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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1731

02/15/2023

Authored by Davids

The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act

1.2 relating to commerce; establishing a liquid fuel modernization fee and

1.3 reimbursement program; requiring a report; appropriating money; amending

1.4 Minnesota Statutes 2022, sections 239.7911, by adding a subdivision; 296A.15,

1.5 by adding a subdivision; proposing coding for new law in Minnesota Statutes,

1.6 chapter 239.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. 239.787 LIQUID FUEL MODERNIZATION FEE; REIMBURSEMENT.

1.9 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have

1.10 the meanings given.

1.11 (b) "Aboveground storage tank system" means the system of components required to

1.12 safely store liquid fuel aboveground and make it available to (1) purchase by a consumer,

1.13 or (2) load onto a fuel transport vehicle. Aboveground storage tank system includes but is

1.14 not limited to tanks, vent tubes, tank monitors, piping, pumps, containment, meters, loading

1.15 racks, dispensers, hoses, and pump handles that are primarily located aboveground.

1.16 (c) "Account" means the liquid fuel modernization account established in subdivision

1.17 2.

1.18 (d) "Board" means the Liquid Fuel Modernization Board required under subdivision 12.

1.19 (e) "Bulk plant" means a liquid fuel storage facility with no more than 250,000 gallons

1.20 of combined aboveground and underground storage capacity.

1.21 (f) "Controlled group" has the meaning given in section 1563(a) of the Internal Revenue

1.22 Code.

2.1 (g) "Eligible entity" means a person, including a controlled group, that installs eligible
2.2 fuel infrastructure at a new or existing retail fueling site or bulk plant owned or operated
2.3 by the person.

2.4 (h) "Eligible fuel infrastructure" means:

2.5 (1) all aboveground storage tank system components that are compatible with higher
2.6 biofuel blends, and essential parts and materials that directly support the components; and

2.7 (2) all underground storage tank system components that are compatible with higher
2.8 biofuel blends, and essential parts and materials that directly support the components.

2.9 (i) "Financial assistance" means federal, state, local, and private grants, forgivable loans,
2.10 and insurance proceeds that support the installation of eligible fuel infrastructure.

2.11 (j) "Higher biofuel blends" means (1) blends of gasoline and ethanol containing more
2.12 than ten percent ethanol by volume, and (2) blends of diesel and biodiesel containing more
2.13 than 20 percent biodiesel by volume.

2.14 (k) "Liquid fuel" means petroleum products.

2.15 (l) "Petroleum products" means the products identified in section 296A.01, subdivision
2.16 42, and blends of diesel and biodiesel containing between 21 and 100 percent biodiesel.

2.17 (m) "Retail fueling site" means a convenience store, service station, or other facility that
2.18 offers liquid fuel for sale to consumers.

2.19 (n) "Underground storage tank system" means the system of components required to
2.20 safely store liquid fuel underground and make it available to (1) purchase by a consumer,
2.21 or (2) load onto a fuel transport vehicle. Underground storage tank system includes but is
2.22 not limited to spill buckets, drop tubes, tanks, vent tubes, tank monitors, piping, submersible
2.23 pumps, containment, meters, dispensers, hoses, and pump handles that are located above
2.24 or below ground.

2.25 Subd. 2. **Account; revenue sources; appropriation.** (a) A liquid fuel modernization
2.26 account is established in the special revenue fund. Revenue from the following sources must
2.27 be deposited in the state treasury and credited to the account:

2.28 (1) the proceeds of the fee imposed under subdivision 4;

2.29 (2) interest attributable to investment of money in the account;

2.30 (3) money received by the commissioner in the form of gifts, grants other than federal
2.31 grants, reimbursements, or appropriations from any source intended to be used for the
2.32 purposes of this section; and

3.1 (4) money recovered by the state under this section, including administrative expenses,
3.2 civil penalties, and money paid under an agreement, stipulation, or settlement.

3.3 (b) Money in the account is appropriated to the commissioner to award and administer
3.4 reimbursements under subdivision 5.

3.5 Subd. 3. **Imposing fee.** The commissioner must notify the commissioner of revenue if
3.6 the unencumbered balance of the account falls below \$25,000,000. Within 90 days after
3.7 the date the notice from the commissioner is received, the commissioner of revenue must
3.8 impose the fee required under subdivision 4 on the use of a tank for six calendar months,
3.9 with payment to be submitted with each monthly distributor tax return.

3.10 Subd. 4. **Liquid fuel modernization fee.** (a) Beginning July 1, 2023, until June 30,
3.11 2033, a liquid fuel modernization fee is imposed on the use of tanks that contain petroleum
3.12 products. On products other than gasoline, the fee must be paid in the manner provided in
3.13 section 296A.15 by the first licensed distributor receiving the product in Minnesota, as
3.14 defined in section 296A.01. When the product is gasoline, the distributor responsible for
3.15 paying the gasoline tax is also responsible for paying the liquid fuel modernization fee.

3.16 (b) The commissioner of revenue must impose the fee at a rate of \$13 per 1,000 gallons
3.17 of petroleum products, rounded to the nearest 1,000 gallons.

3.18 (c) A distributor who fails to pay the fee imposed under this subdivision is subject to
3.19 the penalties provided in section 296A.22.

3.20 Subd. 5. **Reimbursement program.** (a) The commissioner, in consultation with the
3.21 board, must implement a liquid fuel modernization reimbursement program and reimburse
3.22 eligible entities. Applicants for reimbursement must apply to the commissioner in the form
3.23 required by the commissioner.

3.24 (b) Reimbursements are equal to 65 percent of total reasonable equipment and labor
3.25 costs incurred by an eligible entity to acquire and install eligible fuel infrastructure, but
3.26 must not exceed \$800,000 per eligible entity in a calendar year. If an eligible entity also
3.27 receives financial assistance from another source, the commissioner must decrease the
3.28 reimbursement amount under this paragraph if necessary so that total financial assistance
3.29 from all sources does not exceed 100 percent of total reasonable equipment and labor costs.
3.30 The commissioner must determine reasonable costs for purposes of this section.

3.31 (c) Applications for reimbursement must be submitted no later than one year after the
3.32 date the work is performed and must be accompanied by:

4.1 (1) an invoice that demonstrates to the commissioner's satisfaction that all invoiced costs
4.2 were incurred after July 1, 2023, and paid in full by the applicant; and

4.3 (2) all successfully filed compatibility documents, notices, and registration forms required
4.4 by law; and

4.5 (3) an affidavit certifying that:

4.6 (i) all equipment and labor costs submitted for reimbursement were incurred to purchase
4.7 or install eligible fuel infrastructure;

4.8 (ii) no contractor has advanced funds to the applicant; and

4.9 (iii) the applicant must use the eligible fuel infrastructure to:

4.10 (A) offer for sale at the retail fueling site a blend of gasoline and ethanol containing
4.11 more than ten percent ethanol by volume, or a blend of diesel and biodiesel in which the
4.12 biodiesel content exceeds the content required under section 239.77, subdivision 2; or

4.13 (B) store a higher biofuel blend at the bulk plant.

4.14 (d) The commissioner must consider a complete initial application within 60 days of the
4.15 date the initial application is submitted, and must consider a complete supplemental
4.16 application within 120 days of the date the supplemental application is submitted. The
4.17 commissioner must notify the applicant in writing if additional time is necessary to review
4.18 the initial or supplemental application.

4.19 Subd. 6. **Duty to provide information.** (a) A person who submits an application to the
4.20 commissioner for reimbursement, or who has issued invoices or other demands for payment
4.21 which are the basis of an application, must (1) furnish to the commissioner copies of any
4.22 financial records which the commissioner requests and that are relevant to determining the
4.23 validity of the costs listed in the application, or (2) make the financial records reasonably
4.24 available to the commissioner to inspect and audit. The commissioner may obtain access
4.25 to information that must be made available under this section as provided in paragraph (b).

4.26 (b) The commissioner or any member, employee, or agent of the agency authorized by
4.27 the commissioner, may, upon presentation of official agency credentials, take any of the
4.28 following actions:

4.29 (1) examine and copy books, papers, records, memoranda, or data of a person who has
4.30 a duty to provide information to the commissioner under paragraph (a); and

5.1 (2) enter upon public or private property to take action authorized by this subdivision,
5.2 including to obtain information from a person who has a duty to provide the information
5.3 under paragraph (a), to (i) conduct surveys and investigations, and (ii) take corrective action.

5.4 Subd. 7. **Appealing reimbursement determination.** (a) An applicant for reimbursement
5.5 may appeal to the board a reimbursement determination made by the commissioner under
5.6 this section by submitting a written notice setting forth the specific basis for the appeal. The
5.7 commissioner must send written notification of the commissioner's reimbursement
5.8 determination by first class United States mail to the applicant for reimbursement at the
5.9 applicant's last known address. The applicant for reimbursement must file with the board
5.10 written notice of an appeal of a reimbursement determination made by the commissioner
5.11 within 60 days of the date that the commissioner sends the applicant written notice of the
5.12 reimbursement determination. The board must consider the appeal within 90 days of the
5.13 date the applicant for reimbursement's written notice of appeal is received. The written
5.14 notice must set forth the specific basis for the appeal.

5.15 (b) An applicant for reimbursement may appeal a reimbursement determination of the
5.16 board as a contested case under chapter 14. An applicant for reimbursement must provide
5.17 to the board written notification of a request for a contested case, setting forth the specific
5.18 basis for the appeal, within 30 days of the date the board makes a reimbursement
5.19 determination. Only an applicant may appeal the board's reimbursement determination. The
5.20 commissioner must make the final decision in a contested case requested by an applicant.

5.21 Subd. 8. **Returning reimbursement.** (a) The commissioner of commerce may demand
5.22 the complete or partial return of any reimbursement made under this section if the applicant
5.23 for reimbursement (1) misrepresents or omits a fact relevant to a determination made by
5.24 the commissioner under this section, or (2) has entered an agreement to settle or compromise
5.25 any portion of the reimbursed costs. If the applicant has entered an agreement to settle or
5.26 compromise any portion of the reimbursed costs, the amount returned must be prorated in
5.27 proportion to the amount of the settlement or compromise.

5.28 (b) If a reimbursement under this section is not returned upon the commissioner's demand,
5.29 the commissioner may recover the reimbursement, with administrative and legal expenses,
5.30 in a civil action brought by the attorney general against the applicant in a district court. If
5.31 the commissioner's demand for return of the reimbursement is based on willful actions of
5.32 the applicant, the applicant must also forfeit and pay to the state a civil penalty in an amount
5.33 to be determined by the court. A civil penalty under this paragraph must not exceed the full
5.34 amount of the reimbursement.

6.1 Subd. 9. **Fraud.** (a) If a person, with intent to defraud, issues an invoice or other demand
 6.2 for payment with knowledge that the invoice or other demand is in whole or in part false,
 6.3 and with knowledge that the invoice or other demand is being submitted to the board for
 6.4 reimbursement:

6.5 (1) the person is considered to have presented a false claim to a public body under section
 6.6 609.465; and

6.7 (2) the commissioner may demand that the person return any money received as a result
 6.8 of a reimbursement made on the basis of the false invoice or other demand for payment.

6.9 (b) If the money is not returned upon the commissioner's demand, the commissioner
 6.10 may recover the money, with administrative and legal expenses, in a civil action brought
 6.11 by the attorney general against the person in a district court. The person must also forfeit
 6.12 and pay to the state a civil penalty in an amount to be determined by the court. A civil
 6.13 penalty under this paragraph must not exceed the full amount of the money received by the
 6.14 person on the basis of the false invoice or other demand for payment.

6.15 Subd. 10. **Kickbacks.** A consultant or contractor must not agree to pay or forgive, as a
 6.16 condition of performing services, the nonreimbursable portion of an application for
 6.17 reimbursement submitted under this section. An applicant must not accept forgiveness or
 6.18 demand payment from a consultant or contractor for the nonreimbursable portion of an
 6.19 application for reimbursement submitted under this section.

6.20 Subd. 11. **Obligation limited; insufficient funds.** (a) The state's obligation to make
 6.21 reimbursement under this section is limited to the amount available. Notwithstanding any
 6.22 other provision in this section, there is no general fund obligation to make a reimbursement
 6.23 if there is not sufficient money in the account.

6.24 (b) The commissioner must not approve an application for reimbursement if there is
 6.25 insufficient money available in the account to pay the reimbursement.

6.26 Subd. 12. **Board.** (a) The commissioner must convene a Liquid Fuel Modernization
 6.27 Board. The board consists of:

6.28 (1) the commissioner or the commissioner's designee;

6.29 (2) the commissioner of agriculture or the commissioner's designee;

6.30 (3) the commissioner of the Pollution Control Agency or the commissioner's designee;

6.31 (4) a Minnesota fuel equipment and service industry representative, appointed by the
 6.32 governor; and

7.1 (5) a Minnesota petroleum industry representative, appointed by the governor.

7.2 (b) The board member appointed under paragraph (a), clause (5), must serve as chair of
7.3 the board.

7.4 (c) Section 15.0575 governs the filling of positions and vacancies, membership terms,
7.5 payment of compensation and expenses, and removal of members.

7.6 (d) The board's duties are to (1) advise the commissioner regarding the liquid fuel
7.7 modernization fee and reimbursement program, and (2) consider appeals under subdivision
7.8 7.

7.9 Subd. 13. **Rules.** The commissioner may adopt rules necessary to implement this section.

7.10 Subd. 14. **Expiration.** This section expires June 30, 2034.

7.11 **EFFECTIVE DATE.** This section is effective July 1, 2023.

7.12 Sec. 2. Minnesota Statutes 2022, section 239.7911, is amended by adding a subdivision
7.13 to read:

7.14 Subd. 3. **Equipment compatibility goal.** (a) The equipment compatibility goal of the
7.15 state is that no later than December 31, 2028, at least 50 percent of retail gasoline storage
7.16 and dispensing equipment is certified for and offering for sale the highest ethanol blend
7.17 authorized by law for use in standard combustion engines.

7.18 (b) No later than February 1 each year, the commissioner, in consultation with the
7.19 commissioner of agriculture and the Liquid Fuel Modernization Board established under
7.20 section 239.787, must report to the legislative committees with jurisdiction over commerce
7.21 and agriculture regarding:

7.22 (1) progress made toward achieving the goal in paragraph (a); and

7.23 (2) the total expenditures, and the total and average reimbursement payments per site,
7.24 made under section 239.787.

7.25 (c) If equipment and labor availability, blending capacity, ethanol outages at pipelines
7.26 or refineries, federal requirements, or other relevant constraints impede progress in achieving
7.27 the goal in paragraph (a), the commissioner must identify these constraints, along with any
7.28 corresponding recommendations, in the reports required under paragraph (b).

7.29 (d) This subdivision expires June 30, 2034.

7.30 **EFFECTIVE DATE.** This section is effective July 1, 2023.

8.1 Sec. 3. Minnesota Statutes 2022, section 296A.15, is amended by adding a subdivision to
8.2 read:

8.3 Subd. 2a. **Liquid fuel modernization fee.** (a) A person that must pay a liquid fuel
8.4 modernization fee under section 239.787, subdivision 3, must file a report with the
8.5 commissioner. Each report must include the amount of fees due on petroleum products.
8.6 Reports must be filed in the form and manner prescribed by the commissioner. A written
8.7 report is considered filed as required if the report is postmarked on or before the 23rd day
8.8 of the month in which the fee is payable.

8.9 (b) This subdivision expires June 30, 2034.

8.10 **EFFECTIVE DATE.** This section is effective July 1, 2023.