Assembly Bill No. 96

Passed the Assembly July 16, 2009

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Chief Clerk of the Assembly

Passed the Senate July 9, 2009

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

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, 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.

Appropriation: yes.

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

SECTION 1. Section 25299.81 of the Health and Safety Code is amended to read:

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in subdivisions (b) and (c), this chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2016, deletes or extends that date.

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25299.10), Article 2 (commencing with Section 25299.11), and Article 4 (commencing with Section 25299.36) shall not be repealed and shall remain in effect on January 1, 2016.

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

(1) The filing and payment of claims against the fund, including the costs specified in subdivisions (c), (e), and (h) of Section 25299.51, and claims for commingled plumes, as specified in

Article 11 (commencing with Section 25299.90), until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

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

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

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

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

(B) Upon liquidation of funds in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund, the obligation to make a payment from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund is terminated.

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

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

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

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

(iii) The resolution of any cost recovery action filed prior to January 1, 2016, or the initiation of an action or other collection

process to recover defaulted loan moneys due to the board or to recover money paid to a grant or loan recipient pursuant to Chapter 6.76 (commencing with Section 25299.100) to which the recipient is not entitled.

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

SEC. 2. 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, or 25292.5.

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

SEC. 3. 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. The Petroleum Underground Storage Tank Financing Account is created for both of the following purposes:

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

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

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

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

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increments resulting from the investment of the funds in the Petroleum Underground Storage Tank Financing

Account pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in a subaccount of the Petroleum Underground Storage Tank Financing Account, and expended only pursuant to Section 25299.113.

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

(2) An application for grant funding pursuant to this subdivision must have been received not later than June 30, 2009.

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

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

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

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

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

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

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

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

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

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

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

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

Approved _____, 2009

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Governor