

**Introduced by Senator Nielsen**February 22, 2013

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An act to amend Section 25299.57 of the Health and Safety Code, relating to underground storage tanks.

## LEGISLATIVE COUNSEL'S DIGEST

SB 574, as introduced, Nielsen. Underground storage tanks: corrective action.

Under existing law, Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, every owner of an underground storage tank is required to pay a storage fee for each gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund. The money in the fund may be expended by the State Water Resources Control Board, upon appropriation by the Legislature, for various purposes, including the payment of claims of up to \$1,500,000 per occurrence, as defined, to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks and the payment of claims for certain third party injuries and damages. Existing law requires the board to 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 corrective action, and for which additional corrective action is required because of additionally discovered contamination from the previous release, if the person who carried out the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to specified provisions, only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of \$1,500,000.

This bill would additionally impose, as a requirement for that reimbursement, that the subject tank has been removed. The bill would also require the board to 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 removed, the site has been the subject of a corrective action, and for which additional corrective action is required because of additionally discovered contamination from the previous release if the person owns the property and is required to perform corrective action pursuant to those provisions because of additionally discovered contamination, if the person who carried out the earlier and completed corrective action did not apply for reimbursement, as prescribed.

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

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

1 SECTION 1. Section 25299.57 of the Health and Safety Code  
2 is 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.

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

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

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

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

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

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

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

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

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

37 (2) The claimant is required to undertake or contract for  
38 corrective action pursuant to Section 25296.10, under the federal  
39 act, or under Section 6973 of Title 42 of the United States Code,  
40 or, as of January 1, 1988, the claimant has initiated corrective

1 action in accordance with Division 7 (commencing with Section  
2 13000) of the Water Code.

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

4 (4) (A) Except as provided in subparagraphs (B), (C), and (F),  
5 the claimant has complied with the permit requirements of Chapter  
6 6.7 (commencing with Section 25280). A claimant shall obtain a  
7 permit required by subdivision (a) of Section 25284 for the  
8 underground storage tank that is the subject of the claim when the  
9 claimant becomes subject to subdivision (a) of Section 25284 or  
10 when the applicable local agency begins issuing permits pursuant  
11 to subdivision (a) of Section 25284, whichever occurs later.

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

23 (C) All claimants who file their claim on or after January 1,  
24 2008, and who do not obtain a permit required by subdivision (a)  
25 of Section 25284 in accordance with subparagraph (A) or (B) may  
26 seek a waiver of the requirement to obtain a permit. The board  
27 shall waive the provisions of subparagraphs (A) and (B) as a  
28 condition for payment from the fund if the board finds all of the  
29 following:

30 (i) The claimant was unaware of the permit requirement, and  
31 upon becoming aware of the permit requirement, the claimant  
32 complies with either subdivision (a) of Section 25284 or Section  
33 25298 and the regulations adopted to implement those sections  
34 within a reasonable period, not to exceed one year, from when the  
35 claimant became aware of the permit requirement.

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

39 (iii) Prior to submittal of the application to the fund, the claimant  
40 has paid all fees, interest, and penalties imposed pursuant to Article

1 5 (commencing with Section 25299.40) of this chapter and Part  
2 26 (commencing with Section 50101) of Division 2 of the Revenue  
3 and Taxation Code for the underground storage tank that is the  
4 subject of the claim.

5 (D) (i) A claimant exempted pursuant to subparagraph (C) and  
6 who has complied, on or before December 22, 1998, either with  
7 subdivision (a) of Section 25284 or Section 25298 and the  
8 regulations adopted to implement those sections, shall obtain a  
9 level of financial responsibility twice as great as the amount that  
10 the claimant is otherwise required to obtain pursuant to subdivision  
11 (a) of Section 25299.32, but not less than ten thousand dollars  
12 (\$10,000). All other claimants exempted pursuant to subparagraph  
13 (C) shall obtain a level of financial responsibility that is four times  
14 as great as the amount that the claimant is otherwise required to  
15 obtain pursuant to subdivision (a) of Section 25299.32, but not  
16 less than twenty thousand dollars (\$20,000).

17 (ii) The board may waive the requirements of clause (i) if the  
18 claimant can demonstrate that the conditions specified in clauses  
19 (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to  
20 the causing of any contamination. That demonstration may be  
21 made through a certification issued by the permitting agency based  
22 on a site evaluation and tank tests at the time of permit application  
23 or in any other manner acceptable to the board.

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

32 (F) The board shall waive the provisions of subparagraph (A)  
33 as a condition for payment from the fund for a claimant who filed  
34 his or her claim on or after January 1, 2008, and before July 1,  
35 2009, but is not eligible for a waiver of the permit requirement  
36 pursuant to the regulations adopted by the board in effect on the  
37 date of the filing of the claim, and who did not obtain or apply for  
38 a permit required by subdivision (a) of Section 25284, if the board  
39 finds all of the following:

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

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

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

8 (iv) Within three years after becoming the owner or de facto  
9 owner of the underground storage tank but not after December 22,  
10 1998, the claimant caused the underground storage tank to be  
11 removed and closed in accordance with applicable law, and  
12 commenced no later than December 22, 1998, to perform corrective  
13 action pursuant to Section 25296.10 of this code or pursuant to  
14 Division 7 (commencing with Section 13000) of the Water Code.

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

20 (H) For purposes of clauses (ii) and (iv) of subparagraph (F),  
21 “de facto owner of an underground storage tank” means a person  
22 who purchases or otherwise acquires real property, as defined in  
23 subparagraph (D) of paragraph (5) of subdivision (h) of Section  
24 25299.54, and has actual possession of, and control over, an  
25 underground storage tank that has been abandoned by its previous  
26 owner.

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

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

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

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

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

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

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

15 (4) Paragraphs (1), (2), and (3) do not apply to a tank owned or  
16 operated by a public agency if the prospective costs are for private  
17 professional services within the meaning of Chapter 10  
18 (commencing with Section 4525) of Division 5 of Title 1 of the  
19 Government Code and those services are procured in accordance  
20 with the requirements of that chapter.

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

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

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

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

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

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

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

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

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

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

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

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

1 (k) (1) Notwithstanding any other provision of this section, the  
2 board shall pay a claim for the costs of corrective action to a person  
3 who owns property on which is located a release from a petroleum  
4 underground storage tank ~~that has been removed, the site~~ has been  
5 the subject of a completed corrective action, and for which  
6 additional corrective action is required because of additionally  
7 discovered contamination from the previous release, ~~only if the as~~  
8 *follows:*

9 (A) *If the person who carried out the earlier and completed*  
10 *corrective action was eligible for, and applied for, reimbursement*  
11 *pursuant to subdivision (b), ~~and reimbursement for additional~~*  
12 *corrective action shall be available only to the extent that the*  
13 *amount of reimbursement for the earlier corrective action did not*  
14 *exceed the amount of reimbursement authorized by subdivision*  
15 *(a). Reimbursement to a claimant on a reopened site shall occur*  
16 *when funds are available, and reimbursement commitment shall*  
17 *be made ahead of any new letters of commitment to be issued, as*  
18 *of the date of the reopening of the claim, if funding has occurred*  
19 *on the original claim, in which case funding shall occur at the time*  
20 *it would have occurred under the original claim.*

21 (B) *If the person who carried out the earlier and completed*  
22 *corrective action did not apply for reimbursement pursuant to*  
23 *subdivision (b), the person who owns the property and is required*  
24 *to perform corrective action because of additionally discovered*  
25 *contamination may be reimbursed for incurred corrective action*  
26 *costs that are reasonable and necessary. The board shall assign*  
27 *the person a priority ranking consistent with the categories*  
28 *described in Section 25299.52, notwithstanding the requirement*  
29 *to be an owner or operator. Reimbursement shall be limited to the*  
30 *amounts described in Section 25299.59.*

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

35 (l) (1) Claims for reimbursement of corrective action costs that  
36 are received by the board more than 365 days after the date of  
37 issuance of a closure letter issued pursuant to subdivision (g) of  
38 Section 25296.10 or after the issuance or activation of a letter of  
39 commitment, whichever occurs later, shall not be reimbursed unless  
40 either of the following applies:

- 1 (A) Claims for corrective action costs are submitted to the board
- 2 pursuant to paragraph (1) of subdivision (k).
- 3 (B) The board finds that submission within the time period
- 4 specified in this paragraph was beyond the claimant’s reasonable
- 5 control, ongoing work is required for closure that will result in
- 6 submission of claims beyond that time period, or that under the
- 7 circumstances of the particular case, it would be unreasonable or
- 8 inequitable to impose the time period specified in this paragraph.
- 9 (2) This section does not limit or abrogate the rights of a
- 10 claimant in disputing reimbursement determinations or suspension
- 11 of claims.
- 12 (3) For cases that have been issued a closure letter pursuant to
- 13 subdivision (g) of Section 25296.10 prior to January 1, 2012, the
- 14 board shall notify claimants of the 365-day filing deadline specified
- 15 in paragraph (1) on or before March 31, 2012, or upon issuance
- 16 of a letter of commitment, whichever occurs later.