## Senate Bill No. 849

CHAPTER 514

An act to amend Sections 8670.37.58, 8670.40, 8670.54, and 8670.55 of, and to add Sections 8670.41 and 8670.42 to, the Government Code, relating to oil spills.

[Approved by Governor September 12, 2002. Filed with Secretary of State September 12, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 849, Torlakson. Oil spills: fees.

(1) Existing law, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, establishes in state government the office of administrator for oil spill response and requires the administrator to adopt and implement regulations and guidelines governing the adequacy of oil spill contingency plans. A knowing violation of the act is a misdemeanor.

Existing law prohibits a nontank vessel, as defined, that is required to have a contingency plan, from entering the marine waters of the state unless the nontank vessel owner or operator provides to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least $300,000,000 to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel. The administrator is authorized to charge the owner or operator a reasonable fee to reimburse specified costs for processing that application. However, until January 1, 2003, the administrator is authorized to establish a lower standard of financial responsibility for a nontank vessel that has a carrying capacity of 6,500 barrels of oil or less, or a nontank vessel that is owned and operated by California or a federal agency and has a carrying capacity of 7,500 barrels of oil or less.

This bill would extend, until January 1, 2006, the expiration date on the authority of the administrator to establish a lower standard of financial responsibility for the specified nontank vessels.

The bill would require the administrator to charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing certain provisions relating to nontank vessels. The bill would authorize the administrator to charge a reduced fee for nontank vessels determined by the administrator to pose a reduced risk of pollution, including vessels used for research or training and vessels that are moored permanently or rarely move.

The bill would require the fees to be $2,500 or less, before January 1, 2005.

The bill would require the administrator to deposit all revenue derived from the fees in the Oil Spill Prevention and Administration Fund. The bill would authorize revenue derived from the fees to be spent for certain, listed purposes relating to oil spill prevention, response, and preparedness, but not for responding to an oil spill.

(2) Existing law requires the administrator for oil spill response to adopt and implement regulations and guidelines governing the adequacy of oil spill contingency plans. Existing law requires the State Board of Equalization to collect an oil spill prevention and administration fee which is imposed upon every person owning crude oil at the time that the crude oil is received at a marine terminal, in an amount determined by the administrator for oil spill response, not to exceed 4¢ per barrel of crude oil or petroleum products. Under existing law, the revenues from the oil spill prevention and administration fee are deposited in the Oil Spill Prevention and Administration Fund in the State Treasury. Existing law provides that the money in the fund is available for appropriation by the Legislature and may only be used for the purposes of the act and the provisions governing oil spill prevention and response.

Existing law requires the administrator, on or before January 15, to prepare a plan annually that projects revenues and expenses over 3 fiscal years, including the current year. Existing law requires the administrator to set the fee based on the plan.

This bill would prohibit the annual assessment from exceeding 5¢ per barrel of crude oil or petroleum products.

The bill would change the date by which the administrator is required to prepare the plan to January 20.

Since a failure to pay the fees imposed by the bill would be a crime, the bill would impose a state-mandated local program.

(3) Existing law establishes the Oil Spill Technical Advisory Committee to provide public input and independent judgment of the actions of the administrator and the State Interagency Oil Spill Committee. The committee is required to consist of 9 members, of whom 5 are required to be appointed by the Governor, 2 by the Speaker of the Assembly, and 2 by the Senate Committee on Rules, as specified. The committee is required to report annually to the Governor and the Legislature on its evaluation of oil spill response and preparedness programs within the state.

This bill would increase the membership of the committee by 1 member, who would be appointed by the Governor and would be required to have a demonstrable knowledge of the dry cargo vessel industry.

The bill would require the Department of Fish and Game to contract with the Department of Finance to prepare and submit to the Governor and the Legislature, on or before January 1, 2005, a detailed report on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program.

The bill would require the committee to review, on or before August 1, 2005, the Department of Finances report and to prepare and submit to the Governor and the Legislature comments on the report, including recommendations for improving the state's oil spill prevention, response, and preparedness program.

(4) This bill would incorporate additional changes to Section 8670.40 of the Government Code proposed by AB 2083, to be operative only if AB 2083 and this bill are both chaptered and become effective on or before January 1, 2003, and this bill is chaptered last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 8670.37.58 of the Government Code, as added by Section 35 of Chapter 748 of the Statutes of 2001, is amended to read:

8670.37.58. (a) A nontank vessel required to have a contingency plan pursuant to this chapter shall not enter marine waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel.

(b) Notwithstanding subdivision (a), the administrator may establish a lower standard of financial responsibility for a nontank vessel that has a carrying capacity of 6,500 barrels of oil or less, or for a nontank vessel that is owned and operated by California or a federal agency and has a carrying capacity of 7,500 barrels of oil or less. The standard shall be based upon the quantity of oil that can be carried by the nontank vessel and the risk of an oil spill into marine waters. The administrator shall not set a standard that is less than the expected cleanup costs and damages from an oil spill into marine waters.

(c) The administrator may adopt regulations to implement this section.

(d) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 8670.37.58 of the Government Code, as added by Section 36 of Chapter 748 of the Statutes of 2001, is amended to read:

8670.37.58. (a) A nontank vessel, required to have a contingency plan pursuant to this chapter, shall not enter marine waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel.

(b) The administrator may adopt regulations to implement this section.

(c) This section shall become operative on January 1, 2006.

SEC. 3. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents ($0.05) per barrel of crude oil or petroleum products.

(b) (1) The oil spill prevention and administration fee shall be imposed upon every person owning crude oil at the time that the crude oil is received at a marine terminal from within or outside the state, and upon every person owning petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. No fee shall be imposed pursuant to this section with respect to any crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) Every owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of any expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in any fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

SEC. 3.5. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents ($0.05) per barrel of crude oil or petroleum products.

(b) (1) The oil spill prevention and administration fee shall be imposed upon every person owning crude oil at the time that the crude oil is received at a marine terminal from within or outside the state, and upon every person owning petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. No fee shall be imposed pursuant to this section with respect to any crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) Every owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of any expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in any fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993–94 fiscal year, and each fiscal

year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division 9 (commencing with Section 8780) of the Public Resources Code).

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

SEC. 4. Section 8670.41 is added to the Government Code, to read:

8670.41. (a) The administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing this chapter relating to nontank vessels. Before January 1, 2005, the fee shall be two thousand five hundred dollars ($2,500), or less.

(b) The administrator may charge a reduced fee under this section for nontank vessels determined by the administrator to pose a reduced risk of pollution, including, but not limited to, vessels used for research or training and vessels that are moored permanently or rarely move.

(c) The administrator shall deposit all revenue derived from the fees imposed under this section in the Oil Spill Prevention and Administration Fund established in the State Treasury under Section 8670.38.

(d) Revenue derived from the fees imposed under this section may be spent for the purposes listed in subdivision (e) of Section 8670.40, and may not be used for responding to an oil spill.

SEC. 5. Section 8670.42 is added to the Government Code, to read:

8670.42. The Department of Fish and Game shall contract with the Department of Finance for the preparation of a detailed report that shall be submitted on or before January 1, 2005, to the Governor and the Legislature on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program. This report shall include an analysis of all of the oil spill prevention, response, and preparedness program's major expenditures, fees and fines collected, staffing and equipment levels, spills responded to, and other relevant issues. The report shall recommend measures to improve the efficiency and effectiveness of the state's oil spill prevention, response, and preparedness program, including, but not limited to, measures to modify existing contingency plan requirements, to improve protection of sensitive shoreline sites, and to ensure adequate and equitable funding for the state's oil spill prevention, response, and preparedness program.

SEC. 6. Section 8670.54 of the Government Code is amended to read:

8670.54. (a) The Oil Spill Technical Advisory Committee, hereafter in this article the committee, is hereby established to provide public input and independent judgment of the actions of the administrator and the State Interagency Oil Spill Committee. The committee shall consist of ten members, of whom six shall be appointed by the Governor, two by the Speaker of the Assembly, and two by the Senate Rules Committee. The appointments shall be made in the following manner:

(1) The Speaker of the Assembly, and Senate Rules Committee shall each appoint members who shall be representatives of the public.

(2) The Governor shall appoint a member who has a demonstrable knowledge of marine transportation.

(3) The Speaker of the Assembly and the Senate Rules Committee shall each appoint a member who has demonstrable knowledge of environmental protection and the study of ecosystems.

(4) The Governor shall appoint a member who has served as a local government elected official or who has worked for a local government.

(5) The Governor shall appoint a member who has experience in oil spill response and prevention programs.

(6) The Governor shall appoint a member who has been employed in the petroleum industry.

(7) The Governor shall appoint a member who has worked in state government.

(8) The Governor shall appoint a member who has demonstrable knowledge of the dry cargo vessel industry.

(b) The committee shall meet as often as required, but at least twice per year. Members shall be paid one hundred dollars ($100) per day for each meeting and all necessary travel expenses at state per diem rates.

(c) The administrator and any personnel the administrator determines to be appropriate shall serve as staff to the committee.

(d) A chairman and vice chairman shall be elected by a majority vote of the committee.

SEC. 7. Section 8670.55 of the Government Code is amended to read:

8670.55. (a) The committee shall provide recommendations to the administrator, the State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, and the State Interagency Oil Spill Committee, on any provision of this chapter including the promulgation of all rules, regulations, guidelines, and policies.

(b) The committee may, at its own discretion, study, comment on, or evaluate, any aspect of oil spill prevention and response in the state. To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, the administrator, the State Lands Commission, the State Water Resources Control Board, and other appropriate state and international entities. Duplication with the efforts of other entities shall be minimized.

(c) The committee may attend any drills called pursuant to Section 8601.10 or any oil spills, if practicable.

(d) The committee shall report biennially to the Governor and the Legislature on its evaluation of oil spill response and preparedness programs within the state and may prepare and send any additional reports it determines to be appropriate to the Governor and the Legislature.

(e) On or before August 1, 2005, the committee shall review the Department of Finance report required under Section 8670.42 and prepare and submit to the Governor and the Legislature comments on the report, including, but not limited to, recommendations for improving the state's oil spill prevention, response, and preparedness program.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 8670.40 of the Government Code proposed by both this bill and AB 2083. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 8670.40 of the Government Code, and (3) this bill is enacted after AB 2083, in which case Section 3 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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