

AMENDED IN SENATE MAY 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2891

Introduced by Committee on Environmental Safety and Toxic Materials (Assembly Members Alejo (Chair), ~~Gonzalez, McCarty, and Ting Arambula, Lopez, and McCarty~~)

February 29, 2016

An act to amend Sections ~~47104, 47105, and 47106~~ 25173.7 and 25205.6 of the ~~Public Resources~~ *Health and Safety Code*, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2891, as amended, Committee on Environmental Safety and Toxic Materials. ~~Household hazardous Hazardous waste: guidelines. funding.~~

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Superfund Act), imposes liability for hazardous substance removal or remedial actions and authorizes moneys in the Toxic Substances Control Account in the General Fund to be expended by the Department of Toxic Substances Control to pay, among other things, all costs of removal or remedial actions incurred by the state and for the state's share of the costs of removal or remedial actions mandated by the federal Comprehensive Environmental Response Compensation, and Liability Act of 1980, commonly known as the Federal Superfund Act. Existing law expresses the intent of the Legislature that the funds deposited in the account be appropriated in the annual Budget Act each year in a specified manner, including, but not limited to, not less than \$6,750,000 to the Site Remediation Account in the General Fund for direct site remediation costs, as defined.

This bill would instead express the intent of the Legislature that the funds deposited in the account be appropriated in the annual Budget Act each year to the Site Remediation Account in an amount sufficient to pay for estimated costs for direct site remediation, including, but not limited to, at both federal Superfund orphan sites and at state-only orphan sites. Existing law defines orphan sites as those with no reasonably identifiable responsible parties. The bill would require the department to include those estimated costs in a report submitted to the Legislature with the Governor's Budget each year.

Existing law requires the department to provide the State Board of Equalization with a schedule of codes identifying the types of organizations that use, generate, store, or conduct activities in this state related to hazardous materials. Each organization type identified in the schedule is required to pay an annual fee, which is deposited in the Toxic Substances Control Account. Existing law expresses the intent that those organization fee rates are intended to provide sufficient revenue to fund, among other things, appropriations in any given fiscal year of \$3,300,000 to fund the state's clean-up obligation under the Federal Superfund Act. If the department determines that the state's obligation under the Federal Superfund Act will exceed \$3,300,000 in any fiscal year, existing law requires the department to report that determination to the Legislature in the Governor's Budget.

This bill would repeal that expression of legislative intent and a related requirement that the Legislature specify in the annual Budget Act changes to those rates necessary to fund the state's increased obligation under the Federal Superfund Act. The bill would instead express the intent of the Legislature that those rates are intended to provide sufficient revenue to fund appropriations in any given fiscal year to fund the state's obligation under the Federal Superfund Act. The bill would require the department to determine the state's obligation under the Federal Superfund Act and to annually include the determination in the report described above that is submitted to the Legislature with the Governor's Budget.

This bill would also make conforming changes and delete obsolete provisions.

~~(1) Existing law authorizes public agencies to operate household hazardous waste collection facilities, as defined, and specifies conditions for the transportation of household hazardous waste.~~

~~Existing law requires the Department of Resources Recycling and Recovery to prepare, in consultation with the Department of Toxic~~

~~Substances Control, guidelines and a state policy to guide the efforts of local agencies to provide household hazardous waste collection, recycling, and disposal programs pursuant to this article.~~

~~This bill would require the department to additionally consult with the State Water Resources Control Board in preparing the guidelines and state policy.~~

~~(2) Existing law requires the Department of Resources Recycling and Recovery, in establishing guidelines on which products should be disposed of as hazardous waste, to consider specified factors.~~

~~This bill would require the department to consider those factors in consultation with the Department of Toxic Substances Control and the State Water Resources Control Board.~~

~~(3) This bill would require the Department of Resources Recycling and Recovery, beginning January 1, 2019, to annually update and post the guidelines referenced in paragraphs (1) and (2) on its Internet Web site.~~

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 25173.7 of the Health and Safety Code
2 is amended to read:

3 25173.7. (a) It is the intent of the Legislature that funds
4 deposited in the Toxic Substances Control Account shall be
5 appropriated in the annual Budget Act each year in the following
6 manner:

7 (1) ~~Not less than six million seven hundred fifty thousand dollars~~
8 ~~(\$6,750,000)~~ *An amount sufficient to pay for the estimated costs*
9 *identified by the department in the report submitted pursuant to*
10 *subdivision (c) to the Site Remediation Account in the General*
11 *Fund for direct site remediation costs, as defined in Section 25337.*
12 ~~The amount specified in this paragraph shall be increased in any~~
13 ~~fiscal year by the amount of increased revenues specified by the~~
14 ~~Legislature in the Budget Act for that fiscal year pursuant to~~
15 ~~subdivision (g) of Section 25205.6.~~

16 (2) Not less than four hundred thousand dollars (\$400,000) to
17 the Expedited Site Remediation Trust Fund in the State Treasury,
18 created pursuant to subdivision (a) of *former* Section 25399.1, for

1 purposes of paying the orphan share of response costs pursuant to
 2 former Chapter 6.85 (commencing with Section 25396).

3 (3) An amount that does not exceed the costs incurred by the
 4 State Board of Equalization, a private party, or other public agency,
 5 to administer and collect the fees imposed pursuant to Article 9.1
 6 (commencing with Section 25205.1) and deposited into the Toxic
 7 Substances Control Account, for the purpose of reimbursing the
 8 State Board of Equalization, public agency, or private party, for
 9 those costs.

10 ~~(4) Commencing with the 1999–2000 fiscal year and annually~~
 11 ~~thereafter, not~~ *Not* less than one million fifty thousand dollars
 12 (\$1,050,000) for purposes of establishing and implementing a
 13 program pursuant to Sections 25244.15.1, 25244.17.1, 25244.17.2,
 14 ~~25244.22, and 25244.24 and 25244.22~~ to encourage hazardous
 15 waste generators to implement pollution prevention measures.

16 (5) Funds not appropriated as specified in paragraphs (1) to (4),
 17 inclusive, may be appropriated for any of the purposes specified
 18 in subdivision (b) of Section 25173.6, except the purposes specified
 19 in subparagraph (C) of paragraph (1) of, and paragraph (13) of,
 20 subdivision (b) of Section 25173.6.

21 ~~(b) (1) The amounts specified in paragraphs (1) to (3), inclusive,~~
 22 ~~of subdivision (a) are the amounts that the Legislature intends to~~
 23 ~~appropriate for the 1998–99 fiscal year for the purposes specified~~
 24 ~~in those paragraphs, and the amount specified in paragraph (4) of~~
 25 ~~subdivision (a) is the amount the Legislature intends to appropriate~~
 26 ~~for the 1999–2000 fiscal year for the purposes specified in that~~
 27 ~~paragraph. Beginning with the 1999–2000 fiscal year, and for each~~
 28 ~~fiscal year thereafter, the amounts specified in paragraphs (1) (2)~~
 29 ~~to (3); (4), inclusive, of subdivision (a), and beginning with the~~
 30 ~~2000–01 fiscal year, and for each fiscal year thereafter, the amount~~
 31 ~~specified in paragraph (4) of subdivision (a) shall be adjusted~~
 32 ~~annually to reflect increases or decreases in the cost of living during~~
 33 ~~the prior fiscal year, as measured by the Consumer Price Index~~
 34 ~~issued by the Department of Industrial Relations or by a successor~~
 35 ~~agency.~~

36 (2) Notwithstanding paragraph (1), the department may, upon
 37 the approval of the Legislature in a statute or the annual Budget
 38 Act, take either of the following actions:

1 (A) Reduce the amounts specified in paragraphs (1) to (4),
2 inclusive, of subdivision (a), if there are insufficient funds in the
3 Toxic Substances Control Account.

4 (B) Suspend the transfer specified in paragraph (2) of
5 subdivision (a), if there are no orphan shares pending payment
6 pursuant to former Chapter 6.85 (commencing with Section 25396).

7 (c) (1) *The department shall submit to the Legislature with the*
8 *Governor's Budget each year a report that includes an estimate*
9 *of the funding needed to meet the state's obligation to pay for*
10 *direct site remediation costs, including, but not limited to, at*
11 *federal Superfund orphan sites and at state-only orphan sites. The*
12 *estimate shall include projected current budget year and out-year*
13 *costs, including, but not limited to, at federal Superfund orphan*
14 *sites and at state-only orphan sites, for new and ongoing operations*
15 *and maintenance, new and ongoing remediation, and any other*
16 *related costs.*

17 (2) *For purposes of this section, "orphan site" shall have the*
18 *same meaning as defined in Section 25385.1.*

19 SEC. 2. *Section 25205.6 of the Health and Safety Code is*
20 *amended to read:*

21 25205.6. (a) For purposes of this section, "organization" means
22 a corporation, limited liability company, limited partnership,
23 limited liability partnership, general partnership, and sole
24 proprietorship.

25 (b) On or before November 1 of each year, the department shall
26 provide the board with a schedule of codes, that consists of the
27 types of organizations that use, generate, store, or conduct activities
28 in this state related to hazardous materials, as defined in Section
29 25501, including, but not limited to, hazardous waste. The schedule
30 shall consist of identification codes from one of the following
31 classification systems, as deemed suitable by the department:

32 (1) The Standard Industrial Classification (SIC) system
33 established by the United States Department of Commerce.

34 (2) The North American Industry Classification System
35 (NAICS) adopted by the United States Census Bureau.

36 (c) Each organization of a type identified in the schedule adopted
37 pursuant to subdivision (a) shall pay an annual fee, which shall be
38 set in the following amounts:

39 (1) Two hundred dollars (\$200) for those organizations with 50
40 or more employees, but ~~less~~ fewer than 75 employees.

1 (2) Three hundred fifty dollars (\$350) for those organizations
2 with 75 or more employees, but ~~less~~ *fewer* than 100 employees.

3 (3) Seven hundred dollars (\$700) for those organizations with
4 100 or more employees, but ~~less~~ *fewer* than 250 employees.

5 (4) One thousand five hundred dollars (\$1,500) for those
6 organizations with 250 or more employees, but ~~less~~ *fewer* than
7 500 employees.

8 (5) Two thousand eight hundred dollars (\$2,800) for those
9 organizations with 500 or more employees, but ~~less~~ *fewer* than
10 1,000 employees.

11 (6) Nine thousand five hundred dollars (\$9,500) for those
12 organizations with 1,000 or more employees.

13 (d) The fee imposed pursuant to this section shall be paid by
14 each organization that is identified in the schedule adopted pursuant
15 to subdivision (a) in accordance with Part 22 (commencing with
16 Section 43001) of Division 2 of the Revenue and Taxation Code
17 and shall be deposited in the Toxic Substances Control Account.
18 The revenues shall be available, upon appropriation by the
19 Legislature, for the purposes specified in subdivision (b) of Section
20 25173.6.

21 (e) For purposes of this section, the number of employees
22 employed by an organization is the number of persons employed
23 in this state for more than 500 hours during the calendar year
24 preceding the calendar year in which the fee is due.

25 (f) The fee rates specified in subdivision (c) are the rates for the
26 1998 calendar year. Beginning with the 1999 calendar year, and
27 for each calendar year thereafter, the State Board of Equalization
28 shall adjust the rates annually to reflect increases or decreases in
29 the cost of living during the prior fiscal year, as measured by the
30 Consumer Price Index issued by the Department of Industrial
31 Relations or by a successor agency.

32 (g) (1) Pursuant to paragraph (3) of subsection (c) of Section
33 104 of the federal Comprehensive Environmental Response,
34 Compensation, and Liability Act of 1980, as amended (42 U.S.C.
35 Sec. 9604(c)(3)), the state is obligated to pay specified costs of
36 removal and remedial actions carried out pursuant to the federal
37 Comprehensive Environmental Response, Compensation, and
38 Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

39 (2) The fee rates specified in subdivision (c) are intended to
40 provide sufficient revenues to fund the purposes of subdivision

1 (b) of Section 25173.6, including appropriations in any given fiscal
2 year of ~~three million three hundred thousand dollars (\$3,300,000)~~
3 to fund the state's obligation pursuant to paragraph (3) of
4 subsection (c) of Section 104 of the federal Comprehensive
5 Environmental Response, Compensation, and Liability Act of
6 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

7 ~~(3) If the department determines that the state's obligation under~~
8 ~~paragraph (3) of subsection (c) of Section 104 of the federal~~
9 ~~Comprehensive Environmental Response, Compensation, and~~
10 ~~Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3))~~
11 ~~will exceed three million three hundred thousand dollars~~
12 ~~(\$3,300,000) in any fiscal year, the department shall report that~~
13 ~~determination to the Legislature in the Governor's Budget. If, as~~
14 ~~part of the Budget Act deliberations, the Legislature concurs with~~
15 ~~the department's determination, the Legislature shall specify in~~
16 ~~the annual Budget Act those pro rata changes to the fee rates~~
17 ~~specified in subdivision (c) that will increase revenues in the next~~
18 ~~calendar year as necessary to fund the state's increased obligations.~~
19 ~~However, the Legislature shall not specify fee rates in the annual~~
20 ~~Budget Act that increase revenues in an amount greater than eight~~
21 ~~million two hundred thousand dollars (\$8,200,000) above the~~
22 ~~revenues provided by the fee rates specified in subdivision (c).~~

23 *(3) The department shall annually determine the state's*
24 *obligation under paragraph (3) of subsection (c) of Section 104*
25 *of the federal Comprehensive Environmental Response,*
26 *Compensation, and Liability Act of 1980, as amended (42 U.S.C.*
27 *Sec. 9604(c)(3)), and shall include the determination in the annual*
28 *report submitted to the Legislature with the Governor's Budget*
29 *specified in subdivision (c) of Section 25173.7.*

30 (4) Any changes in the fee rates approved by the Legislature in
31 the annual Budget Act pursuant to this subdivision shall have effect
32 only on the fee payment that is due and payable by the end of
33 February in the fiscal year for which that annual Budget Act is
34 enacted.

35 (h) This section does not apply to a nonprofit corporation
36 primarily engaged in the provision of residential social and personal
37 care for children, the aged, and special categories of persons with
38 some limits on their ability for self-care, as described in SIC Code
39 8361 of the Standard Industrial Classification (SIC) Manual

1 published by the United States Office of Management and Budget,
2 1987 edition.

3 (i) The changes made to this section by the act of the 2005–06
4 Regular Session of the Legislature amending this section shall not
5 increase fee revenues in the 2006–07 fiscal year.

6 ~~SECTION 1. Section 47104 of the Public Resources Code is~~
7 ~~amended to read:~~

8 ~~47104. The department shall prepare, in consultation with the~~
9 ~~Department of Toxic Substances Control and the State Water~~
10 ~~Resources Control Board, guidelines and a state policy to guide~~
11 ~~the efforts of local agencies to provide household hazardous waste~~
12 ~~collection, recycling, and disposal programs pursuant to this article.~~
13 ~~The guidelines required by this section shall allow adequate~~
14 ~~flexibility to local agencies in meeting their individual needs, to~~
15 ~~the extent that the local agency’s program does not conflict with~~
16 ~~the state policy prepared pursuant to this section.~~

17 ~~SEC. 2. Section 47105 of the Public Resources Code is~~
18 ~~amended to read:~~

19 ~~47105. (a) The guidelines required by this article shall include~~
20 ~~both of the following elements:~~

21 ~~(1) Development of a model operation plan for community~~
22 ~~household hazardous waste collection, recycling, and disposal~~
23 ~~programs required to be identified pursuant to this article. The~~
24 ~~model operation plan shall include a description of proper~~
25 ~~procedures for hazardous waste handling, storage, transportation,~~
26 ~~and personnel training.~~

27 ~~(2) The establishment of guidelines on the generic types of~~
28 ~~household hazardous substances that should be disposed of as~~
29 ~~hazardous waste, and guidelines on the safe management of~~
30 ~~hazardous wastes generated by households that may be excluded~~
31 ~~from household hazardous waste collection programs but may~~
32 ~~require some special handling.~~

33 ~~(b) Beginning January 1, 2019, the department shall annually~~
34 ~~update and shall post on its Internet Web site the guidelines~~
35 ~~required by this article.~~

36 ~~SEC. 3. Section 47106 of the Public Resources Code is~~
37 ~~amended to read:~~

38 ~~47106. In establishing guidelines on which products should be~~
39 ~~disposed of as hazardous waste, the department, in consultation~~
40 ~~with the Department of Toxic Substances Control and the State~~

1 ~~Water Resources Control Board, shall consider such factors as~~
2 ~~toxicity, concentration of toxic ingredients in a product, and other~~
3 ~~appropriate factors. The department shall also consider the~~
4 ~~appropriateness of excluding from any listing of household~~
5 ~~hazardous wastes specific categories of household products, such~~
6 ~~as products intended for human consumption, personal hygiene~~
7 ~~products, and other categories of household products intended for~~
8 ~~general consumer use.~~

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