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AMENDED IN SENATE MARCH 24, 2003

**SENATE BILL**

**No. 493**

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**Introduced by Senator Cedillo**  
**(Coauthors: Senators Alpert and Ducheny)**  
(Coauthors: Assembly Members Bermudez, Calderon, Diaz, Dutra,  
and Firebaugh)

February 20, 2003

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*An act to add Chapter 6.83 (commencing with Section 25395.91) and Chapter 6.84 (commencing with Section 25395.92) to, and to add and repeal Chapter 6.82 (commencing with Section 25395.60) of, Division 20 of the Health and Safety Code, relating to hazardous materials. An act to amend Sections 25173.6 and 25205.6 of the Health and Safety Code, relating to hazardous materials, and making an appropriation therefor.*

## LEGISLATIVE COUNSEL'S DIGEST

SB 493, as amended, Cedillo. ~~Hazardous materials: liability substances: cleanup loans.~~

*(1) The existing Carpenter-Presley-Tanner Hazardous Substance Account Act imposes liability for hazardous substance removal or remedial actions. The act requires the Department of Toxic Substances Control to establish a loan program for loans to eligible persons to conduct preliminary endangerment assessments of brownfields, as defined, and underutilized properties. The act also requires the department to establish a loan program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property. Under existing law, the Cleanup Loans and Environmental Assistance to Neighborhoods Account in the General Fund is continuously appropriated to the department to provide loans under those programs.*

*Existing law requires corporations that use, generate, store, or conduct activities in this state related to hazardous materials to pay an annual charge, based upon a schedule of standard Industrial Classification Codes provided by the department to the State Board of Equalization. Existing law specifies a schedule for the charge, based upon the number of employees employed by a corporation. Under existing law, specified funds, including this charge imposed on corporations handling hazardous materials, are deposited in the Toxic Substances Control Account in the General Fund and the funds deposited in the Toxic Substances Control Account authorized to be appropriated to the Department of Toxic Substances Control for specified purposes relating to the cleanup of hazardous substance release sites.*

*This bill would transfer \$25,000,000 from the funds deposited in the Toxic Cleanup Substance Control Account from that charge and would deposit that amount in the Cleanup Loans and Environmental Assistance to Neighborhoods Account in the General Fund, thereby making an appropriation.*

~~Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substances removal or remedial actions.~~

~~Existing law, including the Porter-Cologne Water Quality Control Act and the provisions regulating hazardous waste and releases from underground storage tanks, impose various requirements with regard to~~



~~corrective action and cleanup and abatement, upon persons subject to those acts.~~

~~This bill would enact the California Land Reuse and Revitalization Act of 2004, which would provide that an innocent landowner, a bona fide purchaser, or a contiguous property owner, as defined, qualifies for immunity from liability for response cost or damage claims under specified state statutory and common laws that impose liability upon an owner or occupant of property, for pollution conditions caused by a release or threatened release of a hazardous material on, under, or adjacent to that property, if the innocent purchaser, bona fide purchaser, or contiguous property owner meets specified conditions. The bill would prohibit an agency, as defined, from requiring an innocent landowner, bona fide purchaser, or contiguous property owner to take response actions under those state laws, other than a response action required in an approved response plan. The bill would, if there are unrecovered response costs incurred by an agency, at a site for which an owner of the site is not liable as a bona fide purchaser, require the agency to have a lien on the site, or authorize the agency to obtain from the owner a lien on other property or other assurance of payment for the unrecovered response costs, as specified.~~

~~This bill would authorize a court, in an action for contribution or recovery of response costs incurred at a site, to award reasonable attorneys' fees and experts' fees to an innocent landowner, bona fide purchaser, or contiguous landowner, as specified.~~

~~The bill would require the California Environmental Protection Agency, by January 1, 2005, to develop a form containing specified information that a bona fide purchaser, innocent landowner, or contiguous property owner who is subject to immunity would be required to complete and submit to the agency. The bill would require the agency, by July 1, 2005, and annually thereafter, to submit a report to the Legislature compiling this data and comparing brownfield response actions completed by agencies under the act with other similar response actions.~~

~~The bill would repeal the act on January 1, 2010, but would provide that a person who is subject to immunity pursuant to the act before January 1, 2010, would continue after that date to have that immunity, if the person continues to be in compliance with the requirements of the act.~~

~~The bill would require a bona fide purchaser, innocent landowner, or contiguous property owner who seeks to qualify for the immunity~~



~~provided by the act to enter into an agreement with an agency that includes the performance of a site assessment, and if the agency determines that a response plan is necessary, the preparation and implementation of a response plan. The bill would require a person who enters into an agreement to reimburse the agency that enters into the agreement for all agency costs.~~

~~The bill would require a person who enters into an agreement with an agency for oversight of a site assessment to submit a site assessment plan to the agency. The bill would require the agency to evaluate the adequacy of the site assessment plan to ensure that it contains all necessary information and, after evaluating the site assessment plan, if the agency finds that the plan is adequate, the agency would be required to approve the plan and provide notification to appropriate persons.~~

~~The bill would require a person, after implementing the site assessment plan, to submit a report of its findings to the agency. The bill would require the agency, based upon a review of this information, to determine whether a response action is necessary to address any unreasonable risk from hazardous materials at the site. If the agency determines that a response action is necessary to prevent, control, or eliminate an unreasonable risk, the bill would require the bona fide purchaser, innocent landowner, or contiguous property owner to submit a response plan to the agency to conduct a response action at the site. The bill would require the agency to evaluate the adequacy of the response plan and to approve the plan if the agency makes specified findings.~~

~~The bill would authorize a response plan to require the use of a land use control that imposes appropriate conditions, restrictions, and obligations on land use or activities if, after completion of the removal and remedial actions specified in the response plan, hazardous substances materials remain at the site at a level that is not suitable for the unrestricted use of the site, pursuant to a specified procedure. The bill would authorize the Department of Toxic Substances Control to exclude any portion of a response action conducted entirely onsite from certain hazardous waste facilities permit requirements.~~

~~Vote: majority 2/3. Appropriation: no yes. Fiscal committee: yes. State-mandated local program: no.~~

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

1 SECTION 1.—Chapter 6.82 (commencing with Section  
2



1 SECTION 1. *The Legislature finds and declares all of the*  
2 *following:*

3 (a) *There are thousands of properties in the state where*  
4 *redevelopment has been hindered due to real or perceived*  
5 *hazardous materials contamination. Cleaning up these sites and*  
6 *returning them to productive use will benefit the communities in*  
7 *which they are located and the state as a whole.*

8 (b) *Contamination of property in the state has hampered*  
9 *redevelopment, which in turn has limited job creation, economic*  
10 *revitalization, and the full and productive use of the land.*

11 (c) *Private developers, local governments, and schools are*  
12 *reluctant to acquire or redevelop these properties due, at least in*  
13 *part, to concerns regarding liability associated with historic*  
14 *contamination. Instead, they focus new development on clean*  
15 *areas that present fewer complications and lower risk of liability.*

16 (d) *This has resulted in a multitude of problems, including*  
17 *urban sprawl, decaying inner-city neighborhoods and schools,*  
18 *public health and environmental risks stemming from*  
19 *contaminated properties, lack of development at former*  
20 *manufacturing sites and rural areas in need of economic*  
21 *investment, and reduced tax bases.*

22 SEC. 2. *Section 25173.6 of the Health and Safety Code is*  
23 *amended to read:*

24 25173.6. (a) *There is in the General Fund the Toxic*  
25 *Substances Control Account, which shall be administered by the*  
26 *director. In addition to any other money that may be appropriated*  
27 *by the Legislature to the Toxic Substances Control Account, all of*  
28 *the following shall be deposited in the account:*

29 (1) *The fees collected pursuant to Section 25205.6, which are*  
30 *subject to transfer under subdivision (c) of Section 25205.6.*

31 (2) *The fees collected pursuant to Section 25187.2, to the*  
32 *extent that those fees are for oversight of a removal or remedial*  
33 *action taken under Chapter 6.8 (commencing with Section 25300)*  
34 *or Chapter 6.85 (commencing with Section 25396).*

35 (3) *Any fines or penalties collected pursuant to this chapter,*  
36 *Chapter 6.8 (commencing with Section 25300) or Chapter 6.85*  
37 *(commencing with Section 25396), except as directed otherwise*  
38 *by Section 25192.*

39 (4) *Any interest earned upon money deposited in the Toxic*  
40 *Substances Control Account.*



1 (5) All money recovered pursuant to Section 25360, except  
2 recoveries of amounts paid from the Hazardous Substance  
3 Cleanup Fund.

4 (6) All money recovered pursuant to Section 25380.

5 (7) Any reimbursements for funds expended from the Toxic  
6 Substances Control Account for services provided by the  
7 department, including, but not limited to, reimbursements  
8 required pursuant to Sections 25201.9 and 25343.

9 (8) Any money received from the federal government pursuant  
10 to the federal Comprehensive Environmental Response,  
11 Compensation, and Liability Act of 1980, as amended (42 U.S.C.  
12 Sec. 9601; et seq.).

13 (9) Any money received from responsible parties for remedial  
14 action or removal at a specific site, except as otherwise provided  
15 by law.

16 (b) The funds deposited in the Toxic Substances Control  
17 Account may be appropriated to the department for the following  
18 purposes:

19 (1) The administration and implementation of the following:

20 (A) Chapter 6.8 (commencing with Section 25300), except that  
21 no funds may be expended from the Toxic Substances Control  
22 Account for purposes of Section 25354.5.

23 (B) Chapter 6.85 (commencing with Section 25396).

24 (C) ~~Chapter 6.11 (commencing with Section 25404), on and~~  
25 ~~before June 30, 1999.~~

26 ~~(D) Article 10 (commencing with Section 7710) of Chapter 1~~  
27 ~~of Division 4 of the Public Utilities Code, to the extent the~~  
28 ~~department has been delegated responsibilities by the secretary for~~  
29 ~~implementing that article.~~

30 (2) The administration of the following units within the  
31 department:

32 (A) The Human and Ecological Risk Division.

33 (B) The Hazardous Materials Laboratory.

34 (C) The Office of Pollution Prevention and Technology  
35 Development.

36 (3) For allocation to the Office of Environmental Health  
37 Hazard Assessment, pursuant to an interagency agreement, to  
38 assist the department as needed in administering the programs  
39 described in subparagraphs (A) and (B) of paragraph (1).



1 (4) For allocation to the State Board of Equalization to pay  
2 refunds of fees collected pursuant to Section 43054 of the Revenue  
3 and Taxation Code.

4 (5) For the state share mandated pursuant to paragraph (3) of  
5 subsection (c) of Section 104 of the federal Comprehensive  
6 Environmental Response, Compensation, and Liability Act of  
7 1980, as amended (42 U.S.C. Sec. ~~9404(e)(3)~~ 9604(c)(3).

8 (6) For the purchase by the state, or by any local agency with  
9 the prior approval of the director, of hazardous substance response  
10 equipment and other preparations for response to a release of  
11 hazardous substances. However, all equipment shall be purchased  
12 in a cost-effective manner after consideration of the adequacy of  
13 existing equipment owned by the state or the local agency, and the  
14 availability of equipment owned by private contractors.

15 (7) For payment of all costs of removal and remedial action  
16 incurred by the state, or by any local agency with the approval of  
17 the director, in response to a release or threatened release of a  
18 hazardous substance, to the extent the costs are not reimbursed by  
19 the federal Comprehensive Environmental Response,  
20 Compensation, and Liability Act of 1980, as amended (42 U.S.C.  
21 Sec. 9601; et seq.).

22 (8) For payment of all costs of actions taken pursuant to  
23 subdivision (b) of Section 25358.3, to the extent that these costs  
24 are not paid by the federal Comprehensive Environmental  
25 Response, Compensation, and Liability Act of 1980, as amended  
26 (42 U.S.C. Sec. 9601; et seq.).

27 (9) For all costs incurred by the department in cooperation with  
28 the Agency for Toxic Substances and Disease Registry established  
29 pursuant to subsection (i) of Section 104 of the federal  
30 Comprehensive Environmental Response, Compensation, and  
31 Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all  
32 costs of health effects studies undertaken regarding specific sites  
33 or specific substances at specific sites. Funds appropriated for this  
34 purpose shall not exceed five hundred thousand dollars (\$500,000)  
35 in any single fiscal year. However, these actions shall not duplicate  
36 reasonably available federal actions and studies.

37 (10) For repayment of the principal of, and interest on, bonds  
38 sold pursuant to Article 7.5 (commencing with Section 25385) of  
39 Chapter 6.8.



1 (11) For the reasonable and necessary administrative costs and  
2 expenses of the Hazardous Substance Cleanup Arbitration Panel  
3 created pursuant to Section 25356.2.

4 (12) Direct site remediation costs.

5 (13) For the department's expenses for staff to perform  
6 oversight of investigations, characterizations, removals,  
7 remediations, or long-term operation and maintenance.

8 (14) For the administration and collection of the fees imposed  
9 pursuant to Section 25205.6.

10 (c) The funds deposited in the Toxic Substances Control  
11 Account may be appropriated by the Legislature to the office of the  
12 Attorney General for the support of the Toxic Substance  
13 Enforcement Program in the office of the Attorney General, in  
14 carrying out the purposes of Chapter 6.8 (commencing with  
15 Section 25300) and Chapter 6.85 (commencing with Section  
16 25396). Expenditures for the purposes of this subdivision are not  
17 subject to an interagency or interdepartmental agreement.

18 (d) The director shall expend federal funds in the Toxic  
19 Substances Control Account consistent with the requirements  
20 specified in Section 114 of the federal Comprehensive  
21 Environmental Response, Compensation, and Liability Act of  
22 1980, as amended (42 U.S.C. Sec. ~~9601~~ 9614), upon appropriation  
23 by the Legislature, for the purposes for which they were provided  
24 to the state.

25 (e) Money in the Toxic Substances Control Account shall not  
26 be expended to conduct removal or remedial actions if any  
27 significant portion of the hazardous substances to be removed or  
28 remedied originated from a source outside the state.

29 (f) The Director of Finance, upon request of the director, may  
30 make a loan from the General Fund to the Toxic Substances  
31 Control Account to meet cash needs. The loan shall be subject to  
32 the repayment provisions of Section 16351 of the Government  
33 Code and the interest provisions of Section 16314 of the  
34 Government Code.

35 *SEC. 3. Section 25205.6 of the Health and Safety Code is*  
36 *amended to read:*

37 25205.6. (a) On or before November 1 of each year, the  
38 department shall provide the board with a schedule of codes, that  
39 consists of the types of corporations that use, generate, store, or  
40 conduct activities in this state related to hazardous materials, as



1 defined in Section 25501, including, but not limited to, hazardous  
2 waste. The schedule shall consist of identification codes from one  
3 of the following classification systems, as deemed suitable by the  
4 department:

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

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

9 (b) Each corporation of a type identified in the schedule  
10 adopted pursuant to subdivision (a) shall pay an annual fee, which  
11 shall be set at two hundred dollars (\$200) for those corporations  
12 with 50 or more employees, but less than 75 employees, three  
13 hundred fifty dollars (\$350) for those corporations with 75 or more  
14 employees, but less than 100 employees, seven hundred dollars  
15 (\$700) for those corporations with 100 or more employees, but less  
16 than 250 employees, one thousand five hundred dollars (\$1,500)  
17 for those corporations with 250 or more employees, but less than  
18 500 employees, two thousand eight hundred dollars (\$2,800) for  
19 those corporations with 500 or more employees, but less than  
20 1,000 employees, and nine thousand five hundred dollars (\$9,500)  
21 for those corporations with 1,000 or more employees.

22 (c) The fee imposed pursuant to this section shall be paid by  
23 each corporation that is identified in the schedule adopted pursuant  
24 to subdivision (a) in accordance with Part 22 (commencing with  
25 Section 43001) of Division 2 of the Revenue and Taxation Code  
26 and shall be deposited in the Toxic Substances Control Account  
27 *or transferred to the Cleanup Loans and Environmental Assistance*  
28 *to Neighborhoods Account established pursuant to Section*  
29 *25395.20. ~~The~~ Except for revenues transferred to the Cleanup*  
30 *Loans and Environmental Assistance to Neighborhoods Account,*  
31 *the revenues shall be available, upon appropriation by the*  
32 *Legislature, for the purposes specified in subdivision (b) of*  
33 *Section 25173.6.*

34 (d) For purposes of this section, the number of employees  
35 employed by a corporation is the number of persons employed in  
36 this state for more than 500 hours during the calendar year  
37 preceding the calendar year in which the fee is due.

38 (e) The fee rates specified in subdivision (b) are the rates for the  
39 1998 calendar year. Beginning with the 1999 calendar year, and for  
40 each calendar year thereafter, the State Board of Equalization shall



1 adjust the rates annually to reflect increases or decreases in the cost  
2 of living during the prior fiscal year, as measured by the Consumer  
3 Price Index issued by the Department of Industrial Relations or by  
4 a successor agency.

5 (f) Pursuant to paragraph (3) of subsection (c) of Section 104  
6 of the federal Comprehensive Environmental Response,  
7 Compensation, and Liability Act of 1980, as amended (42 U.S.C.  
8 Sec. 9604(c)(3)), the state is obligated to pay specified costs of  
9 removal and remedial actions carried out pursuant to the federal  
10 Comprehensive Environmental Response, Compensation, and  
11 Liability Act of 1980, as amended (42 U.S.C. Sec. 9601; et seq.).  
12 The fee rates specified in subdivision (b) are intended to provide  
13 sufficient revenues to fund the purposes of subdivision (b) of  
14 Section 25173.6, including appropriations in any given fiscal year  
15 of three million three hundred thousand dollars (\$3,300,000) to  
16 fund the state's obligation pursuant to paragraph (3) of subsection  
17 (c) of Section 104 of the federal Comprehensive Environmental  
18 Response, Compensation, and Liability Act of 1980, as amended  
19 (42 U.S.C. Sec. 9604(c)(3)). If the department determines that the  
20 state's obligation under paragraph (3) of subsection (c) of Section  
21 104 of the federal Comprehensive Environmental Response,  
22 Compensation, and Liability Act of 1980, as amended (42 U.S.C.  
23 Sec. 9604(c)(3)) will exceed three million three hundred thousand  
24 dollars (\$3,300,000) in any fiscal year, the department shall report  
25 that determination to the Legislature in the Governor's Budget. If,  
26 as part of the Budget Act deliberations, the Legislature concurs  
27 with the department's determination, the Legislature shall specify  
28 in the annual Budget Act those pro rata changes to the fee rates  
29 specified in subdivision (b) that will increase revenues in the next  
30 calendar year as necessary to fund the state's increased obligations.  
31 However, the Legislature shall not specify fee rates in the annual  
32 Budget Act that increase revenues in an amount greater than eight  
33 million two hundred thousand dollars (\$8,200,000) above the  
34 revenues provided by the fee rates specified in subdivision (b).  
35 Any changes in the fee rates approved by the Legislature in the  
36 annual Budget Act pursuant to this subdivision shall have effect  
37 only on the fee payment that is due and payable by the end of  
38 February in the fiscal year for which that annual Budget Act is  
39 enacted.



1 (g) This section does not apply to a nonprofit corporation  
2 primarily engaged in the provision of residential social and  
3 personal care for children, the aged, and special categories of  
4 persons with some limits on their ability for self-care, as described  
5 in SIC Code 8361 of the Standard Industrial Classification (SIC)  
6 Manual published by the United States Office of Management and  
7 Budget, 1987 edition.

8 *SEC. 4. The sum of twenty-five million dollars (\$25,000,000)*  
9 *is hereby transferred from the funds deposited in the Toxic*  
10 *Substances Control Account pursuant to paragraph (1) of*  
11 *subdivision (a) of Section 25173.6 of the Health and Safety Code.*  
12 *This amount shall be deposited in the Cleanup Loans And*  
13 *Environmental Assistance to Neighborhoods Account in the*  
14 *General Fund for expenditure for the purposes specified in*  
15 *subdivision (b) of Section 25395.20 of the Health and Safety Code.*

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18 **All matter omitted in this version of the**  
19 **bill appears in the bill as amended in the**  
20 **Assembly, June 16, 2004 (JR 11)**  
21  
22

