

Assembly Bill No. 1068

CHAPTER 624

An act to add and repeal Chapter 6.76 (commencing with Section 25299.100) of Division 20 of the Health and Safety Code, relating to underground storage tanks, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 2004. Filed with Secretary of State September 21, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1068, Liu. Petroleum underground storage tanks: loans and grants.

Prior law, until January 1, 2004, required the Technology, Trade and Commerce Agency to conduct a program to make loans and grants to small businesses to undertake certain actions with respect to underground petroleum storage tanks. Under that law, funds in the Petroleum Underground Storage Tank Financing Account in the General Fund were continuously appropriated to the agency, without regard to fiscal year, for making these loans and grants.

This bill would establish the above-described program within the State Water Resources Control Board. The bill would also reestablish the Petroleum Underground Storage Tank Financing Account in the State Treasury, in which funds deposited in the account, upon appropriation by the Legislature, would be required to be used by the board for purposes of making these loans and grants. The bill would establish a subaccount within the account that upon appropriation in the annual Budget Act would be expended for administrative expenses for the program. The bill would transfer \$8,000,000 from the Underground Storage Tank Cleanup Fund to the Petroleum Underground Storage Tank Financing Account and that sum would be appropriated from that account to the board for expenditure for loans and grants as specified.

The bill would provide for the repeal of its provisions on January 1, 2011.

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. Chapter 6.76 (commencing with Section 25299.100) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.76. LOANS FOR REPLACING, REMOVING, OR UPGRADING
UNDERGROUND STORAGE TANKS

25299.100. For purposes of this chapter, the following definitions apply:

- (a) “Board” means the State Water Resources Control Board.
- (b) “Loan applicant” means a small business that applies to the board for a loan pursuant to this chapter.
- (c) “Grant applicant” means a small business that applies to the board for a grant pursuant to this chapter.
- (d) “Tank” means an underground storage tank, as defined in Section 25281, used for the purpose of storing petroleum, as defined in Section 25299.22. “Tank” also includes under-dispenser containment systems, spill containment systems, enhanced monitoring and control systems, and vapor recovery systems and dispensers connected to the underground piping and the underground storage tank.
- (e) “Project tank” means one or more tanks that would be upgraded, replaced, or removed with loan or grant funds.

25299.101. (a) The board shall conduct a loan program pursuant to this chapter, to assist small businesses in upgrading, replacing, or removing tanks to meet applicable local, state, or federal standards. Loan funds may also be used for corrective actions, as defined in Section 25299.14.

(b) The board shall also conduct a grant program, pursuant to this chapter, to assist small businesses to comply with Sections 25284.1 and 25292.4.

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 121.1011) of Chapter 1 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) Loan funds are not obtainable, upon reasonable terms, from private financial institutions, the California Pollution Control Financing Authority, or any other government board.

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

(e) 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.

(f) 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.

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 5268 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 department 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 which 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 department determines to be necessary to include in an application form.

(b) Notwithstanding paragraph (4) of subdivision (a), the department 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).

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 earned by the Surplus Money Investment Fund 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 and 25292.4.

(d) The 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.

(e) 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 Financing Collection Account.

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) The grant applicant, the applicant's family, or an affiliated entity, has owned or operated the project tank since January 1, 1997.

(4) 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.

(5) 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.

(6) The grant applicant owns or operates a tank that is in compliance with Section 25290.1, 25290.2, or 25291, or subdivisions (d) and (e) of Section 25292, and the regulations adopted to implement those sections.



(7) 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.

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

(a) Evidence of eligibility.

(b) Financial and legal documents necessary to demonstrate the applicant's financial hardship, if any. 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.

(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.

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

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, and 25292.5. No person or entity is eligible to receive more than fifty thousand dollars (\$50,000) in grant funds pursuant to this chapter.

25299.108. The board shall adopt regulations necessary to implement and make specific this chapter as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date unless the board complies with Chapter 3.5



(commencing with Section 11340) of Part 1 of Division 3 pursuant to subdivision (e) of Section 11346.1 of the Government Code.

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.

(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.

25299.110. (a) There is hereby created, in the California Economic Development Grant and Loan Fund, the Petroleum Financing Collection Account. The Petroleum Financing Collection Account is created solely for the purpose of receiving charges, fees, and income, including, but not limited to, the charges and costs collected pursuant to subdivision (c).

(b) 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:

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

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

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

(c) The board shall deposit the charges and costs collected pursuant to subdivision (b), including the loan fees charged pursuant to subdivision (e) of Section 25299.104, in the Petroleum Financing Collection Account. Notwithstanding Section 13340 of the Government Code, all money deposited in the Petroleum Financing Collection Account shall be continuously appropriated to the board for those costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility



costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

25299.111. If this chapter is repealed pursuant to Section 25299.117, then following the day on which the authority ceases to exist, all moneys in the Petroleum Underground Storage Tank Financing Account and all moneys due that account shall revert to, and accrue to the benefit of, the Underground Storage Tank Cleanup Fund in the State Treasury.

25299.112. On or before January 1 of each year, the board shall submit a report to the Legislature concerning the performance of the grant and loan program established by this chapter, including the number and size of grants and loans made, characteristics of grant and loan recipients, the number of underground storage tanks removed and upgraded as a result of the grant and loan program, and the amount of money spent on administering the program. Copies of the report shall be submitted to the appropriate fiscal and policy committees of the Legislature and, upon request, to individual Members of the Legislature.

25299.113. (a) The board may, upon appropriation by the Legislature in the annual Budget Act, expend the funds in the subaccount established in the Petroleum Underground Storage Tank Financing Account in subdivision (d) of Section 25299.109 for the administrative expenses in carrying out this chapter.

(b) Commencing on the effective date of this chapter, the Controller shall do all of the following:

(1) Transfer the interest payments from loan applicants and interest earned on the funds in the Petroleum Underground Storage Tank Financing Account received from July 1, 2002, to the effective date of this chapter, inclusive, into the subaccount established in subdivision (d) of Section 25299.109.

(2) Direct to the Petroleum Underground Storage Tank Financing Account repayments of principal of 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.

(3) Direct to the subaccount established in subdivision (d) of Section 25299.109, the payment of interest 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.

(c) For the 2004–05 fiscal year, using funds available in the subaccount established in subdivision (d) of Section 25299.109, the Department of Finance may augment the board’s budget for the



reasonable amount necessary to implement this chapter and may administratively establish necessary positions. Pursuant to subdivision (a), the board shall request the continuation of the necessary positions and funding for the 2005–06 fiscal year, and succeeding years, through the annual Budget Act.

25299.114. All persons serving in an exempt position engaged in the performance of a function described in former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code as repealed by Chapter 229 of the Statutes of 2003 or the administration of the program described in that chapter shall be transferred to the board subject to approval by the Department of Finance. This transfer shall not affect the status, positions, and rights of these persons. Section 19050.9 of the Government Code shall apply to the transfer of persons serving in state civil service who are engaged in the performance of a function or the administration of that chapter.

25299.115. The repeal of former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code by Chapter 229 of the Statutes of 2003 shall not be construed to terminate any obligation to pay claims filed, repay loans outstanding, or resolve any cost recovery action filed on or before January 1, 2004.

25299.116. A recipient of a grant that was awarded 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, and that expired after December 31, 2003, may receive grant funds from the Petroleum Underground Storage Tank Financing Account consistent with the terms of the grant, for one year following enactment of this chapter, notwithstanding expiration of the grant.

25299.117. This chapter is repealed as of January 1, 2011, unless a later enacted statute that is enacted on or before January 1, 2011, deletes or extends that date.

SEC. 2. Eight million dollars (\$8,000,000) is hereby transferred from the Underground Storage Tank Cleanup Fund in the State Treasury to the Petroleum Underground Storage Tank Financing Account and that sum is appropriated from that account to the State Water Resources Control Board, to be used for the purposes specified in subdivision (b) of Section 25299.109 of the Health and Safety Code. In the 2004–05 fiscal year, the State Water Resources Control Board shall not spend more than five million dollars (\$5,000,000) of that amount for making grants pursuant to Chapter 6.76 (commencing with Section 25299.100) of Division 20 of the Health and Safety Code.

SEC. 3. 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 reestablish within the State Water Resources Control Board the program to make loans and grants to small businesses to undertake certain corrective actions with respect to underground petroleum storage tanks as soon as possible, it is necessary that this act take effect immediately.

