

Assembly Bill No. 1909

Passed the Assembly August 18, 1998

Chief Clerk of the Assembly

Passed the Senate August 12, 1998

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 44501, 44506, 44507, 44508, 44533, 44535, 44537.5, 44548, and 44559 of the Health and Safety Code, relating to pollution control.

LEGISLATIVE COUNSEL'S DIGEST

AB 1909, Wayne. Pollution control: financing authority.

Existing law establishes the California Pollution Control Financing Authority, with specified powers and duties, and authorizes the authority to approve financing for projects to prevent or reduce environmental pollution.

This bill would include projects to remediate environmental pollution, and projects for soil excavation and removal, and construction, operation, and maintenance of systems that extract, contain, or treat groundwater, soil vapor, gas, or leachate.

The bill would define pollution for purposes of the above provisions to include hazardous waste disposal, the release of hazardous materials, and the contamination of soil or groundwater resulting from the release of hazardous materials at sites with a reasonable potential for economically beneficial reuse.

The bill would also require the authority, in order to assist with the use of its financing powers to remediate contaminated real property, to prepare and submit to the Legislature by July 1, 1999, an analysis of specified matters relating to the financing powers of the authority.

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

SECTION 1. Section 44501 of the Health and Safety Code is amended to read:

44501. (a) The Legislature hereby finds that it is necessary and essential that the state, in cooperation with the federal government, use all practical means and measures to control, remediate, and eliminate pollution



hazards to the environment. The Legislature further finds and determines that industry within this state utilizes processes and facilities that have significant environmental impact. These processes and facilities shall be modified and supplemented to meet the quality standards established and to be established for the control and remediation of environmental pollution. Industry needs and requires new methods to finance the capital outlays required for the devices, equipment, and facilities utilized in pollution control if they are to rapidly comply with the quality standards established by the state and federal governments, and if they are to rapidly remediate contaminated properties so that those properties can be reused for economically beneficial purposes.

(b) The Legislature also finds and declares that the disposal of waste products by such current methods as incineration and landfill pollute the environment by degrading air and water quality. The Legislature further finds that in order to reduce the environmental pollution that currently occurs in connection with the disposal of waste products, there is a need to develop new and alternative processes and facilities that provide for the disposal of those waste products in ways that prevent or reduce environmental degradation. The Legislature also finds that such new and alternative processes and facilities include those that recover resources and energy from waste products. The Legislature further finds and declares that in order to prevent further environmental degradation resulting from contamination caused by the release of waste products and hazardous materials, there is a need to encourage the remediation of that contamination of properties with the potential for economically beneficial reuse.

(c) The alternate method of financing provided in this division is in the public interest and serves a public purpose and will promote the health, welfare, and safety of the citizens of the State of California.

SEC. 2. Section 44506 of the Health and Safety Code is amended to read:



44506. “Participating party” means any person, company, corporation, partnership, firm, or other entity or group of entities engaged in operations within this state that requires financing pursuant to the terms of this division to aid and assist in the control, remediation, or elimination of pollution of the environment of the state.

SEC. 3. Section 44507 of the Health and Safety Code is amended to read:

44507. “Pollution” means an alteration of the quality of the environment of the state and shall be determined by the various standards prescribed from time to time by this state, the federal government, or any agency, department, or political subdivision of this state or the federal government, and may include, but is not limited to, earth, air, or water pollution, pollution caused by solid or hazardous waste disposal, thermal pollution, radiation contamination, the release of hazardous materials, or noise pollution. Pollution also means the contamination of soil or groundwater resulting from the release of hazardous materials, as defined in Section 25260, at sites with a reasonable potential for economically beneficial reuse.

SEC. 4. Section 44508 of the Health and Safety Code is amended to read:

44508. “Project” and “pollution control facility,” respectively, mean any land, building, improvement thereto, work, property or structure, real or personal, providing or designed to provide for the control, reduction, abatement, elimination, remediation, or prevention of pollution, including, but not limited to, hydrostatic control facilities, dust collectors, smoke bags, settling ponds, filtration plants, sewage disposal facilities, garbage disposal facilities, recycling facilities, dumps, filling grounds, chlorination ponds, treatment works, water utility property, soil excavation and removal, construction, operation, and maintenance of systems that extract, contain, or treat groundwater, soil vapor, gas, or leachate, and all other structures, systems, or facilities now or hereafter developed or useful in the control of pollution of any type or character, including any



structure, equipment, or other facilities for the purpose of the purchase, production, distribution, or sale of water, or of reducing, treating, neutralizing, or cooling the temperature of any liquid, gaseous, or solid or hazardous waste substance or discharge resulting from the process of manufacture, industry, or commerce, or from the development, processing, or recovery of any natural resource or the generation of electricity, steam heat, or manufactured gas, together with the recovery, treatment, neutralizing, stabilizing, or cooling equipment, facilities, plants, or structures necessary to reduce, control, remediate, or eliminate pollution, and any and all facilities which may hereafter be developed through science, study, and investigation to aid and assist in the control of pollution or the removal or treatment of any substance that might otherwise cause or contribute to pollution, and including the use of renewable energy resource devices or the development of an energy conservation program where that action is designed to reduce onsite emissions or pollutants.

SEC. 5. Section 44533 of the Health and Safety Code is amended to read:

44533. (a) No project, or portion thereof, shall be eligible for financing under this division for which, at the time an application is submitted to the authority, financing has been otherwise obtained.

(b) No project relating to the improvement of air or water quality or solid waste control or related to the remediation of property contaminated by a release of hazardous materials shall be eligible for financing under this division unless, prior to the issuance of bonds or notes, a local, regional, state, or federal environmental authority exercising jurisdiction over the project certifies that the project, as designed, will further compliance with federal, state, or local pollution control standards and requirements. Within 60 days of the receipt of a written request for that certification by either the authority or a participating party, the local, regional, state, or federal authority shall issue a written certificate to that effect if, in fact, the project as designed, is in furtherance of those



purposes. The certification requirements of this subdivision may be waived by the authority, at the request of the participating party, if that certification is not necessary to qualify the bonds or notes for tax-exempt status under federal laws and regulations.

(c) No certification issued pursuant to subdivision (b) shall be admissible in evidence, constitute an admission, or bind any certifying authority in any proceeding in which the compliance of a participating party's facilities with any applicable pollution control, land use, zoning, or other similar law is an issue or in any application or proceeding for a permit to locate or construct facilities.

SEC. 6. Section 44535 of the Health and Safety Code is amended to read:

44535. (a) The authority may separately approve financing for projects, the purpose of which is to prevent, remediate, or reduce environmental pollution resulting from the disposal of solid, hazardous, or liquid waste.

(b) The following projects shall be considered for financing:

(1) Projects utilizing recognized resource recovery or energy conversion processes.

(2) Projects utilizing new technologies or processes for resource recovery or energy conversion.

(3) Projects utilizing technologies designed to reduce the level of pollutants found in water.

(4) Recycled water facilities.

(5) Water main replacements.

(6) Water filtration facilities.

(7) Projects for the disposal of agricultural wastes.

(8) Soil excavation and removal, and construction, operation, and maintenance of systems that extract, contain, or treat groundwater, soil vapor, gas, or leachate.

(9) Other projects for the reduction or remediation of environmental pollution resulting from the disposal of solid, hazardous, or liquid waste.

(c) The projects specified in subdivision (b) may include elements that provide for new refuse removal vehicles, transfer stations, resource recovery or energy conversion plants, source separation, or any solid or liquid



waste disposal facilities involved in resource recovery systems. “Solid, hazardous, or liquid waste disposal facilities” means any property, or portion thereof, used for the collection, storage, treatment, utilization, processing, or final disposal of solid, hazardous, or liquid waste in resource recovery systems.

SEC. 7. Section 44537.5 of the Health and Safety Code is amended to read:

44537.5. The authority shall provide the maximum opportunity for the use of the authority’s financing by individuals, businesses engaged in agricultural operations, and small businesses or corporations by providing information, assistance, and coordination to facilitate financing for small projects and other financing that benefits the environment, including financing for projects for the disposal of agricultural wastes, with special attention to the needs of businesses that do not meet standard commercial lending requirements but provide public benefits, such as job creation or retention and the redevelopment for economically beneficial uses of contaminated properties.

SEC. 8. Section 44548 of the Health and Safety Code is amended to read:

44548. (a) Subject to any prior contractual obligations to any of its bondholders, the authority may establish one or more small business assistance funds in order to assist small businesses to achieve financing of pollution control facilities or, to strengthen environmental compliance, or to remediate contamination at properties with a reasonable potential for economically beneficial reuse by funding a capital access program for small businesses pursuant to Article 8 (commencing with Section 44559). For the purpose of establishing and maintaining small business assistance funds as it determines to be necessary or desirable to secure its bonds or any issuance thereof or for other authorized purposes, the authority, pursuant to its contracts with participating parties, may levy fees or other charges on, or require deposits from, participating parties receiving financing for a project under this



division. The total amount of these fees, charges, and deposits with respect to a single issue of bonds shall not exceed 3 percent of the principal amount of that issue of bonds. Prior to levying any fees or charges or requiring deposits, the authority shall adopt regulations for the operation of the small business assistance funds, the amounts and any payment schedule for the fees, charges, or deposits, eligibility standards for small businesses desiring to use or benefit from the small business assistance funds, and any other matters the authority determines to be necessary for the establishment and maintenance of small business assistance funds. The regulations may provide for differential fees from participating parties based upon the size of a project financed by the authority or other factors determined to be relevant by the authority, and the regulations may restrict any benefits to those eligible small businesses specified in the regulations. The authority may transfer any funds available to it or set aside for its administrative expenses to any small business assistance fund established under this section.

(b) The forms of financial assistance that the authority may provide under this section include, but are not limited to, payments to reduce, but not eliminate, the interest rate on loans; payments of part or all of the cost of acquiring letters of credit, insurance, guarantees, or other forms of credit support; and payment of part or all of the authority's expenses in issuing revenue bonds or providing other assistance. The authority may also pledge any small business assistance fund, on an individual or pooled basis, to repay, directly or indirectly, the principal of, or interest or premium on, any issue of bonds of the authority or any loan made or acquired pursuant to this section. In addition to other purposes set forth in this section, the authority may use moneys in a small business assistance fund to make or acquire loans or guarantee commercial loans to participating parties eligible for assistance from those funds. Any moneys repaid or returned to the authority in connection with or as a result of any loan or financial assistance made pursuant to this



section shall be deposited in the small business assistance fund from which the loan or assistance was originally provided. The authority may contract with qualified financial institutions, including, but not limited to, banks, investment and mortgage bankers, insurance companies, sureties, and guarantors, to provide any necessary assistance in the granting of credit for these purposes.

(c) Each small business assistance fund established pursuant to this section shall be deposited in a special account which the Controller shall create. Notwithstanding any other provision of law, and subject to any requirements of federal tax law or regulations relative to maintaining the tax-exempt status of the obligations of the authority, all interest or other gains earned by investment or deposit of money in the special account pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code or pursuant to any other provision of law shall be credited to, and deposited in, the account.

(d) In carrying out this section, the authority shall participate with the air pollution control districts and air quality management districts in providing financial assistance in its lending programs.

SEC. 9. Section 44559 of the Health and Safety Code is amended to read:

44559. (a) The Legislature finds and declares that small businesses engaged in manufacturing or other operations are responsible for a significant amount of environmental emissions in the state, but are less able than larger businesses to afford the investment in new equipment or process modifications needed to comply with environmental regulations, with regard to controlling emissions, preventing the creation of pollutants, contaminants, or waste products, and remediating contamination of properties with a reasonable potential for economically beneficial reuse. Additionally, small businesses faced with financial pressures will be likely to reduce expenditures to achieve environmental compliance. Better access to capital will allow small businesses to more easily comply with



environmental mandates, and to remediate contamination of properties with a reasonable potential or economically beneficial reuse, to the benefit of all the residents of the state.

(b) The Legislature also finds and declares that it is in the best interest of the state to expand the Capital Access Loan Program for small business. Small businesses have difficulty gaining access to capital for startup and expansion purposes. Small businesses owned by minorities and women have special capital access difficulties. In addition, small businesses operating in areas affected by military base closures are disadvantaged by limited access to capital. The Legislature finds that improving access to capital for these small businesses will spur investment, create jobs, expand economic opportunities, assist in the recovery of communities affected by defense and aerospace losses, assist in the recovery of neighborhoods and communities affected by contaminated properties that are not being used for economically beneficial purposes but which could be so used if the contamination was remediated, and help sustain and strengthen economic recovery in California.

SEC. 10. (a) The Legislature finds and declares as follows:

(1) Real property contaminated with hazardous substances is a continuing blight on communities and the cleanup and development of these sites will lead to productive end uses, including creating jobs and providing a community tax base.

(2) The California Pollution Control Financing Authority should assist with the development of financing vehicles for the cleanup and development of contaminated real property.

(3) The authority should assist in determining the most efficient and effective way of using its financial abilities to clean up contaminated real property.

(4) It is within the power of the authority to coordinate with private sector lending institutions to issue bonds and loans for the assessment, cleanup, and development of contaminated real property, recognizing that these



activities are being performed only on a limited basis, or, under certain circumstances, not at all.

(b) In order to assist with the use of its financing powers to remediate contaminated real property, including assessment, cleanup and development, notwithstanding Section 7550.5 of the Government Code, the authority shall prepare and submit to the Legislature, on or before July 1, 1999, an analysis that shall include, but not be limited to, all of the following:

(1) An assessment of the most efficient and effective ways to assist prospective purchasers of property or property owners in obtaining the necessary financing to ensure proper cleanup.

(2) The willingness or reluctance of the private sector to issue loans for contaminated real property projects.

(3) Factors that are barriers to financing incentives that would be required.



Approved _____, 1998

Governor

