

AMENDED IN ASSEMBLY JANUARY 6, 1998

AMENDED IN ASSEMBLY MAY 23, 1997

AMENDED IN ASSEMBLY APRIL 16, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 681

Introduced by Assembly Member Machado

February 26, 1997

An act to add Sections 25297.15, ~~25299.37.1~~ 25299.37.2, and 25355.8 to the Health and Safety Code, and to add Section 13307.1 to the Water Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 681, as amended, Machado. Environmental remediation: closure.

(1) Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, requires the Department of Toxic Substances Control or a California regional water quality control board to prepare or approve remedial action plans, which specify, among other things, removal and remedial actions selected for the cleanup of all hazardous substance release sites identified and categorized pursuant to a specified procedure. The department and the State Water Resources Control Board are required to concurrently establish consistent policies and procedures to be used by each agency in overseeing the investigation and taking of removal and remedial actions at hazardous substance release sites, in the case of the department, and in overseeing the

investigation of, and cleaning up or abating the effects of, discharges of a hazardous substance, in the case of the state board.

Under existing law, the state board is authorized to develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies.

Existing law specifies procedures for the taking of corrective action to unauthorized releases of petroleum from underground storage tanks.

This bill would make a statement of legislative intent and would prohibit considering cleanup or site closure proposals from the primary or active responsible party or discharger, as the case may be, the issuance of a closure letter, or a determination that no further action is required by a local agency with respect to an unauthorized release of hazardous substances from an underground storage tank, a local agency, a regional board, or the state board with regard to an unauthorized release of petroleum from an underground storage tank, the department with respect to a hazardous substances release site under the act, or the state board or a regional board with respect to a site subject to a cleanup or abatement order, ~~unless the primary or active responsible party or discharger, as the case may be, if any, has notified all current owners of fee title to the site of the proposed action~~ *have been notified of the proposed action by the primary or active responsible party.*

~~The bill would require the primary or active responsible party or discharger, if any, to provide the local agency, department, state board, or regional board, as the case may be, with title evidence from a title company identifying all current owners of fee title to the site.~~

~~The bill would require the local agency, department, state board, or regional board, as the case may be, to order the primary or active responsible party or discharger, if any, to promptly remediate or remove all or substantially all of the unauthorized release, hazardous substances, petroleum, or waste, as the case may be, unless a specified agreement is reached or unless the local agency, department, state board,~~



~~or regional board makes specified findings, based upon substantial evidence.~~

~~The bill would prohibit a local land use authority from using the existence of those substances or wastes as a basis for denying specified proposed uses of the site.~~

The bill would require the above described entities to take all reasonable steps necessary to accommodate landowner participation in the cleanup or site closure process and to consider all input and recommendations from any landowner wishing to participate.

Since the bill would require local agencies to take specified actions with regard to unauthorized releases, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 ~~SECTION 1. The Legislature hereby finds and~~
2 ~~declares all of the following:~~
3 ~~(a) Certain state and local agencies responsible for the~~
4 ~~investigation and remediation or removal of hazardous~~
5 ~~substances present in the soil and water of this state,~~
6 ~~including the State Water Resources Control Board, the~~
7 ~~California regional water quality control boards, the~~
8 ~~Department of Toxic Substances Control, and county~~
9 ~~departments of environmental health services, have been~~
10 ~~pursuing targets or quotas for the early closure of sites~~
11 ~~containing soil, water, or both soil and water,~~
12 ~~contaminated with hazardous substance releases without~~
13 ~~remediating or removing those hazardous substances and~~
14 ~~without adequately analyzing either the public health~~
15 ~~risks or the long-term economic impacts on landowners~~



1 and neighboring communities of leaving those hazardous
2 substances in place.

3 (b) Certain corporations and persons who are
4 primarily and actively responsible for causing hazardous
5 substances to be present in the soil or water of sites within
6 this state, but who do not currently own those sites,
7 including former owners, current and former tenants,
8 and easement owners, have requested state and local
9 agencies to approve closure of those hazardous substance
10 release sites without remediating all, or even without
11 remediating any, of the hazardous substances present
12 there.

13 (c) Some primary and active responsible parties have
14 purposely failed to inform the landowners of the
15 hazardous substance sites that closure proceedings are
16 underway so as to preclude effective participation by
17 landowners in the decisionmaking process.

18 (d) State and local agencies' procedures do not require
19 the consent of the landowners to closure requests by the
20 primary and active responsible parties and do not
21 adequately provide for solicitation of the views of the
22 landowners by the state or local agencies when
23 investigation or cleanup plans are submitted and when
24 the closure requests are received.

25 (e) The situation specified in subdivision (d) fails to
26 provide adequate due process for those landowners, who
27 likely will bear the primary burden of state and local
28 agencies' actions of allowing hazardous substances to
29 remain in place, in the form of long term liability for the
30 hazardous substances and immediately and significantly
31 decreased property values.

32 (f) Landowners' positions respecting the cleanup of
33 hazardous substances in their land and water and
34 landowners' common law and contractual rights against
35 the primary and active responsible parties are not
36 adequately considered by the state and local agencies
37 when they consider whether to approve closure of a site
38 with less than a full remedial or removal action or with no
39 removal or remedial action being taken.



1 ~~(g) The state and local agencies' lack of consideration~~
2 ~~of the factors specified in subdivision (f) prevents~~
3 ~~landowners from being able to rely on aggressive state and~~
4 ~~local agency enforcement of remedial action~~
5 ~~requirements and forces landowners to pursue, in the~~
6 ~~courts of this state, their common law and contractual~~
7 ~~rights to require that remedial action be taken on the~~
8 ~~landowners' property by the party actually causing the~~
9 ~~release.~~

10 ~~SEC. 2.~~

11 ~~SECTION 1.~~ Section 25297.15 is added to the Health
12 and Safety Code, to read:

13 25297.15. (a) The local agency shall not consider
14 cleanup or site closure proposals from the primary or
15 active responsible party, issue a closure letter, or make a
16 determination that no further action is required with
17 respect to a site upon which there was an unauthorized
18 release of hazardous substances from an underground
19 storage tank subject to this chapter unless ~~the primary or~~
20 ~~active responsible party, if any, has notified all current all~~
21 ~~current~~ owners of fee title to the site of the proposed
22 action.

23 ~~(b) The primary or active responsible party, if any,~~
24 ~~shall provide the local agency with title evidence from a~~
25 ~~title company identifying all current owners of fee title to~~
26 ~~the site, together with evidence satisfactory to the local~~
27 ~~agency that the notices required by subdivision (a) have~~
28 ~~been given.~~

29 ~~(c) (1) The local agency shall order the primary or~~
30 ~~active responsible party, if any, to promptly remediate or~~
31 ~~remove all or substantially all of the hazardous~~
32 ~~substances, unless the primary and active responsible~~
33 ~~party and all current fee owners of the site agree~~
34 ~~otherwise or unless the local agency finds, based upon~~
35 ~~substantial evidence, both of the following:~~

36 ~~(A) The hazardous substances present on the site have~~
37 ~~been characterized and their vertical and lateral extent~~
38 ~~has been defined sufficiently to enable the local agency~~
39 ~~to make the additional finding set forth in subparagraph~~
40 ~~(B).~~



1 ~~(B) The hazardous substances proposed to be left in~~
2 ~~place at the site will not present a significant risk to~~
3 ~~human health or safety, based on a scientifically valid~~
4 ~~risk based corrective action analysis, if the site is used or~~
5 ~~redeveloped for a use for which the site is currently~~
6 ~~zoned.~~

7 ~~(2) If findings are made pursuant to subparagraphs~~
8 ~~(A) and (B) of paragraph (1), the local agency shall~~
9 ~~provide all owners of fee title to the site with those~~
10 ~~findings in writing prior to, and as a condition to, taking~~
11 ~~the proposed action.~~

12 ~~(d) The existence of hazardous substances that are left~~
13 ~~in place at the site after closure or the issuance of a no~~
14 ~~further action determination, in accordance with~~
15 ~~subdivision (e), may not be used by a local land use~~
16 ~~authority as the basis for the denial of a proposed use of~~
17 ~~the site that is consistent with the zoning for the site.~~

18 ~~(e) This section is applicable only in a case where the~~
19 ~~primary or active responsible party is not the current~~
20 ~~owner of fee title to the entire site.~~

21 ~~SEC. 3. Section 25299.37.1 have been notified of the~~
22 ~~proposed action by the primary or active responsible~~
23 ~~party.~~

24 ~~(b) The local agency shall take all reasonable steps~~
25 ~~necessary to accommodate landowner participation in~~
26 ~~the cleanup or site closure process and shall consider all~~
27 ~~input and recommendations from any landowner wishing~~
28 ~~to participate.~~

29 ~~SEC. 2. Section 25299.37.2 is added to the Health and~~
30 ~~Safety Code, to read:~~

31 ~~25299.37.1.~~

32 25299.37.2. (a) The local agency, the board, or a
33 regional board shall not consider corrective action or site
34 closure proposals from the primary or active responsible
35 party, issue a closure letter, or make a determination that
36 no further corrective action is required with respect to a
37 site upon which there was an unauthorized release of
38 petroleum from an underground storage tank subject to
39 this chapter unless the primary or active responsible



1 ~~party, if any, has notified~~ all current owners of fee title to
2 the site of the proposed action.

3 ~~(b) The primary or active responsible party, if any,~~
4 ~~shall provide the local agency, board, or regional board,~~
5 ~~with title evidence from a title company identifying all~~
6 ~~current owners of fee title to the site, together with~~
7 ~~evidence satisfactory to the local agency, board, or~~
8 ~~regional board, as the case may be, that the notices~~
9 ~~required by subdivision (a) have been given.~~

10 ~~(c) (1) The local agency, board, or regional board, as~~
11 ~~the case may be, shall order the primary or active~~
12 ~~responsible party, if any, to promptly remediate or~~
13 ~~remove all or substantially all of the unauthorized release~~
14 ~~of petroleum, unless the primary and active responsible~~
15 ~~party and all current fee owners of the site agree~~
16 ~~otherwise or unless the local agency, board, or regional~~
17 ~~board, as the case may be, finds, based upon substantial~~
18 ~~evidence, both of the following:~~

19 ~~(A) The unauthorized release of petroleum present on~~
20 ~~the site has been characterized and its vertical and lateral~~
21 ~~extent has been defined sufficiently to enable the local~~
22 ~~agency, board, or regional board, as the case may be, to~~
23 ~~make the additional finding set forth in subparagraph~~
24 ~~(B).~~

25 ~~(B) The petroleum proposed to be left in place at the~~
26 ~~site will not present a significant risk to human health or~~
27 ~~safety, based on a scientifically valid risk-based corrective~~
28 ~~action analysis, if the site is used or redeveloped for a use~~
29 ~~for which the site is currently zoned.~~

30 ~~(2) If findings are made pursuant to subparagraphs~~
31 ~~(A) and (B) of paragraph (1), the local agency, board, or~~
32 ~~regional board, as the case may be, shall provide all~~
33 ~~owners of fee title to the site with those findings in writing~~
34 ~~prior to, and as a condition to, taking the proposed action.~~

35 ~~(d) The existence of petroleum that is left in place at~~
36 ~~the site after closure or the issuance of a no further action~~
37 ~~determination, in accordance with subdivision (c), may~~
38 ~~not be used by a local land use authority as the basis for~~
39 ~~the denial of a proposed use of the site that is consistent~~
40 ~~with the zoning for the site.~~



1 ~~(c) This section is applicable only in a case where the~~
2 ~~primary or active responsible party is not the current~~
3 ~~owner of fee title to the entire site.~~

4 ~~SEC. 4.—have been notified of the proposed action by~~
5 ~~the primary or active responsible party.~~

6 ~~(b) The local agency, board, or regional board shall~~
7 ~~take all reasonable steps necessary to accommodate~~
8 ~~landowner participation in the cleanup or site closure~~
9 ~~process and shall consider all input and recommendations~~
10 ~~from any landowner wishing to participate.~~

11 ~~SEC. 3. Section 25355.8 is added to the Health and~~
12 ~~Safety Code, to read:~~

13 ~~25355.8. (a) The department shall not consider~~
14 ~~cleanup or site closure proposals from the primary or~~
15 ~~active responsible party, issue a closure letter, or make a~~
16 ~~determination that no further action is required with~~
17 ~~respect to a hazardous substances release site subject to~~
18 ~~this chapter unless the primary or active responsible~~
19 ~~party, if any, has notified all current owners of fee title to~~
20 ~~the site of the proposed action.~~

21 ~~(b) The primary or active responsible party, if any,~~
22 ~~shall provide the department with title evidence from a~~
23 ~~title company identifying all current owners of fee title to~~
24 ~~the site, together with evidence satisfactory to the~~
25 ~~department that the notices required by subdivision (a)~~
26 ~~have been given.~~

27 ~~(c) (1) The department shall order the primary or~~
28 ~~active responsible party, if any, to promptly remediate or~~
29 ~~remove all or substantially all of the hazardous~~
30 ~~substances, unless the primary and active responsible~~
31 ~~party and all current fee owners of the site agree~~
32 ~~otherwise or unless the department finds, based upon~~
33 ~~substantial evidence, both of the following:~~

34 ~~(A) The hazardous substances present on the site have~~
35 ~~been characterized and their vertical and lateral extent~~
36 ~~has been defined sufficiently to enable the department to~~
37 ~~make the additional finding set forth in subparagraph~~
38 ~~(B).~~

39 ~~(B) The hazardous substances proposed to be left in~~
40 ~~place at the site will not present a significant risk to~~



1 ~~human health or safety, based on a scientifically valid~~
2 ~~risk-based corrective action analysis, if the site is used or~~
3 ~~redeveloped for a use for which the site is currently~~
4 ~~zoned.~~

5 ~~(2) If findings are made pursuant to subparagraphs~~
6 ~~(A) and (B) of paragraph (1), the department shall~~
7 ~~provide all owners of fee title to the site with those~~
8 ~~findings in writing prior to, and as a condition to, taking~~
9 ~~the proposed action.~~

10 ~~(d) The existence of hazardous substances that are left~~
11 ~~in place at the site after closure or the issuance of a no~~
12 ~~further action determination, in accordance with~~
13 ~~subdivision (c), may not be used by a local land use~~
14 ~~authority as the basis for the denial of a proposed use of~~
15 ~~the site that is consistent with the zoning for the site.~~

16 ~~(e) This section is applicable only in a case where the~~
17 ~~primary or active responsible party is not the current~~
18 ~~owner of fee title to the entire site.~~

19 ~~SEC. 5.—have been notified of the proposed action by~~
20 ~~the primary or active responsible party.~~

21 ~~(b) The department shall take all reasonable steps~~
22 ~~necessary to accommodate landowner participation in~~
23 ~~the cleanup or site closure process and shall consider all~~
24 ~~input and recommendations from any landowner wishing~~
25 ~~to participate.~~

26 ~~SEC. 4. Section 13307.1 is added to the Water Code, to~~
27 ~~read:~~

28 ~~13307.1. (a) The state board and the regional boards~~
29 ~~shall not consider cleanup or site closure proposals from~~
30 ~~the primary or active responsible discharger, issue a~~
31 ~~closure letter, or make a determination that no further~~
32 ~~action is required with respect to a site subject to a~~
33 ~~cleanup or abatement order pursuant to Section 13304,~~
34 ~~and upon which some of the waste that was the subject of~~
35 ~~the cleanup or abatement order under Section 13304 still~~
36 ~~remains, unless the primary or active responsible~~
37 ~~discharger, if any, has notified all current owners of fee~~
38 ~~title to the site of the proposed action.~~

39 ~~(b) The primary or active responsible discharger, if~~
40 ~~any, shall provide the state board or the regional board,~~



1 as the case may be, with title evidence from a title
2 company identifying all current owners of fee title to the
3 site, together with evidence satisfactory to the state board
4 or regional board, as the case may be, that the notices
5 required in subdivision (a) have been given.

6 (e) (1) The state board or regional board, as the case
7 may be, shall order the primary or active responsible
8 party, if any, to promptly remediate or remove all or
9 substantially all of the waste, unless the primary and
10 active responsible discharger and all current fee owners
11 of the site agree otherwise or unless the state board or
12 regional board, as the case may be, finds, based upon
13 substantial evidence, both of the following:

14 (A) The wastes present on the site have been
15 characterized and their vertical and lateral extent has
16 been defined sufficiently to enable the state board or
17 regional board, as the case may be, to make the additional
18 finding set forth in subparagraph (B):

19 (B) The wastes proposed to be left in place at the site
20 will not present a significant risk to human health or
21 safety, based on a scientifically valid risk-based corrective
22 action analysis, if the site is used or redeveloped for a use
23 for which the site is currently zoned.

24 (2) If findings are made pursuant to subparagraphs
25 (A) and (B) of paragraph (1), the state board or regional
26 board, as the case may be, shall provide all owners of fee
27 title to the site with those findings in writing prior to, and
28 as a condition to, taking the proposed action.

29 (d) The existence of wastes that are left in place at the
30 site after closure or the issuance of a no further action
31 determination, in accordance with subdivision (c) may
32 not be used by a local land use authority as the basis for
33 the denial of a proposed use of the site that is consistent
34 with the zoning for the site.

35 (e) This section is applicable only in a case where the
36 primary or active responsible discharger is not the
37 current owner of fee title to the entire site.

38 ~~SEC. 6.—have been notified of the proposed action by~~
39 ~~the primary or active responsible party.~~



1 *(b) The state board and regional boards shall take all*
2 *reasonable steps necessary to accommodate landowner*
3 *participation in the cleanup or site closure process and*
4 *shall consider all input and recommendations from any*
5 *landowner wishing to participate.*

6 SEC. 5. No reimbursement is required by this act
7 pursuant to Section 6 of Article XIII B of the California
8 Constitution because a local agency or school district has
9 the authority to levy service charges, fees, or assessments
10 sufficient to pay for the program or level of service
11 mandated by this act, within the meaning of Section 17556
12 of the Government Code.

13 Notwithstanding Section 17580 of the Government
14 Code, unless otherwise specified, the provisions of this act
15 shall become operative on the same date that the act
16 takes effect pursuant to the California Constitution.

