570 of the Government
9 Code, it shall provide the subject with all materials required by
10 law.

11 (2) Any employee at any rank and file, supervisory, or
12 managerial level, who intentionally engages in acts of reprisal,
13 retaliation, threats, coercion, or similar acts against another
14 employee, pursuant to paragraph (2) of subdivision (a), shall be
15 disciplined by the employing entity by adverse action as provided
16 in Section 19572 of the Government Code. The disciplinary action
17 shall require, at a minimum, a suspension for not less than 30 days
18 without pay, except in a case in which the employing entity
19 determines that a lesser penalty is warranted. In that case, the
20 employing entity shall, within 30 days of receipt of the report,
21 provide written justification for that decision to the Inspector
22 General. The employing entity shall also, within 30 days of receipt
23 of the written report, notify the Inspector General in writing as to
24 what steps, if any, it has taken to remedy the retaliatory conduct
25 found to have been committed by any of its employees.

26 (d) (1) In an instance in which the appropriate director or chair
27 declines to take adverse action against any employee found by the
28 Inspector General to have engaged in acts of reprisal, retaliation,
29 threats, or similar acts in violation of this section, the director or
30 chair shall notify the Inspector General of that fact in writing within
31 30 days of receipt of the report from the Inspector General, and
32 shall notify the Inspector General of the specific reasons why the
33 director or chair declined to invoke adverse action proceedings
34 against the employee.

35 (2) The Inspector General shall, thereafter, with the written
36 consent of the complaining employee, forward an unredacted copy
37 of the report, together with all other underlying materials the
38 Inspector General deems to be relevant, to the State Personnel
39 Board so that the complaining employee can request leave to file
40 charges against the employee found to have engaged in acts of

1 reprisal, retaliation, threats, or similar acts, in accordance with the
2 provisions of Section 19583.5 of the Government Code. If the
3 State Personnel Board accepts the complaint, the board shall
4 provide the charged and complaining parties with a copy of all
5 relevant materials.

6 (3) In addition to all other penalties provided by law, including
7 Section 8547.8 of the Government Code or any other penalties
8 that the sanctioning authority may determine to be appropriate,
9 any state employee at any rank and file, supervisory, or managerial
10 level found by the State Personnel Board to have intentionally
11 engaged in acts of reprisal, retaliation, threats, or coercion shall
12 be suspended for not less than 30 days without pay, and shall be
13 liable in an action for damages brought against him or her by the
14 injured party. If the State Personnel Board determines that a lesser
15 period of suspension is warranted, the reasons for that
16 determination must be justified in writing in the decision.

17 (e) Nothing in this section shall prohibit the employing entity
18 from exercising its authority to terminate, suspend, or discipline
19 an employee who engages in conduct prohibited by this section.

20 *SEC. 12. Section 6131 of the Penal Code is repealed.*

21 ~~6131. (a) Upon the completion of any review conducted by
22 the Inspector General, he or she shall prepare a public written
23 report. The public written report shall differ from the complete
24 written report in the respect that the Inspector General shall have
25 the discretion to redact or otherwise protect the names of
26 individuals, specific locations, or other facts that, if not redacted,
27 might hinder prosecution related to the review, or where disclosure
28 of the information is otherwise prohibited by law, and to decline
29 to produce any of the underlying materials. Copies of public written
30 reports shall be posted on the Inspector General's Internet Web
31 site within 10 days of being disclosed to the entities or persons
32 listed in subdivision (b):~~

33 ~~(b) Upon the completion of any review conducted by the
34 Inspector General, he or she shall prepare a complete written report,
35 which shall be held as confidential and disclosed in confidence,
36 along with all underlying materials the Inspector General deems
37 appropriate, to the Governor, the Secretary of the Department of
38 Corrections and Rehabilitation, and the appropriate law
39 enforcement agency.~~

40 *SEC. 13. Section 6133 of the Penal Code is amended to read:*

1 ~~6133. (a) There is created within the Office of the Inspector~~
2 ~~General a Bureau of Independent Review (BIR), which shall be~~
3 ~~subject to the direction of the Inspector General.~~

4 ~~(b)~~

5 6133. (a) ~~The BIR Office of the Inspector General~~ shall be
6 responsible for contemporaneous public oversight of the
7 Department of Corrections and Rehabilitation investigations
8 conducted by the Department of Corrections and Rehabilitation's
9 Office of Internal Affairs. *To facilitate oversight, the Office of the*
10 *Inspector General shall have staff physically colocated with the*
11 *Department of Corrections and Rehabilitation's Office of Internal*
12 *Affairs, within a reasonable timeframe and without any undue*
13 *delays.* ~~The BIR Office of the Inspector General~~ shall also be
14 responsible for advising the public regarding the adequacy of each
15 investigation, and whether discipline of the subject of the
16 investigation is warranted. ~~The BIR Office of the Inspector General~~
17 shall have discretion to provide public oversight of other
18 Department of Corrections and Rehabilitation personnel
19 investigations as needed.

20 ~~(c)~~

21 ~~(b) (1) The BIR Office of the Inspector General~~ shall issue
22 regular reports, no less than annually, to the Governor and the
23 Legislature summarizing its recommendations concerning its
24 oversight of the Department of Corrections and Rehabilitation
25 allegations of internal misconduct and use of force. ~~The BIR Office~~
26 ~~of the Inspector General~~ shall also issue regular reports, no less
27 than semiannually, summarizing its oversight of Office of Internal
28 Affairs investigations pursuant to subdivision ~~(b)~~: (a). The reports
29 shall include, but not be limited to, *all of the following*:

30 (A) Data on the number, type, and disposition of complaints
31 made against correctional officers and staff.

32 (B) A synopsis of each matter reviewed by the ~~BIR~~: *Office of*
33 *the Inspector General*.

34 (C) An assessment of the quality of the investigation, the
35 appropriateness of any disciplinary charges, the ~~BIR's~~ *Office of*
36 *the Inspector General's* recommendations regarding the disposition
37 in the case and when founded, the level of discipline afforded, and
38 the degree to which the agency's authorities agreed with the ~~BIR~~
39 *Office of the Inspector General* recommendations regarding
40 disposition and level of discipline.

1 (D) The report of any settlement and whether the ~~BIR~~ *Office of*
2 *the Inspector General* concurred with the settlement.

3 (E) The extent to which any discipline was modified after
4 imposition.

5 (2) The reports shall be in a form ~~which~~ *that* does not identify
6 the agency employees involved in the alleged misconduct.

7 (3) The reports shall be posted on the Inspector General's
8 *Internet* Web site and otherwise made available to the public upon
9 their release to the Governor and the Legislature.

10 *SEC. 14. (a) The amount of seven hundred fifty thousand*
11 *dollars (\$750,000) is hereby appropriated from the 1990 Prison*
12 *Construction Fund to the Department of Corrections and*
13 *Rehabilitation for statewide budget packages and advanced*
14 *planning in its capital outlay program during the 2013–14 fiscal*
15 *year. The funds hereby appropriated shall be available for*
16 *encumbrance until June 30, 2014. These funds are to be allocated*
17 *by the Department of Corrections and Rehabilitation, upon*
18 *approval by the Department of Finance to develop design and cost*
19 *information for new projects for which funds have not been*
20 *previously appropriated, but for which preliminary plans funds,*
21 *working drawings funds, or working drawings and construction*
22 *funds are expected to be included in the Budget Act of 2014 or*
23 *Budget Act of 2015, and for which cost estimates or preliminary*
24 *plans can be developed prior to legislative hearings on the Budget*
25 *Act of 2014 or Budget Act of 2015, respectively. Upon approval*
26 *by the Department of Finance, these funds may also be used to*
27 *develop scope and cost information for projects authorized by*
28 *Sections 15819.40 to 15819.404, inclusive, of the Government*
29 *Code.*

30 *(b) (1) These funds may be used for studies, budget package*
31 *development, environmental services, architectural programming,*
32 *engineering assessments, schematic design, and preliminary plans.*

33 *(2) As used in this section, "studies" shall include site studies*
34 *and suitability reports, environmental studies, master planning,*
35 *architectural programming, and schematics.*

36 *(3) Before using these funds for preliminary plans, the*
37 *Department of Corrections and Rehabilitation shall provide a*
38 *20-day notification to the Chairperson of the Joint Legislative*
39 *Budget Committee, the chairpersons of the respective fiscal*
40 *committee of each house of the Legislature, and the legislative*

1 *members of the State Public Works Board, discussing the scope,*
2 *cost, and future implications of the use of funds for preliminary*
3 *plans.*

4 *(c) The amount appropriated hereby is not to be construed as*
5 *a commitment by the Legislature as to the amount of capital outlay*
6 *funds the Legislature will appropriate in any future year.*

7 *SEC. 15. This act is a bill providing for appropriations related*
8 *to the Budget Bill within the meaning of subdivision (e) of Section*
9 *12 of Article IV of the California Constitution, has been identified*
10 *as related to the budget in the Budget Bill, and shall take effect*
11 *immediately.*

12 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
13 ~~changes relating to the Budget Act of 2013.~~