

AMENDED IN SENATE MAY 19, 2014

AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1043

Introduced by Assembly Member Chau
(Coauthor: Senator Hernandez)

February 22, 2013

An act to ~~add Sections 75101.3 and 75101.4 to, and to repeal and add Section 75101 of,~~ *amend Section 75101 of* the Public Resources Code, relating to groundwater.

LEGISLATIVE COUNSEL'S DIGEST

AB 1043, as amended, 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 Department of Public Health 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 the department to require repayment for costs that are subsequently recovered from parties responsible for the contamination. Existing law requires the department, in collaboration with the Department of Toxic Substances Control, or DTSC, and the

State Water Resources Control 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 a grantee of certain initiative bond act funds to take specific actions to recover the costs of cleanup and to utilize those funds for certain groundwater contamination cleanup projects, as specified. The bill would require the grantee, before expending the funds recovered from a responsible party, as defined, to submit an expenditure plan to DTSC for its review. The bill would require that funds recovered from a responsible party by a grantee and used by the grantee for the costs of the specified groundwater contamination cleanup projects be deemed to be repaid by the grantee to the state.~~ *that costs subsequently recovered from a party responsible for the contamination, as defined, be repaid to the State Department of Public Health 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 continuously appropriated, without regard to fiscal years, to the Department of Toxic Substances Control 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 Department of Toxic Substances Control to disburse the funds upon receipt of an expenditure plan from the grantee if the department reviews the plan and concurs that the proposed expenditures by the grantee are consistent with certain requirements. 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.*

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, creates in the General Fund the Site Remediation Account, and authorizes the money in that account to be expended by DTSC, upon appropriation by the Legislature, for direct site remediation costs.

~~The bill would require any funds~~ *moneys* recovered from a responsible party in excess of the ~~specified groundwater contamination cleanup projects costs to be remitted to DTSC and deposited into~~ *amount that may be awarded as a grant to be transferred to the Site Remediation*

Account, to be used for *certain* orphan groundwater contamination cleanup projects, as specified: *projects*.

~~The bill would make technical, nonsubstantive changes.~~

Vote: ~~majority~~^{2/3}. 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 75101 of the Public Resources Code is*
2 *amended to read:*

3 75101. ~~(a) For the purposes of implementing Section 75025,~~
4 ~~the State Department of Public Health shall do all of the following:~~

5 ~~(1) Develop guidelines pursuant to Section 75100 in~~
6 ~~collaboration with the Department of Toxic Substances Control~~
7 ~~and the state board.~~

8 ~~(2) In collaboration with the Department of Toxic Substances~~
9 ~~Control and the state board, develop and adopt regulations~~
10 ~~governing the repayment of costs that are subsequently recovered~~
11 ~~from parties responsible for the contamination.~~

12 75101. (a) (1) *Costs subsequently recovered from a party*
13 *responsible for the contamination pursuant to Section 75025 shall*
14 *be repaid to the State Department of Public Health and deposited*
15 *in the Groundwater Contamination Cleanup Project Fund, which*
16 *is hereby created in the State Treasury. Costs recovered shall be*
17 *separately accounted for within the Groundwater Contamination*
18 *Cleanup Project Fund.*

19 (2) *Notwithstanding Section 13340 of the Government Code,*
20 *moneys in the Groundwater Contamination Cleanup Project Fund*
21 *are continuously appropriated, without regard to fiscal years, to*
22 *the Department of Toxic Substances Control for the purpose of a*
23 *grant to the grantee that received funds and subsequently recovered*
24 *costs from a responsible party and repaid those costs to the state*
25 *in the following priority order:*

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

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

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

5 (B) *If costs recovered by the grantee and deposited in the*
6 *Groundwater Contamination Cleanup Project Fund exceed the*
7 *amount that may be awarded as a grant pursuant to the limit in*
8 *subparagraph (A), the excess moneys shall be transferred to the*
9 *Site Remediation Account, established pursuant to Section 25337*
10 *of the Health and Safety Code. Recovered funds deposited into the*
11 *account shall be used by the Department of Toxic Substances*
12 *Control for orphan groundwater contamination cleanup projects*
13 *at sites that are on the list maintained by the Department of Toxic*
14 *Substances Control pursuant to Section 25356 of the Health and*
15 *Safety Code or on the National Priorities List pursuant to the*
16 *Comprehensive Environmental Response, Compensation, and*
17 *Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), as amended.*

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

23 (5) *The Department of Toxic Substances Control shall disburse*
24 *the funds upon receipt of an expenditure plan from the grantee if*
25 *the Department of Toxic Substances Control reviews the plan and*
26 *concurs that the proposed expenditures by the grantee are*
27 *consistent with paragraphs (2) to (4), inclusive.*

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

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

36 (8) *As used in this subdivision, “costs subsequently recovered*
37 *from a party responsible for the contamination” means the amount*
38 *of any judgment or settlement received by a grantee of funds*
39 *received pursuant to Section 75025 from a responsible party that*
40 *is attributable to costs funded by the grant received pursuant to*

1 *Section 75025, less all reasonable and necessary fees and expenses*
2 *incurred by the grantee of funds received pursuant to Section*
3 *75025 to recover these funds.*

4 (b) For the purposes of implementing subdivision (a) of Section
5 75050, the Department of Fish and Game, when funding a natural
6 community conservation plan, shall fund only the development of
7 a natural community conservation plan that is consistent with the
8 Natural Community Conservation Planning Act (Chapter 10
9 (commencing with Section 2800) of Division 3 of the Fish and
10 Game Code).

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

15 ~~SECTION 1. Section 75101 of the Public Resources Code is~~
16 ~~repealed.~~

17 ~~SEC. 2. Section 75101 is added to the Public Resources Code,~~
18 ~~to read:~~

19 ~~75101. For purposes of implementing Section 75025, all of the~~
20 ~~following shall apply:~~

21 ~~(a) To the extent that the following projects are available, a~~
22 ~~grantee of funds awarded pursuant to Section 75025 shall utilize~~
23 ~~funds recovered from parties responsible for the contamination~~
24 ~~pursuant to the Comprehensive Environmental Response,~~
25 ~~Compensation, and Liability Act of 1980 (42 U.S.C. Sees. 9601,~~
26 ~~et seq.) or other federal or state law only for projects that meet~~
27 ~~both of the following conditions:~~

28 ~~(1) The total of the grant amount awarded to the grantee pursuant~~
29 ~~to Section 75025 and the funds recovered from a responsible party~~
30 ~~under this subdivision do not exceed the grantee's total cost of the~~
31 ~~project to clean up contaminated groundwater or prevent the~~
32 ~~contamination of groundwater.~~

33 ~~(2) The groundwater is a primary source of drinking water and~~
34 ~~the grantee will use the funds recovered from a responsible party~~
35 ~~for groundwater contamination cleanup activities, including, but~~
36 ~~not limited to, ongoing treatment and remediation activities in~~
37 ~~accordance with the purposes of Section 75025.~~

38 ~~(b) Funds recovered from a responsible party shall be utilized~~
39 ~~by the grantee only for projects that meet the requirements of~~
40 ~~subdivision (a) and in the following priority order:~~

1 ~~(1) Projects to clean up areas of groundwater contamination~~
2 ~~within the grantee's jurisdiction where the initial grant awarded~~
3 ~~pursuant to Section 75025 is insufficient to pay for the full costs~~
4 ~~of the cleanup.~~

5 ~~(2) Projects to clean up additional areas of groundwater~~
6 ~~contamination within the grantee's jurisdiction.~~

7 ~~(e) (1) Before expending funds recovered from a responsible~~
8 ~~party on projects specified in subdivision (b), the grantee shall~~
9 ~~submit an expenditure plan to the Department of Toxic Substances~~
10 ~~Control for its review and concurrence that the proposed~~
11 ~~expenditures are consistent with subdivisions (a) and (b).~~

12 ~~(2) Funds recovered from a responsible party by the grantee~~
13 ~~that are in excess of the costs to conduct a project or projects~~
14 ~~authorized under subdivision (b) shall be remitted to the~~
15 ~~Department of Toxic Substances Control for deposit into the Site~~
16 ~~Remediation Account, established pursuant to Section 25337 of~~
17 ~~the Health and Safety Code. Recovered funds deposited into the~~
18 ~~account shall be used by the Department of Toxic Substances~~
19 ~~Control for orphan groundwater contamination cleanup projects~~
20 ~~at sites that are on the list maintained by the Department of Toxic~~
21 ~~Substances Control pursuant to Section 25356 of the Health and~~
22 ~~Safety Code or on the National Priorities List pursuant to the~~
23 ~~Comprehensive Environmental Response, Compensation, and~~
24 ~~Liability Act of 1980 (42 U.S.C. Secs. 9601 et seq.), as amended.~~

25 ~~(d) Funds recovered from a responsible party by a grantee~~
26 ~~pursuant to subdivision (a) and used by the grantee for costs,~~
27 ~~including capital costs and operation and maintenance costs, of a~~
28 ~~project that complies with subdivisions (a) and (b), are deemed to~~
29 ~~be repaid by the grantee to the state.~~

30 ~~(e) Commencing no later than July 1, 2014, and annually~~
31 ~~thereafter until the grantee's funds are expended, a grantee of funds~~
32 ~~awarded pursuant to Section 75025 shall provide public notice, by~~
33 ~~posting a list on the grantee's Internet Web site, of projects that~~
34 ~~meet the requirements of subdivisions (a) and (b) and the amount~~
35 ~~of funds recovered from a responsible party to be expended for~~
36 ~~the projects.~~

37 ~~(f) As used in this section, "funds recovered from a responsible~~
38 ~~party" means the amount of any judgment or settlement received~~
39 ~~by the grantee from a responsible party that is attributable to costs~~

1 funded by the grant, less all reasonable and necessary fees and
2 expenses incurred by the grantee to recover these funds.

3 SEC. 3. Section 75101.3 is added to the Public Resources Code,
4 to read:

5 75101.3. For the purposes of implementing subdivision (a) of
6 Section 75050, the Department of Fish and Wildlife, when
7 funding a natural community conservation plan, shall fund only
8 the development of a natural community conservation plan that is
9 consistent with the Natural Community Conservation Planning
10 Act (Chapter 10 (commencing with Section 2800) of Division 3
11 of the Fish and Game Code).

12 SEC. 4. Section 75101.4 is added to the Public Resources Code,
13 to read:

14 75101.4. The San Francisco Bay Area Conservancy may use
15 the funds made available pursuant to subdivision (e) of Section
16 75060 to restore the salt ponds in the south San Francisco Bay and
17 to create trails and visitor facilities for public use in that area.