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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 753  
**Author:** Grayson  
**Version:** 6/14/2021  
**Urgency:** No  
**Consultant:** Gabrielle Meindl  
**Hearing Date:** 6/28/2021  
**Fiscal:** Yes

**SUBJECT:** Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989: brownfields remediation and redevelopment

**DIGEST:** Extends the Underground Storage Tank Cleanup Trust Fund (USTCTF) to January 1, 2036. Requires the State Water Resources Control Board (State Water Board) to, on or before July 1, 2022, convene a stakeholder group, as specified, for the purposes of examining the eligibility criteria and funding priorities of USTCTF.

**ANALYSIS:**

Existing law:

- 1) Requires, by December 31, 2025, the owner or operator of an underground storage tank (UST) to permanently close that UST if the UST does not meet certain requirements in state law and regulation. (Health and Safety Code (HSC) § 25292.05)
- 2) The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the UST Cleanup Fund Program, until January 1, 2026, to help owners and operators of petroleum USTs satisfy federal and state financial responsibility requirements. (HSC § 25299.10)
- 3) Requires every owner and operator of a UST to establish and maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank. (HSC § 25299.31)
- 4) Authorizes a claimant under the USTCTF, who meets specified requirements, to use the USTCTF to establish and maintain evidence of financial responsibility. (HSC § 25299.32)

This bill:

- 1) Extends the sunset for the Underground Storage Tank Cleanup Program and USTCTF from January 1, 2026, to January 1, 2036.
- 2) States the intent of the Legislature that:
  - a) The USTCF continues to satisfy federal requirements that underground storage tank owners and operators demonstrate financial responsibility for corrective action and third party coverage, that the fund and its subaccounts continue to be available for cleanup of petroleum releases from underground storage tanks, and that grants and loans continue to be available to assist small businesses in upgrading, replacing, or removing project tanks.
  - b) All appropriate resources be directed to action promoting the development of housing, particularly affordable housing, and amenities, including, but not limited to, parks and recreational space in proximity to new housing projects, for purposes of alleviating the state's housing challenges and furthering attainment of the state's climate change mitigation objectives.
- 3) Requires, on or before July 1, 2022, the State Water Board to, convene a stakeholder group, as specified, for the purposes of conducting a study of the USTCTF and its subaccounts and any existing eligibility criteria or priority classes that would further the legislative intent and housing and climate change mitigation objectives, as specified.
- 4) Specifies that the use of the fund as a financial responsibility mechanism and the timely reimbursement of claims, the use of the fund and those fund subaccounts existing on January 1, 2022 for cleanup of contamination at sites, and the availability of financial assistance for small businesses shall remain programmatic priorities.
- 5) Requires the stakeholder group convened by the State Water Board consist of the following: Three claimant representatives; two grantee representatives; one grantee or borrower representative; one representative from an alternative fuels organization; one environmental justice representative; one housing developer representative; a brownfield practitioner; and any other industry, state or local government, or nonprofit representative whom the State Water Board deems qualified for and beneficial to the study.
- 6) Requires the Study be conducted in consultation with the State Water Board and consider, but not be limited to:
  - a) The creation of a fund eligibility scoring matrix pursuant to which property and community attributes are prioritized, evaluated, and scored to allow for

the assessment, remediation, and redevelopment of properties in a manner that furthers the legislative intent and housing and climate change mitigation objectives;

- b) Assessment of the potential impact of the Governor's 2020 Executive Order N-79-20 (which set new statewide goals for phasing out gasoline-powered cars and trucks in California), including underground storage tank owners' and operators' existing and future needs for the fund as a financial responsibility mechanism and to assist eligible claimants to cleanup releases of petroleum from underground storage tanks;
  - c) Changes to the eligibility criteria or priority classification so as to prioritize assessment and remediation of both petroleum and non-petroleum hazardous substances to further attainment of the legislative intent;
  - d) Changes to the eligibility criteria or priority classification to better assist small businesses in upgrading, replacing, or removing project tanks; and
  - e) Additional funding sources for remediating the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination, including sources that would provide a long-term source of funding to further the legislative intent and housing and climate change mitigation objectives.
- 7) Requires the recommendations in the Study to include proposed changes to statute required to implement the findings of the Study.
- 8) Requires, on or before July 1, 2024, the stakeholder group to prepare and submit a report presenting the results of the Study to the State Water Board and the Legislature. Specifies that the State Water Board post the report on its internet website within 15 days of receiving the report.
- 9) Makes numerous technical and conforming changes to statute.

## Background

- 1) *UST program.* The purpose of the UST program, administered by the State Water Board, is to protect public health and safety and the environment from releases of petroleum and other hazardous substances from USTs. An underground storage tank (UST) is defined by law as "any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of

the ground" (certain exceptions apply). Existing law requires single-walled USTs to be removed by December 31, 2025.

- 2) *UST Cleanup Fund Program.* The Barry Keene Underground Storage Tank Cleanup Fund Act of 1989 created the UST Cleanup Fund Program to help owners and operators of petroleum USTs satisfy federal and state financial responsibility requirements. The Cleanup Fund Program is available to assist petroleum UST owners and operators with the costs of cleaning up contaminated soil and groundwater caused by leakage from petroleum USTs. The federal financial responsibility requirements also require coverage for third-party liability due to unauthorized releases of petroleum from USTs. The Cleanup Fund Program receives funding from fees paid by UST owners for every gallon of fuel that is placed into a UST. The Cleanup Fund Program has been a critical resource for both cleaning up immediate impacts of UST releases, and preventing significant migration of petroleum products in groundwater and soil.

UST owners and operators who have leaking USTs are required to pay for the costs of soil and groundwater contamination that results from the leak. Under the Cleanup Fund Program, the owners and operators submit claims to the State Water Board for reimbursement of the costs of cleanup, and the State Water Board reimburses them for their cleanup costs. The per gallon fee (currently \$0.02 per gallon) assessed on petroleum stored in USTs has increased over time and currently generates about \$340 million annually.

The Cleanup Fund Program benefits numerous small, medium, large businesses, and individuals by providing reimbursement for expenses associated with the cleanup of leakage from petroleum USTs.

- 3) *Underground Storage Tank Sites.* The State Water Board's latest data (as of November 2020) indicates 37,553 USTs are active at 13,656 facilities in the state. Over 32,000 USTs contain motor vehicle fuel (gasoline and diesel), while the remaining roughly 4,500 contain other products, such as jet fuel and aviation gas, fuel additives, waste oil, chemicals, and other hazardous substances.

Contaminants from leaking USTs include petroleum hydrocarbons and volatile organic compounds (VOCs) that are considered hazardous substances as defined by existing law, such as methyl tert-butyl ether (MTBE), benzene, toluene, ethylbenzene, and xylenes.

- 4) *Non-UST Release Sites.* In addition to sites contaminated by UST releases of petroleum, there are currently thousands of contaminated sites in the state where recent or historical unauthorized releases of pollutants to the environment have occurred. Currently, the Regional Water Boards oversee 2,913 active non-UST release sites, and an additional 1,070 sites are inactive and awaiting Regional Water Board regulatory oversight.

These sites are varied and include, but are not limited to, pesticide manufacturing facilities, rail yards, ports, drycleaners, and refineries, where there have been releases of pollutants to the soil, groundwater, surface water, and/or sediment. The types of pollutants encountered at these sites vary widely and can include solvents, pesticides, heavy metals, and fuel constituents, to name a few. Remediation of such types of contaminants is complex, long-lasting, and expensive.

Successfully returning non-UST release sites to productive use can amount to millions of dollars in costs and present significant financial challenges to small business owners and cleanup site property (i.e. non-UST release site or brownfield property) owners. Most sites with solvent discharges (e.g., dry cleaning facilities) have yet to be investigated and remediated.

- 5) *Financial Assistance Demands for Remediation: UST vs. Non-UST Release Sites.* Open UST cleanup cases have been on a declining trend since 2000, which may be attributed to the financial assistance available through the UST Cleanup Fund for remediation and agency oversight, as well as improved standards for USTs – particularly secondary containment requirements – that help to prevent leaks. Cleanup for many of the approximately 40,000 closed leaking UST cases – many of which have been owned by small businesses and individuals that could not normally afford cleanup in its entirety – were funded partially or fully with UST Cleanup Fund monies of up to \$1.5 million each.

In contrast, open non-UST release sites have been on an increasing trend, and demand for financial assistance for these sites (through the Site Cleanup Subaccount) far exceeds the Water Boards' current financial and staffing resources. Sites contaminated by compounds such as solvents, PFAS, and nitrates pose much greater health risks than petroleum contamination and are often more costly to remediate. For the vast majority of non-UST site cleanup cases, the responsible party is required to finance the cleanup of their site in its entirety and pay for agency oversight under the Water Boards' cost recovery program. Of the 4,016 open non-UST release site cases, only 2,170 (54%) are in the cost recovery program.

Due to inadequate funding available to responsible parties, the responsible parties being unknown or not yet identified, legal and physical access issues, recalcitrant responsible parties, and other potential reasons, a high number of non-UST release site cases (1,103 cases – approximately 27% of open cases) are inactive.

The UST Cleanup Fund demonstrates a successful funding model for moving leaking UST cases and a limited number of non-UST release site cases through closure, although the demand for additional resources, particularly for non-UST release sites, is highly evident. The direct cost recovery model administered by the Water Board has been less successful and the backlog of non-UST release sites and impacted wells will likely continue to grow in the future unless additional funding for non-UST release sites can be identified.

- 6) *Three Mills Allocation.* In addition to providing for UST Cleanup Fund monies on reimbursement payments, administrative costs, and oversight activities, existing law dedicates three mills (\$0.003) of the \$0.02 per gallon fees assessed on petroleum stored in USTs, amounting to approximately \$40 million annually, to three special purposes:
  - a) School District Account – provides funding to school districts for the reimbursement of costs associated with cleaning up contamination caused by leaking petroleum USTs;
  - b) Site Cleanup Subaccount Program (SCAP) – provides funding for grants to remediate harm caused by surface or groundwater contamination and is not restricted to contaminated UST sites (i.e. sites contaminated by releases of substances other than petroleum products are eligible);
  - c) Removing, Replacing, or Upgrading Underground Storage Tanks (RUST) Loan and Grant Program – provides loans and grants to small businesses with less than 500 employees for cleanup costs and upgrades necessary to meet regulatory requirements, including the requirement in existing law for the permanent closure of single-walled USTs and the removal or replacement of single-walled piping in double-walled USTs by December 31, 2025.
  
- 7) *AB 753.* This bill extends the UST Cleanup Fund program an additional 10 years until January 1, 2036. As this program continues to clean-up USTs, there will likely be fewer and fewer USTs to clean-up. However, it is important to continue this program for a couple of reasons: federal law requires UST owners and operators to maintain financial responsibility for the USTs and any potential contamination and state law allows UST owners and operators to use the USTCTF as their financial responsibility mechanism; and California is looking to reduce emissions from transportation, including looking at a

potential zero emission transportations system by 2045. Given the anticipated reduction in petroleum powered vehicle-use over time, the deadline to permanently close single-walled USTs and piping by December 31, 2025 in existing law, and the over 2,000 single walled tanks (and tanks with single walled piping) in the state still left to be closed, it is likely that UST owners and operators will continue to require assistance to remove USTs and cleanup potential contamination caused by leaks for at least 10 additional years.

AB 753 also requires the State Water Board to convene a stakeholder group for the purposes of conducting a study of the USTCTF and making policy recommendations to the Board and Legislature regarding Fund eligibility criteria and priorities, including the remediation of non-petroleum hazardous substances to further the attainment of the state's housing and climate objectives.

## Comments

- 1) *Purpose of Bill.* According to the author, "Housing is desperately needed in urban areas, especially near jobs and transit. However, much buildable urban infill is passed over due to known or suspected environmental contamination from previous developments. These urban infill properties, known as Brownfield sites, take up valuable acreage in areas where housing development is sorely needed.

“Additionally, while there were once thousands of new applicants per year for the Underground Storage Tank Cleanup Fund, now there are only a few dozen. While this is an excellent result of the Legislature’s efforts to reduce fuel leaks, there is still an enormous need for other environmental cleanup funds in California to meet the housing needs of communities where Brownfield land is located. Without action, this fund will sunset and an incredibly valuable resource for environmental and water protection will be lost, and an opportunity to fund infill housing lost with it.

“AB 753 will extend the sunset of the Underground Storage Tank Cleanup Fund to 2035 and create a task force to examine expanding the program to offer funding opportunities to urban infill clean-up projects. This task-force will provide the state with the opportunity to address stakeholder concerns and questions and create safeguards against fraud or abuse. Through AB 753, the state will explore a promising pathway towards remediating Brownfield sites in job- and transit-rich areas to support the state’s goals of reducing carbon emissions and building urban infill housing.”

**Related/Prior Legislation**

SB 445 (Hill, Chapter 547, Statutes of 2014) extended the State Water Board program for the clean-up of USTs from 2016 to 2020.

AB 282 (Wieckowski, 2014) would have extended the sunset date of the UST Cleanup Program from 2016 until 2018, and extend the sunset of a \$0.006 surcharge on petroleum stored in an UST from 2014 until 2016. Held in the Senate Appropriations Committee.

AB 291 (Wieckowski, Chapter 569, Statutes of 2011) extended for two years a temporary fee paid per gallon on motor vehicle fuel that the owner of an underground storage tank must pay from 1.4 mils to 2 mils per gallon through January 1, 2014.

AB 358 (Smyth, Chapter 571, Statutes of 2011) streamlined the State Water Board process for completing the clean-up of USTs by establishing authority for the State Water Board to close sites overseen by local government as part of the State Water Board existing five-year review process.

**SOURCE:** Center for Creative Land Recycling and Trust for Public Land

**SUPPORT:**

Community Housing Development Corporation  
Council of Industries  
Greenbelt Alliance  
Habitat for Humanity California  
Habitat for Humanity Greater San Francisco  
Los Angeles Neighborhood Land Trust  
Mercy Housing California  
Redeemer Community Partnership

**OPPOSITION:**

None received