

Senate Bill No. 763

CHAPTER 640

An act to amend Sections 25284.1, 25299.51, 25299.102, 25299.103, 25299.104, 25299.105, 25299.106, 25299.107, 25299.109, and 25299.117 of, to repeal Section 25299.113 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.

[Approved by Governor October 8, 2013. Filed with
Secretary of State October 8, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 763, 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 operation of the loan and grant program until January 1, 2022, except as specified with regard to certain authority.

The bill would revise loan eligibility and grant award requirements. The bill would require the board to annually make available not more than 25% 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, 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.

Appropriation: yes.

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

SECTION 1. Section 25284.1 of the Health and Safety Code is amended to read:

25284.1. (a) The board shall take all of the following actions with regard to the prevention of unauthorized releases from petroleum underground storage tanks:

(1) On or before June 1, 2000, initiate a field-based research program to quantify the probability and environmental significance of releases from underground storage tank systems meeting the 1998 upgrade requirements specified in Section 25284, as that section read on January 1, 2002. The research program shall do all of the following:

(A) Seek to identify the source and causes of releases and any deficiencies in leak detection systems.

(B) Include single-walled, double-walled, and hybrid tank systems, and avoid bias towards known leaking underground storage tank systems by including a statistically valid sample of all operating underground storage tank systems.

(C) Include peer review.

(2) Complete the research program on or before June 1, 2002.

(3) Use the results of the research program to develop appropriate changes in design, construction, monitoring, operation, and maintenance requirements for tank systems.

(4) On or before January 1, 2001, adopt regulations to do all of the following:

(A) (i) Require underground storage tank owners, operators, service technicians, installers, and inspectors to meet minimum industry-established training standards and require tank facilities to be operated in a manner consistent with industry-established best management practices.

(ii) The board shall implement an outreach effort to educate small business owners or operators on the importance of the regulations adopted pursuant to this subparagraph.

(B) (i) Except as provided in clauses (ii) and (iii), require testing of the secondary containment components, including under-dispenser and pump turbine containment components, upon initial installation of a secondary containment component and periodically thereafter, to ensure that the system is capable of containing releases from the primary containment until a release is detected and cleaned up. The board shall consult with the petroleum industry and local government to assess the appropriate test or tests that would comply with this subparagraph.

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

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

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

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

(B) Require all underground storage tanks installed after January 1, 2000, to have the tank system fitted with under-dispenser containment or a spill containment or control system to meet the requirements of subparagraph (A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) To pay claims pursuant to Section 25299.57.

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

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

(i) To pay claims pursuant to Section 25299.58.

(j) To pay for expenditures by the board associated with discovering violations of, and enforcing, or assisting in the enforcement of, the requirements of Chapter 6.7 (commencing with Section 25280) with regard to petroleum underground storage tanks.

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

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

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

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

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

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

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

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

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

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

(1) Evidence of eligibility.

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

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

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

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

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

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

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

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

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

(c) Loan funds may be used to finance up to 100 percent of the costs necessary to upgrade, remove, or replace project tanks, including corrective actions, to meet applicable local, state, or federal standards, including, but

not limited to, any design, construction, monitoring, operation, or maintenance requirements adopted pursuant to Sections 25284.1, 25292.4, and 41954.

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

(e) The inoperation or repeal of this chapter pursuant to Section 25299.117 shall not extinguish a loan obligation and shall not impair the deed of trust or other collateral made pursuant to this chapter or the authority of the state to pursue appropriate action for collection.

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

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

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

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

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

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

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

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

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

(A) Section 41954.

(B) Any of the following:

(i) Section 25290.1.

(ii) Section 25290.2.

(iii) Section 25291.

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

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

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

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

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

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

(a) Evidence of eligibility.

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

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

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

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

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

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

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

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

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

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

25299.109. (a) The Petroleum Underground Storage Tank Financing Account is hereby created in the State Treasury. All of the following moneys shall be deposited in the Petroleum Underground Storage Tank Financing Account:

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

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

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

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

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

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

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

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

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

(c) The board shall annually make available not more than 25 percent of the available funds from the account for the purposes of providing grants pursuant to this chapter.

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

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

SEC. 11. Section 25299.110 is added to the Health and Safety Code, to read:

25299.110. To defray the costs of the board in administering the loan program created pursuant to this chapter, the board may do all of the following:

(a) Impose reasonable charges on all applications and impose the loan fee specified in subdivision (d) of Section 25299.104.

(b) Recover collection costs from the borrower or other party.

(c) Earn income on any asset recovered pursuant to a loan default.

SEC. 12. Section 25299.113 of the Health and Safety Code is repealed.

SEC. 13. Section 25299.117 of the Health and Safety Code is amended to read:

25299.117. (a) Except as provided in subdivision (b), this chapter is repealed as of January 1, 2022, unless a later enacted statute that is enacted on or before January 1, 2022, deletes or extends that date.

(b) Notwithstanding subdivision (a), the repeal of this chapter does not terminate any of the following rights, obligations, authorities, or any provision necessary to carry out these rights, obligations, and authority:

(1) The repayment of loans due and payable to the board.

(2) The resolution of any cost recovery action or the initiation of an action or other collection process to recover defaulted loan moneys due to the board or to recover grant moneys paid but to which the grantee is not entitled.