

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 102

Introduced by Assembly Member Rodriguez

January 8, 2015

An act to ~~amend Section 7718 of the Public Utilities Code, amend Section 8670.40 of, and to add Article 3.9 (commencing with Section 8574.30) to Chapter 7 of Division 1 of Title 2 of, the Government Code,~~ relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 102, as amended, Rodriguez. Railroad *and surface transportation* safety and emergency planning and ~~response: response: hazardous materials.~~

Existing law establishes the Railroad Accident Prevention and Immediate Deployment Force in the California Environmental Protection Agency and designates the force as being responsible for providing immediate onsite response capability in the event of a large-scale release of toxic materials resulting from a surface transportation accident. Existing law requires the agency to develop a state railroad accident prevention and immediate deployment plan, in consultation with specified state entities, other potentially affected state, local, or federal agencies, and affected businesses, and designates the force as being responsible for implementing the plan, acting cooperatively and in concert with existing local emergency response units.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Existing law establishes the Office of Emergency Services *within the office of the Governor and* under the supervision of the Director of

Emergency Services and makes the office responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies. *Existing law requires the office to serve as the central point of state government for the emergency reporting of spills, unauthorized releases, or other accidental releases of hazardous materials and to coordinate the notification of the appropriate state and local administering agencies that may be required to respond to those spills, unauthorized releases, or other accidental releases.*

~~This bill would declare the intent of the Legislature to reauthorize the Railroad Accident Prevention and Immediate Deployment Force, to transfer the force from the California Environmental Protection Agency to the Office of Emergency Services, and to require the Office of Emergency Services to designate the force as responsible for providing onsite response capability in the event of a large-scale release of toxic materials resulting from a railroad accident. The bill would make related findings and declarations.~~

This bill would create the Regional Railroad and Surface Transportation Accident Preparedness and Immediate Response Force in the Office of Emergency Services, consisting of specified representatives, and would designate this force as being responsible for providing regional and onsite response capabilities in the event of a release of hazardous materials from a rail car or a railroad accident involving a rail car or a hazardous materials release from a truck accident. This bill would require the office to develop a state regional railroad and surface transportation accident preparedness and immediate response plan, in consultation with specified entities, and would require that plan to become an annex to the state emergency plan. This bill would require the force and the Office of Spill Prevention and Response to coordinate in their respective authorities and responsibilities to avoid any duplication of effort, ensure cooperation, and promote the sharing of information regarding the risk of discharge of petroleum by rail into state waters. The bill would require the Office of Emergency Services to biennially review the training of all emergency response personnel with responsibilities along rail lines and other surface transportation routes to ascertain the level of readiness to respond to an accident and to identify all equipment and response assets available to respond to a spill or discharge of a hazardous material.

This bill would require the director to establish a schedule of fees to determine the amount of a fee to be paid by a person owning hazardous

materials that are transported by rail or surface transportation in California. The bill would require that the fees be fair, as required by the federal Hazardous Materials Transportation Act, and state the intent of the Legislature that the schedule of fees reflect the proportionate risks to both the public safety and the environment resulting from a release of hazardous materials and the expense of preparing to respond to those risks. The bill would authorize the director to exempt from the fee a shipment of hazardous materials that meets certain criteria and would prohibit the collection of fees in excess of the reasonable regulatory costs to the state. The bill would also require every person who operates a railroad that transports hazardous materials by rail car to register with the board and to remit the fees to the board pursuant to the Fee Collection Procedures Law. The bill would create the Regional Railroad and Surface Transportation Accident Preparedness and Immediate Response Fund in the State Treasury and would require that all revenues, interest, penalties, and other amounts collected pursuant to the bill's requirements be deposited into the fund, less refunds and reimbursement to the board for expenses incurred in the administration and collection of the fee. The bill would require that moneys in the fund, upon appropriation by the Legislature, be used by the director for specified purposes. This bill would limit the amount available for appropriation from the fund to \$10,000,000 in any calendar year. For any fee imposed upon persons and corporations owning crude oil or petroleum products that are transported by rail, the bill would provide for an offset of the amount of the fee against the amount of the fee imposed pursuant to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

The Fee Collection Procedures Law makes a violation of any provision of the law, or of certain requirements imposed by the board pursuant to the law, a crime.

By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

- 1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*
3 *(a) Each year, billions of gallons of crude oil, petroleum*
4 *products, and other hazardous materials are transported by*
5 *railroad, truck, or pipeline over, across, under, and through this*
6 *state.*
7 *(b) Recent accidents in other parts of the nation and Canada*
8 *have shown that transportation of hazardous materials can be a*
9 *significant threat to the health and safety of individuals and a*
10 *significant threat to the environment.*
11 *(c) Existing prevention programs in California are not able to*
12 *sufficiently reduce the risk and effects of significant discharges of*
13 *hazardous materials into state waters and onto state lands.*
14 *(d) California's inland waters, coastal waters, forests, deserts,*
15 *agricultural lands, and other inland areas are treasured*
16 *environmental and economic resources that the state cannot afford*
17 *to place at undue risk from spills of hazardous materials.*
18 *(e) An emphasis must be placed on prevention and response if*
19 *the risk and consequences of hazardous materials spills are to be*
20 *minimized. Existing cleanup and response measures must be*
21 *strengthened and improved to increase safety for individuals and*
22 *the environment.*
23 *(f) Improvements in the design, construction, and operation of*
24 *rail tank cars, tank trucks, tank ships, terminals, trucks, truck tank*
25 *cars, and other surface transportation methods and pipelines,*
26 *maintenance of emergency response stations and personnel, and*
27 *stronger inspection and enforcement efforts are necessary to reduce*
28 *the risks of, and from, a major hazardous materials spill.*
29 *(g) A major spill of hazardous materials in state waters and on*
30 *state lands is extremely expensive because of the need to clean up*
31 *the discharged material, protect sensitive environmental areas,*
32 *and restore ecosystem damage.*
33 *(h) Immediate action must be taken to improve control and*
34 *cleanup technology in order to strengthen the capabilities and*
35 *capacities of cleanup operations.*

1 (i) Government should improve its response and management
2 of hazardous materials spills that occur in California.

3 (j) Those who transport hazardous materials in the state must
4 meet minimum safety standards and must demonstrate financial
5 responsibility.

6 (k) California has approximately 158,500 square miles of
7 interior area where there are approximately 6,800 miles of pipeline
8 used for oil distribution, 5,800 miles of class I railroad track, and
9 172,100 miles of maintained roads.

10 (l) Having an immediate response system in place to respond
11 to a spill of hazardous materials by surface transportation will
12 reduce the effects and costs of that spill.

13 (m) Establishing a fee on hazardous materials being transported
14 in California based upon toxicity and risk places the appropriate
15 financial responsibility on the owners of those hazardous materials
16 for a response to spills or releases of those materials.

17 (n) Implementation of the Railroad Accident Prevention and
18 Immediate Deployment Force will save owners and transporters
19 of hazardous materials significant costs by mitigating the effects
20 of spills or releases.

21 SEC. 2. Article 3.9 (commencing with Section 8574.30) is added
22 to Chapter 7 of Division 1 of Title 2 of the Government Code, to
23 read:

24
25 Article 3.9. Regional Railroad and Surface Transportation
26 Accident Preparedness and Immediate Response
27

28 8574.30. For purposes of this article, the following terms have
29 the following meanings:

30 (a) "Board" means the State Board of Equalization.

31 (b) "Director" means the Director of Emergency Services.

32 (c) "Fund" means the Regional Railroad and Surface
33 Transportation Accident Preparedness and Immediate Response
34 Fund established pursuant to Section 8574.44.

35 (d) "Hazardous material" means a material that the United
36 States Department of Transportation has designated as a hazardous
37 material for purposes of transportation in Part 172 of Title 49 of
38 the Code of Federal Regulations.

39 (e) "Owner" means the person who has the ultimate control
40 over, and the right to use or sell, the hazardous material being

1 shipped. There is a rebuttable presumption that the shipper,
2 consignor, or consignee of the hazardous material is the owner of
3 the hazardous material. This presumption may be overcome by
4 showing that ownership of the hazardous material rests with
5 someone other than the shipper, consignor, or consignee. Evidence
6 to rebut the presumption may include, but is not limited to,
7 documentation, including a bill of lading, shipping document, bill
8 of sale, or other medium, that shows the ownership of the
9 hazardous material rests in a person other than the shipper,
10 consignor, or consignee.

11 (f) "Person" means an individual, trust, firm, joint stock
12 company, business entity, corporation, including, but not limited
13 to, a government corporation, partnership, limited liability
14 company, and association. "Person" also includes any city, county,
15 city and county, district, commission, the state or any department,
16 agency, or political subdivision thereof, and the federal government
17 and its agencies and instrumentalities, to the extent permitted by
18 law.

19 (g) "Railroad" has the same meaning as defined in Section 229
20 of the Public Utilities Code.

21 (h) "Rail car" means a railroad car or rolling stock designed
22 to transport hazardous material commodities, and includes, but
23 is not limited to, those railroad cars subject to the requirements
24 of Part 179 (commencing with Section 179.1) of Title 49 of the
25 Code of Federal Regulations, or successor regulations adopted
26 by the United States Department of Transportation.

27 (i) "Surface transportation" means any mode of transportation
28 that utilizes the public streets, highways, and roads. "Surface
29 transportation" does not include pipelines subject to the fee
30 assessed pursuant to Section 51019 of the Government Code or
31 any natural gas pipeline.

32 8574.32. (a) The director shall establish a schedule of fees to
33 determine the amount of a fee that shall be paid by each person
34 owning hazardous materials that are transported by rail or surface
35 transportation in California in an amount sufficient to fund the
36 appropriation from the fund pursuant to Section 8574.44, to
37 reimburse the California High-Cost Fund-B Administrative
38 Committee Fund for any moneys loaned, and to maintain a reserve
39 for operating costs. The fee shall be based on each loaded rail car
40 or truck as described in subdivision (b).

1 ***(b) (1) Within six months of the director establishing a schedule***
2 ***of fees pursuant to subdivision (a), the fee shall be imposed on a***
3 ***person owning hazardous material at the time that hazardous***
4 ***material is transported by loaded rail car or truck. The fee is based***
5 ***on each loaded rail car or truck.***

6 ***(A) If the loaded rail car or truck enters the state from outside***
7 ***this state, the fee is imposed on the owner of the hazardous material***
8 ***at the time the loaded rail car or truck enters this state. The***
9 ***railroad or owner of the truck shall collect the fee from the owner***
10 ***of the hazardous material and shall pay the fee to the board. The***
11 ***director may authorize the railroad or owner of a truck to collect***
12 ***a reasonable amount to cover the processing and payment of fees***
13 ***made pursuant to this article from the owner of hazardous***
14 ***materials being transported.***

15 ***(B) If the rail car or truck is loaded within this state, the fee is***
16 ***imposed upon the loading of hazardous material into or onto the***
17 ***rail car or truck for transport in or through this state. The railroad***
18 ***or owner of the truck shall collect the fee from the owner of the***
19 ***hazardous material at the time the rail car or truck is loaded and***
20 ***shall pay the fee to the board.***

21 ***(2) The fee shall be paid to the board by the railroad or owner***
22 ***of the truck at the time the return is required to be filed, as***
23 ***specified in Section 8574.38, based on the number of loaded***
24 ***hazardous material rail cars or trucks transported within the state.***

25 ***(3) Any fee collected from an owner of hazardous materials***
26 ***pursuant to this section that have not been remitted to the board***
27 ***shall be deemed a debt owed to the state by the person required***
28 ***to collect and remit the fee.***

29 ***(4) The owner of the hazardous material is liable for the fee***
30 ***until it has been paid to the board, except that payment to a***
31 ***railroad or to the owner of a truck registered under this article is***
32 ***sufficient to relieve the owner of the hazardous material from***
33 ***further liability for the fee.***

34 ***(5) Any owner of hazardous materials, railroad, or owner of a***
35 ***truck who has paid the fee pursuant to this section shall not be***
36 ***assessed any additional fee under this section for further***
37 ***transporting the same hazardous materials in the same rail cars***
38 ***on a different railroad within the state.***

39 ***(c) The fee shall be fair, as required by Section 5125(f) of Title***
40 ***49 of the United States Code and Section 107.202(c) of Title 49***

1 of the Code of Federal Regulations. It is the intent of the
2 Legislature that the fee reflect the proportionate risks to both the
3 public safety and the environment resulting from a release of
4 hazardous materials and the expense of preparing to respond to
5 those risks. The director may establish a separate fee schedule for
6 hazardous materials transported by railroad and a separate fee
7 schedule for hazardous materials transported by truck. The director
8 may exempt from the fee those shipments of hazardous materials
9 that do not merit inclusion in the state regional railroad and
10 surface transportation accident preparedness and immediate
11 response plan developed pursuant to Section 8574.46 and those
12 shipments of hazardous materials that do not merit additional
13 governmental preparation to respond to their release in the event
14 of a railroad or surface transportation accident.

15 (d) The fee shall not result in the collection of moneys that
16 exceed the reasonable regulatory costs to the state for the purposes
17 specified in subdivision (e) of Section 8574.44. The director shall
18 set the fee consistent with Section 3 of Article XIII A of the
19 California Constitution.

20 (e) The director shall be responsible for reporting fee
21 information to the federal Secretary of Transportation pursuant
22 to Section 5125(f)(2) of Title 49 of the United States Code.

23 (f) The director may authorize payments of fees through
24 contributions in kind of equipment, materials, or services. The
25 director may authorize payment of fees or a set off of fees for
26 owners or transporters of hazardous materials that contract with
27 the Office of Emergency Services to provide equipment, materials,
28 supplies, or services to be provided in responding to a release of
29 hazardous materials.

30 8574.34. Every person who operates a railroad that transports
31 hazardous materials by rail car shall register with the board
32 pursuant to Section 55021 of the Revenue and Taxation Code.

33 8574.36. The fee imposed pursuant to Section 8574.32 shall
34 be administered and collected by the board in accordance with
35 the Fee Collection Procedures Law (Part 30 (commencing with
36 Section 55001) of Division 2 of the Revenue and Taxation Code).
37 For purposes of this section, the references in the Fee Collection
38 Procedures Law to “fee” shall include the fee imposed by this
39 article, and references to “feepayer” shall include a person
40 required to pay the fee imposed by this article.

1 8574.38. *The return required to be filed pursuant to Section*
2 *55040 of the Revenue and Taxation Code shall be prepared and*
3 *filed by the person required to register with the board, in the form*
4 *prescribed by the board, and shall contain that information the*
5 *board deems necessary or appropriate for the proper*
6 *administration of this article and the Fee Collection Procedures*
7 *Law. The return shall be filed on or before the last day of the*
8 *calendar month following the calendar quarter to which it relates,*
9 *together with a remittance payable to the board for the fee amount*
10 *due for that period. Returns shall be authenticated in a form of,*
11 *or pursuant to, methods as may be prescribed by the board.*

12 8574.40. *Notwithstanding the petition for redetermination and*
13 *claim for refund provisions of the Fee Collection Procedures Law*
14 *(Article 3 (commencing with Section 55081) of Chapter 3 of, and*
15 *Article 1 (commencing with Section 55221) of Chapter 5 of, Part*
16 *30 of Division 2 of the Revenue and Taxation Code), the board*
17 *shall not:*

18 (a) *Accept or consider a petition for redetermination of fees*
19 *determined under this article if the petition is founded upon the*
20 *grounds that the rail car or truck content is or is not a hazardous*
21 *material. The board shall forward to the director any appeal of a*
22 *determination that is based on the grounds that the rail car or*
23 *truck content is or is not a hazardous material.*

24 (b) *Accept or consider a claim for refund of fees paid pursuant*
25 *to this chapter if the claim is founded upon the grounds that the*
26 *rail car or truck content is or is not a hazardous material. The*
27 *board shall forward to the director any claim for refund that is*
28 *based on the grounds that the rail car or truck content is or is not*
29 *a hazardous material.*

30 8574.42. (a) *The board may prescribe, adopt, and enforce*
31 *regulations relating to the administration and enforcement of this*
32 *article.*

33 (b) *The board may prescribe, adopt, and enforce any emergency*
34 *regulations, as necessary, to implement this article. Except as*
35 *provided in Section 8574.44, any emergency regulation prescribed,*
36 *adopted, or enforced pursuant to this article shall be adopted*
37 *pursuant to Chapter 3.5 (commencing with Section 11340) of Part*
38 *1 of Division 3 in Title 2 and, for purposes of that article, including*
39 *Section 11349.6, the adoption of the regulation is an emergency*
40 *and shall be considered by the Office of Administrative Law as*

1 *necessary for the immediate preservation of the public peace,*
2 *health and safety, and general welfare.*

3 8574.44. (a) *The Regional Railroad and Surface*
4 *Transportation Accident Preparedness and Immediate Response*
5 *Fund is hereby created in the State Treasury.*

6 (b) *All revenues, interest, penalties, and other amounts collected*
7 *pursuant to this article shall be deposited into the fund, less refunds*
8 *and reimbursement to the board for expenses incurred in the*
9 *administration and collection of the fee.*

10 (c) *The adoption of regulations pursuant to this section shall*
11 *be considered by the Office of Administrative Law as an emergency*
12 *and necessary for the immediate preservation of the public peace,*
13 *health and safety, and general welfare. Notwithstanding Chapter*
14 *3.5 (commencing with Section 11340) of Part 1 of Division 3 in*
15 *Title 2 emergency regulations adopted by the director and the*
16 *board pursuant to this section shall be filed with, but not repealed*
17 *by, the Office of Administrative Law and shall remain in effect*
18 *until revised or repealed by the director.*

19 (d) *The fund shall be used to reimburse the California High-Cost*
20 *Fund-B Administrative Committee Fund for any moneys loaned*
21 *from the California High-Cost Fund-B Administrative Committee*
22 *Fund to the fund to pay for the Office of Emergency Service's*
23 *administrative costs associated with implementation of the fee*
24 *pursuant to this article.*

25 (e) *All moneys remaining in the fund after reimbursement of*
26 *the California High-Cost Fund-B Administrative Committee Fund*
27 *pursuant to subdivision (d) shall, upon appropriation by the*
28 *Legislature, be used by the director to pay for the following*
29 *purposes related to the transportation of hazardous materials:*

30 (1) *Planning, developing, and maintaining a capability for*
31 *large-scale hazardous materials releases emergency response*
32 *relating to railroad accidents involving rail cars carrying*
33 *hazardous materials, including the risks of explosions and fires.*

34 (2) *Planning, developing, and maintaining a capability for*
35 *large-scale hazardous materials releases emergency response*
36 *relating to releases of hazardous materials from rail cars and*
37 *trucks, including reducing the harmful effects of exposure of those*
38 *materials to humans and the environment.*

39 (3) *Creation, support, maintenance, and implementation of the*
40 *Regional Railroad and Surface Transportation Accident*

1 *Preparedness and Immediate Response Force created by Section*
2 *8574.46.*

3 *(4) Acquisition and maintenance of specialized equipment and*
4 *supplies used to respond to a hazardous materials release from a*
5 *rail car or a railroad accident involving a rail car or a hazardous*
6 *materials release from a truck accident.*

7 *(5) Support of specialized regional training facilities to prepare*
8 *for and respond to a hazardous materials release from a rail car*
9 *or a railroad accident involving a rail car.*

10 *(6) Creation and support of a regional, state and local*
11 *emergency response team to provide immediate onsite response*
12 *capabilities in the event of large-scale releases of hazardous*
13 *materials from a rail car or a railroad accident involving a rail*
14 *car or a hazardous materials release from a truck accident.*

15 *(7) Support for specialized training for state and local*
16 *emergency response officials in techniques for prevention of, and*
17 *response to, release of hazardous materials from a rail car or a*
18 *railroad accident involving a rail car or a hazardous materials*
19 *release from a truck accident.*

20 *(8) Support for the Office of Emergency Service's biennial*
21 *review performed pursuant to Section 8574.47 and to provide the*
22 *training, personnel, and equipment necessary to fill the gaps in*
23 *preparedness identified by the office pursuant to that biennial*
24 *review.*

25 *(f) The amount available for appropriation from the fund shall*
26 *not exceed ten million dollars (\$10,000,000) in any calendar year.*

27 *8574.46. (a) The Regional Railroad and Surface*
28 *Transportation Accident Preparedness and Immediate Response*
29 *Force is hereby created in the Office of Emergency Services. The*
30 *force shall be responsible for providing regional and onsite*
31 *response capabilities in the event of a release of hazardous*
32 *materials from a rail car, or a railroad accident involving a rail*
33 *car or a hazardous materials release from a truck accident, and*
34 *for implementing the state regional railroad and surface*
35 *transportation accident preparedness and immediate response*
36 *plan for releases of hazardous materials from a rail car or a*
37 *railroad accident involving a rail car or a hazardous materials*
38 *release from a truck accident. This force shall act cooperatively*
39 *and in concert with existing local emergency response units*

1 pursuant to Article 9.5 (commencing with Section 8607). The force
2 shall consist of representatives of all of the following:

- 3 (1) Department of Fish and Wildlife.
- 4 (2) California Environmental Protection Agency.
- 5 (3) State Air Resources Board.
- 6 (4) Department of Resources Recycling and Recovery.
- 7 (5) California regional water quality control boards.
- 8 (6) Department of Toxic Substances Control.
- 9 (7) Department of Pesticide Regulation.
- 10 (8) Office of Environmental Health Hazard Assessment.
- 11 (9) State Department of Public Health.
- 12 (10) Department of the California Highway Patrol.
- 13 (11) Department of Food and Agriculture.
- 14 (12) Department of Forestry and Fire Protection.
- 15 (13) Department of Parks and Recreation.
- 16 (14) Public Utilities Commission.
- 17 (15) State Fire Marshal.
- 18 (16) Emergency Medical Services Authority.
- 19 (17) California National Guard.
- 20 (18) Any other potentially affected state, local, or federal
21 agency, as determined by the director.

22 (b) The Office of Emergency Services shall develop a state
23 regional railroad and surface transportation accident preparedness
24 and immediate response plan in cooperation with all of the entities
25 listed in paragraphs (1) to (18), inclusive, of subdivision (a) and
26 the plan shall become an annex to the state emergency plan.

27 (c) (1) The Legislature finds and declares that the state has a
28 comprehensive program through the Office of Spill Prevention
29 and Response to prevent and prepare for the risk of a significant
30 discharge of petroleum into state waters, including a discharge
31 caused by the transportation of petroleum by rail. The Legislature
32 further finds and declares that the Regional Railroad and Surface
33 Transportation Accident Preparedness and Immediate Response
34 Force is focused on the emergency response for railroad accidents
35 and rail car discharges and truck accidents and truck discharges
36 involving all designated hazardous materials regardless of where
37 the accident or discharge takes place.

38 (2) The Regional Railroad and Surface Transportation Accident
39 Preparedness and Immediate Response Force and Office of Spill
40 Prevention and Response shall coordinate in their respective

1 *authorities and responsibilities pursuant to Article 9.5*
2 *(commencing with Section 8607), to avoid any duplication of effort,*
3 *ensure cooperation, and promote the sharing of information*
4 *regarding the risk of discharge of petroleum by rail into state*
5 *waters.*

6 *8574.47. The Office of Emergency Services shall biennially*
7 *review the training of all emergency response personnel with*
8 *responsibilities along rail lines and other surface transportation*
9 *routes to ascertain the level of readiness to respond to an accident*
10 *involving hazardous materials. As part of this review, the office*
11 *shall identify all equipment and response assets available to*
12 *respond to a spill or discharge of hazardous materials along those*
13 *routes. This assessment shall include the assets and personnel of*
14 *all private and public entities that have agreed to respond to a*
15 *spill of hazardous materials as part of the response team. The*
16 *Office of Emergency Services shall determine where there are*
17 *gaps in the ability to respond to spills of hazardous materials in*
18 *California and specify what is required to continue funding the*
19 *training and response teams to close those gaps.*

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

22 *8670.40. (a) The State Board of Equalization shall collect a*
23 *fee in an amount determined by the administrator to be sufficient*
24 *to pay the reasonable regulatory costs to carry out the purposes*
25 *set forth in subdivision (e), and a reasonable reserve for*
26 *contingencies. The annual assessment shall not exceed six and*
27 *one-half cents (\$0.065) per barrel of crude oil or petroleum*
28 *products. The oil spill prevention and administration fee shall be*
29 *based on each barrel of crude oil or petroleum products, as*
30 *described in subdivision (b).*

31 *(b) (1) The oil spill prevention and administration fee shall be*
32 *imposed upon a person owning crude oil at the time that the crude*
33 *oil is received at a marine terminal, by any mode of delivery that*
34 *passed over, across, under, or through waters of the state, from*
35 *within or outside the state, and upon a person who owns petroleum*
36 *products at the time that those petroleum products are received at*
37 *a marine terminal, by any mode of delivery that passed over, across,*
38 *under, or through waters of the state, from outside this state. The*
39 *fee shall be collected by the marine terminal operator from the*

1 owner of the crude oil or petroleum products for each barrel of
2 crude oil or petroleum products received.

3 (2) The oil spill prevention and administration fee shall be
4 imposed upon a person owning crude oil or petroleum products at
5 the time that the crude oil or petroleum products are received at a
6 refinery within the state by any mode of delivery that passed over,
7 across, under, or through waters of the state, whether from within
8 or outside the state. The refinery shall collect the fee from the
9 owner of the crude oil or petroleum products for each barrel
10 received.

11 (3) (A) There is a rebuttable presumption that crude oil or
12 petroleum products received at a marine terminal or a refinery
13 have passed over, across, under, or through waters of the state.
14 This presumption may be overcome by a marine terminal operator,
15 refinery operator, or owner of the crude oil or petroleum products
16 by showing that the crude oil or petroleum products did not pass
17 over, across, under, or through waters of the state. Evidence to
18 rebut the presumption may include, but shall not be limited to,
19 documentation, including shipping documents, bills of lading,
20 highway maps, rail maps, transportation maps, related
21 transportation receipts, or another medium that shows the crude
22 oil or petroleum products did not pass over, across, under, or
23 through waters of the state.

24 (B) Notwithstanding the petition for redetermination and claim
25 for refund provisions of the Oil Spill Response, Prevention, and
26 Administration Fees Law (Part 24 (commencing with Section
27 46001) of Division 2 of the Revenue and Taxation Code), the State
28 Board of Equalization shall not do either of the following:

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

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

37 (C) The State Board of Equalization shall forward to the
38 administrator an appeal of a redetermination or a claim for a refund
39 of fees that is based on the grounds that the crude oil or petroleum

1 products did or did not pass over, across, under, or through waters
2 of the state.

3 (4) The fees shall be remitted to the State Board of Equalization
4 by the owner of the crude oil or petroleum products, the refinery
5 operator, or the marine terminal operator on the 25th day of the
6 month based upon the number of barrels of crude oil or petroleum
7 products received at a refinery or marine terminal during the
8 preceding month. A fee shall not be imposed pursuant to this
9 section with respect to crude oil or petroleum products if the person
10 who would be liable for that fee, or responsible for its collection,
11 establishes that the fee has already been collected by a refinery or
12 marine terminal operator registered under this chapter or paid to
13 the State Board of Equalization with respect to the crude oil or
14 petroleum product.

15 (5) The oil spill prevention and administration fee shall not be
16 collected by a marine terminal operator or refinery operator or
17 imposed on the owner of crude oil or petroleum products if the fee
18 has been previously collected or paid on the crude oil or petroleum
19 products at another marine terminal or refinery. It shall be the
20 obligation of the marine terminal operator, refinery operator, or
21 owner of crude oil or petroleum products to demonstrate that the
22 fee has already been paid on the same crude oil or petroleum
23 products.

24 (6) An owner of crude oil or petroleum products is liable for
25 the fee until it has been paid to the State Board of Equalization,
26 except that (A) payment to a refinery operator or marine terminal
27 operator registered under this chapter is sufficient to relieve the
28 owner from further liability for the ~~fee~~; *fee and (B) an owner of*
29 *crude oil or petroleum products that are transported by rail who*
30 *pays fees imposed pursuant to Section 8574.32 shall be entitled*
31 *to offset the amount of those fees against the amount of the fee*
32 *imposed pursuant to this section.*

33 (7) On or before January 20, the administrator shall annually
34 prepare a plan that projects revenues and expenses over three fiscal
35 years, including the current year. Based on the plan, the
36 administrator shall set the fee so that projected revenues, including
37 any interest and inflation, are equivalent to expenses as reflected
38 in the current Budget Act and in the proposed budget submitted
39 by the Governor. In setting the fee, the administrator may allow
40 for a surplus if the administrator finds that revenues will be

1 exhausted during the period covered by the plan or that the surplus
2 is necessary to cover possible contingencies. The administrator
3 shall notify the State Board of Equalization of the adjusted fee
4 rate, which shall be rounded to no more than four decimal places,
5 to be effective the first day of the month beginning not less than
6 30 days from the date of the notification.

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

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

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

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

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

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

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

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

28 (6) To fund the Oiled Wildlife Care Network pursuant to Section
29 8670.40.5.

30 (f) The moneys deposited in the fund shall not be used for
31 responding to a spill.

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

34 (h) Every person who operates a refinery, a marine terminal in
35 waters of the state, or a pipeline shall register with the State Board
36 of Equalization, pursuant to Section 46101 of the Revenue and
37 Taxation Code.

38 (i) The amendments to this section enacted in Senate Bill 861
39 of the 2013–14 Regular Session shall become operative 90 days

1 after the effective date of Senate Bill 861 of 2013–14 Regular
2 Session.

3 *SEC. 4. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

12 ~~SECTION 1. (a) The Legislature finds and declares the~~
13 ~~following:~~

14 ~~(1) Existing law establishes the Railroad Accident Prevention~~
15 ~~and Immediate Deployment Force in the California Environmental~~
16 ~~Protection Agency. The force is responsible for providing~~
17 ~~immediate onsite response capability in the event of a large-scale~~
18 ~~release of toxic materials resulting from a surface transportation~~
19 ~~accident.~~

20 ~~(2) Existing law requires the agency to develop a state railroad~~
21 ~~accident prevention and immediate deployment plan, in~~
22 ~~consultation with specified state entities, and other potentially~~
23 ~~affected state, local, or federal agencies. The force is responsible~~
24 ~~for implementing the plan and is required to act cooperatively and~~
25 ~~in concert with existing local emergency response units.~~

26 ~~(3) Authority and funding for the Railroad Accident Prevention~~
27 ~~and Immediate Deployment Force program has lapsed, leaving a~~
28 ~~gap in the state's ability to respond to spills of toxic and hazardous~~
29 ~~materials.~~

30 ~~(4) Existing law establishes the Office of Emergency Services~~
31 ~~under the supervision of the Director of Emergency Services. The~~
32 ~~office is responsible for the state's emergency and disaster response~~
33 ~~services for natural, technological, or manmade disasters and~~
34 ~~emergencies.~~

35 ~~(b) It is the intent of the Legislature to reauthorize the Railroad~~
36 ~~Accident Prevention and Immediate Deployment Force and transfer~~
37 ~~it from the California Environmental Protection Agency to the~~
38 ~~Office of Emergency Services. It is further the intent of the~~
39 ~~Legislature to require the Office of Emergency Services to~~
40 ~~designate the force as responsible for providing onsite response~~

1 capability in the event of a large-scale release of toxic materials
2 resulting from a railroad accident.

3 SEC. 2. Section 7718 of the Public Utilities Code is amended
4 to read:

5 7718. (a) The Railroad Accident Prevention and Immediate
6 Deployment Force is hereby created in the California
7 Environmental Protection Agency. The force shall be responsible
8 for providing immediate onsite response capability in the event of
9 large-scale releases of toxic materials resulting from surface
10 transportation accidents and for implementing the state hazardous
11 materials incident prevention and immediate deployment plan.
12 The force shall act cooperatively and in concert with existing local
13 emergency response units. The force shall consist of representatives
14 of all of the following:

- 15 (1) Department of Fish and Wildlife.
- 16 (2) California Environmental Protection Agency.
- 17 (3) State Air Resources Board.
- 18 (4) Department of Resources Recycling and Recovery.
- 19 (5) California regional water quality control boards.
- 20 (6) Department of Toxic Substances Control.
- 21 (7) Department of Pesticide Regulation.
- 22 (8) Office of Environmental Health Hazard Assessment.
- 23 (9) State Department of Public Health.
- 24 (10) Department of the California Highway Patrol.
- 25 (11) Department of Food and Agriculture.
- 26 (12) Department of Forestry and Fire Protection.
- 27 (13) Department of Parks and Recreation.
- 28 (14) Public Utilities Commission.
- 29 (15) Any other potentially affected state, local, or federal agency.
- 30 (16) Office of Emergency Services.

31 (b) The California Environmental Protection Agency shall
32 develop a state railroad accident prevention and immediate
33 deployment plan in cooperation with the State Fire Marshal,
34 affected businesses, and all of the entities listed in paragraphs (1)
35 to (16), inclusive, of subdivision (a).

36 (c) The plan specified in subdivision (b) shall be a
37 comprehensive set of policies and directions that every potentially
38 affected state agency and business shall follow if there is a railroad
39 accident to minimize the potential damage to the public health and

- 1 ~~safety, property, and the environment that might result from~~
- 2 ~~accidents involving railroad activities in the state.~~

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