

AMENDED IN SENATE JUNE 25, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1646

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

February 13, 2012

An act to add and repeal Article 6 (commencing with Section 12099) 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, *as defined*, to test, evaluate, or demonstrate innovative solutions pursuant to demonstration projects and pilot projects, as defined. *The bill would prohibit the office from approving more than 10 demonstration agreements per year.* 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, 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 These provisions would be repealed as of January 1, 2019.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

1 innovation platform for startup companies, economic development
2 organizations, business groups, and venture capitalists.

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

6
7 Article 6. California Demonstration of Emerging Market
8 Opportunities Act
9

10 12099. (a) Commencing January 1, 2014, the Governor's
11 Office of Business and Economic Development shall implement
12 and administer the California Demonstration of Emerging Market
13 Opportunities (CalDEMO) Program.

14 (b) The CalDEMO Program shall be designed to provide
15 businesses and nonprofit organizations with the opportunity to do
16 all of the following:

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

20 (2) Obtain high-profile public exposure for the business or
21 nonprofit organization demonstrating an innovative solution or
22 pilot project.

23 (3) Obtain data collection on a project's real-time performance
24 in a public setting.

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

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

30 (6) Access new markets for innovative products.

31 12099.1. For purposes of this article, the following terms shall
32 be defined as follows:

33 (a) "Demonstration project" means a project involving a request
34 from a business or nonprofit organization to make state resources
35 available as a forum for testing, evaluating, or demonstrating an
36 innovative solution before being deployed in the marketplace.

37 (b) "Innovative solution" means a product, process, service, or
38 information technology that is new or improves upon an existing
39 product, process, service, or information technology. An innovative
40 solution shall be expected to deliver identifiable and measurable

1 environmental, economic, or social benefits, enhanced
2 performance, or increases to the overall process reliability or
3 control. An innovative solution shall also consist of a specific and
4 identifiable research component.

5 (c) “Demonstration agreement” means an agreement between
6 a state agency and a business or nonprofit organization to test,
7 evaluate, or demonstrate an innovative solution pursuant to a
8 demonstration project or pilot project.

9 (d) “Pilot project” means a project involving a request from a
10 business or nonprofit organization to make state resources available
11 as a forum for testing, evaluating, or demonstrating an innovative
12 solution that is currently available in the marketplace.

13 (e) “*Business or nonprofit organization*” means a business or
14 nonprofit organization primarily engaged in activities described
15 in Codes 11, 213111, 213112, 213113, 213114, 213115, 221119,
16 221122, 221210, 221310, 237110, 237130, 237310, 237990, 48-49,
17 484110, 485112, 511199, 511210, 512110, 512120, 512240,
18 512290, 518210, 541310, 541320, 541330, 541340, 541350,
19 541360, 541370, 541380, 541420, 541430, 541490, 541511,
20 541512, 541513, 541519, 541614, 541618, 541620, 541690,
21 541711, 541712, 541720, 541921, 541922, 541930, 541990,
22 811111, 811112, 811113, 811118, 811121, 811198, 811211,
23 811212, 811213, 811219, 811310, 811411, 811412, 811420,
24 811490, 812921, and 812922 of the North American Industry
25 Classification System Manual published by the United States Office
26 of Management and Budget, 2012 edition.

27 12099.2. The Director of the Governor’s Office of Business
28 and Economic Development shall designate an innovation
29 partnership coordinator, who shall do all of the following:

30 (a) Provide guidance to the office and other state agencies
31 regarding the interpretation and the application of the CalDEMO
32 Program.

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

35 (c) Track and report on all approved demonstration agreements.
36 The innovation partnership coordinator shall report to the office
37 regarding the implementation and administration of the CalDEMO
38 Program and the status of all approved demonstration agreements.

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

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

6 (f) Establish in the State Administrative Manual policies and
7 procedures for state agencies to engage with the CalDEMO
8 Program.

9 12099.3. (a) (1) The office shall issue a request for proposals
10 from businesses and nonprofit organizations for the CalDEMO
11 Program.

12 (2) A business or nonprofit organization may, at any time,
13 submit a proposal for a demonstration project or pilot project to
14 the office. If the innovation partnership coordinator has the
15 resources, the coordinator shall review the proposal.

16 (b) The business's or nonprofit organization's proposal shall
17 include, but is not limited to, the following information:

18 (1) Background on the business or nonprofit organization
19 submitting the proposal.

20 (2) A description of the proposed project, including whether
21 the proposed project is a pilot project or a demonstration project.

22 (3) Identification of a problem that the proposed innovative
23 solution seeks to address.

24 (4) Performance measures that will be used to evaluate the
25 success of the project at the conclusion of the agreement.

26 (5) A list of requested state resources that could be used to
27 implement the project, including state-owned land, facilities,
28 equipment, rights-of-way, or data that is reasonably necessary.

29 (6) Certification that the proposed project meets all current
30 applicable industry standards, laws, and applicable regulations.

31 (7) Any other information deemed relevant by the office,
32 including information necessary for the office to prepare the report
33 as required by this article.

34 (8) The office shall target the sectors for participation in the
35 CalDEMO Program. The office may limit applicants or applications
36 by any factors it deems appropriate, given the resources available
37 to the office to administer the program.

38 (c) The office shall provide a preference for startup companies
39 based in California. For purposes of this section, "startup
40 companies based in California" means a small business, as defined

1 in paragraph (1) of subdivision (d) of Section 14837, that has its
2 headquarters in California and produces the innovative solution
3 or pilot project to be demonstrated in California or a business that
4 has an office in California and substantially manufactures the
5 innovative solution or pilot project in California or substantially
6 develops the research for the innovative solution or pilot project
7 to be demonstrated in California.

8 (d) The office may charge a fee to the business or nonprofit
9 organization to process the proposal that shall not exceed the
10 reasonable costs to the office.

11 (e) The office may establish guidelines to implement the
12 requirements of this article.

13 12099.4. (a) To ensure the efficient implementation and
14 administration of the CalDEMO Program, the innovation
15 partnership coordinator may do all of the following:

16 (1) Establish an investment advisory group to review and
17 comment on proposals.

18 (2) Review proposals, including comments from the advisory
19 group, and make a determination that the proposal meets the
20 threshold requirements of the law and guidelines adopted pursuant
21 to this article.

22 (3) Upon making the determination in paragraph (2), the
23 innovation partnership coordinator shall identify and refer the
24 proposal to the appropriate state agency or agencies. If the
25 innovation partnership coordinator determines that it is appropriate
26 to refer the proposal to more than one agency, the coordinator shall
27 identify a lead state agency for the purpose of the review.

28 (4) The innovation partnership coordinator shall convene an
29 initial meeting with the business or nonprofit organization and the
30 appropriate state agency or agencies. Following the initial meeting,
31 the appropriate state agency or the lead state agency, in the case
32 of more than one agency, may hold additional meetings and request
33 information from the business or nonprofit organization. The
34 appropriate state agency or lead agency shall keep the innovation
35 partnership coordinator informed of its discussions with the
36 business or nonprofit organization.

37 (5) If the appropriate state agency or agencies approve of the
38 proposal, the innovation partnership coordinator shall coordinate
39 and oversee the development of a demonstration agreement
40 between the appropriate state agency and the business or nonprofit

1 organization. A state agency shall act in good faith to assist in the
2 development of a demonstration agreement.

3 (b) The business or nonprofit organization participating in the
4 program shall, pursuant to guidance provided by the innovation
5 partnership coordinator and appropriate state agencies, develop a
6 scope of work that sets forth details on how the demonstration
7 project or pilot project is to be implemented.

8 (c) A proposed demonstration agreement shall include, but is
9 not limited to, the following requirements:

10 (1) The proposed demonstration agreement shall identify the
11 project as a pilot project or demonstration project.

12 (2) The proposed demonstration agreement shall describe the
13 project, including, but not limited to, a description of the types of
14 activities to be undertaken, facilities and resources to be used, and
15 relevant timelines, including a start and termination date.

16 (3) The proposed demonstration agreement shall identify the
17 participating state agency or agencies.

18 (4) The proposed demonstration agreement shall include
19 performance measures that will be used by the business or nonprofit
20 organization to evaluate the project. The data obtained during the
21 implementation of the project may assist the state to better manage
22 its own resources.

23 (5) The proposed demonstration agreement shall include a
24 provision that the business or nonprofit organization agrees to
25 indemnify the state against any liability or damages that may result
26 from the project.

27 (6) The proposed demonstration agreement shall include a
28 provision that authorizes the innovation partnership coordinator
29 or the state agency to discontinue the project if it finds that the
30 business or nonprofit organization has falsified or withheld
31 information that should have been disclosed.

32 (7) The proposed demonstration agreement shall include a
33 provision that the business or nonprofit organization agrees to
34 purchase insurance coverage necessary, as determined by the state,
35 to cover the costs to the state for any risks.

36 (8) The proposed demonstration agreement shall include a
37 provision that sets the maximum costs that the state can incur,
38 including the methodology used to determine the costs.

1 (9) The proposed demonstration agreement shall include a
2 certification that the demonstration project or pilot project is safe
3 for state employees and the public.

4 (10) The proposed demonstration agreement shall include other
5 information or provisions determined by the innovation partnership
6 coordinator to be relevant to the successful and safe undertaking
7 of the project.

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

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

14 (2) To the extent that the state may benefit from a demonstration
15 project or pilot project, the state agency may absorb a portion of
16 the costs to implement the project, in an amount not to exceed the
17 anticipated benefits to the state of participating in the project.

18 (3) Agree to nondisclosure agreements relating to proprietary
19 information that the state acquires from a business or nonprofit
20 organization during the implementation of a demonstration
21 agreement.

22 (4) Perform or cause to be performed a safety assessment of the
23 project. If the state agency has reason to believe that the project
24 is unsafe or likely to cause any danger, the state agency shall
25 discontinue the project.

26 12099.5. (a) Demonstration agreements must be approved by
27 all participating state agencies. After receiving approval from the
28 participating state agencies, the office shall provide the final
29 approval of the demonstration agreement.

30 *(b) The office shall not approve more than 10 demonstration*
31 *agreements per year.*

32 ~~(b)~~

33 (c) The office shall post on its Internet Web site a brief
34 description of each demonstration agreement, including information
35 on anticipated outcomes. The office shall not make available any
36 proprietary information that is subject to a nondisclosure agreement
37 under paragraph (3) of subdivision (d) of Section 12099.4.

38 ~~(e)~~

39 (d) The office shall biennially post on its Internet Web site
40 information on the progress of the program.

1 12099.6. (a) The office may enter into a partnership with
2 foundations or private sector sponsors to solicit funding for the
3 implementation of the CalDEMO Program. It is the intent of the
4 Legislature that the office seek private sector sponsors and partners
5 and foundations to solicit funding for the implementation of the
6 CalDEMO Program consistent with paragraph (f) of Section
7 12096.3.

8 (b) The office may enter into a memorandum of understanding
9 or an interagency agreement to obtain technical, scientific, or
10 administrative services or expertise to support the CalDEMO
11 Program. It is the intent of the Legislature that state agencies with
12 appropriate subject matter expertise provide input to the office
13 when requested.

14 (c) The office may enter into an agreement, including a
15 memorandum of understanding, with another state agency or
16 organization for the purpose of implementing the CalDEMO
17 Program. The agreement shall be entered into for the purpose of
18 reducing costs to the state, reducing or sharing risk, or obtaining
19 technical, scientific, or administrative services or expertise. The
20 agreement shall also specify, including, but not limited to, the
21 metrics to be evaluated in determining whether the project is
22 successful.

23 12099.7. It is the intent of the Legislature that the state shall
24 not seek to co-own or procure any share of rights in the intellectual
25 property that is developed during participation in the program.

26 12099.8. Any party to a demonstration agreement, including
27 employees or potential subcontractors, shall comply with all
28 applicable laws, regulations, and any other requirements pertaining
29 to the implementation and execution of the demonstration
30 agreement.

31 12099.9. If at any time a representative of a business or
32 nonprofit organization is found by clear and convincing evidence
33 to have falsified or withheld information that should have been
34 disclosed, the state agency may discontinue the project and assess
35 a fine of up to ten thousand dollars (\$10,000) against the business
36 or nonprofit organization for a failure to comply with this section.

37 12100. This article shall remain in effect only until January 1,
38 2019, and as of that date is repealed.

O