

ASSEMBLY BILL

No. 2032

**Introduced by Assembly Member Hancock
(Coauthors: Assembly Members Beall, Coto, DeSaulnier, Huffman,
Leno, Lieber, Mullin, Ruskin, Swanson, Torrico, and Wolk)**

February 15, 2008

An act to amend Section 8670.3 of the Government Code, and to amend Sections 46012 and 46028 of the Revenue and Taxation Code, relating to oil spills, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2032, as introduced, Hancock. Oil spill prevention and response.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response. The act defines “nontank vessel” as a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo. The act defines “tank ship” as any self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

This bill would, for purposes of the act, revise the definition of “nontank vessel” to exclude a vessel that carries oil in a single tank with a capacity greater than 50,000 gallons, and revise the definition of “tank ship” to include a vessel that carries oil in a single tank with a capacity greater than 50,000 gallons.

(2) The act imposes a uniform oil spill response fee during any period that the Oil Spill Response Trust Fund contains less than a designated amount. The money in the fund is continuously appropriated for specified purposes. Under the act, a designated amount of \$109,750,000

is required to be maintained in the fund, with half of that amount retained in cash and the other half accessible in the form of financial security obtained by the Treasurer.

This bill would increase the designated amount to \$200,000,000, and would require that designated amount and the amounts retained for cash or accessible in the form of financial security to be adjusted annually for inflation, in accordance with an index that the administrator may reasonably choose. By increasing the designated amount in the Oil Spill Response Trust Fund, a continuously appropriated fund, the bill would make an appropriation.

(3) The bill would make conforming changes.

Vote: majority. 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 8670.3 of the Government Code is
2 amended to read:

3 8670.3. Unless the context requires otherwise, the following
4 definitions shall govern the construction of this chapter:

5 (a) "Administrator" means the administrator for oil spill response
6 appointed by the Governor pursuant to Section 8670.4.

7 (b) (1) "Best achievable protection" means the highest level of
8 protection that can be achieved through both the use of the best
9 achievable technology and those manpower levels, training
10 procedures, and operational methods that provide the greatest
11 degree of protection achievable. The administrator's determination
12 of which measures provide the best achievable protection shall be
13 guided by the critical need to protect valuable coastal resources
14 and marine waters, while also considering all of the following:

15 (A) The protection provided by the measure.

16 (B) The technological achievability of the measure.

17 (C) The cost of the measure.

18 (2) The administrator shall not use a cost-benefit or
19 cost-effectiveness analysis or any particular method of analysis in
20 determining which measures provide the best achievable protection.
21 The administrator shall instead, when determining which measures
22 provide best achievable protection, give reasonable consideration
23 to the protection provided by the measures, the technological
24 achievability of the measures, and the cost of the measures when

1 establishing the requirements to provide the best achievable
2 protection for coastal and marine resources.

3 (c) (1) “Best achievable technology” means that technology
4 that provides the greatest degree of protection, taking into
5 consideration both of the following:

6 (A) Processes that are being developed, or could feasibly be
7 developed anywhere in the world, given overall reasonable
8 expenditures on research and development.

9 (B) Processes that are currently in use anywhere in the world.

10 (2) In determining what is the best achievable technology
11 pursuant to this chapter, the administrator shall consider the
12 effectiveness and engineering feasibility of the technology.

13 (d) “Dedicated response resources” means equipment and
14 personnel committed solely to oil spill response, containment, and
15 cleanup that are not used for any other activity that would adversely
16 affect the ability of that equipment and personnel to provide oil
17 spill response services in the timeframes for which the equipment
18 and personnel are rated.

19 (e) “Environmentally sensitive area” means an area defined
20 pursuant to the applicable area contingency plans, as created and
21 revised by the Coast Guard and the administrator.

22 (f) “Local government” means any chartered or general law
23 city, chartered or general law county, or any city and county.

24 (g) (1) “Marine facility” means any facility of any kind, other
25 than a tank ship or tank barge, that is or was used for the purposes
26 of exploring for, drilling for, producing, storing, handling,
27 transferring, processing, refining, or transporting oil and is located
28 in marine waters, or is located where a discharge could impact
29 marine waters unless the facility is either of the following:

30 (A) Subject to Chapter 6.67 (commencing with Section 25270)
31 or Chapter 6.75 (commencing with Section 25299.10) of Division
32 20 of the Health and Safety Code.

33 (B) Placed on a farm, nursery, logging site, or construction site
34 and does not exceed 20,000 gallons in a single storage tank.

35 (2) For the purposes of this chapter, “marine facility” includes
36 a drill ship, semisubmersible drilling platform, jack-up type drilling
37 rig, or any other floating or temporary drilling platform.

38 (3) For the purposes of this chapter, “marine facility” does not
39 include a small craft refueling dock.

- 1 (h) (1) “Marine terminal” means any marine facility used for
2 transferring oil to or from a tank ship or tank barge.
- 3 (2) “Marine terminal” includes, for purposes of this chapter, all
4 piping not integrally connected to a tank facility, as defined in
5 subdivision (1) of Section 25270.2 of the Health and Safety Code.
- 6 (i) “Marine waters” means those waters subject to tidal
7 influence, and includes the waterways used for waterborne
8 commercial vessel traffic to the Port of Sacramento and the Port
9 of Stockton.
- 10 (j) “Mobile transfer unit” means a small marine fueling facility
11 that is a vehicle, truck, or trailer, including all connecting hoses
12 and piping, used for the transferring of oil at a location where a
13 discharge could impact marine waters.
- 14 (k) “Nondedicated response resources” means those response
15 resources identified by an Oil Spill Response Organization for oil
16 spill response activities that are not dedicated response resources.
- 17 (l) “Nonpersistent oil” means a petroleum-based oil, such as
18 gasoline, diesel, or jet fuel, that evaporates relatively quickly and
19 is an oil with hydrocarbon fractions, at least 50 percent of which,
20 by volume, distills at a temperature of 645° Fahrenheit, and at least
21 95 percent of which, by volume, distills at a temperature of 700°
22 Fahrenheit.
- 23 (m) “Nontank vessel” means a vessel of 300 gross tons or greater
24 that carries oil, but does not carry that oil as cargo *or in a single*
25 *tank with a capacity greater than 50,000 gallons.*
- 26 (n) “Oil” means any kind of petroleum, liquid hydrocarbons,
27 or petroleum products or any fraction or residues therefrom,
28 including, but not limited to, crude oil, bunker fuel, gasoline, diesel
29 fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and
30 liquid distillates from unprocessed natural gas.
- 31 (o) “Oil spill cleanup agent” means a chemical, or any other
32 substance, used for removing, dispersing, or otherwise cleaning
33 up oil or any residual products of petroleum in, or on, any of the
34 waters of the state.
- 35 (p) “Oil spill contingency plan” or “contingency plan” means
36 the oil spill contingency plan required pursuant to Article 5
37 (commencing with Section 8670.28).
- 38 (q) (1) “Oil Spill Response Organization” or “OSRO” means
39 an individual, organization, association, cooperative, or other entity
40 that provides, or intends to provide, equipment, personnel, supplies,

1 or other services directly related to oil spill containment, cleanup,
2 or removal activities.

3 (2) A “rated OSRO” means an OSRO that has received a
4 satisfactory rating from the administrator for a particular rating
5 level established pursuant to Section 8670.30.

6 (3) “OSRO” does not include an owner or operator with an oil
7 spill contingency plan approved by the administrator or an entity
8 that only provides spill management services, or who provides
9 services or equipment that are only ancillary to containment,
10 cleanup, or removal activities.

11 (r) “Onshore facility” means any facility of any kind which is
12 located entirely on lands not covered by marine waters.

13 (s) (1) “Owner” or “operator” means any of the following:

14 (A) In the case of a vessel, any person who owns, has an
15 ownership interest in, operates, charters by demise, or leases, the
16 vessel.

17 (B) In the case of a marine facility, any person who owns, has
18 an ownership interest in, or operates the marine facility.

19 (C) Except as provided in subparagraph (D), in the case of any
20 vessel or marine facility, title or control of which was conveyed
21 due to bankruptcy, foreclosure, tax delinquency, abandonment, or
22 similar means to an entity of state or local government, any person
23 who owned, held an ownership interest in, operated, or otherwise
24 controlled activities concerning the vessel or marine facility
25 immediately beforehand.

26 (D) An entity of the state or local government that acquired
27 ownership or control of a vessel or marine facility, when the entity
28 of the state or local government has caused or contributed to a spill
29 or discharge of oil into marine waters.

30 (2) “Owner” or “operator” does not include a person who,
31 without participating in the management of a vessel or marine
32 facility, holds indicia of ownership primarily to protect his or her
33 security interest in the vessel or marine facility.

34 (3) “Operator” does not include any person who owns the land
35 underlying a marine facility or the facility itself if the person is
36 not involved in the operations of the facility.

37 (t) “Person” means any individual, trust, firm, joint stock
38 company, or corporation, including, but not limited to, a
39 government corporation, partnership, and association. “Person”
40 also includes any city, county, city and county, district, and the

1 state or any department or agency thereof, and the federal
2 government, or any department or agency thereof, to the extent
3 permitted by law.

4 (u) “Pipeline” means any pipeline used at any time to transport
5 oil.

6 (v) “Reasonable worst case spill” means, for the purposes of
7 preparing contingency plans for a nontank vessel, the total volume
8 of the largest fuel tank on the nontank vessel.

9 (w) “Responsible party” or “party responsible” means any of
10 the following:

11 (1) The owner or transporter of oil or a person or entity accepting
12 responsibility for the oil.

13 (2) The owner, operator, or lessee of, or person who charters
14 by demise, any vessel or marine facility, or a person or entity
15 accepting responsibility for the vessel or marine facility.

16 (x) “Small craft” means any vessel, other than a tank ship or
17 tank barge, that is less than 20 meters in length.

18 (y) “Small craft refueling dock” means a waterside operation
19 that dispenses only nonpersistent oil in bulk and small amounts of
20 persistent lubrication oil in containers primarily to small craft and
21 meets both of the following criteria:

22 (1) Has tank storage capacity not exceeding 20,000 gallons in
23 any single storage tank or tank compartment.

24 (2) Has total usable tank storage capacity not exceeding 75,000
25 gallons.

26 (z) “Small marine fueling facility” means either of the following:

27 (1) A mobile transfer unit.

28 (2) A fixed facility that is not a marine terminal, that dispenses
29 primarily nonpersistent oil, that may dispense small amounts of
30 persistent oil, primarily to small craft, and that meets all of the
31 following criteria:

32 (A) Has tank storage capacity greater than 20,000 gallons but
33 not more than 40,000 gallons in any single storage tank or storage
34 tank compartment.

35 (B) Has total usable tank storage capacity not exceeding 75,000
36 gallons.

37 (C) Had an annual throughput volume of over-the-water transfers
38 of oil that did not exceed 3,000,000 gallons during the most recent
39 preceding 12-month period.

1 (aa) “Spill” or “discharge” means any release of at least one
2 barrel (42 gallons) of oil into marine waters that is not authorized
3 by any federal, state, or local government entity.

4 (ab) “State Interagency Oil Spill Committee” means the
5 committee established pursuant to Article 3.5 (commencing with
6 Section 8574.1) of Chapter 7.

7 (ac) “California oil spill contingency plan” means the California
8 oil spill contingency plan prepared pursuant to Article 3.5
9 (commencing with Section 8574.1) of Chapter 7.

10 (ad) “Tank barge” means any vessel that carries oil in
11 commercial quantities as cargo but is not equipped with a means
12 of self-propulsion.

13 (ae) “Tank ship” means any self-propelled vessel that is
14 constructed or adapted for the carriage of oil in bulk or in
15 commercial quantities as cargo, *or that carries oil in a single tank*
16 *with a capacity greater than 50,000 gallons.*

17 (af) “Tank vessel” means a tank ship or tank barge.

18 (ag) “Vessel” means any watercraft or ship of any kind,
19 including every structure adapted to be navigated from place to
20 place for the transportation of merchandise or persons.

21 (ah) “Vessel carrying oil as secondary cargo” means any vessel
22 that does not carry oil as a primary cargo, but does carry oil in
23 bulk as cargo or cargo residue.

24 SEC. 2. Section 46012 of the Revenue and Taxation Code is
25 amended to read:

26 46012. (a) “Designated amount” means an amount equal to
27 ~~one hundred nine million seven hundred fifty thousand dollars~~
28 ~~(\$109,750,000)~~ *two hundred million dollars (\$200,000,000)*,
29 subject to the following:

30 (a)

31 ~~(1) Fifty-four million eight hundred seventy-five thousand~~
32 ~~dollars (\$54,875,000)~~ *One hundred million dollars (\$100,000,000)*
33 shall be retained in the Oil Spill Response Trust Fund as cash.

34 (b)

35 ~~(2) Fifty-four million eight hundred seventy-five thousand~~
36 ~~dollars (\$54,875,000)~~ *One hundred million dollars (\$100,000,000)*
37 shall be accessible in the Oil Spill Response Trust Fund in the
38 form of financial security obtained by the Treasurer.

1 **(b)** *The amounts specified in this section shall be adjusted*
2 *annually for inflation, in accordance with an index that the*
3 *administrator may reasonably choose.*

4 SEC. 3. Section 46028 of the Revenue and Taxation Code is
5 amended to read:

6 46028. “Tanker” means any self-propelled, waterborne vessel,
7 constructed or adapted for the carriage of crude oil or petroleum
8 products in bulk or in commercial quantities as cargo, *or that*
9 *carries oil in a single tank with a capacity greater than 50,000*
10 *gallons.*