

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN ASSEMBLY JULY 1, 2014

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN ASSEMBLY JUNE 9, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MAY 6, 2014

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 2, 2014

SENATE BILL

No. 1319

**Introduced by Senator Pavley
(Coauthors: Senators Hill, Jackson, Lara, Leno, and Wolk)**

February 21, 2014

An act to amend Sections 8574.7, 8670.8, 8670.8.3, 8670.12, 8670.36, ~~8670.40~~, 8670.54, and 8670.56.6 of, and to add Sections 8670.6.5, 8670.15, 8670.29.5, and 8670.32.5 to, the Government Code, to amend Section 25364 of the Public Resources Code, and to amend Sections 765.5 and 7711 of the Public Utilities Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1319, as amended, Pavley. 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, 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 directs the Governor to require the administrator to amend, not in conflict with the National Contingency Plan, the California oil spill contingency plan to provide for the best achievable protection of waters of the state that contains specified elements, including, among others, a regional and local planning 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 and requires the regulations to provide for the best achievable protection of the waters and natural resources of the state.

This bill would expand the regional and local planning element of the California oil spill contingency plan to include the identification and mitigation of public health and safety impacts from an oil spill in waters of the state. The bill would authorize the administrator to obtain confidential and other information from the Office of Emergency Services, the State Energy Resources Conservation and Development Commission, and other regulators, as necessary, in order for the administrator to carry out his or her duties, and would require the administrator to develop procedures in handling the obtained information. The bill would require the administrator to provide a program for training and certification of a local emergency responder designated as a local spill response manager by a local government with jurisdiction over or directly adjacent to waters of the state. The bill would require the administrator to offer grants to a local government with jurisdiction over or directly adjacent to waters of the state to provide oil spill response equipment to be deployed by a specified local spill response manager and to request an appropriation for this purpose. The bill would require the administrator, no later than January 1, 2016, to conduct a study and evaluation for inland areas of the state and would require the administrator to obtain annually, at a minimum, information on the modes of transportation of oil into and within the state and the properties of the oil and to provide this information to the Oil Spill Technical Advisory Committee. The bill would also require the administrator, in consultation with the appropriate local, state, and federal regulators, to conduct a comprehensive risk assessment of nonvessel modes of transportation oil and to identify those operations that pose the highest risk of a pollution incident in state waters, as specified, and would require the administrator to obtain and make

publicly available, as specified, previously filed information related to the transport of oil through, near, or into communities, as specified.

(2) Existing law requires the administrator, within 5 working days after receipt of a contingency plan, prepared as specified, to post a notice that the plan is available for review. Existing law requires the State Lands Commission and the California Coastal Commission to review the plans for facilities or local governments within the coastal zone.

This bill would require the California Environmental Protection Agency and the Office of Emergency Services to review the plans for facilities and local governments located outside of the coastal zone.

~~(3) Existing law imposes an oil spill prevention and administration fee in an amount determined by the administrator to be sufficient to pay the reasonable regulatory costs of specified oil spill prevention activities, but not to exceed \$0.065 per barrel of crude oil or petroleum products, on persons owning crude oil or petroleum products received at a marine terminal or refinery. The fee is deposited into the Oil Spill Prevention and Administration Fund in the State Treasury. Upon appropriation by the Legislature, moneys in the fund are available for specified purposes.~~

~~This bill instead would require the administrator to annually determine the fee in an amount sufficient to pay the reasonable regulatory costs of specified oil spill prevention activities and would remove the fee cap of \$0.065 per barrel of crude oil or petroleum products.~~

~~(4)~~

~~(3) Existing law establishes the Oil Spill Technical Advisory Committee to provide public input and independent judgment of the actions of the administrator. The committee is composed of 14 members.~~

~~This bill would increase the number of members from 14 to 15 and would require the Governor to appoint an additional member with knowledge of the truck transportation industry.~~

~~(5)~~

~~(4) Existing law requires, beginning November 1, 2003, and every 2 years thereafter, the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission, to adopt an integrated energy policy report that contains an overview of certain topics including specified transportation forecasting and assessment activities. Existing law requires refiners, major marketers of petroleum products, major oil producers, oil transporters, and oil storers to submit specified information during specified periods to the commission. Existing law makes specified~~

information collected by the commission confidential, subject to certain exceptions.

This bill would authorize the commission to disclose specified confidential information to the administrator for oil spill response so long as the administrator for oil spill response agrees to keep that information confidential, as specified.

(6)

(5) Existing law requires the Public Utilities Commission to establish, by regulation, the inspection of railroad locomotives, equipment, and facilities occur not less frequently than every 120 days, and, in addition to those minimum inspections, that the commission conduct focused inspections of railroad yards and track, either in coordination with the Federal Railroad Administration or as the commission determines to be necessary.

This bill would expand those inspections to include bridges and grade crossings over which oil is being transported and oil unloading facilities, as specified. The bill also would authorize the commission to regulate essential local safety hazards for the transport of oil more stringently than federal regulation, as specified.

Existing law requires the commission to report to the Legislature, on or before July 1 each year, on sites on railroad lines in the state it finds to be hazardous, as specified.

This bill would expand that annual report to the Legislature to include the timing, nature, and status of the remediation of defects or violations of federal and state law related to the transport and unloading of oil detected by the commission through its inspections.

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

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

- 1 SECTION 1. Section 8574.7 of the Government Code is
- 2 amended to read:
- 3 8574.7. The Governor shall require the administrator, not in
- 4 conflict with the National Contingency Plan, to amend the
- 5 California oil spill contingency plan to provide for the best
- 6 achievable protection of waters of the state. ~~“Administrator” for~~
- 7 ~~purposes of this section~~ *For purposes of this section,*
- 8 *“administrator”* means the administrator appointed by the

1 Governor pursuant to Section 8670.4. The plan shall consist of all
2 of the following elements:

3 (a) A state response element that specifies the hierarchy for state
4 and local agency response to an oil spill. The element shall define
5 the necessary tasks for oversight and control of cleanup and
6 removal activities associated with an oil spill and shall specify
7 each agency's particular responsibility in carrying out these tasks.
8 The element shall also include an organizational chart of the state
9 oil spill response organization and a definition of the resources,
10 capabilities, and response assignments of each agency involved
11 in cleanup and removal actions in an oil spill.

12 (b) A regional and local planning element that shall provide the
13 framework for the involvement of regional and local agencies in
14 the state effort to respond to an oil spill, and shall ensure the
15 effective and efficient use of regional and local resources, as
16 appropriate, in all of the following:

17 (1) Traffic and crowd control.

18 (2) Firefighting.

19 (3) Boating traffic control.

20 (4) Radio and communications control and provision of access
21 to equipment.

22 (5) Identification and use of available local and regional
23 equipment or other resources suitable for use in cleanup and
24 removal actions.

25 (6) Identification of private and volunteer resources or personnel
26 with special or unique capabilities relating to oil spill cleanup and
27 removal actions.

28 (7) Provision of medical emergency services.

29 (8) Identification and mitigation of public health and safety
30 impacts.

31 (9) Consideration of the identification and use of private working
32 craft and mariners, including commercial fishing vessels and
33 licensed commercial fishing men and women, in containment,
34 cleanup, and removal actions.

35 (c) A coastal protection element that establishes the state
36 standards for coastline protection. The administrator, in
37 consultation with the Coast Guard and Navy and the shipping
38 industry, shall develop criteria for coastline protection. If
39 appropriate, the administrator shall consult with representatives
40 from the States of Alaska, Washington, and Oregon, the Province

1 of British Columbia in Canada, and the Republic of Mexico. The
2 criteria shall designate at least all of the following:

3 (1) Appropriate shipping lanes and navigational aids for tankers,
4 barges, and other commercial vessels to reduce the likelihood of
5 collisions between tankers, barges, and other commercial vessels.
6 Designated shipping lanes shall be located off the coastline at a
7 distance sufficient to significantly reduce the likelihood that
8 disabled vessels will run aground along the coast of the state.

9 (2) Ship position reporting and communications requirements.

10 (3) Required predeployment of protective equipment for
11 sensitive environmental areas along the coastline.

12 (4) Required emergency response vessels that are capable of
13 preventing disabled tankers from running aground.

14 (5) Required emergency response vessels that are capable of
15 commencing oil cleanup operations before spilled oil can reach
16 the shoreline.

17 (6) An expedited decisionmaking process for dispersant use in
18 coastal waters. Prior to adoption of the process, the administrator
19 shall ensure that a comprehensive testing program is carried out
20 for any dispersant proposed for use in California marine waters.
21 The testing program shall evaluate toxicity and effectiveness of
22 the dispersants.

23 (7) Required rehabilitation facilities for wildlife injured by
24 spilled oil.

25 (8) An assessment of how activities that usually require a permit
26 from a state or local agency may be expedited or issued by the
27 administrator in the event of an oil spill.

28 (d) An environmentally and ecologically sensitive areas element
29 that shall provide the framework for prioritizing and ensuring the
30 protection of environmentally and ecologically sensitive areas.
31 The environmentally and ecologically sensitive areas element shall
32 be developed by the administrator, in conjunction with appropriate
33 local agencies, and shall include all of the following:

34 (1) Identification and prioritization of environmentally and
35 ecologically sensitive areas in state waters and along the coast.
36 Identification and prioritization of environmentally and ecologically
37 sensitive areas shall not prevent or excuse the use of all reasonably
38 available containment and cleanup resources from being used to
39 protect every environmentally and ecologically sensitive area
40 possible. Environmentally and ecologically sensitive areas shall

1 be prioritized through the evaluation of criteria, including, but not
2 limited to, all of the following:

- 3 (A) Risk of contamination by oil after a spill.
- 4 (B) Environmental, ecological, recreational, and economic
5 importance.
- 6 (C) Risk of public exposure should the area be contaminated.
- 7 (2) Regional maps depicting environmentally and ecologically
8 sensitive areas in state waters or along the coast that shall be
9 distributed to facilities and local and state agencies. The maps shall
10 designate those areas that have particularly high priority for
11 protection against oil spills.
- 12 (3) A plan for protection actions required to be taken in the
13 event of an oil spill for each of the environmentally and
14 ecologically sensitive areas and protection priorities for the first
15 24 to 48 hours after an oil spill shall be specified.
- 16 (4) The location of available response equipment and the
17 availability of trained personnel to deploy the equipment to protect
18 the priority environmentally and ecologically sensitive areas.
- 19 (5) A program for systemically testing and revising, if necessary,
20 protection strategies for each of the priority environmentally and
21 ecologically sensitive areas.
- 22 (6) Any recommendations for action that cannot be financed or
23 implemented pursuant to existing authority of the administrator,
24 which shall also be reported to the Legislature along with
25 recommendations for financing those actions.
- 26 (e) A reporting element that requires the reporting of spills of
27 any amount of oil in or on state waters.

28 SEC. 2. Section 8670.6.5 is added to the Government Code,
29 to read:

30 8670.6.5. The administrator may obtain confidential and other
31 information protected from public disclosure from the Office of
32 Emergency Services, the State Energy Resources Conservation
33 and Development Commission, and other regulators, as necessary,
34 in order for the administrator to carry out his or her duties. The
35 administrator shall develop procedures for handling the obtained
36 information consistent with the California Public Records Act
37 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
38 Title 1), Section 25364 of the Public Resources Code, and federal
39 law.

1 SEC. 3. Section 8670.8 of the Government Code is amended
2 to read:

3 8670.8. (a) The administrator shall carry out programs to
4 provide training for individuals in response, containment, and
5 cleanup operations and equipment, equipment deployment, and
6 the planning and management of these programs. These programs
7 may include training for members of the California Conservation
8 Corps, other response personnel employed by the state, personnel
9 employed by other public entities, personnel from marine facilities,
10 commercial fishermen and other mariners, and interested members
11 of the public. Training may be offered for volunteers.

12 (b) The administrator may offer training to anyone who is
13 required to take part in response and cleanup efforts under the
14 California oil spill contingency plan or under local government
15 contingency plans prepared and approved under this chapter.

16 (c) Upon request by a local government, the administrator shall
17 provide a program for training and certification of a local
18 emergency responder designated as a local spill response manager
19 by a local government with jurisdiction over or directly adjacent
20 to waters of the state.

21 (d) Trained and certified local spill response managers shall
22 participate in all drills upon request of the administrator.

23 (e) As part of the training and certification program, the
24 administrator shall authorize a local spill response manager to train
25 and certify volunteers.

26 (f) In the event of an oil spill, local spill response managers
27 trained and certified pursuant to subdivision (c) shall provide the
28 state onscene coordinator with timely information on activities
29 and resources deployed by local government in response to the oil
30 spill. The local spill response manager shall cooperate with the
31 administrator and respond in a manner consistent with the area
32 contingency plan to the extent possible.

33 (g) Funding for activities undertaken pursuant to subdivisions
34 (a) to (c), inclusive, shall be from the Oil Spill Prevention and
35 Administration Fund created pursuant to Section 8670.38.

36 (h) All training provided by the administrator shall follow the
37 requirements of applicable federal and state occupational safety
38 and health standards adopted by the Occupational Safety and
39 Health Administration of the Department of Labor and the
40 Occupational Safety and Health Standards Board.

1 SEC. 4. Section 8670.8.3 of the Government Code is amended
2 to read:

3 8670.8.3. The administrator shall offer grants to a local
4 government with jurisdiction over or directly adjacent to waters
5 of the state to provide oil spill response equipment to be deployed
6 by a local spill response manager certified pursuant to Section
7 8670.8. The administrator shall request the Legislature to
8 appropriate funds from the Oil Spill Prevention and Administration
9 Fund created pursuant to Section 8670.38 for the purposes of this
10 section.

11 SEC. 5. Section 8670.12 of the Government Code is amended
12 to read:

13 8670.12. (a) (1) The administrator shall conduct studies and
14 evaluations necessary for improving oil spill response, containment,
15 and cleanup and oil spill wildlife rehabilitation in waters of the
16 state and oil transportation systems. The administrator may expend
17 moneys from the Oil Spill Prevention and Administration Fund
18 created pursuant to Section 8670.38, enter into consultation
19 agreements, and acquire necessary equipment and services for the
20 purpose of carrying out these studies and evaluations.

21 (2) On or before January 1, 2016, the administrator shall conduct
22 a study and evaluation pursuant to paragraph (1) for inland areas
23 of the state. The study and evaluation shall include, but shall not
24 be limited to, an analysis of likely spill scenarios, response
25 requirements for oil of varying properties and urban, rural, and
26 sensitive environments, and spill response equipment and
27 resources.

28 (b) The administrator shall study the use and effects of
29 dispersants, incineration, bioremediation, and any other methods
30 used to respond to a spill. The study shall periodically be updated
31 to ensure the best achievable protection from the use of those
32 methods. Based upon substantial evidence in the record, the
33 administrator may determine in individual cases that best
34 achievable protection is provided by establishing requirements
35 that provide the greatest degree of protection achievable without
36 imposing costs that significantly outweigh the incremental
37 protection that would otherwise be provided. The studies shall do
38 all of the following:

39 (1) Evaluate the effectiveness of dispersants and other chemical
40 agents in oil spill response under varying environmental conditions.

1 (2) Evaluate potential adverse impacts on the environment and
2 public health including, but not limited to, adverse toxic impacts
3 on water quality, fisheries, and wildlife with consideration to
4 bioaccumulation and synergistic impacts, and the potential for
5 human exposure, including skin contact and consumption of
6 contaminated seafood.

7 (3) Recommend appropriate uses and limitations on the use of
8 dispersants and other chemical agents to ensure they are used only
9 in situations where the administrator determines they are effective
10 and safe.

11 (c) The administrator shall evaluate the feasibility of using
12 commercial fishermen and other mariners for oil spill containment
13 and cleanup. The study shall examine the following:

- 14 (1) Equipment and technology needs.
- 15 (2) Coordination with private response personnel.
- 16 (3) Liability and insurance.
- 17 (4) Compensation.

18 (d) The studies shall be performed in conjunction with any
19 studies performed by federal, state, and international entities. The
20 administrator may enter into contracts for the studies.

21 SEC. 6. Section 8670.15 is added to the Government Code, to
22 read:

23 8670.15. (a) To the extent allowed by federal and state law
24 and to provide public transparency, the Legislature declares it is
25 the policy of the state that communities that face significant risks
26 associated with the transport or planned transport of significant
27 quantities of oil through or near those communities be notified of
28 the quantities and properties of the oil in a timely manner.

29 (b) The administrator shall obtain and make publicly available,
30 as allowed pursuant to the California Public Records Act (Chapter
31 3.5 (commencing with Section 6250) of Division 7 of Title 1) and
32 federal law, previously filed information related to the transport
33 of oil through, near, or into communities. The previously filed
34 information shall include the type and quantity of oil and its mode
35 of transport. The previously filed information shall be obtained
36 annually, at a minimum, and shall cover the immediately preceding
37 12-month period.

38 (c) For purposes of this section, “transport” includes transport
39 or planned transport by vessel, truck, railroad, or pipeline.

1 SEC. 7. Section 8670.29.5 is added to the Government Code,
2 to read:

3 8670.29.5. (a) The administrator shall obtain annually, at a
4 minimum, information on the modes of transportation of oil into
5 and within the state and the properties of the oil in order to evaluate
6 and identify any necessary changes in oil spill response and
7 preparedness programs to meet the goals of this chapter.

8 (b) The administrator shall provide this information to the Oil
9 Spill Technical Advisory Committee, established pursuant to
10 Section 8670.54.

11 SEC. 8. Section 8670.32.5 is added to the Government Code,
12 to read:

13 8670.32.5. The administrator, in consultation with the
14 appropriate local, state, and federal regulators, shall conduct a
15 comprehensive risk assessment of nonvessel modes of
16 transportation of oil and shall identify those operations that pose
17 the highest risk of a pollution incident in state waters. The
18 assessment shall include a consideration of the likely range in
19 properties of the oil.

20 SEC. 9. Section 8670.36 of the Government Code is amended
21 to read:

22 8670.36. The administrator shall, within five working days
23 after receipt of a contingency plan prepared pursuant to Section
24 8670.28 or 8670.35, post a notice that the plan is available for
25 review. The administrator shall send a copy of the plan within two
26 working days after receiving a request from the Oil Spill Technical
27 Advisory Committee. The State Lands Commission and the
28 California Coastal Commission shall review the plans for facilities
29 or local governments within the coastal zone. The San Francisco
30 Bay Conservation and Development Commission shall review the
31 plans for facilities or local governments within the area described
32 in ~~Sections~~ *Section 66610 of this code and Section 29101 of the*
33 *Public Resources Code.* The California Environmental Protection
34 Agency and the Office of Emergency Services shall review the
35 plans for facilities or local governments located outside of the
36 coastal zone. Any state agency or committee that comments shall
37 submit its comments to the administrator within 15 days of receipt
38 of the plan. The administrator shall consider all comments.

39 ~~SEC. 10. Section 8670.40 of the Government Code is amended~~
40 ~~to read:~~

1 8670.40.— (a) The State Board of Equalization shall collect a
2 fee in an amount annually determined by the administrator to be
3 sufficient to pay the reasonable regulatory costs to carry out the
4 purposes set forth in subdivision (c), and a reasonable reserve for
5 contingencies. The oil spill prevention and administration fee shall
6 be based on each barrel of crude oil or petroleum products, as
7 described in subdivision (b).

8 (b) (1) The oil spill prevention and administration fee shall be
9 imposed upon a person owning crude oil at the time that the crude
10 oil is received at a marine terminal, by any mode of delivery that
11 passed over, across, under, or through waters of the state, from
12 within or outside the state, and upon a person who owns petroleum
13 products at the time that those petroleum products are received at
14 a marine terminal, by any mode of delivery that passed over, across,
15 under, or through waters of the state, from outside this state. The
16 fee shall be collected by the marine terminal operator from the
17 owner of the crude oil or petroleum products for each barrel of
18 crude oil or petroleum products received.

19 (2) The oil spill prevention and administration fee shall be
20 imposed upon a person owning crude oil or petroleum products at
21 the time that the crude oil or petroleum products are received at a
22 refinery within the state by any mode of delivery that passed over,
23 across, under, or through waters of the state, whether from within
24 or outside the state. The refinery shall collect the fee from the
25 owner of the crude oil or petroleum products for each barrel
26 received.

27 (3) (A) There is a rebuttable presumption that crude oil or
28 petroleum products received at a marine terminal or a refinery
29 have passed over, across, under, or through waters of the state.
30 This presumption may be overcome by a marine terminal operator,
31 refinery operator, or owner of the crude oil or petroleum products
32 by showing that the crude oil or petroleum products did not pass
33 over, across, under, or through waters of the state. Evidence to
34 rebut the presumption may include, but shall not be limited to,
35 documentation, including shipping documents, bills of lading,
36 highway maps, rail maps, transportation maps, related
37 transportation receipts, or another medium that shows the crude
38 oil or petroleum products did not pass over, across, under, or
39 through waters of the state.

1 ~~(B) Notwithstanding the petition for redetermination and claim~~
2 ~~for refund provisions of the Oil Spill Response, Prevention, and~~
3 ~~Administration Fees Law (Part 24 (commencing with Section~~
4 ~~46001) of Division 2 of the Revenue and Taxation Code), the State~~
5 ~~Board of Equalization shall not do either of the following:~~

6 ~~(i) Accept or consider a petition for redetermination of fees~~
7 ~~determined pursuant to this section if the petition is founded upon~~
8 ~~the grounds that the crude oil or petroleum products did or did not~~
9 ~~pass over, across, under, or through waters of the state.~~

10 ~~(ii) Accept or consider a claim for a refund of fees paid pursuant~~
11 ~~to this section if the claim is founded upon the grounds that the~~
12 ~~crude oil or petroleum products did or did not pass over, across,~~
13 ~~under, or through waters of the state.~~

14 ~~(C) The State Board of Equalization shall forward to the~~
15 ~~administrator an appeal of a redetermination or a claim for a refund~~
16 ~~of fees that is based on the grounds that the crude oil or petroleum~~
17 ~~products did or did not pass over, across, under, or through waters~~
18 ~~of the state.~~

19 ~~(4) The fees shall be remitted to the State Board of Equalization~~
20 ~~by the owner of the crude oil or petroleum products, the refinery~~
21 ~~operator, or the marine terminal operator on the 25th day of the~~
22 ~~month based upon the number of barrels of crude oil or petroleum~~
23 ~~products received at a refinery or marine terminal during the~~
24 ~~preceding month. A fee shall not be imposed pursuant to this~~
25 ~~section with respect to crude oil or petroleum products if the person~~
26 ~~who would be liable for that fee, or responsible for its collection,~~
27 ~~establishes that the fee has already been collected by a refinery or~~
28 ~~marine terminal operator registered under this chapter or paid to~~
29 ~~the State Board of Equalization with respect to the crude oil or~~
30 ~~petroleum product.~~

31 ~~(5) The oil spill prevention and administration fee shall not be~~
32 ~~collected by a marine terminal operator or refinery operator or~~
33 ~~imposed on the owner of crude oil or petroleum products if the fee~~
34 ~~has been previously collected or paid on the crude oil or petroleum~~
35 ~~products at another marine terminal or refinery. It shall be the~~
36 ~~obligation of the marine terminal operator, refinery operator, or~~
37 ~~owner of crude oil or petroleum products to demonstrate that the~~
38 ~~fee has already been paid on the same crude oil or petroleum~~
39 ~~products.~~

1 ~~(6) An owner of crude oil or petroleum products is liable for~~
2 ~~the fee until it has been paid to the State Board of Equalization,~~
3 ~~except that payment to a refinery operator or marine terminal~~
4 ~~operator registered under this chapter is sufficient to relieve the~~
5 ~~owner from further liability for the fee.~~

6 ~~(7) On or before January 20, the administrator shall annually~~
7 ~~prepare a plan that projects revenues and expenses over three fiscal~~
8 ~~years, including the current year. Based on the plan, the~~
9 ~~administrator shall set the fee so that projected revenues, including~~
10 ~~any interest and inflation, are equivalent to expenses as reflected~~
11 ~~in the current Budget Act and in the proposed budget submitted~~
12 ~~by the Governor. In setting the fee, the administrator may allow~~
13 ~~for a surplus if the administrator finds that revenues will be~~
14 ~~exhausted during the period covered by the plan or that the surplus~~
15 ~~is necessary to cover possible contingencies. The administrator~~
16 ~~shall notify the State Board of Equalization of the adjusted fee~~
17 ~~rate, which shall be rounded to no more than four decimal places,~~
18 ~~to be effective the first day of the month beginning not less than~~
19 ~~30 days from the date of the notification.~~

20 ~~(e) The moneys collected pursuant to subdivision (a) shall be~~
21 ~~deposited into the fund.~~

22 ~~(d) The State Board of Equalization shall collect the fee and~~
23 ~~adopt regulations for implementing the fee collection program.~~

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

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

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

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

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

37 ~~(5) To reimburse the State Board of Equalization for its~~
38 ~~reasonable costs incurred to implement this chapter and to carry~~
39 ~~out Part 24 (commencing with Section 46001) of Division 2 of the~~
40 ~~Revenue and Taxation Code.~~

1 ~~(6) To fund the Oiled Wildlife Care Network pursuant to Section~~
2 ~~8670.40.5.~~

3 ~~(f) The moneys deposited in the fund shall not be used for~~
4 ~~responding to a spill.~~

5 ~~(g) The moneys deposited in the fund shall not be used to~~
6 ~~provide a loan to any other fund.~~

7 ~~(h) Every person who operates a refinery, a marine terminal in~~
8 ~~waters of the state, or a pipeline shall register with the State Board~~
9 ~~of Equalization, pursuant to Section 46101 of the Revenue and~~
10 ~~Taxation Code.~~

11 ~~(i) The amendments to this section enacted in Senate Bill 861~~
12 ~~of the 2013–14 Regular Session shall become operative 90 days~~
13 ~~after the effective date of Senate Bill 861 of 2013–14 Regular~~
14 ~~Session.~~

15 ~~SEC. 11.~~

16 *SEC. 10.* Section 8670.54 of the Government Code is amended
17 to read:

18 8670.54. (a) The Oil Spill Technical Advisory Committee,
19 hereafter in this article, the committee, is hereby established to
20 provide public input and independent judgment of the actions of
21 the administrator. The committee shall consist of 15 members, of
22 whom nine shall be appointed by the Governor, three by the
23 Speaker of the Assembly, and three by the Senate Committee on
24 Rules. The appointments shall be made in the following manner:

25 (1) The Speaker of the Assembly and Senate Committee on
26 Rules shall each appoint a member who shall be a representative
27 of the public.

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

30 (3) The Speaker of the Assembly and the Senate Committee on
31 Rules shall each appoint two members who have demonstrable
32 knowledge of environmental protection and the study of
33 ecosystems.

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

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

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

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

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

5 (9) The Governor shall appoint a member who has demonstrable
6 knowledge of the railroad industry.

7 (10) The Governor shall appoint a member who has
8 demonstrable knowledge of the oil production industry.

9 (11) The Governor shall appoint a member who has
10 demonstrable knowledge of the truck transportation industry.

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

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

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

19 ~~SEC. 12.~~

20 *SEC. 11.* Section 8670.56.6 of the Government Code is
21 amended to read:

22 8670.56.6. (a) (1) Except as provided in subdivisions (b) and
23 (d), and subject to subdivision (c), a person, including, but not
24 limited to, an oil spill cooperative, its agents, subcontractors, or
25 employees, shall not be liable under this chapter or the laws of the
26 state to any person for costs, damages, or other claims or expenses
27 as a result of actions taken or omitted in good faith in the course
28 of rendering care, assistance, or advice in accordance with the
29 National Contingency Plan, the California oil spill contingency
30 plan, or at the direction of the administrator, onsite coordinator,
31 or the Coast Guard in response to a spill or threatened spill.

32 (2) The qualified immunity under this section shall not apply
33 to any oil spill response action that is inconsistent with the
34 following:

35 (A) The directions of the unified command, consisting of at
36 least the Coast Guard and the administrator.

37 (B) In the absence of a unified command, the directions of the
38 administrator pursuant to Section 8670.27.

1 (C) In the absence of directions pursuant to subparagraph (A)
2 or (B), applicable oil spill contingency plans implemented under
3 this division.

4 (3) Nothing in this section shall, in any manner or respect, affect
5 or impair any cause of action against or any liability of any person
6 or persons responsible for the spill, for the discharged oil, or for
7 the vessel, terminal, pipeline, or facility from which the oil was
8 discharged. The responsible person or persons shall remain liable
9 for any and all damages arising from the discharge, including
10 damages arising from improperly carried out response efforts, as
11 otherwise provided by law.

12 (b) Nothing in this section shall, in any manner or respect, affect
13 or impair any cause of action against or any liability of any party
14 or parties responsible for the spill, or the responsible party's agents,
15 employees, or subcontractors, except persons immunized under
16 subdivision (a) for response efforts, for the discharged oil, or for
17 the vessel, truck, terminal, pipeline, or facility from which the oil
18 was discharged.

19 (c) The responsible party or parties shall be subject to both of
20 the following:

21 (1) Notwithstanding subdivision (b) or (i) of Section 8670.56.5,
22 or any other law, be strictly and jointly and severally liable for all
23 damages arising pursuant to subdivision (h) of Section 8670.56.5
24 from the response efforts of its agents, employees, subcontractors,
25 or an oil spill cooperative of which it is a member or with which
26 it has a contract or other arrangement for cleanup of its oil spills,
27 unless it would have a defense to the original spill.

28 (2) Remain strictly liable for any and all damages arising from
29 the response efforts of a person other than a person specified in
30 paragraph (1).

31 (d) Nothing in this section shall immunize a cooperative or any
32 other person from liability for acts of gross negligence or willful
33 misconduct in connection with the cleanup of a spill.

34 (e) This section does not apply to any action for personal injury
35 or wrongful death.

36 (f) As used in this section, a "cooperative" means an
37 organization of private persons that is established for the primary
38 purpose and activity of preventing or rendering care, assistance,
39 or advice in response to a spill or threatened spill.

1 (g) Except for the responsible party, membership in a
2 cooperative shall not be grounds, in and of itself, for liability
3 resulting from cleanup activities of the cooperative.

4 (h) For purposes of this section, there shall be a rebuttable
5 presumption that an act or omission described in subdivision (a)
6 was taken in good faith.

7 (i) In any situation in which immunity is granted pursuant to
8 subdivision (a) and a responsible party is not liable, is not liable
9 for noneconomic damages caused by another, or is partially or
10 totally insolvent, the fund provided for in Article 7 (commencing
11 with Section 8670.46) shall reimburse, in accordance with its terms,
12 claims of any injured party for which a person who is granted
13 immunity pursuant to this section would otherwise be liable.

14 (j) (1) The immunity granted by this section shall only apply
15 to response efforts that are undertaken after the administrator
16 certifies that contracts with qualified and responsible persons are
17 in place to ensure an adequate and expeditious response to any
18 foreseeable oil spill that may occur in waters of the state for which
19 the responsible party (A) cannot be identified or (B) is unable or
20 unwilling to respond, contain, and clean up the oil spill in an
21 adequate and timely manner. In negotiating these contracts, the
22 administrator shall procure, to the maximum extent practicable,
23 the services of persons who are willing to respond to oil spills with
24 no, or lesser, immunity than that conferred by this section, but, in
25 no event, a greater immunity. The administrator shall make the
26 certification required by this subdivision on an annual basis. Upon
27 certification, the immunity conferred by this section shall apply
28 to all response efforts undertaken during the calendar year to which
29 the certification applies. In the absence of the certification required
30 by this subdivision, the immunity conferred by this section shall
31 not attach to any response efforts undertaken by any person in
32 waters of the state.

33 (2) In addition to the authority to negotiate contracts described
34 in paragraph (1), the administrator may also negotiate and enter
35 into indemnification agreements with qualified and financially
36 responsible persons to respond to oil spills that may occur in waters
37 of the state for which the responsible party (A) cannot be identified
38 or (B) is unable or unwilling to respond, contain, and clean up the
39 oil spill in an adequate and timely manner.

1 (3) The administrator may indemnify response contractors for
2 (A) all damages payable by means of settlement or judgment that
3 arise from response efforts to which the immunity conferred by
4 this section would otherwise apply, and (B) reasonably related
5 legal costs and expenses incurred by the responder, provided that
6 indemnification shall only apply to response efforts undertaken
7 after the expiration of any immunity that may exist as the result
8 of the contract negotiations authorized in this subdivision. In
9 negotiating these contracts, the administrator shall procure, to the
10 maximum extent practicable, the services of persons who are
11 willing to respond to oil spills with no, or as little, right to
12 indemnification as possible. All indemnification shall be paid by
13 the administrator from the Oil Spill Response Trust Fund.

14 (4) (A) The contracts required by this section, and any other
15 contracts entered into by the administrator for response,
16 containment, or cleanup of an existing spill, or for response to an
17 imminent threat of a spill, the payment of which is to be made
18 from the Oil Spill Response Trust Fund created pursuant to Section
19 8670.46, shall be exempt from Part 2 (commencing with Section
20 10100) of Division 2 of the Public Contract Code and Article 6
21 (commencing with Section 999) of Chapter 6 of Division 4 of the
22 Military and Veterans Code.

23 (B) The exemption specified in subparagraph (A) applies only
24 to contracts for which the services are used for a period of less
25 than 90 days, cumulatively, per year.

26 (C) This paragraph shall not be construed as limiting the
27 administrator's authority to exercise the emergency powers granted
28 pursuant to subdivision (c) of Section 8670.62, including the
29 authority to enter into emergency contracts that are exempt from
30 approval by the Department of General Services.

31 (k) (1) With regard to a person who is regularly engaged in the
32 business of responding to oil spills, the immunity conferred by
33 this section shall not apply to any response efforts by that person
34 that occur later than 60 days after the first day the person's response
35 efforts commence.

36 (2) Notwithstanding the limitation contained in paragraph (1),
37 the administrator may extend, upon making all the following
38 findings, the period of time, not to exceed 30 days, during which
39 the immunity conferred by this section applies to response efforts:

1 (A) Due to inadequate or incomplete containment and
2 stabilization, there exists a substantial probability that the size of
3 the spill will significantly expand and (i) threaten previously
4 uncontaminated resources, (ii) threaten already contaminated
5 resources with substantial additional contamination, or (iii)
6 otherwise endanger the public health and safety or harm the
7 environment.

8 (B) The remaining work is of a difficult or perilous nature that
9 extension of the immunity is clearly in the public interest.

10 (C) No other qualified and financially responsible contractor is
11 prepared and willing to complete the response effort in the absence
12 of the immunity, or a lesser immunity, as negotiated by contract.

13 (3) The administrator shall provide five days' notice of his or
14 her proposed decision to either extend, or not extend, the immunity
15 conferred by this section. Interested parties shall be given an
16 opportunity to present oral and written evidence at an informal
17 hearing. In making his or her proposed decision, the administrator
18 shall specifically seek and consider the advice of the relevant Coast
19 Guard representative. The administrator's decision to not extend
20 the immunity shall be announced at least 10 working days before
21 the expiration of the immunity to provide persons an opportunity
22 to terminate their response efforts as contemplated by paragraph
23 (4).

24 (4) A person or their agents, subcontractors, or employees shall
25 not incur any liability under this chapter or any other provision of
26 law solely as a result of that person's decision to terminate their
27 response efforts because of the expiration of the immunity
28 conferred by this section. A person's decision to terminate response
29 efforts because of the expiration of the immunity conferred by this
30 section shall not in any manner impair, curtail, limit, or otherwise
31 affect the immunity conferred on the person with regard to the
32 person's response efforts undertaken during the period of time the
33 immunity applied to those response efforts.

34 (5) The immunity granted under this section shall attach, without
35 the limitation contained in this subdivision, to the response efforts
36 of any person who is not regularly engaged in the business of
37 responding to oil spills. A person who is not regularly engaged in
38 the business of responding to oil spills includes, but is not limited
39 to, (A) a person who is primarily dedicated to the preservation and

1 rehabilitation of wildlife and (B) a person who derives his or her
2 livelihood primarily from fishing.

3 (l) As used in this section, “response efforts” means rendering
4 care, assistance, or advice in accordance with the National
5 Contingency Plan, the California oil spill contingency plan, or at
6 the direction of the administrator, United States Environmental
7 Protection Agency, or the Coast Guard in response to a spill or
8 threatened spill into waters of the state.

9 ~~SEC. 13.~~

10 *SEC. 12.* Section 25364 of the Public Resources Code is
11 amended to read:

12 25364. (a) Any person required to present information to the
13 commission pursuant to Section 25354 may request that specific
14 information be held in confidence. Information requested to be
15 held in confidence shall be presumed to be confidential.

16 (b) Information presented to the commission pursuant to Section
17 25354 shall be held in confidence by the commission or aggregated
18 to the extent necessary to ensure confidentiality if public disclosure
19 of the specific information or data would result in unfair
20 competitive disadvantage to the person supplying the information.

21 (c) (1) Whenever the commission receives a request to publicly
22 disclose unaggregated information, or otherwise proposes to
23 publicly disclose information submitted pursuant to Section 25354,
24 notice of the request or proposal shall be provided to the person
25 submitting the information. The notice shall indicate the form in
26 which the information is to be released. Upon receipt of notice,
27 the person submitting the information shall have 10 working days
28 in which to respond to the notice to justify the claim of
29 confidentiality on each specific item of information covered by
30 the notice on the basis that public disclosure of the specific
31 information would result in unfair competitive disadvantage to the
32 person supplying the information.

33 (2) The commission shall consider the respondent’s submission
34 in determining whether to publicly disclose the information
35 submitted to it to which a claim of confidentiality is made. The
36 commission shall issue a written decision that sets forth its reasons
37 for making the determination whether each item of information
38 for which a claim of confidentiality is made shall remain
39 confidential or shall be publicly disclosed.

1 (d) The commission shall not make public disclosure of
2 information submitted to it pursuant to Section 25354 within 10
3 working days after the commission has issued its written decision
4 required in this section.

5 (e) No information submitted to the commission pursuant to
6 Section 25354 shall be deemed confidential if the person submitting
7 the information or data has made it public.

8 (f) With respect to petroleum products and blendstocks reported
9 by type pursuant to paragraph (1) or (2) of subdivision (a) of
10 Section 25354 and information provided pursuant to subdivision
11 (h) or (i) of Section 25354, neither the commission nor any
12 employee of the commission shall do any of the following:

13 (1) Use the information furnished under paragraph (1) or (2) of
14 subdivision (a) of Section 25354 or under subdivision (h) or (i) of
15 Section 25354 for any purpose other than the statistical purposes
16 for which it is supplied.

17 (2) Make any publication whereby the information furnished
18 by any particular establishment or individual under paragraph (1)
19 or (2) of subdivision (a) of Section 25354 or under subdivision (h)
20 or (i) of Section 25354 can be identified.

21 (3) Permit anyone other than commission members and
22 employees of the commission to examine the individual reports
23 provided under paragraph (1) or (2) of subdivision (a) of Section
24 25354 or under subdivision (h) or (i) of Section 25354.

25 (g) Notwithstanding any other law, the commission may disclose
26 confidential information received pursuant to subdivision (a) of
27 Section 25304 or Section 25354 to the State Air Resources Board
28 or the administrator for oil spill response, appointed pursuant to
29 Section 8670.4 of the Government Code, if the state board or the
30 administrator, as applicable, agrees to keep the information
31 confidential. With respect to the information they receive, the state
32 board and the administrator shall be subject to all pertinent
33 provisions of this section.

34 ~~SEC. 14.~~

35 *SEC. 13.* Section 765.5 of the Public Utilities Code is amended
36 to read:

37 765.5. (a) The purpose of this section is to provide that the
38 commission takes all appropriate action necessary to ensure the
39 safe operation of railroads in this state.

1 (b) The commission shall dedicate sufficient resources necessary
2 to adequately carry out the State Participation Program for the
3 regulation of rail transportation of hazardous materials as
4 authorized by the Hazardous Material Transportation Uniform
5 Safety Act of 1990 ~~(P.L. (Public Law 101-615)~~.

6 (c) On or before July 1, 1992, the commission shall hire a
7 minimum of six additional rail inspectors who are or shall become
8 federally certified, consisting of three additional motive power
9 and equipment inspectors, two signal inspectors, and one operating
10 practices inspector, for the purpose of enforcing compliance by
11 railroads operating in this state with state and federal safety
12 regulations.

13 (d) On or before July 1, 1992, the commission shall establish,
14 by regulation, a minimum inspection standard to ensure, at the
15 time of inspection, that railroad locomotives, equipment, and
16 facilities located in class I railroad yards in California will be
17 inspected not less frequently than every 120 days, and inspection
18 of all branch and main line track not less frequently than every 12
19 months.

20 (e) Commencing July 1, 2008, in addition to the minimum
21 inspections undertaken pursuant to subdivision (d), the commission
22 shall conduct focused inspections of railroad yards and track, either
23 in coordination with the Federal Railroad Administration or as the
24 commission determines to be necessary. The focused inspection
25 program shall target railroad yards and track that pose the greatest
26 safety risk, based on inspection data, accident history, and rail
27 traffic density.

28 (f) Commencing January 1, 2015, in addition to the inspections
29 undertaken pursuant to subdivisions (d) and (e), the commission
30 shall conduct expanded focused inspections, either in coordination
31 with the Federal Railroad Administration or as the commission
32 determines to be necessary, of bridges and grade crossings over
33 which oil is being transported and oil unloading facilities, including
34 movement within these facilities and ~~onside~~ *onsite* storage. The
35 expanded focused inspection program shall target bridges, grade
36 crossings, and oil unloading facilities that pose the greatest safety
37 risk, based on inspection data, accident history, and rail traffic
38 density.

1 (g) The commission may regulate essential local safety hazards
2 for the transport of oil more stringently than federal regulation,
3 pursuant to Section 20106 of Title 49 of the United States Code.

4 ~~SEC. 15.~~

5 *SEC. 14.* Section 7711 of the Public Utilities Code is amended
6 to read:

7 7711. The commission shall annually report to the Legislature,
8 on or before July 1, on sites on railroad lines in the state it finds
9 to be hazardous. The report shall include, but not be limited to,
10 information on all of the following:

11 (a) A list of all railroad derailment accident sites in the state on
12 which accidents have occurred within at least the previous five
13 years. The list shall describe the nature and probable causes of the
14 accidents, if known, and shall indicate whether the accidents
15 occurred at or near sites that the commission has determined,
16 pursuant to subdivision (b), pose a local safety hazard.

17 (b) A list of all railroad sites in the state that the commission
18 determines, pursuant to Section 20106 of Title 49 of the United
19 States Code, pose a local safety hazard. The commission may
20 submit in the annual report the list of railroad sites submitted in
21 the immediate prior year annual report, and may amend or revise
22 that list from the immediate prior year as necessary. Factors that
23 the commission shall consider in determining a local safety hazard
24 may include, but need not be limited to, all of the following:

- 25 (1) The severity of grade and curve of track.
- 26 (2) The value of special skills of train operators in negotiating
27 the particular segment of railroad line.
- 28 (3) The value of special railroad equipment in negotiating the
29 particular segment of railroad line.
- 30 (4) The types of commodities transported on or near the
31 particular segment of railroad line.
- 32 (5) The hazard posed by the release of the commodity into the
33 environment.
- 34 (6) The value of special railroad equipment in the process of
35 safely loading, transporting, storing, or unloading potentially
36 hazardous commodities.
- 37 (7) The proximity of railroad activity to human activity or
38 sensitive environmental areas.
- 39 (8) A list of the root causes and significant contributing factors
40 of all train accidents or derailments investigated.

1 (c) In determining which railroad sites pose a local safety hazard
2 pursuant to subdivision (b), the commission shall consider the
3 history of accidents at or near the sites. The commission shall not
4 limit its determination to sites at which accidents have already
5 occurred, but shall identify potentially hazardous sites based on
6 the criteria enumerated in subdivision (b) and all other criteria that
7 the commission determines influence railroad safety. The
8 commission shall also consider whether any local safety hazards
9 at railroad sites have been eliminated or sufficiently remediated
10 to warrant removal of the site from the list required under
11 subdivision (b).

12 (d) The timing, nature, and status of the remediation of defects
13 and violations of federal and state law related to the transport and
14 delivery of oil detected by the commission through its inspections.

15 ~~SEC. 16.~~

16 *SEC. 15.* Nothing in this act is intended to limit the police
17 power or other authority of a local government or government
18 regulator to enforce any other state or federal environmental law
19 or regulation.

O