

## Assembly Bill No. 2729

### CHAPTER 644

An act to amend Section 25356.1 of, to add Section 25299.50.5 to, and to add and repeal Sections 25299.50.3 and 25299.50.4 of, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 30, 2008. Filed with  
Secretary of State September 30, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2729, Ruskin. Hazardous substances: underground storage tanks.

(1) The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 requires owners and operators of petroleum underground storage tanks to pay a storage fee for each gallon of petroleum placed in the tank and requires the fees to be deposited in the Underground Storage Tank Cleanup Fund (fund). The act authorizes the State Water Resources Control Board, upon appropriation by the Legislature, to expend the moneys in that fund to pay claims to aid eligible owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks. The act imposes various requirements on those claimants and requires the board to adopt a priority ranking list, consisting of 4 ranks, for awarding the claims. Included in the 3rd rank of that list are owners and operators of tanks that are independently owned and operated businesses that employ fewer than 500 employees and cities, counties, districts, or nonprofit organizations that employ fewer than 500 employees.

This bill would create the School District Account (account) in the fund and would transfer a sum of \$10,000,000 per year in the 2009–10, 2010–11, and 2011–12 fiscal years from the fund to the account. The moneys in the account, upon appropriation by the Legislature, would be available for expenditure by the board to pay claims filed by school districts that have a 4th rank on the ranking list. The account would be repealed on July 1, 2014. Upon the repeal of the account, moneys in the account and moneys due to the account would revert to, and accrue to, the benefit of the fund. The board, in consultation with the Department of Toxic Substances Control, would be required to include, in its annual report, information on the expenditure of moneys transferred to the account.

(2) The Carpenter-Presley-Tanner Hazardous Substance Account Act establishes the Hazardous Substance Account and, among other things, requires the department to adopt, by regulation, criteria for the selection of hazardous substance release sites for response actions and to publish and revise a listing of hazardous substance release sites selected for response actions, listed according to a specified order of priority.

The act requires the department or a California regional water quality control board to prepare and approve remedial action plans for all sites on the list and authorizes a potentially responsible party to request the department or the regional board to prepare or approve a remedial action plan for any site not listed if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. Existing law imposes various requirements regarding the content of a remedial action plan. The act provides that a remedial action plan is not required if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than \$1,000,000.

This bill would provide, instead, that a remedial action plan is not required under this provision if the estimated cost of the removal action is less than \$2,000,000.

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

SECTION 1. Section 25299.50.3 is added to the Health and Safety Code, to read:

25299.50.3. (a) For purposes of this section, “school district” means a school district as defined in Section 80 of the Education Code, or a county office of education.

(b) The School District Account is hereby created in the Underground Storage Tank Cleanup Fund, for expenditure by the board to pay a claim filed by a district that is a school district and has a priority based on paragraph (4) of subdivision (b) of Section 25299.52. Notwithstanding Section 25299.52, in the 2009–10, 2010–11, and 2011–12 fiscal years, the board shall pay a claim filed by a district that is a school district and has a priority based on paragraph (4) of subdivision (b) of Section 25299.52 only from funds appropriated from the School District Account.

(c) (1) The sum of ten million dollars (\$10,000,000) per year shall be transferred, in the 2009–10, 2010–11, and 2011–12 fiscal years, from the Underground Storage Tank Cleanup Fund to the School District Account, for expenditure upon appropriation by the Legislature for the payment of claims filed by a district that is a school district with a priority based on paragraph (4) of subdivision (b) of Section 25299.52.

(2) The board shall consult with the Department of Toxic Substances Control in allocating the funds transferred to the School District Account.

(3) The board shall pay claims from the School District Account in the order of the date of the filing of the claim application to the Underground Storage Tank Cleanup Fund.

(d) Funds in the School District Account that are not expended in the 2009–10 or 2010–11 fiscal years shall remain in the School District Account. Unencumbered funds remaining in the School District Account on July 1, 2012, shall be transferred to the Underground Storage Tank Cleanup Fund. Encumbered funds remaining in the School District Account on July 1,

2012, shall remain in the School District Account. Those encumbered funds remaining in the School District Account on July 1, 2012, shall be liquidated on or before June 30, 2014.

(e) The board shall include information on the expenditure of the funds transferred to the School District Account, as well as the amount of all claims filed by districts that are school districts and the amount of reimbursements made to districts that are school districts from the Underground Storage Tank Cleanup Fund, in its annual report, and shall, in consultation with the Department of Toxic Substances Control, estimate the amount of funds needed to reimburse anticipated future claims by districts that are school districts. The board shall provide a copy of this report to the State Allocation Board and the State Department of Education.

(f) This section does not affect the priority of a district that is a school district and has a priority based on paragraph (2) or (3) of subdivision (b) of Section 25299.52.

(g) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

SEC. 2. Section 25299.50.4 is added to the Health and Safety Code, to read:

25299.50.4. (a) It is the intent of the Legislature that the board and the Department of Toxic Substances Control, using information gathered and reported pursuant to subdivision (e) of Section 25299.50.3, propose changes to Section 25299.50.3 that may be necessary to ensure that adequate funds are available to reimburse anticipated future claims by districts that are school districts and have a priority based on paragraph (4) of subdivision (b) of Section 25299.52.

(b) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

SEC. 3. Section 25299.50.5 is added to the Health and Safety Code, to read:

25299.50.5. Upon the repeal of Section 25299.50.3, all moneys in the School District Account and all moneys due that account shall revert to, and accrue to the benefit of, the Underground Storage Tank Cleanup Fund in the State Treasury.

SEC. 4. Section 25356.1 of the Health and Safety Code is amended to read:

25356.1. (a) For purposes of this section, “regional board” means a California regional water quality control board and “state board” means the State Water Resources Control Board.

(b) Except as provided in subdivision (h), the department, or, if appropriate, the regional board shall prepare or approve remedial action plans for the sites listed pursuant to Section 25356.

(c) A potentially responsible party may request the department or the regional board, when appropriate, to prepare or approve a remedial action plan for a site not listed pursuant to Section 25356, if the department or the

regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the regional board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of a regional board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(d) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), and any amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or the regional board shall consider the extent to which remedial action measures are available that use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions that do not use this treatment. The department or the regional board shall not select remedial action measures that use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site-specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost-effectiveness of alternative remedial action measures. In evaluating the cost-effectiveness of proposed alternative remedial action measures, the department or the regional board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(e) A remedial action plan prepared pursuant to this section shall include the basis for the remedial action selected and shall include an evaluation of each alternative considered and rejected by the department or the regional board for a particular site. The plan shall include an explanation for rejection of alternative remedial actions considered but rejected. The plan shall also include an evaluation of the consistency of the selected remedial action with the requirements of the federal regulations and the factors specified in subdivision (d), if those factors are not otherwise adequately addressed through compliance with the federal regulations. The remedial action plan shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information that is necessary to address the issues that concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(f) After complying with subdivision (e), the department or the regional board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional board shall then issue the final remedial action plan.

(g) (1) A potentially responsible party named in the final remedial action plan issued by the department or the regional board may seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final remedial action plan is issued by the department or the regional board. Any other person who has the right to seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one year after the final remedial action plan is issued. No action may be brought by

a potentially responsible party to review the final remedial action plan if the petition for writ of mandate is not filed within 30 days of the date that the final remedial action plan was issued. No action may be brought by any other person to review the final remedial action plan if the petition for writ of mandate is not filed within one year of the date that the final remedial action plan was issued. The filing of a petition for writ of mandate to review the final remedial action plan shall not stay any removal or remedial action specified in the final plan.

(2) For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional board, as the case may be.

(3) This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(h) (1) This section does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than two million dollars (\$2,000,000). The department or a regional board shall prepare or approve a removal action work plan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than two million dollars (\$2,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment which may include conducting a public meeting on proposed removal actions.

(2) A remedial action plan is not required pursuant to subdivision (b) if the site is listed on the National Priority List by the Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(3) The department may waive the requirement that a remedial action plan meet the requirements specified in subdivision (d) if all of the following apply:

(A) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Section 25356.

(B) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(i) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(ii) A listing of the alternative remedial measures which were considered by the responsible party in selecting the proposed removal action.

(iii) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(iv) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(C) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with subdivision (c).

(D) The total cost of the removal action is less than two million dollars (\$2,000,000).

(4) For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 9601 (23) of Title 42 of the United States Code.

(5) Paragraph (2) of this subdivision does not apply to a removal action paid from the state account.

(i) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to an action or failure to act by a regional board pursuant to this section.