

Assembly Bill No. 1043

CHAPTER 349

An act to amend Section 75101 of the Public Resources Code, relating to groundwater.

[Approved by Governor September 16, 2014. Filed with Secretary of State September 16, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1043, Chau. Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006: groundwater contamination.

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative statute approved by the voters as Proposition 84 at the November 7, 2006, statewide general election, makes approximately \$5.4 billion in bond funds available for safe drinking water, water quality and supply, flood control, natural resource protection, and park improvements. The initiative bond act makes \$60,000,000 available to the State Water Resources Control Board for the purpose of loans and grants for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water and requires repayment for costs that are subsequently recovered from parties responsible for the contamination. Existing law requires the State Department of Public Health, in collaboration with the Department of Toxic Substances Control and the state board, to develop and adopt regulations governing the repayment of costs that are subsequently recovered from parties responsible for the contamination of groundwater.

This bill would eliminate the requirement to develop and adopt regulations and instead would require that costs subsequently recovered from a party responsible for the contamination, as defined, be repaid to the state board and deposited, and separately accounted for, in the Groundwater Contamination Cleanup Project Fund, which this bill would create in the State Treasury. This bill would require moneys in the fund to be available, upon appropriation by the Legislature, to the state board for a grant to the grantee that received a grant to prevent or reduce contamination of groundwater pursuant to Proposition 84 and subsequently recovered costs from a responsible party and repaid those costs to the state. This bill would require the state board to disburse the funds upon the approval of an expenditure plan submitted by the grantee. This bill would prohibit the total amount of a grant from the fund and a grant received to prevent or reduce contamination of groundwater pursuant to Proposition 84 from exceeding the grantee's total costs to cleanup contaminated groundwater or prevent the contamination of groundwater. This bill would require moneys recovered

from a responsible party in excess of the amount that may be awarded as a grant to be available from the fund to the state board, upon appropriation by the Legislature, for expenditure on orphan groundwater contamination cleanup projects and would require the state board to consult with the Department of Toxic Substances Control when considering expenditures on orphan groundwater contamination cleanup projects. The bill would authorize the state board, upon appropriation, to use moneys in the fund for its administrative costs and for directly recovering moneys from a party responsible for contamination of groundwater addressed by a grant or loan under Proposition 84, and would require that if moneys from the fund are used for legal costs in directly recovering moneys, the moneys recovered by the judgment in favor of the state board be deposited into the fund.

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

SECTION 1. Section 75101 of the Public Resources Code is amended to read:

75101. (a) (1) Costs subsequently recovered from a party responsible for the contamination pursuant to Section 75025 shall be repaid to the state board and deposited in the Groundwater Contamination Cleanup Project Fund, which is hereby created in the State Treasury. Costs recovered shall be separately accounted for within the Groundwater Contamination Cleanup Project Fund.

(2) Moneys in the Groundwater Contamination Cleanup Project Fund are available, upon appropriation by the Legislature, to the state board for the purpose of a grant to the grantee that received funds and subsequently recovered costs from a responsible party and repaid those costs to the state in the following priority order:

(A) Projects and activities to clean up areas of groundwater contamination within the grantee's jurisdiction where the initial grant awarded pursuant to Section 75025 is insufficient to pay for the full costs of the cleanup.

(B) Projects and activities to clean up additional areas of groundwater contamination within the grantee's jurisdiction.

(3) (A) The total amount of the grant awarded pursuant to Section 75025 and the amount awarded pursuant to this subdivision shall not exceed the grantee's total costs to clean up contaminated groundwater or prevent the contamination of groundwater.

(B) If costs recovered by the grantee and deposited in the Groundwater Contamination Cleanup Project Fund exceed the amount that may be awarded as a grant pursuant to the limit in subparagraph (A), the excess moneys shall be available to the state board, upon appropriation by the Legislature, for expenditure on orphan groundwater contamination cleanup projects. The state board shall consult with the Department of Toxic Substances Control when considering expenditures on orphan groundwater contamination cleanup projects.

(4) The grantee shall use an amount awarded pursuant to this subdivision for groundwater contamination cleanup activities for groundwater that is a primary source of drinking water, including, but not limited to, ongoing treatment and remediation activities in accordance with the purposes of Section 75025.

(5) When seeking grant funds pursuant to paragraph (2), a grantee shall submit an expenditure plan to the state board for projects consistent with this subdivision. The state board shall review the submitted expenditure plan and consult with the Department of Toxic Substances Control for sites where the Department of Toxic Substances Control is the lead state agency. The state board shall notify the grantee if the expenditure plan is approved, and if approved, the state board shall disburse the funds.

(6) Grants awarded pursuant to this subdivision may be used for capital costs and treatment and remediation activities.

(7) Commencing no later than July 1, 2015, and annually thereafter until the grantee's funds are expended, a grantee of funds awarded pursuant to this subdivision shall provide public notice, by posting a list on the grantee's Internet Web site, of projects and activities that receive grant funds pursuant to this subdivision and the amount of those funds.

(8) As used in this subdivision, "costs subsequently recovered from a party responsible for the contamination" means the amount of any judgment or settlement received by a grantee of funds received pursuant to Section 75025 from a responsible party that is attributable to costs funded by the grant received pursuant to Section 75025, less all reasonable and necessary costs of response incurred by the grantee of funds received pursuant to Section 75025 to recover these funds. Attorney's fees may be considered reasonable and necessary costs of response if the attorney's efforts are for identifying potentially responsible parties, but not if incurred in pursuit of litigation, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), and *Key Tronic Corp. v. U.S.* (511 U.S. 809 (1994)).

(9) The state board may use moneys in the Groundwater Contamination Cleanup Project Fund, upon appropriation by the Legislature, for the costs of administering this subdivision.

(b) The state board may directly recover moneys from a party responsible for contamination addressed by a loan or grant pursuant to Section 75025 in accordance with the procedures described in subdivision (c) of Section 13304 of the Water Code. The state board, upon appropriation by the Legislature, may use moneys in the Groundwater Contamination Cleanup Project Fund for this purpose. If moneys from the Groundwater Contamination Cleanup Project Fund are used for legal costs pursuant to this subdivision, moneys recovered by a judgment in favor of the state board shall be deposited in that fund.

(c) For the purposes of implementing subdivision (a) of Section 75050, the Department of Fish and Wildlife, when funding a natural community conservation plan, shall fund only the development of a natural community conservation plan that is consistent with the Natural Community

Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

(d) The San Francisco Bay Area Conservancy may use the funds made available pursuant to subdivision (c) of Section 75060 to restore the salt ponds in the south San Francisco Bay and to create trails and visitor facilities for public use in that area.