

Assembly Bill No. 1188

CHAPTER 649

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

[Approved by Governor November 4, 2009. Filed with
Secretary of State November 5, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1188, Ruskin. Hazardous materials: 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, 2011. 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 results 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 years \$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.

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.

(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 the 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.

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

SECTION 1. Section 25299.43 of the Health and Safety Code is amended to read:

25299.43. (a) To implement the changes to this chapter made by Chapter 1191 of the Statutes of 1994, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank that the person owns, in addition to the fee required by Section 25299.41.

(b) On and after January 1, 1996, the storage fee imposed under subdivision (a) shall be increased by two mills (\$0.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee increased under subdivision (b) shall be increased by an additional three mills (\$0.003) for each gallon of petroleum placed in an underground storage tank.

(d) On and after January 1, 2005, the storage fee increased under subdivision (c) shall be increased by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

(e) On and after January 1, 2006, the storage fee increased under subdivision (d) shall be increased by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

(f) On and after January 1, 2010, the storage fee increased under subdivision (e) shall be increased by an additional six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank. The increase provided for in this subdivision shall be effective until January 1, 2012, at which time, the fee shall revert back to the fee pursuant to subdivision (e).

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

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

SEC. 2. Section 25299.50.3 of the Health and Safety Code is amended 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 (2), (3), or (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 (2), (3), or (4) of subdivision (b) of Section 25299.52. The ten million dollars (\$10,000,000) shall be transferred to the School District Account prior to allocating the remaining available funds to each priority ranking in paragraphs (1), (2), (3), and (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 a school district with a priority based on paragraph (4) of subdivision (b) of Section 25299.52 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. In each of the fiscal years identified in subdivision (b), if the board estimates that money will be

available in the School District Account after the board has allocated funding for all submitted claims from school districts with a priority based on paragraph (4) of subdivision (b) of Section 25299.52, School District Account funds may be used to fund school district claims with a priority based on paragraph (2) or (3) of subdivision (b) of Section 25299.52.

(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. 3. Section 25299.51.2 is added to the Health and Safety Code, to read:

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

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

25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of a corrective action that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million five hundred thousand dollars (\$1,500,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner

or operator may apply to the board for satisfaction of a claim filed pursuant to this article. The board shall notify claimants applying for satisfaction of claims from the fund of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment that will obligate funds for reimbursement shall follow the notice of eligibility as soon thereafter as possible.

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

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

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

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

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

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

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

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

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

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

(3) The claimant has complied with Section 25299.31.

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

permits pursuant to subdivision (a) of Section 25284, whichever occurs later.

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

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

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

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

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) of this chapter 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.

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

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the

permitting agency based on a site evaluation and tank tests at the time of permit application or in any other manner acceptable to the board.

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

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

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

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

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

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

(G) The board shall rank all claims submitted pursuant to subparagraph (F) in their respective priority classes specified in subdivision (b) of Section 25299.52 in the order in which the claims are received by the board, but subsequent to any claim filed on a 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 Government Code and those services are procured in accordance with the requirements of that chapter.

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

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

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

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

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

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

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

(E) A claimant may submit a request for reimbursement of carrying costs after receipt of fund reimbursement for the corrective action costs, third-party compensation costs, or regulatory technical assistance costs to which the carrying costs apply. Additional carrying costs associated with a reimbursement request for carrying costs submitted pursuant to this paragraph are not eligible for payment.

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

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

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

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

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

(2) For purposes of this subdivision, a corrective action is completed when the local agency or regional board with jurisdiction over the site or the board issues a closure letter pursuant to subdivision (g) of Section 25296.10.

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

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

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

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

(a) “Board” means the State Water Resources Control Board.

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

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

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

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

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

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

(a) Evidence of eligibility.

(b) Financial and legal documents necessary to demonstrate the applicant’s financial hardship, if any. The board shall develop a standard list of documents required of all applicants, and may also request from individual applicants additional financial and legal documents not provided on this list.

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

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

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

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

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

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

(b) Grant funds may be used to finance up to 100 percent of the costs necessary to comply with Sections 25284.1, 25292.4, and 25292.5.

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

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

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

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