

AMENDED IN SENATE SEPTEMBER 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1188

Introduced by Assembly Member Ruskin

February 27, 2009

An act to amend Sections ~~25173.6, 25187, 25390, 25390.1, 25390.3, and 25390.4~~ 25299.43, 25299.50.3, 25299.57, 25299.62, 25299.100, 25299.106, and 25299.107 of, and to add Section ~~25244.25~~ 25299.51.2 to, the Health and Safety Code, relating to hazardous materials, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1188, as amended, Ruskin. Hazardous materials: ~~penalties: allocation: underground storage tanks.~~

(1) Existing law requires the owner or operator of an underground petroleum storage tank, or other responsible party, to take corrective action, as defined, in response to an unauthorized release of petroleum from the tank. A person required to perform corrective action may apply to the State Water Resources Control Board for payment of specified portions of the costs of corrective action. Existing law requires the board to pay claims of owners and operators in accordance with a specified order of priority. Existing law establishes the Underground Storage Tank Cleanup Fund in the State Treasury and authorizes the money in the fund to be used, upon appropriation by the Legislature, to pay those claims, and, among other things, for corrective actions undertaken by the board, a California regional water quality control board, or a local agency, and for the cleanup and oversight of unauthorized releases at abandoned tank sites. Existing law imposes certain petroleum storage fees upon the owner of an underground

storage tank for which a permit is required and requires those fees to be deposited in the fund.

This bill would temporarily increase a specified petroleum storage fee by \$0.006 per gallon of petroleum stored, between January 1, 2010, and December 31, 2012. By operation of existing law, the revenue resulting from the increase would be required to be deposited in the fund and be available, upon appropriation, for expenditure for the purposes authorized under existing law for money in the fund.

The bill would require the board, within 90 days of completion of any independent program audit or fiscal audit of the fund, to post the result of the program audit or fiscal audit on its Internet Web site.

For a reimbursement request received by the board on or after November 7, 2008, but before June 30, 2010, if costs submitted by a claimant are approved by the board, but funding is not available for payment to the claimant at the time of approval, the bill would require the board to reimburse the claimant's carrying costs, as defined, subject to specified limitations.

(2) Existing law establishes until July 1, 2014, the School District Account in the Underground Storage Tank Cleanup Fund and transfers in the 2009–10, 2010–11, and 2011–12 fiscal year \$10,000,000 per year from the fund to the account for payment of claims filed by a school district that takes corrective actions to clean up an unauthorized release from a petroleum underground storage tank. Existing law provides that encumbered funds remaining in the account on July 1, 2012, be liquidated on or before June 30, 2014.

This bill would require that these annual transfers be made prior to the allocation of the moneys in the fund for payment of claims by other underground storage tank owners or operators. The bill would instead reallocate the encumbered funds remaining in the account on July 1, 2012, back to the fund on or before June 30, 2014.

(3) Existing law provides for a grant and loan program for small businesses to pay specified costs of complying with underground petroleum storage tank regulations adopted by the board, and defines terms for the purposes of that program. If a grant or loan from specified moneys available for the grant and loan program is being requested for purposes of complying with Enhanced Vapor Recovery Phase II regulations, existing law requires the applicant to have applied for or obtained a permit from an air quality management district by April 1, 2009, and have obtained an enforcement agreement or other binding obligation by June 30, 2009.

This bill would revise the definition of “project tank” to include one or more tanks that are upgraded to comply with the Enhanced Vapor Recovery Phase II regulations, and would require a grant application to include a detailed description of the costs incurred to perform the work and complete the Enhanced Vapor Recovery Phase II upgrade, if applicable. If the board received an applicant’s grant application on or before April 1, 2009, the bill would authorize grant funds to be used to reimburse up to 100% of the costs that the applicant incurred after the board received the grant application to comply with the Enhanced Vapor Recovery Phase II regulations.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

~~(1) Existing law establishes the Toxic Substances Control Account in the General Fund and requires the Director of Toxic Substances Control to administer the account. Existing law authorizes the moneys in the account to be appropriated to the Department of Toxic Substances Control for various purposes, including for the administration of the Human and Ecological Risk Division, Hazardous Materials Laboratory, and Office of Pollution Prevention and Technology Development in the department.~~

This bill would additionally authorize the funds in the account to be appropriated to the department for the administration of the successor organizations of those units of the department, the implementation of programs administered by those units, and activities in the department related to pollution prevention and technology development.

~~(2) Existing law authorizes the department or a unified program agency to issue an administrative enforcement order requiring that a violation be corrected and imposing an administrative penalty for a violation of specified statutory provisions or a permit, rule, regulation, standard, or requirement issued or adopted pursuant to those provisions. Existing law imposes requirements regarding the payment of administrative penalties collected from enforcement actions and requires the administrative penalties to be placed in a separate subaccount in the Toxic Substances Control Account for transfer to the Site Remediation Account or the Expedited Site Remediation Trust Fund and for expenditure by the department upon appropriation by the Legislature.~~

This bill would delete the requirement that the administrative penalties be placed in a separate subaccount in the account. If a specified requirement is met, the bill would additionally authorize, upon appropriation by the Legislature, (a) the transfer of those moneys to the

Orphan Share Reimbursement Trust Fund, only for purposes of paying claims for reimbursement filed by project proponents, as defined, and to the Pollution Prevention Technology Assistance Grant Fund, which would be established by this bill, and (b) the expenditure by the department of those moneys for activities in the department related to pollution prevention and technology development.

~~(3) Existing law requires the department to establish a technical and research assistance program to assist generators of hazardous waste in identifying and applying methods of source reduction and other hazardous waste management approaches. Under existing law, that program is required to emphasize assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing source reduction methods, and developing and applying source reduction techniques. Existing law also requires the department to conduct an inventory and analysis of low-cost voluntary programs to reduce hazardous waste generation and other environmental releases of toxic chemicals and to develop recommendations for new programs, as specified.~~

~~This bill would establish the Pollution Prevention Technology Assistance Grant Fund in the State Treasury. The bill would authorize the department to expend the moneys in the fund, upon appropriation by the Legislature, to be used to pay for grants to assist small businesses in purchasing pollution prevention equipment and to pay the department's administrative costs in implementing the fund. The bill would authorize the department to adopt emergency regulations to implement the provisions relating to the fund.~~

~~(4) Existing law establishes the Orphan Share Reimbursement Trust Fund to, among other things, encourage responsible parties to quickly and efficiently remediate contamination by hazardous substances and authorizes the administrator of the fund to expend the moneys in the fund, upon appropriation by the Legislature, to, among other things, pay a responsible party for a claim for reimbursement of the orphan share of a site, which is the share of liability for the costs of response action at the site that is attributable to the activities of persons who are defunct or insolvent.~~

~~Existing law defines various terms for purposes of administering the Orphan Share Reimbursement Trust Fund.~~

~~This bill would additionally define "project proponent" and "responsible party" for purposes of the fund and would authorize a project proponent to file a claim for reimbursement from that fund. The~~

bill would also authorize the administrator of the fund to expend money in the fund to pay a project proponent for a claim for reimbursement of an orphan share at a site paid by that project proponent.

Vote: majority ²/₃. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 25299.43 of the Health and Safety Code
2 is amended to read:
3 25299.43. (a) To implement the changes to this chapter made
4 by the act adding this section Chapter 1191 of the Statutes of 1994,
5 and consistent with Section 25299.40, effective January 1, 1995,
6 every owner subject to Section 25299.41 shall pay a storage fee
7 of one mill (\$0.001) for each gallon of petroleum placed in an
8 underground storage tank ~~which~~ *that* the person owns, in addition
9 to the fee required by Section 25299.41.
10 (b) On and after January 1, 1996, the storage fee imposed under
11 subdivision (a) shall be increased by two mills (\$0.002) for each
12 gallon of petroleum placed in an underground storage tank.
13 (c) On and after January 1, 1997, the storage fee increased under
14 subdivision (b) shall be increased by an additional three mills
15 (\$0.003) for each gallon of petroleum placed in an underground
16 storage tank.
17 (d) On and after January 1, 2005, the storage fee increased under
18 subdivision (c) shall be increased by an additional one mill (\$0.001)
19 for each gallon of petroleum placed in an underground storage
20 tank.
21 (e) On and after January 1, 2006, the storage fee increased under
22 subdivision (d) shall be increased by an additional one mill
23 (\$0.001) for each gallon of petroleum placed in an underground
24 storage tank.
25 (f) *On and after January 1, 2010, the storage fee increased*
26 *under subdivision (e) shall be increased by an additional six mills*
27 *(\$0.006) for each gallon of petroleum placed in an underground*
28 *storage tank. The increase provided for in this subdivision shall*
29 *be effective until December 31, 2012, at which time, the fee shall*
30 *revert back to the fee pursuant to subdivision (e).*
31 (f)

1 (g) The fee imposed under this section shall be paid to the State
2 Board of Equalization under Part 26 (commencing with Section
3 50101) of Division 2 of the Revenue and Taxation Code in the
4 same manner as, and consistent with, the fees imposed under
5 Section 24299.41.

6 ~~(g)~~

7 (h) The State Board of Equalization shall amend the regulations
8 adopted under Section 25299.41 to carry out this section.

9 *SEC. 2. Section 25299.50.3 of the Health and Safety Code is*
10 *amended to read:*

11 25299.50.3. (a) For purposes of this section, “school district”
12 means a school district as defined in Section 80 of the Education
13 Code, or a county office of education.

14 (b) The School District Account is hereby created in the
15 Underground Storage Tank Cleanup Fund, for expenditure by the
16 board to pay a claim filed by a district that is a school district and
17 has a priority based on paragraph (2), (3), or (4) of subdivision (b)
18 of Section 25299.52. Notwithstanding Section 25299.52, in the
19 2009–10, 2010–11, and 2011–12 fiscal years, the board shall pay
20 a claim filed by a district that is a school district and has a priority
21 based on paragraph (4) of subdivision (b) of Section 25299.52
22 only from funds appropriated from the School District Account.

23 (c) (1) The sum of ten million dollars (\$10,000,000) per year
24 shall be transferred, in the 2009–10, 2010–11, and 2011–12 fiscal
25 years, from the Underground Storage Tank Cleanup Fund to the
26 School District Account, for expenditure upon appropriation by
27 the Legislature for the payment of claims filed by a district that is
28 a school district with a priority based on paragraph (2), (3), or (4)
29 of subdivision (b) of Section 25299.52. *The ten million dollars*
30 *(\$10,000,000) shall be transferred to the School District Account*
31 *prior to allocating the remaining available funds to each priority*
32 *ranking in paragraphs (1), (2), (3), and (4) of subdivision (b) of*
33 *Section 25299.52.*

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

37 (3) The board shall pay claims *from a school district with a*
38 *priority based on paragraph (4) of subdivision (b) of Section*
39 *25299.52* from the School District Account in the order of the date
40 of the filing of the claim application to the Underground Storage

1 Tank Cleanup Fund. *In each of the fiscal years identified in*
 2 *subdivision (b), if the board estimates that money will be available*
 3 *in the School District Account after the board has allocated funding*
 4 *for all submitted claims from school districts with a priority based*
 5 *on paragraph (4) of subdivision (b) of Section 25299.52, School*
 6 *District Account funds may be used to fund school district claims*
 7 *with a priority based on paragraph (2) or (3) of subdivision (b)*
 8 *of Section 25299.52.*

9 (d) Funds in the School District Account that are not expended
 10 in the 2009–10 or 2010–11 fiscal years shall remain in the School
 11 District Account. Unencumbered funds remaining in the School
 12 District Account on July 1, 2012, shall be transferred to the
 13 Underground Storage Tank Cleanup Fund. Encumbered funds
 14 remaining in the School District Account on July 1, 2012, shall
 15 remain in the School District Account. Those encumbered funds
 16 remaining in the School District Account on July 1, 2012, shall be
 17 ~~liquidated~~ *reallocated back to the Underground Storage Tank*
 18 *Cleanup Fund on or before June 30, 2014.*

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

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

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

35 SEC. 3. *Section 25299.51.2 is added to the Health and Safety*
 36 *Code, to read:*

37 25299.51.2. *Within 90 days of the completion of any*
 38 *independent program audit or fiscal audit of the fund, the board*
 39 *shall post the results of the program audit or fiscal audit on the*
 40 *board's Internet Web site.*

1 *SEC. 4. Section 25299.57 of the Health and Safety Code is*
2 *amended to read:*

3 25299.57. (a) If the board makes the determination specified
4 in subdivision (d), the board may only pay for the costs of a
5 corrective action that exceed the level of financial responsibility
6 required to be obtained pursuant to Section 25299.32, but not more
7 than one million five hundred thousand dollars (\$1,500,000) for
8 each occurrence. In the case of an owner or operator who, as of
9 January 1, 1988, was required to perform corrective action, who
10 initiated that corrective action in accordance with Division 7
11 (commencing with Section 13000) of the Water Code or Chapter
12 6.7 (commencing with Section 25280), and who is undertaking
13 the corrective action in compliance with waste discharge
14 requirements or other orders issued pursuant to Division 7
15 (commencing with Section 13000) of the Water Code or Chapter
16 6.7 (commencing with Section 25280), the owner or operator may
17 apply to the board for satisfaction of a claim filed pursuant to this
18 article. The board shall notify claimants applying for satisfaction
19 of claims from the fund of eligibility for reimbursement in a prompt
20 and timely manner and that a letter of credit or commitment that
21 will obligate funds for reimbursement shall follow the notice of
22 eligibility as soon thereafter as possible.

23 (b) (1) For claims eligible for reimbursement pursuant to
24 subdivision (c) of Section 25299.55, the claimant shall submit the
25 actual cost of corrective action to the board, which shall either
26 approve or disapprove the costs incurred as reasonable and
27 necessary. At least 15 days before the board proposes to disapprove
28 the reimbursement of corrective action costs that have been
29 incurred on the grounds that the costs were unreasonable or
30 unnecessary, the board shall issue a notice advising the claimant
31 and the lead agency of the proposed disallowance, to allow review
32 and comment.

33 (2) The board shall not reject any actual costs of corrective
34 action in a claim solely on the basis that the invoices submitted
35 fail to sufficiently detail the actual costs incurred, if all of the
36 following apply:

37 (A) Auxiliary documentation is provided that documents to the
38 board's satisfaction that the invoice is for necessary corrective
39 action work.

1 (B) The costs of corrective action work in the claim are
2 reasonably commensurate with similar corrective action work
3 performed during the same time period covered by the invoice for
4 which reimbursement is sought.

5 (C) The invoices include a brief description of the work
6 performed, the date that the work was performed, the vendor, and
7 the amount.

8 (c) (1) For claims eligible for prepayment pursuant to
9 subdivision (c) of Section 25299.55, the claimant shall submit the
10 estimated cost of the corrective action to the board, which shall
11 approve or disapprove the reasonableness of the cost estimate.

12 (2) If the claim is for reimbursement of costs incurred pursuant
13 to a performance-based contract, Article 6.5 (commencing with
14 Section 25299.64) shall apply to that claim.

15 (d) Except as provided in subdivision (j), a claim specified in
16 subdivision (a) may be paid if the board makes all of the following
17 findings:

18 (1) There has been an unauthorized release of petroleum into
19 the environment from an underground storage tank.

20 (2) The claimant is required to undertake or contract for
21 corrective action pursuant to Section 25296.10, or, as of January
22 1, 1988, the claimant has initiated corrective action in accordance
23 with Division 7 (commencing with Section 13000) of the Water
24 Code.

25 (3) The claimant has complied with Section 25299.31.

26 (4) (A) Except as provided in subparagraphs (B), (C), and (F),
27 the claimant has complied with the permit requirements of Chapter
28 6.7 (commencing with Section 25280). A claimant shall obtain a
29 permit required by subdivision (a) of Section 25284 for the
30 underground storage tank that is the subject of the claim when the
31 claimant becomes subject to subdivision (a) of Section 25284 or
32 when the applicable local agency begins issuing permits pursuant
33 to subdivision (a) of Section 25284, whichever occurs later.

34 (B) A claimant who acquires real property on which an
35 underground storage tank is situated and, despite the exercise of
36 reasonable diligence, was unaware of the existence of the
37 underground storage tank when the real property was acquired,
38 has obtained a permit required by subdivision (a) of Section 25284
39 for the underground storage tank that is the subject of the claim
40 within a reasonable period, not to exceed one year, from when the

1 claimant should have become aware of the existence of the
2 underground storage tank, or when the applicable local agency
3 began issuing permits pursuant to Section 25284, whichever occurs
4 later.

5 (C) All claimants who file their claim on or after January 1,
6 2008, and who do not obtain a permit required by subdivision (a)
7 of Section 25284 in accordance with subparagraph (A) or (B) may
8 seek a waiver of the requirement to obtain a permit. The board
9 shall waive the provisions of subparagraphs (A) and (B) as a
10 condition for payment from the fund if the board finds all of the
11 following:

12 (i) The claimant was unaware of the permit requirement, and
13 upon becoming aware of the permit requirement, the claimant
14 complies with either subdivision (a) of Section 25284 or Section
15 25298 and the regulations adopted to implement those sections
16 within a reasonable period, not to exceed one year, from when the
17 claimant became aware of the permit requirement.

18 (ii) Prior to submittal of the application to the fund, the claimant
19 has complied with Section 25299.31 and has obtained and paid
20 for all permits currently required by this paragraph.

21 (iii) Prior to submittal of the application to the fund, the claimant
22 has paid all fees, interest, and penalties imposed pursuant to Article
23 5 (commencing with Section 25299.40) of this ~~code~~ *chapter* and
24 Part 26 (commencing with Section 50101) of Division 2 of the
25 Revenue and Taxation Code for the underground storage tank that
26 is the subject of the claim.

27 (D) (i) A claimant exempted pursuant to subparagraph (C) and
28 who has complied, on or before December 22, 1998, either with
29 subdivision (a) of Section 25284 or Section 25298 and the
30 regulations adopted to implement those sections, shall obtain a
31 level of financial responsibility twice as great as the amount that
32 the claimant is otherwise required to obtain pursuant to subdivision
33 (a) of Section 25299.32, but not less than ten thousand dollars
34 (\$10,000). All other claimants exempted pursuant to subparagraph
35 (C) shall obtain a level of financial responsibility that is four times
36 as great as the amount that the claimant is otherwise required to
37 obtain pursuant to subdivision (a) of Section 25299.32, but not
38 less than twenty thousand dollars (\$20,000).

39 (ii) The board may waive the requirements of clause (i) if the
40 claimant can demonstrate that the conditions specified in clauses

1 (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to
2 the causing of any contamination. That demonstration may be
3 made through a certification issued by the permitting agency based
4 on a site evaluation and tank tests at the time of permit application
5 or in any other manner acceptable to the board.

6 (E) All claimants who file a claim before January 1, 2008, and
7 who are not eligible for a waiver of the permit requirements
8 pursuant to applicable statutes or regulations in effect on the date
9 of the filing of the claim may resubmit a new claim pursuant to
10 subparagraph (C) on or after January 1, 2008. The board shall rank
11 all claims resubmitted pursuant to subparagraph (C) lower than
12 all claims filed before January 1, 2008, within their respective
13 priority classes specified in subdivision (b) of Section 25299.52.

14 (F) The board shall waive the provisions of subparagraph (A)
15 as a condition for payment from the fund for a claimant who filed
16 his or her claim on or after January 1, 2008, and before July 1,
17 2009, but is not eligible for a waiver of the permit requirement
18 pursuant to the regulations adopted by the board in effect on the
19 date of the filing of the claim, and who did not obtain or apply for
20 a permit required by subdivision (a) of Section 25284, if the board
21 finds all of the following:

22 (i) The claim is filed pursuant to paragraph (2) of subdivision
23 (h) of Section 25299.54 and the claim otherwise satisfies the
24 eligibility requirements of that paragraph.

25 (ii) The claimant became the owner or de facto owner of an
26 underground storage tank prior to December 22, 1998.

27 (iii) The claimant did not, and does not, operate the underground
28 storage tank.

29 (iv) Within three years after becoming the owner or de facto
30 owner of the underground storage tank but not after December 22,
31 1998, the claimant caused the underground storage tank to be
32 removed and closed in accordance with applicable law, and
33 commenced no later than December 22, 1998, to perform corrective
34 action pursuant to Section 25296.10 of this code or pursuant to
35 Division 7 (commencing with Section 13000) of the Water Code.

36 (G) The board shall rank all claims submitted pursuant to
37 subparagraph (F) in their respective priority classes specified in
38 subdivision (b) of Section 25299.52 in the order in which the claims
39 are received by the board, but subsequent to any claim filed on a
40 previous date in each of those priority classes.

(H) For purposes of clauses (ii) and (iv) of subparagraph (F), “de facto owner of an underground storage tank” means a person who purchases or otherwise acquires real property, as defined in subparagraph (D) of paragraph (5) of subdivision (h) of Section 25299.54, and has actual possession of, and control over, an underground storage tank that has been abandoned by its previous owner.

(5) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(6) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of commitment authorizing payment of the costs from the fund.

(f) The claimant may submit a request for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) A claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) A claimant who submits a claim to the board for the payment of professional engineering and geologic work shall submit multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.77. The claimant’s selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate conforms with the range of acceptable costs established by the board.

(3) A claimant who submits a claim for payment to the board for remediation construction contracting work shall submit multiple bids, as required in the regulations adopted by the board pursuant to Section 25299.77.

(4) Paragraphs (1), (2), and (3) do not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the

1 Government Code and those services are procured in accordance
2 with the requirements of that chapter.

3 (h) The board shall provide, upon the request of a claimant,
4 assistance to the claimant in the selection of contractors retained
5 by the claimant to conduct reimbursable work related to corrective
6 actions. The board shall develop a summary of expected costs for
7 common corrective actions. This summary of expected costs may
8 be used by claimants as a guide in the selection and supervision
9 of consultants and contractors.

10 (i) ~~The~~ (1) *To the extent funding is available, the board shall*
11 *pay, within 60 days from the date of receipt of an invoice of*
12 *expenditures, all costs specified in the work plan developed*
13 *pursuant to Section 25296.10, and all costs that are otherwise*
14 *necessary to comply with an order issued by a local, state, or*
15 *federal agency.*

16 (2) *If corrective action costs, third-party compensation costs,*
17 *or regulatory technical assistance costs submitted by a claimant*
18 *are approved for reimbursement by the board but funding is not*
19 *available for payment to the claimant at the time of approval, the*
20 *board shall reimburse carrying costs incurred by the claimant*
21 *after November 7, 2008, but before June 30, 2010, subject to all*
22 *of the following limitations:*

23 (A) *The reimbursement for carrying costs shall not exceed the*
24 *carrying costs actually incurred by the claimant from the date the*
25 *corrective action costs, third-party compensation costs, or*
26 *regulatory technical assistance costs are approved for payment*
27 *by the board until the date that a check for the reimbursement*
28 *request is issued by the Controller.*

29 (B) *The reimbursement for carrying costs shall not exceed an*
30 *amount equivalent to a maximum annual percentage rate of 7*
31 *percent as applied to the amount approved for reimbursement and*
32 *for the period calculated pursuant to subparagraph (A).*

33 (C) *The board shall not reimburse carrying costs that amount*
34 *to less than one hundred dollars (\$100) per reimbursement request.*

35 (D) *The board shall not reimburse carrying costs that exceed*
36 *9 percent of the total amount of costs approved for the*
37 *reimbursement to which the carrying costs apply.*

38 (E) *A claimant may submit a request for reimbursement of*
39 *carrying costs after receipt of fund reimbursement for the*
40 *corrective action costs, third-party compensation costs, or*

1 *regulatory technical assistance costs to which the carrying costs*
2 *apply. Additional carrying costs associated with a reimbursement*
3 *request for carrying costs submitted pursuant to this paragraph*
4 *are not eligible for payment.*

5 *(F) This paragraph does not apply to tank owners or operators*
6 *that are not described in paragraphs (1), (2), or (3) of subdivision*
7 *(b) of Section 25299.52.*

8 *(3) For the purposes of paragraph (2), “carrying cost” means*
9 *the interest expense incurred by a claimant to acquire money to*
10 *pay costs approved for reimbursement by the board but for which*
11 *reimbursement is delayed because funds are unavailable.*

12 *(j) (1) The board shall pay a claim of not more than three*
13 *thousand dollars (\$3,000) per occurrence for regulatory technical*
14 *assistance to an owner or operator who is otherwise eligible for*
15 *reimbursement under this chapter.*

16 *(2) For the purposes of this subdivision, regulatory technical*
17 *assistance is limited to assistance from a person, other than the*
18 *claimant, in the preparation and submission of a claim to the fund.*
19 *Regulatory technical assistance does not include assistance in*
20 *connection with proceedings under Section 25296.40, 25299.39.2,*
21 *or 25299.56 or any action in court.*

22 *(k) (1) Notwithstanding any other provision of this section, the*
23 *board shall pay a claim for the costs of corrective action to a person*
24 *who owns property on which is located a release from a petroleum*
25 *underground storage tank that has been the subject of a completed*
26 *corrective action and for which additional corrective action is*
27 *required because of additionally discovered contamination from*
28 *the previous release, only if the person who carried out the earlier*
29 *and completed corrective action was eligible for, and applied for,*
30 *reimbursement pursuant to subdivision (b), and only to the extent*
31 *that the amount of reimbursement for the earlier corrective action*
32 *did not exceed the amount of reimbursement authorized by*
33 *subdivision (a). Reimbursement to a claimant on a reopened site*
34 *shall occur when funds are available, and reimbursement*
35 *commitment shall be made ahead of any new letters of commitment*
36 *to be issued, as of the date of the reopening of the claim, if funding*
37 *has occurred on the original claim, in which case funding shall*
38 *occur at the time it would have occurred under the original claim.*

39 *(2) For purposes of this subdivision, a corrective action is*
40 *completed when the local agency or regional board with*

1 jurisdiction over the site or the board issues a closure letter pursuant
2 to subdivision (g) of Section 25296.10.

3 *SEC. 5. Section 25299.62 of the Health and Safety Code is*
4 *amended to read:*

5 25299.62. ~~All~~*If funding is available, all reimbursement*
6 *requests that are approved shall be forwarded to the Controller*
7 *within 10 days from the date of approval, for payment by the*
8 *Controller. If a reimbursement request is approved but not*
9 *forwarded to the Controller because funding is unavailable at the*
10 *time of approval, the claimant may seek reimbursement for*
11 *carrying costs actually incurred for the approved amount pursuant*
12 *to paragraph (2) of subdivision (i) of Section 25299.57.*

13 *SEC. 6. Section 25299.100 of the Health and Safety Code is*
14 *amended to read:*

15 25299.100. For purposes of this chapter, the following
16 definitions apply:

17 (a) "Board" means the State Water Resources Control Board.

18 (b) "Loan applicant" means a small business that applies to the
19 board for a loan pursuant to this chapter.

20 (c) "Grant applicant" means a small business that applies to the
21 board for a grant pursuant to this chapter.

22 (d) "Tank" means an underground storage tank, as defined in
23 Section 25281, used for the purpose of storing petroleum, as
24 defined in Section 25299.22. "Tank" also includes under-dispenser
25 containment systems, spill containment systems, enhanced
26 monitoring and control systems, and vapor recovery systems and
27 dispensers connected to the underground piping and the
28 underground storage tank.

29 (e) "Project tank" means one or more tanks that would be
30 upgraded, replaced, or removed with loan or grant funds. "*Project*
31 *tank*" also includes one or more tanks that are upgraded to comply
32 with the Enhanced Vapor Recovery Phase II regulations.

33 *SEC. 7. Section 25299.106 of the Health and Safety Code is*
34 *amended to read:*

35 25299.106. A complete grant application shall include all of
36 the following information:

37 (a) Evidence of eligibility.

38 (b) Financial and legal documents necessary to demonstrate the
39 applicant's financial hardship, if any. The board shall develop a
40 standard list of documents required of all applicants, and may also

1 request from individual applicants additional financial and legal
2 documents not provided on this list.

3 (c) An explanation of the actions the applicant is required to
4 take to comply with the requirements of Sections 25284.1 and
5 25292.4.

6 (d) (1) A detailed cost estimate of the actions that are required
7 to be completed for the project tanks to comply with applicable
8 local, state, or federal standards, *if applicable*.

9 (2) *A detailed description of the costs incurred to perform work
10 and complete the Enhanced Vapor Recovery Phase II upgrade, as
11 required by Section 41954 and implementing regulations, if
12 applicable.*

13 (e) Any other information that the ~~department~~ board determines
14 to be necessary to include in an application form.

15 *SEC. 8. Section 25299.107 of the Health and Safety Code is
16 amended to read:*

17 25299.107. (a) The minimum amount that the board may grant
18 an applicant is three thousand dollars (\$3,000), and the maximum
19 amount that the board may grant an applicant is fifty thousand
20 dollars (\$50,000).

21 (b) Grant funds may be used to finance up to 100 percent of the
22 costs necessary to comply with Sections 25284.1, 25292.4, and
23 25292.5. ~~No person or entity is eligible to receive more than fifty
24 thousand dollars (\$50,000) in grant funds pursuant to this chapter.~~

25 (c) *If the board received the applicant's grant application on
26 or before April 1, 2009, grant funds may be used to reimburse up
27 to 100 percent of the costs that the applicant incurred after the
28 board received the grant application to comply with the Enhanced
29 Vapor Recovery Phase II regulations.*

30 (d) *A person or entity is not eligible to receive more than fifty
31 thousand dollars (\$50,000) in grant funds pursuant to this chapter.*

32 *SEC. 9. This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or safety within
34 the meaning of Article IV of the Constitution and shall go into
35 immediate effect. The facts constituting the necessity are:*

36 *In order to immediately finance projects critical to the protection
37 of the environment, and provide immediate funding to the small
38 businesses that are at immediate risk of insolvency, it is necessary
39 for this act to take effect immediately.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Assembly, February 27, 2009 (JR11)**

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