

AMENDED IN SENATE JULY 1, 2009

AMENDED IN SENATE JUNE 15, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 96

Introduced by Assembly Member Ruskin
(Principal coauthor: Assembly Member Chesbro)
(Coauthors: Assembly Members Carter, Miller, and Nielsen)
(Coauthors: Senators Hancock, Lowenthal, and Steinberg)

January 6, 2009

An act to amend Sections 25299.81, 25299.105, 25299.109, and 25299.117 of, and to amend and repeal Section 41964 of, the Health and Safety Code, relating to public health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 96, as amended, Ruskin. Gasoline: underground storage tanks.

(1) Existing law provides for the regulation of underground storage tanks by the State Water Resources Control Board. Existing law requires the board to take specified actions with regard to unauthorized releases from petroleum underground storage tanks, including, among other things, adopting regulations requiring the owners of those tanks to undertake certain actions.

Existing law provides for a grant and loan program for small businesses to pay specified costs of complying with the underground storage tank regulations adopted by the board. Existing law contains

various eligibility criteria for grant funds, including a requirement that the grant applicant, the applicant's family, or an affiliated entity, has owned and operated the project tank since January 1, 1997.

This bill would delete that ownership requirement from the grant eligibility criteria.

(2) Under existing law, the grant and loan program is funded through the Petroleum Underground Storage Tank Financing Account. Existing law allows not more than 33% of the available funds to be used for the purpose of providing grants. Existing law requires the interest and other increments resulting from the investment of the funds in the account to be placed in a separate subaccount to be expended for the administration of the program.

This bill would make a one time transfer of \$8,000,000 from the administrative subaccount to be appropriated for the purpose of making grants and loans in the 2008–09 and 2009–10 fiscal years. The bill would establish specified criteria for the grants and loans awarded from funds made pursuant to this transfer.

(3) Existing law, the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, provides for the establishment of an Underground Storage Tank Cleanup Fund to pay for various costs of corrective action and abatement for the unauthorized release of hazardous materials from underground storage tanks. The provisions of this act will expire January 1, 2016. Under existing law, upon the expiration of the Petroleum Underground Storage Tank Financing Account on January 1, 2011, the funds remaining in that account revert to the Underground Storage Tank Cleanup Fund. The grant and loan program provisions would be repealed on January 1, 2011.

This bill would extend the repeal date of the grant and loan program as well as the Petroleum Underground Storage Tank Financing Account to January 1, 2016. Additionally, it would make provisions for the payment of loans and grants, conditions of which were effective prior to January 1, 2016, from the Underground Storage Tank Cleanup Fund and the Petroleum Underground Storage Tank Financing Account, as specified.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 25299.81 of the Health and Safety Code
2 is amended to read:

3 25299.81. (a) Except as provided in subdivisions (b) and (c),
4 this chapter shall remain in effect only until January 1, 2016, and
5 as of that date is repealed, unless a later enacted statute, which is
6 enacted before January 1, 2016, deletes or extends that date.

7 (b) Notwithstanding subdivision (a), Article 1 (commencing
8 with Section 25299.10), Article 2 (commencing with Section
9 25299.11), and Article 4 (commencing with Section 25299.36)
10 shall not be repealed and shall remain in effect on January 1, 2016.

11 (c) The repeal of certain portions of this chapter does not
12 terminate any of the following rights, obligations, or authorities,
13 or any provision necessary to carry out these rights and obligations:

14 (1) The filing and payment of claims against the fund, including
15 the costs specified in subdivisions (c), (e), and (h) of Section
16 25299.51, and claims for commingled plumes, as specified in
17 Article 11 (commencing with Section 25299.90), until the moneys
18 in the fund are exhausted. Upon exhaustion of the fund, any
19 remaining claims shall be invalid.

20 (2) The repayment of loans, outstanding as of January 1, 2016,
21 due and payable to the board.

22 (3) The recovery of moneys reimbursed to a claimant to which
23 the claimant is not entitled, or the resolution of any cost recovery
24 action.

25 (4) The collection of unpaid fees that are imposed pursuant to
26 Article 5 (commencing with Section 25299.40), as that article read
27 on December 31, 2015, or have become due before January 1,
28 2016, including any interest or penalties that accrue before, on, or
29 after January 1, 2016, associated with those unpaid fees.

30 (5) (A) The filing of an application for funds from, and the
31 making of payments from, the Underground Storage Tank
32 Petroleum Contamination Orphan Site Cleanup Fund pursuant to
33 Section 25299.50.2, any action for the recovery of moneys paid
34 pursuant to Section 25299.50.2 to which the recipient is not
35 entitled, and the resolution of that cost recovery action.

36 (B) Upon liquidation of funds in the Underground Storage Tank
37 Petroleum Contamination Orphan Site Cleanup Fund, the obligation

1 to make a payment from the Underground Storage Tank Petroleum
2 Contamination Orphan Site Cleanup Fund is terminated.

3 (6) (A) The payment of loans and grants, consistent with the
4 terms of agreements that were effective prior to January 1, 2016,
5 from the Underground Storage Tank Cleanup Fund, pursuant to
6 this chapter or the Petroleum Underground Storage Tank Financing
7 Account pursuant to Chapter 6.76 (commencing with Section
8 25299.100). Upon exhaustion of the Underground Storage Tank
9 Cleanup Fund, any remaining claims for payment of grants or
10 loans shall be invalid.

11 (B) The amount of money disbursed for grants and loans
12 pursuant to Chapter 6.76 (commencing with Section 25299.100)
13 shall not exceed the sum of following:

14 (i) The amount that reverts to the Underground Storage Tank
15 Cleanup Fund pursuant to Section 25299.111.

16 (ii) Amounts recovered through the repayment of loans granted
17 pursuant to Chapter 6.76 (commencing with Section 25299.100).

18 (iii) The resolution of any cost recovery action filed prior to
19 January 1, 2016, or the initiation of an action or other collection
20 process to recover defaulted loan moneys due to the board or to
21 recover money paid to a grant or loan recipient pursuant to Chapter
22 6.76 (commencing with Section 25299.100) to which the recipient
23 is not entitled.

24 (d) The board shall continuously post and update on its Internet
25 Web site, but at a minimum, annually on or before September 30,
26 information that describes the status of the fund and shall make
27 recommendations, when appropriate, to improve the efficiency of
28 the program.

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

31 25299.105. (a) The board shall make grant funds available
32 from the Petroleum Underground Storage Tank Financing Account
33 to eligible grant applicants who meet all of the following eligibility
34 requirements:

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

37 (A) The grant applicant meets the conditions for a small business
38 concern as defined in Section 632 of Title 15 of the United States
39 Code, and in the federal regulations adopted to implement that
40 section, as specified in Part 121 (commencing with Section

1 121.101) of Chapter I of Title 13 of the Code of Federal
2 Regulations.

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

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

9 (3) All tanks owned and operated by the grant applicant are
10 subject to compliance with Chapter 6.7 (commencing with Section
11 25280) and the regulations adopted pursuant to that chapter.

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

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

19 (A) Section 41954.

20 (B) Any of the following:

21 (i) Section 25290.1.

22 (ii) Section 25290.2.

23 (iii) Section 25291.

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

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

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

29 (b) Grant funds may only be used to pay the costs necessary to
30 comply with the requirements of Section 25284.1, 25292.4, or
31 25292.5.

32 (c) If the total amount of grant requests by eligible grant
33 applicants to the board pursuant to this section exceeds, or is
34 anticipated to exceed, the amount in the Petroleum Underground
35 Storage Tank Financing Account, the board may adopt a priority
36 ranking list to award grants based upon the level of demonstrated
37 financial hardship of the eligible grant applicant or the relative
38 impact upon the local community where the project tank is located
39 if the claim is denied.

1 SEC. 3. Section 25299.109 of the Health and Safety Code is
2 amended to read:

3 25299.109. (a) The Petroleum Underground Storage Tank
4 Financing Account is hereby created in the State Treasury. The
5 Petroleum Underground Storage Tank Financing Account is created
6 for both of the following purposes:

7 (1) Receiving federal, state, and local money.

8 (2) Receiving repayments of loans and interest and late fees on
9 those accounts.

10 (b) Upon appropriation by the Legislature, funds in the account
11 shall be used by the board only to make loans and grants pursuant
12 to this chapter.

13 (c) The board shall annually make available not more than 33
14 percent of the available funds from the account for the purposes
15 of providing grants pursuant to this chapter. Funds transferred
16 pursuant to subdivision (e) shall not be used in calculating the
17 maximum amount that may be made available for grant funding.

18 (d) Notwithstanding Section 16305.7 of the Government Code,
19 all interest or other increments resulting from the investment of
20 the funds in the Petroleum Underground Storage Tank Financing
21 Account pursuant to Article 4 (commencing with Section 16470)
22 of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government
23 Code shall be deposited in a subaccount of the Petroleum
24 Underground Storage Tank Financing Account, and expended only
25 pursuant to Section 25299.113.

26 (e) (1) The sum of eight million dollars (\$8,000,000) is hereby
27 transferred from the subaccount established in subdivision (d) to
28 the Petroleum Underground Storage Tank Financing Account and
29 is appropriated for the purpose of making grants and loans pursuant
30 to this chapter in the 2008–09 and 2009–10 fiscal years.

31 (2) An application for grant funding pursuant to this subdivision
32 must have been received not later than ~~April 1, 2009~~ *June 30,*
33 *2009.*

34 (3) If a grant or loan from moneys transferred pursuant to this
35 subdivision is being requested for the purpose of compliance with
36 Enhanced Vapor Recovery Phase II regulations, then the applicant
37 must have applied for or obtained a permit from the air quality
38 management district by April 1, 2009, and have obtained an
39 enforcement agreement or other binding obligation by June 30,
40 2009.

1 SEC. 4. Section 25299.117 of the Health and Safety Code is
2 amended to read:

3 25299.117. This chapter is repealed as of January 1, 2016,
4 unless a later enacted statute that is enacted on or before January
5 1, 2016, deletes or extends that date.

6 SEC. 5. Section 41964 of the Health and Safety Code is
7 amended to read:

8 41964. (a) The state board shall not require a gasoline
9 dispensing facility that meets all of the following requirements to
10 undergo an Enhanced Vapor Recovery Phase II upgrade, as
11 required pursuant to Section 41954 and implementing regulations,
12 until April 1, 2011:

13 (1) As of January 1, 2009, have installed a state board certified
14 Phase II vapor recovery system.

15 (2) Have an annual gasoline throughput of 240,000 gallons or
16 less.

17 (3) Operate in a county that has a population of less than
18 100,000.

19 (4) Operate in a basin not classified as nonattainment for ozone.

20 (b) This section shall remain in effect only until July 1, 2011,
21 and as of that date is repealed, unless a later enacted statute, that
22 is enacted before July 1, 2011, deletes or extends that date.

23 SEC. 6. This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety within
25 the meaning of Article IV of the Constitution and shall go into
26 immediate effect. The facts constituting the necessity are:

27 In order to immediately finance projects critical to the protection
28 of the environment, it is necessary that this act take effect
29 immediately.