

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2547

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

February 22, 2008

An act to amend Sections 8670.3, 8670.13, 8670.28, 8670.30, 8670.48, 8670.49, and 8670.55 of, and to add Sections 8670.11 and 8670.74 to, the Government Code, relating to oil spills, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2547, as amended, Leno. Oil spill prevention and response.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil ~~spill~~ *spill* response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. Existing law defines “*best achievable technology*,” “*dedicated response resources*” and “*nondedicated response resources*” ~~resources~~ *resources*,” for purposes of the act.

Existing law authorizes an oil spill response organization (OSRO), as defined, to apply to the administrator for a rating of that organization’s response capabilities. Under existing law, upon receiving and reviewing a completed application, the administrator is required to rate the organization based on its satisfactory compliance with specified criteria.

This bill would *revise the definition of “best achievable technology” to include that technology that provides the greatest degree of protection taking into consideration processes currently contained in any oil spill contingency or response plan anywhere in the world.* The bill would revise the definition of “dedicated response resources” to provide that, for the port areas, *as defined*, of San Francisco, Los Angeles/Long Beach and San Diego, “dedicated response resources” shall additionally mean equipment and personnel permanently located in each of those areas. The bill would revise the definition of “nondedicated response resources” to provide that identified response resources located outside of the state are nondedicated response resources.

This bill would include ~~as an additional element~~ *elements* in rating an OSRO for compliance with specified criteria, the dedicated response resources the OSRO controls, as defined, in the area in which it intends to operate *and the capability of the OSRO to provide best achievable protection.*

The bill would require, instead of authorize, the administrator to require a rated OSRO to demonstrate that it can deploy the response resources required to meet the OSRO’s oil spill contingency plan. The bill would also require, instead of authorize, the administrator to require the satisfactory completion of one unannounced drill of an OSRO prior to modifying, renewing, or reinstating a rating.

This bill would require the administrator to establish a universal mutual aid agreement for the purpose of regulating the terms under which an owner or operator of a vessel or marine facility, or rated oil spill response organization (OSRO), may use the response resources of another owner or operator, or rated OSRO.

This bill would require the administrator to award and administer competitive grants for the development of improved processes and technologies for oil spill prevention, containment, and cleanup. The grants ~~shall~~ *would* be known as the California Oil Spill Prevention and Cleanup Technology Grants and ~~shall~~ *would* provide funds to eligible recipients for research, testing, and capital matching grants for bringing emerging technologies to the marketplace. The bill would require the administrator, beginning January 1, 2010, and every 5 years thereafter, to prepare and make available to the Legislature a comprehensive evaluation of emerging technologies that aid prevention, response, containment, cleanup, and wildlife rehabilitation.

This bill would require the administrator to additionally expend moneys from the Oil Spill Response Trust Fund, a continuously

appropriated fund for specified purposes, to cover the uncompensated response and cleanup costs resulting from providing resources through the use of a universal mutual aid agreement, and to pay for technology grants, thereby making an appropriation.

This bill would require the administrator to adopt and implement regulations regarding a ~~mandated~~ minimum containment response required for oil spills or discharges that occur during low visibility conditions and for marine groundings, collisions, and allisions that involve a tank vessel or nontank vessel.

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
25 establishing the requirements to provide the best achievable
26 protection for coastal and marine resources.

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

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

7 (B) Processes that are currently in use *or contained in any oil*
 8 *spill contingency or response plan* anywhere in the world.

9 (C) This subdivision does not require that a particular technology
 10 shall first be used elsewhere in the world prior to being required
 11 for use or deployment by the administrator.

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

15 (d) (1) “Dedicated response resources” means equipment and
 16 personnel committed solely to oil spill response, containment, and
 17 cleanup that are not used for any other activity that would adversely
 18 affect the ability of that equipment and personnel to provide oil
 19 spill response services in the timeframes for which the equipment
 20 and personnel are rated.

21 (2) For the port areas, *as defined in area contingency plans of*
 22 *San Francisco, Los Angeles/Long Beach, and San Diego,*
 23 *“dedicated response resources” shall, in addition to the other*
 24 *criteria in this subdivision, mean equipment and personnel*
 25 *permanently located in each of those areas. Personnel may be*
 26 *characterized as a dedicated resource only when on duty or on call.*
 27 *On-call personnel may be characterized as a dedicated resource if*
 28 *an on-call employee is all of the following:*

29 (A) Required to wear a functioning pager or other means of
 30 immediate communication at all times.

31 (B) Required to remain in close geographic proximity to the
 32 OSRO’s facility *or nonpersonnel dedicated response resource so*
 33 *as to be capable of reporting to either within 30 minutes.*

34 ~~(C) Capable of reporting to the OSRO’s facility within 30~~
 35 ~~minutes of being contacted.~~

36 ~~(D)~~

37 (C) Required to carry approved work clothing and necessary
 38 identification to access the OSRO’s facility or the site of a spill.

39 ~~(E)~~

1 (D) Required to maintain the United States Coast Guard fitness
2 for duty requirements referenced at _____ CFR _____ in Part 95 of
3 Title 33 of the Code of Federal Regulations.

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

7 (f) “Local government” means a chartered or general law city,
8 a chartered or general law county, or a city and county.

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

15 (A) Subject to Chapter 6.67 (commencing with Section 25270)
16 or Chapter 6.75 (commencing with Section 25299.10) of Division
17 20 of the Health and Safety Code.

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

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

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

25 (h) (1) “Marine terminal” means a marine facility used for
26 transferring oil to or from a tank ship or tank barge.

27 (2) “Marine terminal” includes, for purposes of this chapter, all
28 piping not integrally connected to a tank facility, as defined in
29 subdivision (m) of Section 25270.2 of the Health and Safety Code.

30 (i) “Marine waters” means those waters subject to tidal
31 influence, and includes the waterways used for waterborne
32 commercial vessel traffic to the Port of Sacramento and the Port
33 of Stockton.

34 (j) “Mobile transfer unit” means a small marine fueling facility
35 that is a vehicle, truck, or trailer, including all connecting hoses
36 and piping, used for the transferring of oil at a location where a
37 discharge could impact marine waters.

38 (k) “Nondedicated response resources” means those response
39 resources identified by an Oil Spill Response Organization for oil
40 spill response activities that are not dedicated response resources.

1 Identified response resources located outside of California are
2 nondedicated response resources.

3 (l) “Nonpersistent oil” means a petroleum-based oil, such as
4 gasoline, diesel, or jet fuel, that evaporates relatively quickly and
5 is an oil with hydrocarbon fractions, at least 50 percent of which,
6 by volume, distills at a temperature of 645° Fahrenheit, and at least
7 95 percent of which, by volume, distills at a temperature of 700°
8 Fahrenheit.

9 (m) “Nontank vessel” means a vessel of 300 gross tons or greater
10 that carries oil, but does not carry that oil as cargo.

11 (n) “Oil” means any kind of petroleum, liquid hydrocarbons,
12 or petroleum products or any fraction or residues therefrom,
13 including, but not limited to, crude oil, bunker fuel, gasoline, diesel
14 fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and
15 liquid distillates from unprocessed natural gas.

16 (o) “Oil spill cleanup agent” means a chemical, or any other
17 substance, used for removing, dispersing, or otherwise cleaning
18 up oil or any residual products of petroleum in, or on, any of the
19 waters of the state.

20 (p) “Oil spill contingency plan” or “contingency plan” means
21 the oil spill contingency plan required pursuant to Article 5
22 (commencing with Section 8670.28).

23 (q) (1) “Oil Spill Response Organization” or “OSRO” means
24 an individual, organization, association, cooperative, or other entity
25 that provides, or intends to provide, equipment, personnel, supplies,
26 or other services directly related to oil spill containment, cleanup,
27 or removal activities.

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

31 (3) “OSRO” does not include an owner or operator with an oil
32 spill contingency plan approved by the administrator or an entity
33 that only provides spill management services, or who provides
34 services or equipment that are only ancillary to containment,
35 cleanup, or removal activities.

36 (r) “Onshore facility” means a facility of any kind that is located
37 entirely on lands not covered by marine waters.

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

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

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

3 (C) Except as provided in subparagraph (D), in the case of a
4 vessel or marine facility, where title or control was conveyed due
5 to bankruptcy, foreclosure, tax delinquency, abandonment, or
6 similar means to an entity of state or local government, a person
7 who owned, held an ownership interest in, operated, or otherwise
8 controlled activities concerning the vessel or marine facility
9 immediately beforehand.

10 (D) An entity of the state or local government that acquired
11 ownership or control of a vessel or marine facility, when the entity
12 of the state or local government has caused or contributed to a spill
13 or discharge of oil into marine waters.

14 (2) “Owner” or “operator” does not include a person who,
15 without participating in the management of a vessel or marine
16 facility, holds indicia of ownership primarily to protect the person’s
17 security interest in the vessel or marine facility.

18 (3) “Operator” does not include a person who owns the land
19 underlying a marine facility or the facility itself if the person is
20 not involved in the operations of the facility.

21 (t) “Person” means an individual, trust, firm, joint stock
22 company, or corporation, including, but not limited to, a
23 government corporation, partnership, and association. “Person”
24 also includes a city, county, city and county, district, and the state
25 or any department or agency thereof, and the federal government,
26 or any department or agency thereof, to the extent permitted by
27 law.

28 (u) “Pipeline” means a pipeline used at any time to transport
29 oil.

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

33 (w) “Responsible party” or “party responsible” means any of
34 the following:

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

37 (2) The owner, operator, or lessee of, or a person that charters
38 by demise, a vessel or marine facility, or a person or entity
39 accepting responsibility for the vessel or marine facility.

- 1 (x) “Small craft” means a vessel, other than a tank ship or tank
2 barge, that is less than 20 meters in length.
- 3 (y) “Small craft refueling dock” means a waterside operation
4 that dispenses only nonpersistent oil in bulk and small amounts of
5 persistent lubrication oil in containers primarily to small craft and
6 meets both of the following criteria:
- 7 (1) Has tank storage capacity not exceeding 20,000 gallons in
8 any single storage tank or tank compartment.
- 9 (2) Has total usable tank storage capacity not exceeding 75,000
10 gallons.
- 11 (z) “Small marine fueling facility” means either of the following:
- 12 (1) A mobile transfer unit.
- 13 (2) A fixed facility that is not a marine terminal, that dispenses
14 primarily nonpersistent oil, that may dispense small amounts of
15 persistent oil, primarily to small craft, and that meets all of the
16 following criteria:
- 17 (A) Has tank storage capacity greater than 20,000 gallons but
18 not more than 40,000 gallons in any single storage tank or storage
19 tank compartment.
- 20 (B) Has total usable tank storage capacity not exceeding 75,000
21 gallons.
- 22 (C) Had an annual throughput volume of over-the-water transfers
23 of oil that did not exceed 3,000,000 gallons during the most recent
24 preceding 12-month period.
- 25 (aa) “Spill” or “discharge” means a release of at least one barrel
26 (42 gallons) of oil into marine waters that is not authorized by a
27 federal, state, or local government entity.
- 28 (ab) “State Interagency Oil Spill Committee” means the
29 committee established pursuant to Article 3.5 (commencing with
30 Section 8574.1) of Chapter 7.
- 31 (ac) “California oil spill contingency plan” means the California
32 oil spill contingency plan prepared pursuant to Article 3.5
33 (commencing with Section 8574.1) of Chapter 7.
- 34 (ad) “Tank barge” means a vessel that carries oil in commercial
35 quantities as cargo but is not equipped with a means of
36 self-propulsion.
- 37 (ae) “Tank ship” means a self-propelled vessel that is
38 constructed or adapted for the carriage of oil in bulk or in
39 commercial quantities as cargo.
- 40 (af) “Tank vessel” means a tank ship or tank barge.

1 (ag) “Vessel” means a watercraft or ship of any kind, including
2 a structure adapted to be navigated from place to place for the
3 transportation of merchandise or persons.

4 (ah) “Vessel carrying oil as secondary cargo” means a vessel
5 that does not carry oil as a primary cargo, but does carry oil in
6 bulk as cargo or cargo residue.

7 SEC. 2. Section 8670.11 is added to the Government Code, to
8 read:

9 8670.11. (a) The administrator shall establish a universal
10 mutual aid agreement for the purpose of regulating the terms under
11 which an owner or operator or rated OSRO may utilize the response
12 resources of another owner or operator or rated OSRO.

13 (b) Each owner or operator or rated OSRO shall be subject to
14 the provisions of the universal mutual aid agreement.

15 (c) The responsible party shall be liable for all costs incurred
16 by the administrator and by the owner or operator or rated OSRO
17 that is called upon to provide response resources through the
18 utilization of the universal mutual aid agreement.

19 (d) If a responsible party cannot be identified and sufficient
20 federal oil spill response funds are not available or will not be
21 available in an adequate period of time as determined by the
22 administrator, costs incurred by an owner or operator or rated
23 OSRO due to the provision of response resources under the terms
24 of the universal mutual aid agreement may be paid from the Oil
25 Spill Response Trust Fund.

26 (e) *The terms of the universal mutual aid agreement shall reflect*
27 *market conditions and allow for the reasonable compensation of*
28 *the owner or operator or rated OSRO that is called upon to provide*
29 *response resources through the utilization of the universal mutual*
30 *aid agreement.*

31 (f) *Response resources available to an owner or operator or*
32 *rated OSRO through the universal mutual aid agreement shall not*
33 *be considered by the administrator to be a dedicated response*
34 *resource or be considered in the rating of another OSRO or in*
35 *another owner or operator’s contingency plan.*

36 SEC. 3. Section 8670.13 of the Government Code is amended
37 to read:

38 8670.13. (a) The administrator shall periodically evaluate the
39 feasibility of requiring new technologies to aid prevention,
40 response, containment, cleanup and wildlife rehabilitation.

1 (b) Beginning January 1, 2010, and every five years thereafter,
2 the administrator shall prepare and make available to the
3 Legislature a comprehensive evaluation of emerging technologies
4 that aid prevention, response, containment, cleanup, and wildlife
5 rehabilitation. The purpose of the evaluation is to ~~access~~ *assess*
6 which emerging technologies show the most promise and to
7 provide policy guidance for investments made through California
8 Oil Spill Prevention and Cleanup Technology Grants pursuant to
9 Section 8670.74.

10 SEC. 4. Section 8670.28 of the Government Code is amended
11 to read:

12 8670.28. (a) The administrator, taking into consideration the
13 marine facility or vessel contingency plan requirements of the
14 national and California contingency plans, the State Lands
15 Commission, the State Fire Marshal, and the California Coastal
16 Commission shall adopt and implement regulations governing the
17 adequacy of oil spill contingency plans to be prepared and
18 implemented under this article. All regulations shall be developed
19 in consultation with the State Interagency Oil Spill Committee,
20 and the Oil Spill Technical Advisory Committee and shall be
21 consistent with the California oil spill contingency plan and not
22 in conflict with the National Contingency Plan. The regulations
23 shall provide for the best achievable protection of coastal and
24 marine resources. The regulations shall permit the development,
25 application, and use of an oil spill contingency plan for similar
26 vessels, pipelines, terminals, and facilities within a single company
27 or organization, and across companies and organizations. The
28 regulations shall, at a minimum, ensure all of the following:

29 (1) All areas of the marine waters of the state are at all times
30 protected by prevention, response, containment, and cleanup
31 equipment and operations. For the purposes of this section, “marine
32 waters” includes the waterways used for waterborne commercial
33 vessel traffic to the Port of Stockton and the Port of Sacramento.

34 (2) Standards set for response, containment, and cleanup
35 equipment and operations are maintained and regularly improved
36 to protect the resources of the state.

37 (3) A ~~mandated~~ minimum containment response is required for
38 all oil spills or discharges that occur during low visibility conditions
39 where the area impacted by the spill *or the spill trajectory* cannot
40 be determined by visual observation.

1 (4) A ~~mandated~~ minimum containment response is required for
2 all marine groundings, collisions, and allisions that involve a tank
3 vessel or nontank vessel.

4 (5) All appropriate personnel employed by operators ~~are~~ required
5 to have a contingency plan *are to* receive training in oil spill
6 response and cleanup equipment usage and operations.

7 (6) Each oil spill contingency plan provides for appropriate
8 financial or contractual arrangements for all necessary equipment
9 and services, for the response, containment, and cleanup of a
10 reasonable worst case oil spill scenario for each part of the coast
11 the plan addresses.

12 (7) Each oil spill contingency plan demonstrates that all
13 protection measures are being taken to reduce the possibility of
14 an oil spill occurring as a result of the operation of the marine
15 facility or vessel. The protection measures shall include, but not
16 be limited to, response to disabled vessels and an identification of
17 those measures taken to comply with requirements of Division 7.8
18 (commencing with Section 8750) of the Public Resources Code.

19 (8) Each oil spill contingency plan identifies the types of
20 equipment that can be used, the location of the equipment, and the
21 time taken to deliver the equipment.

22 (9) Each marine facility conducts a hazard and operability study
23 to identify the hazards associated with the operation of the facility,
24 including the use of the facility by vessels, due to operating error,
25 equipment failure, and external events. For the hazards identified
26 in the hazard and operability studies, the facility shall conduct an
27 offsite consequence analysis that, for the most likely hazards,
28 assumes pessimistic water and air dispersion and other adverse
29 environmental conditions.

30 (10) Each oil spill contingency plan contains a list of contacts
31 to call in the event of a drill, threatened discharge of oil, or
32 discharge of oil.

33 (11) Each oil spill contingency plan identifies the measures to
34 be taken to protect the recreational and environmentally sensitive
35 areas that would be threatened by a reasonable worst case oil spill
36 scenario.

37 (12) Standards for determining a reasonable worst case oil spill.

38 (13) Each oil spill contingency plan includes a timetable for
39 implementing the plan.

1 (14) Each oil spill contingency plan specifies an agent for service
2 of process. The agent shall be located in this state.

3 (b) The regulations and guidelines adopted pursuant to this
4 section shall also include provisions to provide public review and
5 comment on submitted oil spill contingency plans prior to approval.

6 (c) The regulations adopted pursuant to this section shall
7 specifically address the types of equipment that will be necessary,
8 the maximum time that will be allowed for deployment, the
9 maximum distance to cooperating response entities, the amounts
10 of dispersant, and the maximum time required for application,
11 should the use of dispersants be approved. Upon a determination
12 by the administrator that booming is appropriate at the site and
13 necessary to provide best achievable protection, the regulations
14 shall require that vessels engaged in lightering operations be
15 boomed prior to the commencement of operations.

16 (d) The administrator shall adopt regulations and guidelines for
17 oil spill contingency plans with regard to mobile transfer units,
18 small marine fueling facilities, and vessels carrying oil as secondary
19 cargo that acknowledge the reduced risk of damage from oil spills
20 from those units, facilities, and vessels while maintaining the best
21 achievable protection for the public health and safety and the
22 environment.

23 (e) The regulations adopted pursuant to subdivision (d) shall be
24 exempt from review by the Office of Administrative Law.
25 Subsequent amendments and changes to the regulations shall not
26 be exempt from Office of Administrative Law review.

27 SEC. 5. Section 8670.30 of the Government Code is amended
28 to read:

29 8670.30. (a) An oil spill response organization may apply to
30 the administrator for a rating of that OSRO's response capabilities.
31 The administrator shall establish rating levels for classifying
32 OSROs pursuant to subdivision (b).

33 (b) Upon receiving a completed application for rating, the
34 administrator shall review the application and rate the OSRO based
35 on the OSRO's satisfactory compliance with criteria established
36 by the administrator, which shall include, but is not limited to, all
37 of the following elements:

38 (1) The geographic region or regions of the state where the
39 OSRO intends to operate.

1 (2) Timeframes for having response resources on-scene and
2 deployed.

3 (3) The type of equipment that the OSRO will use and the
4 location of the stored equipment.

5 (4) The volume of oil that the OSRO is capable of recovering
6 and containing.

7 (5) The dedicated response resources the OSRO controls in the
8 area it intends to operate. For purposes of this paragraph, “controls”
9 means equipment owned by the OSRO and located in the area and
10 personnel employed by the OSRO and located in the area.

11 (6) *The capability of the OSRO to provide best achievable*
12 *protection.*

13 (c) The administrator shall not issue a rating until the applicant
14 OSRO completes an unannounced drill. The administrator may
15 call a drill for every distinct geographic area in which the OSRO
16 requests a rating. The drill shall test the resources and response
17 capabilities of the OSRO, including, but not limited to, on water
18 containment and recovery, environmentally sensitive habitat
19 protection, and storage. If an OSRO fails to successfully complete
20 a drill, the administrator shall not issue the requested rating, but
21 the administrator may rate the OSRO at a rating lesser than the
22 rating sought with the application. If an OSRO is denied a
23 requested rating, the OSRO may reapply for rating.

24 (d) A rating issued pursuant to this section shall be valid for
25 three years unless modified, suspended, or revoked. The
26 administrator shall review the rating of each rated OSRO at least
27 once every three years. The administrator shall not renew a rating
28 unless the OSRO meets criteria established by the administrator,
29 including, at a minimum, that the rated OSRO periodically tests
30 and drills itself, including testing protection of environmentally
31 sensitive sites, during the three-year period.

32 (e) The administrator shall require a rated OSRO to demonstrate
33 that the rated OSRO can deploy the response resources required
34 to meet the applicable provisions of an oil spill contingency plan
35 in which the OSRO is listed. These demonstrations may be
36 achieved through inspections, announced and unannounced drills,
37 or by any other means.

38 (f) (1) Except as provided in paragraph (6), each rated OSRO
39 shall satisfactorily complete at least one unannounced drill every
40 three years after receiving its rating.

- 1 (2) The administrator may modify, suspend, or revoke an
2 OSRO's rating if a rated OSRO fails to satisfactorily complete a
3 drill.
- 4 (3) The administrator shall require the satisfactory completion
5 of one unannounced drill of each rated OSRO prior to being
6 granted a modified rating, for renewal, or prior to the reinstatement
7 of a revoked or suspended rating.
- 8 (4) A drill for the protection of environmentally sensitive areas
9 shall conform as close as possible to the response that would occur
10 during a spill but sensitive sites shall not be damaged during the
11 drill.
- 12 (5) The response resources to be deployed by a rated OSRO
13 within the first six hours of a spill or drill shall be dedicated
14 response resources. This requirement does not preclude a rated
15 OSRO from bringing in additional response resources. The
16 administrator may, by regulation, permit a lesser requirement for
17 dedicated or OSRO owned and controlled response resources for
18 shoreline protection.
- 19 (6) The administrator may determine that actual spill response
20 performance may be substituted in lieu of a drill.
- 21 (7) The administrator shall issue a written report evaluating the
22 performance of the OSRO after every unannounced drill called by
23 the administrator.
- 24 (8) The administrator shall determine whether an unannounced
25 drill called upon an OSRO by a federal agency qualifies as an
26 unannounced drill for the purposes of this subdivision.
- 27 (g) Each rated OSRO shall provide reasonable notice to the
28 administrator about each future drill, and the administrator, or his
29 or her designee, may attend the drill.
- 30 (h) The costs incurred by an OSRO to comply with this section
31 and the regulations adopted pursuant to this section, including
32 drills called by the administrator, shall be the responsibility of the
33 OSRO. All local, state, and federal agency costs incurred in
34 conjunction with participation in a drill shall be borne by each
35 respective agency.
- 36 (i) (1) A rating awarded pursuant to this section is personal and
37 applies only to the OSRO that receives that rating and the rating
38 is not transferable, assignable, or assumable. A rating does not
39 constitute a possessory interest in real or personal property.

1 (2) If there is a change in ownership or control of the OSRO,
2 the rating of that OSRO is null and void and the OSRO shall file
3 a new application for a rating pursuant to this section.

4 (3) For purposes of this subdivision, a “change in ownership or
5 control” includes, but is not limited to, a change in corporate status,
6 or a transfer of ownership that changes the majority control of
7 voting within the entity.

8 (j) The administrator may charge a reasonable fee to process an
9 application for, or renewal of, a rating.

10 (k) The administrator shall adopt regulations to implement this
11 section as appropriate. At a minimum, the regulations shall
12 appropriately address all of the following:

13 (1) *The level of resources that constitute best achievable*
14 *protection.*

15 ~~(1)~~

16 (2) Criteria for successful completion of a drill.

17 ~~(2)~~

18 (3) The amount and type of response resources that are required
19 to be available to respond to a particular volume of spilled oil
20 during specific timeframes within a particular region.

21 ~~(3)~~

22 (4) Regional requirements.

23 ~~(4)~~

24 (5) Training.

25 ~~(5)~~

26 (6) The process for applying for a rating, and for suspension,
27 revocation, appeal, or other modification of a rating.

28 ~~(6)~~

29 (7) Ownership and employment of response resources.

30 ~~(7)~~

31 (8) Conditions for canceling a drill due to hazardous or other
32 operational circumstances.

33 (l) A letter of approval issued from the administrator before
34 January 1, 2002, that rates an OSRO shall be deemed to meet the
35 requirements of this section for three years from the date of the
36 letter’s issuance or until January 1, 2003, whichever date occurs
37 later.

38 SEC. 6. Section 8670.48 of the Government Code is amended
39 to read:

1 8670.48. (a) (1) A uniform oil spill response fee in an amount
2 not exceeding twenty-five cents (\$0.25) for each barrel of
3 petroleum products, as set by the administrator pursuant to
4 subdivision (f), shall be imposed upon a person owning petroleum
5 products at the time the petroleum products are received at a marine
6 terminal within this state by means of a vessel from a point of
7 origin outside this state. The fee shall be remitted to the State Board
8 of Equalization by the terminal operator on the 25th day of each
9 month based upon the number of barrels of petroleum products
10 received during the preceding month.

11 (2) An owner of petroleum products is liable for the fee until it
12 has been paid to the state, except that payment to a marine terminal
13 operator registered under this chapter is sufficient to relieve the
14 owner from further liability for the fee.

15 (b) An operator of a pipeline shall also pay a uniform oil spill
16 response fee in an amount not exceeding twenty-five cents (\$0.25)
17 for each barrel of petroleum products, as set by the administrator
18 pursuant to subdivision (f), transported into the state by means of
19 a pipeline operating across, under, or through the marine waters
20 of the state. The fee shall be paid on the 25th day of each month
21 based upon the number of barrels of petroleum products so
22 transported into the state during the preceding month.

23 (c) (1) An operator of a refinery shall pay a uniform oil spill
24 response fee in an amount not exceeding twenty-five cents (\$0.25)
25 for each barrel of crude oil, as set by the administrator pursuant
26 to subdivision (f), received at a refinery within the state. The fee
27 shall be paid on the 25th day of each month based upon the number
28 of barrels of crude oil so received during the preceding month.

29 (2) The fee shall not be imposed by a refiner, or a person or
30 entity acting as an agent for a refiner, on crude oil produced by an
31 independent crude oil producer as defined in paragraph (3). The
32 board shall not identify a company as exempt from the fee
33 requirements of this section if that company was reorganized, sold,
34 or otherwise modified with the intent of circumventing the
35 requirements of this section.

36 (3) For purposes of this chapter, “independent crude oil
37 producer” means a person or entity producing crude oil within this
38 state who does not refine crude oil into product, and who does not
39 possess or own a ~~no~~ retail gasoline marketing facility.

1 (d) A marine terminal operator shall pay a uniform oil spill
2 response fee in an amount not exceeding twenty-five cents (\$0.25),
3 in accordance with subdivision (g), for each barrel of crude oil, as
4 set by the administrator pursuant to subdivision (f), that is
5 transported from within this state by means of marine vessel to a
6 destination outside this state.

7 (e) A operator of a pipeline shall pay a uniform oil spill response
8 fee in an amount not exceeding twenty-five cents (\$0.25), in
9 accordance with subdivision (g), for each barrel of crude oil, as
10 set by the administrator pursuant to subdivision (f), transported
11 out of the state by pipeline.

12 (f) (1) The fees required pursuant to this section shall be
13 collected during a period for which the administrator determines
14 that collection is necessary for any of the following reasons:

15 (A) The amount in the fund is less than or equal to 95 percent
16 of the designated amount specified in subdivision (a) of Section
17 46012 of the Revenue and Taxation Code.

18 (B) Additional money is required to pay for the purposes
19 specified in subdivision (k).

20 (C) The revenue is necessary to repay a draw on a financial
21 security obtained by the Treasurer pursuant to subdivision (o) or
22 borrowing by the Treasurer pursuant to Article 7.5 (commencing
23 with Section 8670.53.1) including any principal, interest, premium,
24 fees, charges, or costs of any kind incurred in connection with
25 those borrowings or financial security.

26 (2) The administrator, in consultation with the State Board of
27 Equalization, and with the approval of the Treasurer, may direct
28 the State Board of Equalization to cease collecting the fee when
29 the administrator determines that further collection of the fee is
30 not necessary for the purposes specified in paragraph (1).

31 (3) The administrator, in consultation with the State Board of
32 Equalization, shall set the amount of the oil spill response fees.
33 The oil spill response fees shall be imposed on all feepayers in the
34 same amount. The administrator shall not set the amount of the
35 fee at less than twenty-five cents (\$0.25) for each barrel of
36 petroleum products or crude oil, unless the administrator finds that
37 the assessment of a lesser fee will cause the fund to reach the
38 designated amount specified in subdivision (a) of Section 46012
39 of the Revenue and Taxation Code within four months. The fee
40 shall not be less than twenty-five cents (\$0.25) for each barrel of

1 petroleum products or crude oil if the administrator has drawn
2 upon the financial security obtained by the Treasurer pursuant to
3 subdivision (o) or if the Treasurer has borrowed money pursuant
4 to Article 7.5 (commencing with Section 8670.53.1) and principal,
5 interest, premium, fees, charges, or costs of any kind incurred in
6 connection with those borrowings remain outstanding or unpaid,
7 unless the Treasurer has certified to the administrator that the
8 money in the fund is not necessary for the purposes specified in
9 paragraph (1).

10 (g) The fees imposed by subdivisions (d) and (e) shall be
11 imposed in any calendar year beginning the month following the
12 month when the total cumulative year-to-date barrels of crude oil
13 transported outside the state by all feepayers by means of vessel
14 or pipeline exceeds 6 percent by volume of the total barrels of
15 crude oil and petroleum products subject to oil spill response fees
16 under subdivisions (a), (b), and (c) for the prior calendar year.

17 (h) For purposes of this chapter, “designated amount” means
18 the amounts specified in Section 46012 of the Revenue and
19 Taxation Code.

20 (i) The administrator, in consultation with the State Board of
21 Equalization and with the approval of the Treasurer, shall authorize
22 refunds of any money collected that is not necessary for the
23 purposes specified in paragraph (1) of subdivision (f). The State
24 Board of Equalization, as directed by the administrator, and in
25 accordance with Section 46653 of the Revenue and Taxation Code,
26 shall refund the excess amount of fees collected to each feepayer
27 who paid the fee to the state, in proportion to the amount that each
28 feepayer paid into the fund during the preceding 12 monthly
29 reporting periods in which there was a fee due, including the month
30 in which the fund exceeded the specified amount. If the total
31 amount of money in the fund exceeds the amount specified in this
32 subdivision by 10 percent or less, refunds need not be ordered by
33 the administrator. This section does not require the refund of excess
34 fees as provided in this subdivision more frequently than once
35 each year.

36 (j) The State Board of Equalization shall collect the fee and
37 adopt regulations implementing the fee collection program. All
38 fees collected pursuant to this section shall be deposited in the Oil
39 Spill Response Trust Fund.

1 (k) The fee described in this section shall be collected solely
2 for any of the following purposes:

3 (1) To provide funds to cover promptly the costs of response,
4 containment, and cleanup of oil spills into marine waters, including
5 damage assessment costs, and wildlife rehabilitation as provided
6 in Section 8670.61.5.

7 (2) To cover response and cleanup costs and other damages
8 suffered by the state or other persons or entities from oil spills into
9 marine waters, which cannot otherwise be compensated by
10 responsible parties or the federal government, including, but not
11 limited to, an owner or operator, or rated OSRO, that is called
12 upon to provide response resources through the utilization of the
13 universal mutual aid agreement pursuant to Section 8670.11.

14 (3) To pay claims for damages pursuant to Section 8670.51.

15 (4) To pay claims for damages, except for damages described
16 in paragraph (7) of subdivision (h) of Section 8670.56.5, pursuant
17 to Section 8670.51.1.

18 (5) To pay for the cost of obtaining financial security in the
19 amount specified in subdivision (b) of Section 46012 of the
20 Revenue and Taxation Code, as authorized by subdivision (o).

21 (6) To pay indemnity and related costs and expenses as
22 authorized by Section 8670.56.6.

23 (7) To pay principal, interest, premium, if any, and fees, charges,
24 and costs of any kind incurred in connection with moneys drawn
25 by the administrator on the financial security obtained by the
26 Treasurer pursuant to subdivision (o) or borrowed by the Treasurer
27 pursuant to Article 7.5 (commencing with Section 8670.53.1).

28 (8) To pay for the costs of rescue, medical treatment,
29 rehabilitation, and disposition of oiled wildlife, as incurred by the
30 network of oiled wildlife rescue and rehabilitation stations created
31 pursuant to Section 8670.37.5.

32 (9) To pay for the costs to administer and award California Oil
33 Spill Prevention and Cleanup Technology Grants pursuant to
34 Section 8670.74.

35 (l) (1) The interest that the state earns on the funds deposited
36 into the Oil Spill Response Trust Fund shall be deposited in the
37 fund and shall be used to maintain the fund at the designated
38 amount specified in subdivision (a) of Section 46012 of the
39 Revenue and Taxation Code. Interest earned until July 1, 1998,
40 on funds deposited pursuant to subdivision (a) of Section 46012

1 of the Revenue and Taxation Code, as determined jointly by the
2 Controller and the Director of Finance, shall be available upon
3 appropriation by the Legislature in the Budget Act to establish,
4 equip, operate, and maintain the network of rescue and
5 rehabilitation stations for oiled wildlife as described in Section
6 8670.37.5 and to support technology development and research
7 related to oiled wildlife care. Interest earned on the financial
8 security portion of the fund, required to be accessible pursuant to
9 subdivision (b) of Section 46012 of the Revenue and Taxation
10 Code shall not be available for that purpose. If the amount in the
11 fund exceeds that designated amount, the interest not needed to
12 equip, operate, and maintain the network of rescue and
13 rehabilitation stations, or for appropriate technology development
14 and research regarding oiled wildlife care, shall be deposited into
15 the Oil Spill Prevention and Administration Fund, and shall be
16 available for the purposes authorized by Article 6 (commencing
17 with Section 8670.38).

18 (2) (A) For each fiscal year, consistent with this article, the
19 administrator shall submit, as a proposed appropriation in the
20 Governor's Budget, an amount up to one million five hundred
21 thousand dollars (\$1,500,000), of the interest earned on the funds
22 deposited into the Oil Spill Response Trust Fund, for the purpose
23 of equipping, operating, and maintaining the network of oiled
24 wildlife rescue and rehabilitation stations established pursuant to
25 Section 8670.37.5 and for support of technology development and
26 research related to oiled wildlife care. The remaining interest shall
27 be deposited into the Oil Spill Prevention and Administration Fund
28 pursuant to paragraph (1).

29 (B) The administrator shall report to the Legislature not later
30 than June 30, 2002, on the progress and effectiveness of the
31 network of oiled wildlife rescue and rehabilitation stations
32 established pursuant to Section 8670.37.5, and the adequacy of
33 the Oil Spill Response Trust Fund to meet the purposes for which
34 it was established.

35 (C) At the administrator's request, the funds made available
36 pursuant to this paragraph may be directly appropriated to a suitable
37 program for wildlife health and rehabilitation within a school of
38 veterinary medicine within this state, provided that an agreement
39 exists, consistent with this chapter, between the administrator and
40 an appropriate representative of the program for carrying out that

1 purpose. The administrator shall attempt to have an agreement in
2 place at all times. The agreement shall ensure that the training of,
3 and the care provided by, the program staff are at levels that are
4 consistent with those standards generally accepted within the
5 veterinary profession.

6 (D) The funds made available pursuant to this paragraph shall
7 not be considered an offset to any other state funds appropriated
8 to the program, the program's associated school of veterinary
9 medicine, or the program's associated college or university, and
10 the funds shall not be used for any other purpose. If an offset does
11 occur or the funds are used for an unintended purpose, expenditure
12 of any appropriation of funds pursuant to this paragraph may be
13 terminated by the administrator and the administrator may request
14 a reappropriation to accomplish the intended purpose. The
15 administrator shall annually review and approve the proposed uses
16 of any funds made available pursuant to this paragraph.

17 (m) The Legislature finds and declares that effective response
18 to oil spills requires that the state have available sufficient funds
19 in a response fund. The Legislature further finds and declares that
20 maintenance of that fund is of utmost importance to the state and
21 that the money in the fund shall be used solely for the purposes
22 specified in subdivision (k).

23 (n) It is the intent of the Legislature, in enacting this section,
24 that the fee shall not be imposed by a refiner, or a person or entity
25 acting as an agent for a refiner, on crude oil produced by an
26 independent crude oil producer.

27 (o) The Treasurer shall obtain financial security, in the
28 designated amount specified in subdivision (b) of Section 46012
29 of the Revenue and Taxation Code, in a form which, in the event
30 of an oil spill, may be drawn upon immediately by the administrator
31 upon making the determinations required by paragraph (2) of
32 subdivision (a) of Section 8670.49. The financial security may be
33 obtained in any of the forms described in subdivision (b) of Section
34 8670.53.3, as determined by the Treasurer.

35 (p) This section does not limit the authority of the administrator
36 to raise oil spill response fees pursuant to Section 8670.48.5.

37 SEC. 7. Section 8670.49 of the Government Code is amended
38 to read:

1 8670.49. (a) (1) The administrator may only expend money
 2 from the fund to pay for any of the following, subject to the lien
 3 established in Section 8670.53.2:

4 (A) To pay the cost of obtaining financial security as authorized
 5 by paragraph (5) of subdivision (k) and subdivision (o) of Section
 6 8670.48.

7 (B) To pay the principal, interest, premium, if any, and fees,
 8 charges, and costs of any kind incurred in connection with moneys
 9 drawn by the administrator on the financial security obtained by
 10 the Treasurer, or the moneys borrowed by the Treasurer, as
 11 authorized by paragraph (7) of subdivision (k) of Section 8670.48.

12 (C) To pay for the construction, equipping, operation, and
 13 maintenance of rescue and rehabilitation facilities, and technology
 14 development for oiled wildlife care from interest earned on money
 15 deposited in the fund as authorized by subdivision (l) of Section
 16 8670.48.

17 (D) To pay for the costs of rescue, medical treatment,
 18 rehabilitation, and disposition of oiled wildlife, as incurred by the
 19 network of oiled wildlife rescue and rehabilitation stations pursuant
 20 to subdivision (f) of Section 8670.37.5.

21 (E) To pay for the expansion, in the VTS area, pursuant to
 22 Section 445 of the Harbors and Navigation Code, of the vessel
 23 traffic service system (VTS system) authorized pursuant to
 24 subdivision (f) of Section 8670.21.

25 (F) To pay for the costs to administer and award California Oil
 26 Spill Prevention and Cleanup Technology Grants pursuant to
 27 Section 8670.74.

28 (2) If a spill has occurred, the administrator may expend the
 29 money in the fund for the purposes identified in paragraphs (1),
 30 (2), (3), (4), (6), and (9) of subdivision (k) of Section 8670.48 only
 31 upon making the following determinations:

32 (A) Except as authorized by Section 8670.51.1, a responsible
 33 party does not exist or the responsible party is unable or unwilling
 34 to provide adequate and timely cleanup and to pay for the damages
 35 resulting from the spill. The administrator shall make a reasonable
 36 effort to have the party responsible remove the oil or agree to pay
 37 for any actions resulting from the spill that may be required by
 38 law, provided that the efforts are not detrimental to fish, plant,
 39 animal, or bird life in the affected waters. The reasonable effort
 40 of the administrator shall include attempting to access the

1 responsible parties' insurance or other proof of financial
2 responsibility.

3 (B) Sufficient federal oil spill funds are not available or will
4 not be available in an adequate period of time.

5 (3) Notwithstanding any other provision of this subdivision, the
6 administrator may expend money from the fund for authorized
7 expenditures when a reimbursement procedure is in place to receive
8 reimbursements for those expenditures from federal oil spill funds.

9 (b) Upon making the determinations specified in paragraph (2)
10 of subdivision (a), the administrator shall immediately make
11 whatever payments are necessary for responding to, containing,
12 or cleaning up, the spill, including any wildlife rehabilitation
13 required by law and payment of claims pursuant to Sections
14 8670.51 and 8670.51.1, subject to the lien established by Section
15 8670.53.2.

16 SEC. 8. Section 8670.55 of the Government Code is amended
17 to read:

18 8670.55. (a) The committee shall provide recommendations
19 to the administrator, the State Lands Commission, the California
20 Coastal Commission, the San Francisco Bay Conservation and
21 Development Commission, and the State Interagency Oil Spill
22 Committee, on any provision of this chapter including the
23 promulgation of all rules, regulations, guidelines, and policies.

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

32 (c) The committee may attend any drills called pursuant to
33 Section 8670.10 or any oil spills, if practicable.

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

39 (e) On or before August 1, 2005, the committee shall review
40 the Department of Finance report required under Section 8670.42

1 and prepare and submit to the Governor and the Legislature
2 comments on the report, including, but not limited to,
3 recommendations for improving the state's oil spill prevention,
4 response, and preparedness program.

5 (f) The committee shall review potential recipients of California
6 Oil Spill Prevention and Cleanup Technology Grants and make
7 recommendations to the administrator for awarding grants pursuant
8 to Section 8670.74.

9 SEC. 9. Section 8670.74 is added to the Government Code, to
10 read:

11 8670.74. (a) The administrator shall award and administer
12 competitive grants for the development of improved processes and
13 technologies for oil spill prevention, containment, and cleanup.
14 The grants shall be known as California Oil Spill Prevention and
15 Cleanup Technology Grants and shall provide funds to eligible
16 recipients for research, testing, and capital matching grants for
17 bringing emerging technologies to the marketplace. In awarding
18 the grants, the administrator shall select projects and recipients
19 that are likely to yield the most benefit in providing the best
20 achievable technology and best achievable protection pursuant to
21 this chapter.

22 (b) The administrator shall expend money from the Oil Spill
23 Response Trust Fund in the amount of five million dollars
24 (\$5,000,000) annually to pay for California Oil Spill Prevention
25 and Cleanup Technology Grants.

26 (c) A grant may be awarded to a state agency, university,
27 research institution, nonprofit organization, scientist, engineer,
28 corporation, or private business on a competitive basis using a
29 selection process established by the administrator.

30 (d) A corporation or private business receiving a grant shall
31 expend a sum of money not less than two times the grant amount
32 for the purpose of advancing the project or line of study for which
33 the grant is awarded.

34 (e) A state agency, university, research institution, nonprofit
35 organization, scientist, or engineer receiving a grant shall expend
36 a sum of money equivalent to or greater than the grant amount for
37 the purpose of advancing the project or line of study for which the
38 grant is awarded.

39 (f) Prior to the awarding of a grant, the Oil Spill Technical
40 Advisory Committee, created pursuant to Section 8670.54, shall

1 review grant applications determined by the administrator to be
2 most promising for award and make recommendations to the
3 administrator.

4 (g) In selecting a grant recipient, the administrator shall consider
5 the recommendations of the Oil Spill Technical Advisory
6 Committee and the comprehensive evaluation of emerging
7 technologies completed pursuant to Section 8670.13.

8 (h) A grant recipient shall use the grant award to fund only the
9 project described in the recipient's application.

10 (i) A grant recipient shall not use the grant funds to fund or
11 otherwise cover costs of an existing or proposed project or activity
12 not included in the application.

13 (j) Any grant funds allocated to a project that exceed the actual
14 cost of completing the project as outlined in the recipient's
15 application shall be returned to the Oil Spill Response Trust Fund
16 and shall not be used by the grant recipient for any other purpose.

17 (k) If the administrator or an employee or agent of the Office
18 of Oil Spill Prevention and Response, or a member of his or her
19 immediate family, is employed by a grant applicant, the employer
20 of a grant applicant, or a consultant or independent contractor
21 employed by the grant applicant, the administrator, employee, or
22 agent shall make that disclosure to the administrator or the deputy
23 administrator and shall not participate in or make recommendations
24 on the grant proposal of that applicant.

25 (l) (1) *To the extent that intellectual property is developed under*
26 *this section, an equitable share of rights in the intellectual property*
27 *or in the benefits derived therefrom shall accrue to the State of*
28 *California.*

29 (2) *The administrator may determine what share of the*
30 *intellectual property, or the benefits derived therefrom, shall accrue*
31 *to the state. The administrator may negotiate sharing mechanisms*
32 *for intellectual property or benefits with award recipients.*

O