

AMENDED IN SENATE MAY 6, 2014

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 380

Introduced by Assembly Member Dickinson

February 14, 2013

An act to amend Sections ~~21080.5, 21083.9, 21092, 21092.2, 21092.3, 21108, 21152, and 21161~~ 8670.31 and 8670.35 of the Government Code, and to add Article 5 (commencing with Section 25547) to Chapter 6.95 of Division 20 of the ~~Public Resources~~ Health and Safety Code, relating to the ~~California Environmental Quality Act~~ oil spills.

LEGISLATIVE COUNSEL'S DIGEST

AB 380, as amended, Dickinson. ~~California Environmental Quality Act: notice requirements~~ Oil spills: 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. Existing law directs the Governor to require the administrator to amend, not in conflict with the National Contingency Plan, the California oil spill contingency plan to add a marine oil spill contingency planning section containing specified elements, including an environmentally and ecologically sensitive areas element. Existing law also requires the administrator to adopt and implement regulations governing the adequacy of oil spill contingency plans to be prepared and implemented. Existing law authorizes a local government with jurisdiction over or adjacent to marine waters, as defined, to apply for

a grant from the Oil Spill Prevention and Administration Fund to complete, update, or revise an oil spill contingency plan element.

This bill would require the administrator to post each oil spill contingency plan it receives on its Internet Web site for public review and would require the administrator to solicit public comment.

This bill instead would require the administrator to offer grants to a local government with jurisdiction over or directly adjacent to surface waters within the boundaries of the state to complete, update, or revise an oil spill contingency plan element and to train personnel to administer and implement the oil spill contingency plan element.

(2) Existing law requires the Office of Emergency Services to implement regulations establishing minimum standards for business plans and area plans relating to the handling and release or threatened release of hazardous materials. Existing law requires the establishment of a statewide environmental reporting system for these plans.

This bill would require the operator of the railroad, as defined, to report specified information to the office on a monthly basis when a railroad transports rail cargo that includes oil or oil products, as defined. The bill would require a railroad transporting oil and oil products in this state to maintain a response management communications center to be available 24 hours each day for the purpose of communicating with the 911 emergency response centers of primary local public safety agencies that respond to or are on the scene of a railroad-involved hazardous spill or critical railroad-involved incident. The bill would require every refinery operating in the state that receives one or more deliveries of oil and oil products that have been transported by railroad report specified information to the office on a monthly basis. The bill would require the office to provide a copy of each report it receives pursuant to this act to each unified program agency, as defined, when the office determines a unified program agency area of responsibility may be impacted by oil and oil product cargo transported by a railroad and to maintain those reports in a specified manner.

~~(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a~~

significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

~~CEQA authorizes the Secretary of the Natural Resources Agency to certify a regulatory program that meets specified requirements. CEQA provides that written documentation required by those certified regulatory programs may be submitted in lieu of an EIR. CEQA requires an administering agency to file with the secretary a notice of decision made pursuant to the certified regulatory program, which is required to be available for public inspection. CEQA requires a lead agency to call a scoping meeting for specified projects and provide a notice of the meeting to specified entities. CEQA requires the lead agency or a project proponent to file a notice of approval or determination with Office of Planning and Research if the lead agency is a state agency or the county clerk if the lead agency is a local agency. CEQA requires a public agency that has completed an EIR to file with the Office of Planning and Research a notice of completion.~~

~~CEQA requires a lead agency determining that an EIR is required for a project to send a notice of that determination to specified public agencies. CEQA requires a lead agency preparing an EIR, a negative declaration, or making a specified determination regarding a subsequent project to provide a public notice within a reasonable time period before the certification of the EIR, or the adoption of a negative declaration, or making the specified determination. CEQA requires those notices to be posted in the office of the county clerk in each county in which the project is located and requires the notices to remain posted for 30 days. CEQA requires the county clerk to post the notice within 24 hours of receipt.~~

~~This bill would additionally require the above-mentioned notices to be filed with both the Office of Planning and Research and the county clerk and be posted by the county clerk for public review. The bill would require the county clerk to post the notices within one business day, as defined, of receipt and stamp on the notice the date on which the notices were actually posted. By expanding the services provided by the lead agency and the county clerk, this bill would impose a state-mandated local program. The bill would require the county clerk to post the notices for at least 30 days. The bill would require the Office of Planning and Research to post the notices on a publicly available online database established and maintained by the office. The bill would require the~~

~~office to stamp the notices with the date on which the notices were actually posted for online review and would require the notices to be posted for at least 30 days. The bill would specify that a time period or limitation period specified by CEQA does not commence until the notices are actually posted for public review by the county clerk and are available in the online database, and if the notices are posted on different days, the time period shall run from the date of the posting on the online database. The bill would require the notice of determination to be filed solely by the lead agency.~~

~~(2) CEQA authorizes, for a project that is determined by a state agency to be exempted from the requirements of CEQA, a state agency or a project proponent to file a notice of determination with the Office of Planning and Research. CEQA authorizes, for a project that is determined by a local agency to be exempted from the requirements of CEQA, a local agency or a project proponent to file a notice of determination with the county clerk of the county in which the project is located.~~

~~This bill would authorize this notice of determination to be filed with both the Office of Planning and Research and the county clerk. By requiring a county clerk to receive and post that notice of determination filed by a state agency, this bill would impose a state-mandated local program. The bill would provide that the notice of determination be filed by the lead agency only.~~

~~(3) 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.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes-no.~~

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

1 SECTION 1. Section 8670.31 of the Government Code is
 2 amended to read:
 3 8670.31. (a) Each oil spill contingency plan required under
 4 this article shall be submitted to the administrator ~~before a tank~~
 5 vessel, nontank vessel, or vessel carrying oil as secondary cargo
 6 operates in the marine waters of the state, or before a marine
 7 facility, small marine fueling facility, or mobile transfer unit,

1 operates in the marine waters of the state or where an oil spill
2 therefrom could impact marine waters.

3 (b) The administrator shall review each submitted contingency
4 plan to determine whether it complies with the administrator's
5 rules, policies, and regulations adopted pursuant to Section 8670.28
6 and 8670.29.

7 (c) *The administrator shall post each oil spill contingency plan*
8 *it receives on its Internet Web site for public review and shall*
9 *solicit public comment.*

10 ~~(e)~~

11 (d) Each contingency plan submitted shall be approved or
12 disapproved within 180 days after receipt by the administrator.
13 The administrator may approve or disapprove portions of a plan.
14 A plan is not deemed approved until all portions are approved
15 pursuant to this section. The disapproved portion shall be subject
16 to the procedures contained in subdivision ~~(d)~~ (e).

17 ~~(d)~~

18 (e) If the administrator finds the submitted contingency plan is
19 inadequate under the rules, policies, and regulations of the
20 administrator, the plan shall be returned to the submitter with
21 written reasons why the plan was found inadequate and, if
22 practicable, suggested modifications or alternatives, if appropriate.
23 The submitter shall submit a new or modified plan within 90 days
24 after the earlier plan was returned, responding to the findings and
25 incorporating any suggested modifications. The resubmittal shall
26 be treated as a new submittal and processed according to the
27 provisions of this section, except that the resubmitted plan shall
28 be deemed approved unless the administrator acts pursuant to
29 subdivision ~~(e)~~ (d). Failure to gain approval after the second
30 submission may be determined by the administrator to be a
31 violation of this chapter.

32 ~~(e)~~

33 (f) The administrator may make inspections and require drills
34 of any oil spill contingency plan that is submitted.

35 ~~(f)~~

36 (g) After the plan has been approved, it shall be resubmitted
37 every five years thereafter. The administrator may require earlier
38 or more frequent resubmission, if warranted. Circumstances that
39 would require an earlier resubmission include, but are not limited
40 to, changes in regulations, new oil spill response technologies,

1 deficiencies identified in the evaluation conducted pursuant to
 2 Section 8670.19, or a need for a different oil spill response because
 3 of increased need to protect endangered species habitat. The
 4 administrator may deny approval of the resubmitted plan if it is
 5 no longer considered adequate according to the adopted rules,
 6 regulations, and policies of the administrator at the time of
 7 resubmission.

8 ~~(g)~~

9 (h) (1) Each operator of a tank vessel, vessel carrying oil as a
 10 secondary cargo, or marine facility who is required to file an oil
 11 spill response plan or update pursuant to provisions of federal law
 12 regulating marine oil spill response plans shall, for informational
 13 purposes only, submit a copy of that plan or update to the
 14 administrator at the time that it is approved by the relevant federal
 15 agency.

16 (2) A tank vessel, vessel carrying oil as a secondary cargo, or
 17 marine facility operator is not required to submit a copy of the
 18 response plan or update specified in paragraph (1) to the
 19 administrator if either the vessel or facility is exempt from having
 20 to file a response plan with the state, or if the content of the plan
 21 submitted by the operator pursuant to Section 8670.29 is
 22 substantially the same as the federal response plan or update.

23 *SEC. 2. Section 8670.35 of the Government Code is amended*
 24 *to read:*

25 8670.35. (a) The administrator, taking into consideration the
 26 California oil spill contingency plan, shall promulgate regulations
 27 regarding the adequacy of oil spill contingency plan elements of
 28 business and hazardous materials area plans required pursuant to
 29 Section 25503 of the Health and Safety Code. In developing the
 30 ~~guidelines~~ *regulations*, the administrator shall consult with the Oil
 31 Spill Technical Advisory Committee.

32 (b) ~~Any~~ *The administrator shall offer a local government with*
 33 *jurisdiction over or directly adjacent to marine surface waters may*
 34 ~~apply for~~ *within the boundaries of the state a grant to complete,*
 35 *update, or revise an oil spill contingency plan element and to train*
 36 *personnel to administer and implement the oil spill contingency*
 37 *plan element.*

38 (c) Each contingency plan element established under this section
 39 shall include provisions for training fire and police personnel in
 40 oil spill response and cleanup equipment use and operations.

1 (d) Each contingency plan element prepared under this section
2 shall be consistent with the local government’s local coastal
3 program as certified under Section 30500 of the Public Resources
4 Code, the California oil spill contingency plan, and the National
5 Contingency Plan.

6 (e) The administrator shall review and approve each contingency
7 plan element established pursuant to this section. If, upon review,
8 the administrator determines that the contingency plan element is
9 inadequate, the administrator shall return it to the agency that
10 prepared it, specifying the nature and extent of the inadequacies,
11 and, if practicable, suggesting modifications. The local government
12 agency shall submit a new or modified plan within 90 days after
13 the plan was returned, responding to the findings and incorporating
14 any suggested modifications.

15 (f) The administrator shall review the preparedness of local
16 governments to determine whether a program of grants for
17 completing oil spill contingency plan elements is desirable and
18 should be continued. If the administrator determines that local
19 government preparedness should be improved, the administrator
20 shall request the Legislature to appropriate funds from the Oil Spill
21 Prevention and Administration Fund for the purposes of this
22 section.

23 (g) This section shall become operative on January 1, 2012.

24 *SEC. 3. Article 5 (commencing with Section 25547) is added*
25 *to Chapter 6.95 of Division 20 of the Health and Safety Code, to*
26 *read:*

27
28 *Article 5. Oil Spills Prevention and Response for Railroads*

29
30 *25547. For purposes of this article, the following terms have*
31 *the following meanings:*

32 (a) *“Office” means the Office of Emergency Services.*

33 (b) *“Railroad” means a railway, rail facility, rail car, rolling*
34 *stock, or train.*

35 (c) *“Refinery” has the same meaning as in Section 25128 of*
36 *the Public Resources Code.*

37 (d) *“Oil” and “oil product” has the same meaning as in Section*
38 *8670.3 of the Government Code.*

1 25547.2. When a railroad transports rail cargo that includes
2 oil or oil products, the operator of the railroad shall report to the
3 office on a monthly basis all of the following:

4 (a) A map of track routes and rail facilities utilized by the
5 railroad to transport oil and oil product cargo from the point of
6 entry into the state to a point of final destination where the oil and
7 oil product cargo is offloaded.

8 (b) The average weekly frequency of the trains transporting oil
9 and oil product cargo for each track route. The average weekly
10 frequency shall represent the frequency of the trains transporting
11 oil and oil product cargo for each track route identified in
12 subdivision (a) during the most recent four-week period prior to
13 the submission of each report.

14 (c) The average number of railroad tank cars transporting oil
15 and oil product cargo per train consist for each track route. The
16 average number of railroad tank cars transporting oil and oil
17 product cargo per train consist for each track route identified in
18 subdivision (a) shall represent the number of rail tank cars per
19 train consist for each track route during the most recent four-week
20 period prior to the submission of each report.

21 (d) The average number of tank cars transporting oil and oil
22 product cargo that were constructed pursuant to the applicable
23 railroad tank car standards per train consist of the United States
24 Department of Transportation. The average number of railroad
25 tank cars constructed pursuant to each applicable standard of the
26 United States Department of Transportation shall represent the
27 most recent four-week period prior to the submission of each
28 report.

29 (e) The average quantity of oil and oil product cargo per train
30 consist for each track route. The average quantity of oil and oil
31 product cargo for each track route shall represent the most recent
32 four-week period prior to the submission of each report.

33 (f) The name, address, and contact information of each entity
34 taking delivery of the oil and oil product cargo transported by a
35 railroad during the most recent four-week period prior to the
36 submission of each report.

37 (g) An oil spill contingency plan, prepared pursuant to Article
38 5 (commencing with Section 8670.28) of Chapter 7.4 of Division
39 1 of Title 2 of the Government Code.

1 25547.4. (a) A railroad transporting oil and oil products in
2 this state shall maintain a response management communications
3 center, which shall be available 24 hours each day for the purpose
4 of communicating with the 911 emergency response centers of
5 primary local public safety agencies that respond to, or are on the
6 scene of, a railroad-involved hazardous spill or critical
7 railroad-involved incident.

8 (b) When contacted by a primary local public safety agency
9 through a 911 response center, a response management
10 communications center shall provide real-time information about
11 the train consist involved in a hazardous spill or critical incident,
12 including, but not limited to, hazardous material movement
13 shipping papers, including a way bill or total trace and materials
14 safety data sheet, detailing the oil and oil product cargo and any
15 information that can assist the primary local public safety agency
16 in containing and safely removing an oil or oil product spill.

17 25547.6. Every refinery operating in the state that receives
18 one or more deliveries of oil and oil products that has been
19 transported by a railroad shall report to the office on a monthly
20 basis all of the following:

21 (a) The name of the railroad that transported the oil and oil
22 product cargo to the refinery.

23 (b) The average weekly amount of oil and oil product cargo
24 transported to the refinery by each railroad identified in
25 subdivision (a). The average weekly amount of oil and oil product
26 cargo transported to the refinery shall represent the most recent
27 four-week period prior to the submission of each report.

28 (c) The characteristics and classifications of the oil and oil
29 product cargo transported to the refinery by railroad for the most
30 recent four-week period prior to the submission of each report.
31 The characteristics of oil and oil products for the report required
32 pursuant to this section shall include, but shall not be limited to,
33 the flash point as a combustible liquid, gas content, corrosivity,
34 toxicity, and flammability.

35 25547.8. (a) The office shall provide a copy of each report it
36 receives pursuant to this article to each unified program agency,
37 as defined in Section 25501, when the office determines a unified
38 program agency area of responsibility may be impacted by oil and
39 oil product cargo transported by a railroad.

1 ***(b) The office and each unified program agency that receives***
2 ***a report pursuant to this section shall maintain those reports as***
3 ***confidential information and shall use the information contained***
4 ***in those reports only for the purpose of preparing an oil spill***
5 ***contingency plan, prepared pursuant to Article 5 (commencing***
6 ***with Section 8670.28) of Chapter 7.4 of Division 1 of Title 2 of the***
7 ***Government Code, and to coordinate emergency spill responses***
8 ***with other emergency services in its area of responsibility.***

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly May 24, 2013. (JR11)**