

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 16, 2013

**SENATE BILL**

**No. 763**

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**Introduced by Senator Fuller**

February 22, 2013

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An act to amend Sections 25284.1, 25299.51, 25299.102, 25299.103, 25299.104, 25299.105, 25299.106, 25299.107, and 25299.109; of, to repeal Sections 25299.111, 25299.113, and 25299.117 of, and to repeal and add Section 25299.110 of, the Health and Safety Code, relating to underground storage tanks, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 763, as amended, Fuller. State Water Resources Control Board: underground storage tanks.

(1) Existing law provides for the regulation of underground storage tanks by the State Water Resources Control Board. Existing law, until January 1, 2016, requires the board to conduct a loan and grant program to assist small businesses in upgrading, replacing, or removing tanks meeting applicable local, state, or federal standards (UST upgrade program). Under existing law, the interest rate for loans is set at the rate earned by the Surplus Money Investment Fund at the time of the loan commitment. Existing law establishes the Petroleum Underground Storage Tank Financing Account (financing account) and, upon appropriation by the Legislature, requires moneys in the account to be used by the board to make loans and grants for purposes of the UST upgrade program. Existing law requires interest earned from the investment of the moneys in the account to be deposited into a subaccount, available upon appropriation by the Legislature for administrative expenses of the board. Existing law requires the board

annually to make available not more than 33% of the available funds from the account for the purposes of providing grants.

This bill would extend the loan and grant program indefinitely and revise loan eligibility and grant award requirements. The bill would require the board to annually make available not more than 15% of the available funds from the account for the purposes of providing grants. The bill would set the interest rate for loans at the rate equal to  $\frac{1}{2}$  of the most recent general obligation rate obtained by the office of the Treasurer at the time of commitment. The bill would instead require interest earned from moneys in the financing account to be deposited into that account and would eliminate the subaccount. The bill would require loan fees and various other moneys received in the implementation of the loan and grant program to be deposited into the financing account. The bill would specify that moneys in the financing account are permitted to be used, in addition to making loans and grants, to service loans, to recover defaulted loan moneys, to protect the state's position as a lender creditor, and for administration costs, as specified. *The bill would additionally authorize the board to provide grants and loans for the purposes of compliance with performance standards for the control of gasoline vapor emissions during gasoline marketing operations.*

(2) Existing law establishes the Underground Storage Tank Cleanup Fund in the State Treasury and requires specified moneys to be deposited into the fund, *including charges imposed upon owners of underground storage tanks*. Under existing law, moneys in the fund may be expended by the board, upon appropriation by the Legislature, for *various purposes of, including for the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 and for transfer to the financing account.*

This bill would transfer \$8,000,000 *of a specified portion of those charges* from the fund to the financing account and appropriate these funds for the purpose of making grants and loans and administering specific provisions, as prescribed.

(3) This bill would also make technical, nonsubstantive changes to various provisions.

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

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

1 SECTION 1. Section 25284.1 of the Health and Safety Code  
2 is amended to read:  
3 25284.1. (a) The board shall take all of the following actions  
4 with regard to the prevention of unauthorized releases from  
5 petroleum underground storage tanks:  
6 (1) On or before June 1, 2000, initiate a field-based research  
7 program to quantify the probability and environmental significance  
8 of releases from underground storage tank systems meeting the  
9 1998 upgrade requirements specified in Section 25284, as that  
10 section read on January 1, 2002. The research program shall do  
11 all of the following:  
12 (A) Seek to identify the source and causes of releases and any  
13 deficiencies in leak detection systems.  
14 (B) Include single-walled, double-walled, and hybrid tank  
15 systems, and avoid bias towards known leaking underground  
16 storage tank systems by including a statistically valid sample of  
17 all operating underground storage tank systems.  
18 (C) Include peer review.  
19 (2) Complete the research program on or before June 1, 2002.  
20 (3) Use the results of the research program to develop  
21 appropriate changes in design, construction, monitoring, operation,  
22 and maintenance requirements for tank systems.  
23 (4) On or before January 1, 2001, adopt regulations to do all of  
24 the following:  
25 (A) (i) Require underground storage tank owners, operators,  
26 service technicians, installers, and inspectors to meet minimum  
27 industry-established training standards and require tank facilities  
28 to be operated in a manner consistent with industry-established  
29 best management practices.  
30 (ii) The board shall implement an outreach effort to educate  
31 small business owners or operators on the importance of the  
32 regulations adopted pursuant to this subparagraph.  
33 (B) (i) Except as provided in clauses (ii) and (iii), require testing  
34 of the secondary containment components, including  
35 under-dispenser and pump turbine containment components, upon  
36 initial installation of a secondary containment component and  
37 periodically thereafter, to ensure that the system is capable of  
38 containing releases from the primary containment until a release

1 is detected and cleaned up. The board shall consult with the  
2 petroleum industry and local government to assess the appropriate  
3 test or tests that would comply with this subparagraph.

4 (ii) Secondary containment components that are part of an  
5 emergency generator tank system may be tested using enhanced  
6 leak detection, if the test is performed at the frequency specified  
7 by the board for testing of secondary containment pursuant to  
8 Section 2644.1 of Title 23 of the California Code of Regulations.  
9 If the results of the enhanced leak detection test indicate that any  
10 component of the emergency generator tank system is leaking  
11 liquid or vapor, the owner or operator shall take appropriate actions  
12 to correct the leakage, and the owner or operator shall retest the  
13 system using enhanced leak detection until the system is no longer  
14 leaking liquid or vapor.

15 (iii) Any tank or piping that is part of an emergency generator  
16 tank system and located within a structure as described in paragraph  
17 (2) of subdivision (a) of Section 25283.5 is exempt from the  
18 secondary containment testing required by clause (i), if the owner  
19 or operator conducts visual inspections of tank or piping each time  
20 the tank system is operated, but no less than monthly, and maintains  
21 a log of inspection results for review by the local agency. This  
22 clause is not applicable if the board adopts regulations pursuant  
23 to Section 25299.3 that address the design, construction, upgrade,  
24 and monitoring of unburied tanks that are part of an emergency  
25 generator tank system.

26 (C) Require annual testing of release detection sensors and  
27 alarms, including under-dispenser and pump turbine containment  
28 sensors and alarms. The board shall consult with the petroleum  
29 industry and local government to assess the appropriate test or  
30 tests that would comply with this subparagraph.

31 (5) (A) Require an owner or operator of an underground storage  
32 tank installed after July 1, 1987, if a tank is located within 1,000  
33 feet of a public drinking water well, as identified pursuant to the  
34 state GIS mapping database, to have the underground storage tank  
35 system fitted, on or before July 1, 2001, with under-dispenser  
36 containment or a spill containment or control system that is  
37 approved by the board as capable of containing any accidental  
38 release.

39 (B) Require all underground storage tanks installed after January  
40 1, 2000, to have the tank system fitted with under-dispenser

1 containment or a spill containment or control system to meet the  
2 requirements of subparagraph (A).

3 (C) Require an owner or operator of an underground storage  
4 tank that is not otherwise subject to subparagraph (A), and not  
5 subject to subparagraph (B), to have the underground storage tank  
6 system fitted to meet the requirements of subparagraph (A), on or  
7 before December 31, 2003.

8 (D) On and after January 1, 2002, no person shall install, repair,  
9 maintain, or calibrate monitoring equipment for an underground  
10 storage tank unless that person satisfies both of the following  
11 requirements:

12 (i) The person has fulfilled training standards identified by the  
13 board in regulations adopted pursuant to this section.

14 (ii) The person possesses a tank testing license issued by the  
15 board pursuant to Section 25284.4, or a Class "A" General  
16 Engineering Contractor License, C-10 Electrical Contractor  
17 License, C-34 Pipeline Contractor License, C-36 Plumbing  
18 Contractor License, or C-61 (D40) Limited Specialty Service  
19 Station Equipment and Maintenance Contractor License issued by  
20 the Contractors' State License Board.

21 (E) Loans and grants for the installation of under-dispenser  
22 containment or a spill containment or control system shall be made  
23 available pursuant to Chapter 6.76 (commencing with Section  
24 ~~25299.10~~ 25299.100).

25 (6) Convene a panel of local agency and regional board  
26 representatives to review existing enforcement authority and  
27 procedures and to advise the board of any changes that are needed  
28 to enable local agencies to take adequate enforcement action against  
29 owners and operators of noncompliant underground storage tank  
30 facilities. The panel shall make its recommendations to the board  
31 on or before September 30, 2001. Based on the recommendations  
32 of the panel, the board shall also establish effective enforcement  
33 procedures in cases involving fraud.

34 (b) On or before July 1, 2001, the Contractors' State License  
35 Board, in consultation with the board, the petroleum industry, air  
36 pollution control districts, air quality management districts, and  
37 local government, shall review its requirements for petroleum  
38 underground storage tank system installation and removal  
39 contractors and make changes, where appropriate, to ensure these  
40 contractors are qualified.

1 SEC. 2. Section 25299.51 of the Health and Safety Code is  
2 amended to read:

3 25299.51. The board may expend the money in the fund for  
4 all the following purposes:

5 (a) In addition to the purposes specified in subdivisions (c), (d),  
6 and (e), for the costs of implementing this chapter and for  
7 implementing Section 25296.10 for a tank that is subject to this  
8 chapter.

9 (b) To pay for the administrative costs of the State Board of  
10 Equalization in collecting the fee imposed by Article 5  
11 (commencing with Section 25299.40).

12 (c) To pay for the reasonable and necessary costs of corrective  
13 action pursuant to Section 25299.36, up to one million five hundred  
14 thousand dollars (\$1,500,000) per occurrence. The Legislature  
15 may appropriate the money in the fund for expenditure by the  
16 board, without regard to fiscal year, for prompt action in response  
17 to any unauthorized release.

18 (d) To pay for the costs of an agreement for the abatement of,  
19 and oversight of the abatement of, an unauthorized release of  
20 hazardous substances from underground storage tanks, by a local  
21 agency, as authorized by Section 25297.1 or by any other provision  
22 of law, except that, for the purpose of expenditure of these funds,  
23 only underground storage tanks, as defined in Section 25299.24,  
24 shall be the subject of the agreement.

25 (e) To pay for the costs of cleanup and oversight of unauthorized  
26 releases at abandoned tank sites. The board shall not expend more  
27 than 25 percent of the total amount of money collected and  
28 deposited in the fund annually for the purposes of this subdivision  
29 and subdivision (h).

30 (f) To pay claims pursuant to Section 25299.57.

31 (g) To pay, upon order of the Controller, for refunds pursuant  
32 to Part 26 (commencing with Section 50101) of Division 2 of the  
33 Revenue and Taxation Code.

34 (h) To pay for the reasonable and necessary costs of corrective  
35 action pursuant to subdivision (f) of Section 25296.10, in response  
36 to an unauthorized release from an underground storage tank  
37 subject to this chapter.

38 (i) To pay claims pursuant to Section 25299.58.

39 (j) To pay for expenditures by the board associated with  
40 discovering violations of, and enforcing, or assisting in the

1 enforcement of, the requirements of Chapter 6.7 (commencing  
2 with Section 25280) with regard to petroleum underground storage  
3 tanks.

4 (k) For transfer to the Petroleum Underground Storage Tank  
5 Financing Account, for purposes of Chapter 6.76 (commencing  
6 with Section 25299.100).

7 SEC. 3. Section 25299.102 of the Health and Safety Code is  
8 amended to read:

9 25299.102. The board shall only make loan funds available to  
10 loan applicants that meet all of the following eligibility  
11 requirements:

12 (a) The loan applicant is a small business, either as defined in  
13 Section 632 of Title 15 of the United States Code, and in the federal  
14 regulations adopted to implement that section, as specified in Part  
15 121 (commencing with Section 121.101) of Chapter 1 of Title 13  
16 of the Code of Federal Regulations, or employs fewer than 500  
17 full-time and part-time employees, is independently owned and  
18 operated, and is not dominant in its field of operation. In either  
19 case, the principal office of the small business shall be domiciled  
20 in the state, and the officers of the small business shall be domiciled  
21 in this state. The board shall give priority to awarding loans to  
22 small businesses that meet the definition of small business specified  
23 in subdivision (d) of Section 14837 of the Government Code.

24 (b) The loan applicant owns or operates a project tank.

25 (c) The loan applicant demonstrates the ability to repay the loan,  
26 and the availability of adequate collateral to secure the loan.

27 (d) All tanks owned and operated by the loan applicant are  
28 subject to compliance with Chapter 6.7 (commencing with Section  
29 25280), and the regulations adopted pursuant to that chapter.

30 (e) The loan applicant has complied, or will comply, with the  
31 financial responsibility requirements specified in Section 25299.31  
32 and the regulations adopted pursuant to this section.

33 SEC. 4. Section 25299.103 of the Health and Safety Code is  
34 amended to read:

35 25299.103. (a) A complete loan application shall include all  
36 of the following:

37 (1) Evidence of eligibility.

38 (2) An environmental audit, as specified in Section 5260 of Title  
39 10 of the California Code of Regulations.

1 (3) Financial and legal documents necessary to demonstrate the  
2 applicant's ability to repay and provide collateral for the loan. The  
3 board shall develop a standard list of documents required of all  
4 applicants, and may also request from individual applicants  
5 additional financial and legal documents not provided on this list.

6 (4) An explanation of the reasons why the project tank is not in  
7 compliance with applicable local, state, or federal standards, and  
8 evidence that tanks not included in the list of project tanks are  
9 currently in compliance with applicable local, state, or federal  
10 standards.

11 (5) A detailed cost estimate of the tasks that are required to be  
12 completed in order for the project tanks to comply with applicable  
13 local, state, or federal standards.

14 (6) Any other information that the board determines to be  
15 necessary to include in an application form.

16 (b) Notwithstanding paragraph (4) of subdivision (a), the board  
17 may not refuse to grant a loan to an applicant solely because the  
18 applicant has failed to obtain a permit pursuant to the requirements  
19 of Chapter 6.7 (commencing with Section 25280).

20 SEC. 5. Section 25299.104 of the Health and Safety Code is  
21 amended to read:

22 25299.104. (a) The minimum amount that the board may loan  
23 an applicant is ten thousand dollars (\$10,000), and the maximum  
24 amount that the board may loan an applicant is seven hundred fifty  
25 thousand dollars (\$750,000).

26 (b) The term of the loan shall be for a maximum of 20 years if  
27 secured by real property, and for 10 years if not secured by real  
28 property. The interest rate for loans shall be set at the rate equal  
29 to one-half of the most recent general obligation bond rate obtained  
30 by the office of the Treasurer at the time of the loan commitment.

31 (c) Loan funds may be used to finance up to 100 percent of the  
32 costs necessary to upgrade, remove, or replace project tanks,  
33 including corrective actions, to meet applicable local, state, or  
34 federal standards, including, but not limited to, any design,  
35 construction, monitoring, operation, or maintenance requirements  
36 adopted pursuant to Sections 25284.1 ~~and~~, 25292.4, and 41954.

37 (d) The board may charge a loan fee to loan applicants of up to  
38 2 percent of the requested loan amount. The loan fee shall be  
39 deposited in the Petroleum Underground Storage Tank Financing  
40 Account.



1 SEC. 6. Section 25299.105 of the Health and Safety Code is  
2 amended to read:

3 25299.105. (a) The board shall make grant funds available  
4 from the Petroleum Underground Storage Tank Financing Account  
5 to eligible grant applicants who meet all of the following eligibility  
6 requirements:

7 (1) The grant applicant is a small business, pursuant to the  
8 following requirements:

9 (A) The grant applicant meets the conditions for a small business  
10 concern as defined in Section 632 of Title 15 of the United States  
11 Code, and in the federal regulations adopted to implement that  
12 section, as specified in Part 121 (commencing with Section  
13 121.101) of Chapter I of Title 13 of the Code of Federal  
14 Regulations.

15 (B) The grant applicant employs fewer than 20 full-time and  
16 part-time employees, is independently owned and operated, and  
17 is not dominant in its field of operation.

18 (2) The principal office of the grant applicant is domiciled in  
19 the state and the officers of the grant applicant are domiciled in  
20 this state.

21 (3) All tanks owned and operated by the grant applicant are  
22 subject to compliance with Chapter 6.7 (commencing with Section  
23 25280) and the regulations adopted pursuant to that chapter.

24 (4) The facility where the project tank is located has sold at  
25 retail less than 900,000 gallons of gasoline annually for each of  
26 the two years preceding the submission of the grant application.  
27 The number of gallons sold shall be based upon taxable sales  
28 figures provided to the State Board of Equalization for that facility.

29 (5) The grant applicant owns or operates a tank that is in  
30 compliance with all of the following:

31 (A) Section 41954.

32 (B) Any of the following:

33 (i) Section 25290.1.

34 (ii) Section 25290.2.

35 (iii) Section 25291.

36 (iv) Subdivisions (d) and (e) of Section 25292.

37 (C) Any regulation implementing the applicable sections  
38 required for compliance with subparagraphs (A) and (B).

39 (6) The facility where the project tank is located was legally in  
40 business retailing gasoline after January 1, 1999.

1 (b) Grant funds may only be used to pay the costs necessary to  
2 comply with the requirements of Section 25284.1, 25292.4, ~~or~~  
3 25292.5, *or 41954.*

4 SEC. 7. Section 25299.106 of the Health and Safety Code is  
5 amended to read:

6 25299.106. A complete grant application shall include all of  
7 the following information:

8 (a) Evidence of eligibility.

9 (b) The board shall develop a standard list of documents required  
10 of all applicants, and may also request from individual applicants  
11 additional financial and legal documents not provided on this list.

12 (c) An explanation of the actions the applicant is required to  
13 take to comply with the requirements of Sections 25284.1 and  
14 25292.4 *or Section 41954.*

15 (d) A detailed cost estimate of the actions that are required to  
16 be completed for the project tanks to comply with applicable local,  
17 state, or federal standards, if applicable.

18 (e) Any other information that the board determines to be  
19 necessary to include in an application form.

20 SEC. 8. *Section 25299.107 of the Health and Safety Code is*  
21 *amended to read:*

22 25299.107. (a) The minimum amount that the board may grant  
23 an applicant is three thousand dollars (\$3,000), and the maximum  
24 amount that the board may grant an applicant is fifty thousand  
25 dollars (\$50,000).

26 (b) Grant funds may be used to finance up to 100 percent of the  
27 costs necessary to comply with Sections 25284.1, 25292.4, ~~and~~  
28 25292.5, *and 41954.*

29 (c) If the board received the applicant’s grant application on or  
30 before April 1, 2009, grant funds may be used to reimburse up to  
31 100 percent of the costs that the applicant incurred after the board  
32 received the grant application to comply with the Enhanced Vapor  
33 Recovery Phase II regulations.

34 (d) A person or entity is not eligible to receive more than fifty  
35 thousand dollars (\$50,000) in grant funds pursuant to this chapter.

36 ~~SEC. 8.~~

37 SEC. 9. Section 25299.109 of the Health and Safety Code is  
38 amended to read:

39 25299.109. (a) The Petroleum Underground Storage Tank  
40 Financing Account is hereby created in the State Treasury. All of

1 the following moneys shall be deposited in the Petroleum  
2 Underground Storage Tank Financing Account:

3 (1) Federal, state, and local funds transferred for deposit in the  
4 account.

5 (2) Repayments of loans and interest and late fees on loans  
6 issued pursuant to this chapter.

7 (3) Repayments of loans and interest and late fees on loans  
8 issued pursuant to former Chapter 8.5 (commencing with Section  
9 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government  
10 Code, as that chapter existed on December 31, 2003.

11 (4) Moneys collected pursuant to Section 25299.110 and  
12 subdivision (d) of Section 25299.104.

13 (5) Repayments of loan and grant moneys paid to a loan or grant  
14 applicant to which the applicant is not entitled.

15 (6) Notwithstanding Section 16305.7 of the Government Code,  
16 all interest earned upon moneys that are deposited in the account.

17 (7) All unexpended moneys in a subaccount of the account that  
18 is consolidated into the account by the act adding this paragraph.

19 (8) All unexpended moneys in the Petroleum Financing  
20 Collection Account established pursuant to Section 25299.110, as  
21 added by Section 1 of Chapter 624 of the Statutes of 2004.

22 (b) Upon appropriation by the Legislature, funds in the account  
23 shall be used by the board to make loans and grants, service loans,  
24 recover defaulted loan moneys due, protect the state's position as  
25 a lender creditor, and administer this chapter.

26 (c) The board shall annually make available not more than 15  
27 percent of the available funds from the account for the purposes  
28 of providing grants pursuant to this chapter.

29 (d) Eight million dollars (\$8,000,000) is hereby transferred from  
30 the *portion of the* fees collected pursuant to *subdivisions (a) to (e),*  
31 *inclusive, of* Section 25299.43 in the Underground Storage Tank  
32 Cleanup Fund, to the Petroleum Underground Storage Tank  
33 Financing Account, and is hereby appropriated for the purposes  
34 of making grants and loans pursuant to this chapter and  
35 administering this chapter.

36 ~~SEC. 9.~~

37 *SEC. 10.* Section 25299.110 of the Health and Safety Code is  
38 repealed.

1     ~~SEC. 10.~~  
2     *SEC. 11.* Section 25299.110 is added to the Health and Safety  
3 Code, to read:  
4     25299.110. To defray the costs of the board in administering  
5 the loan program created pursuant to this chapter, the board may  
6 do all of the following:  
7     (a) Impose reasonable charges on all applications and impose  
8 the loan fee specified in subdivision (d) of Section 25299.104.  
9     (b) Recover collection costs from the borrower or other party.  
10    (c) Earn income on any asset recovered pursuant to a loan  
11 default.  
12    ~~SEC. 11.~~  
13    *SEC. 12.* Section 25299.111 of the Health and Safety Code is  
14 repealed.  
15    ~~SEC. 12.~~  
16    *SEC. 13.* Section 25299.113 of the Health and Safety Code is  
17 repealed.  
18    ~~SEC. 13.~~  
19    *SEC. 14.* Section 25299.117 of the Health and Safety Code is  
20 repealed.