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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 864

Introduced by Assembly Members Williams and Burke

(Principal coauthor: Senator Jackson)

**(Coauthors: Assembly Members Chiu, Rendon, Mark Stone, Ting,
and Wood)**

February 26, 2015

An act to amend Sections 8670.28.5 and 8670.29 of, and to add Section 51013.1 to, the Government Code, relating to oil spill response.

LEGISLATIVE COUNSEL'S DIGEST

AB 864, as amended, Williams. Oil spill response: environmentally and ecologically sensitive areas.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act requires owners or operators of various facilities, including pipelines, while operating in the waters of the state or where a spill from the pipelines could impact state waters, to have an oil spill contingency plan submitted to, and approved by, the administrator for oil spill response to ensure prompt and adequate response and removal action in case of a spill. The act requires the operator to maintain a level

of readiness that will allow effective implementation of the applicable contingency plan.

This bill would require, by ~~July 1, 2018~~, *January 1, 2019*, the operators of an interstate pipeline near environmentally and ecologically sensitive areas, as provided, to use the best achievable technologies to reduce the amount of oil released in an oil spill to protect the state waters and wildlife, and to include a description of the use of those technologies in their oil spill contingency plans. The bill would require the Office of Spill Prevention and Response to consult with the Office of the State Fire Marshal for technical expertise, and would authorize the office to enter into a memorandum of understanding, as provided, for purposes of implementing the above provisions.

The Elder California Pipeline Safety Act of 1981, among other things, requires the State Fire Marshal to adopt hazardous liquid pipeline safety regulations in compliance with the federal law relating to hazardous liquid pipeline safety. The act requires any new pipeline constructed after January 1, 1984, and which normally operates under conditions of constant flow and pressure, to be designed and constructed in accordance with specified federal regulations, and have a means of leak detection and cathodic protection that the State Fire Marshal determines is acceptable. A violation of the act is a crime. Except as provided, the act defines “pipeline” as including every intrastate pipeline used to transport hazardous liquid substances or highly volatile liquid substances, as provided.

This bill would ~~require~~ *require, by January 1, 2018*, any new or replacement pipeline near environmentally and ecologically sensitive areas in the coastal zone to use best achievable technologies to reduce the amount of oil released in an oil spill to protect state waters and wildlife. The bill would require, by July 1, 2018, an operator of ~~the above-described~~ *an existing pipeline near these sensitive areas* to submit a plan to retrofit ~~existing pipelines~~ *the pipeline, by January 1, 2020*, as provided. By creating a new crime, the bill would impose a state-mandated local program. The bill would require the State Fire Marshal to adopt regulations relating to the above provisions by July 1, 2017.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 8670.28.5 of the Government Code is
2 amended to read:

3 8670.28.5. (a) An operator shall maintain a level of readiness
4 that will allow effective implementation of the applicable
5 contingency plans.

6 (b) (1) ~~By July 1, 2018,~~ *January 1, 2019*, an operator of an
7 interstate pipeline subject to Part 195 of Title 49 of the Code of
8 Federal Regulations near environmentally and ecologically
9 sensitive areas in the coastal zone shall use best achievable
10 technology, including, but not limited to, the installation of leak
11 detection technology, automatic shutoff systems, or remote
12 controlled sectionalized block valves, or any combination of these
13 technologies, based on a risk analysis conducted by the operator,
14 to reduce the amount of oil released in an oil spill to protect state
15 waters and wildlife.

16 (2) For purposes of implementing this subdivision, the Office
17 of Spill Prevention and Response shall consult with the Office of
18 the State Fire Marshal for technological expertise and may enter
19 into a memorandum of understanding to clarify roles and
20 responsibilities.

21 (3) ~~By July 1, 2017,~~ *January 1, 2018*, the administrator shall
22 develop guidelines to assess the adequacy of the operator's risk
23 ~~analysis.~~ *analysis and shall determine how near an environmentally*
24 *and ecologically sensitive area a pipeline must be to be subject to*
25 *the requirements of this section based on the likelihood of the*
26 *pipeline impacting that area.*

27 (c) *For purposes of this section, and notwithstanding paragraph*
28 *(2) of subdivision (c) of Section 8670.3, the State Fire Marshal*
29 *shall determine what is the best achievable technology and shall*
30 *consider the effectiveness and engineering feasibility of the*
31 *technology when making this determination.*

32 SEC. 2. Section 8670.29 of the Government Code is amended
33 to read:

34 8670.29. (a) In accordance with the rules, regulations, and
35 policies established by the administrator pursuant to Section

1 8670.28, an owner or operator of a facility, small marine fueling
2 facility, or mobile transfer unit, or an owner or operator of a tank
3 vessel, nontank vessel, or vessel carrying oil as secondary cargo,
4 while operating in the waters of the state or where a spill could
5 impact waters of the state, shall have an oil spill contingency plan
6 that has been submitted to, and approved by, the administrator
7 pursuant to Section 8670.31. An oil spill contingency plan shall
8 ensure the undertaking of prompt and adequate response and
9 removal action in case of a spill, shall be consistent with the
10 California oil spill contingency plan, and shall not conflict with
11 the National Oil and Hazardous Substances Pollution Contingency
12 Plan (NCP).

13 (b) An oil spill contingency plan shall, at a minimum, meet all
14 of the following requirements:

15 (1) Be a written document, reviewed for feasibility and
16 executability, and signed by the owner or operator, or his or her
17 designee.

18 (2) Provide for the use of an incident command system to be
19 used during a spill.

20 (3) Provide procedures for reporting oil spills to local, state,
21 and federal agencies, and include a list of contacts to call in the
22 event of a drill, threatened spill, or spill.

23 (4) Describe the communication plans to be used during a spill,
24 if different from those used by a recognized incident command
25 system.

26 (5) Describe the strategies for the protection of environmentally
27 sensitive areas.

28 (6) Identify at least one rated OSRO for each rating level
29 established pursuant to Section 8670.30. Each identified rated
30 OSRO shall be directly responsible by contract, agreement, or
31 other approved means to provide oil spill response activities
32 pursuant to the oil spill contingency plan. A rated OSRO may
33 provide oil spill response activities individually, or in combination
34 with another rated OSRO, for a particular owner or operator.

35 (7) Identify a qualified individual.

36 (8) Provide the name, address, and telephone and facsimile
37 numbers for an agent for service of process, located within the
38 state and designated to receive legal documents on behalf of the
39 owner or operator.

1 (9) Provide for training and drills on elements of the plan at
2 least annually, with all elements of the plan subject to a drill at
3 least once every three years.

4 (c) An oil spill contingency plan for a vessel shall also include,
5 but is not limited to, all of the following requirements:

6 (1) The plan shall be submitted to the administrator at least
7 seven days prior to the vessel entering waters of the state.

8 (2) The plan shall provide evidence of compliance with the
9 International Safety Management Code, established by the
10 International Maritime Organization, as applicable.

11 (3) If the oil spill contingency plan is for a tank vessel, the plan
12 shall include both of the following:

13 (A) The plan shall specify oil and petroleum cargo capacity.

14 (B) The plan shall specify the types of oil and petroleum cargo
15 carried.

16 (4) If the oil spill contingency plan is for a nontank vessel, the
17 plan shall include both of the following:

18 (A) The plan shall specify the type and total amount of fuel
19 carried.

20 (B) The plan shall specify the capacity of the largest fuel tank.

21 (d) An oil spill contingency plan for a facility shall also include,
22 but is not limited to, all of the following provisions, as appropriate:

23 (1) Provisions for site security and control.

24 (2) Provisions for emergency medical treatment and first aid.

25 (3) Provisions for safety training, as required by state and federal
26 safety laws for all personnel likely to be engaged in oil spill
27 response.

28 (4) Provisions detailing site layout and locations of
29 environmentally sensitive areas requiring special protection.

30 (5) Provisions for vessels that are in the operational control of
31 the facility for loading and unloading.

32 (e) Unless preempted by federal law or regulations, an oil spill
33 contingency plan for a railroad also shall include, but is not limited
34 to, all of the following:

35 (1) A list of the types of train cars that may make up the consist.

36 (2) A list of the types of oil and petroleum products that may
37 be transported.

38 (3) A map of track routes and facilities.

39 (4) A list, description, and map of any prestaged spill response
40 equipment and personnel for deployment of the equipment.

1 (f) (1) An oil spill contingency plan for an interstate pipeline
 2 subject to Part 195 of Title 49 of the Code of Federal Regulations
 3 near environmentally and ecologically sensitive areas in the coastal
 4 zone subject to the requirements of subdivision (b) of Section
 5 8670.28.5 shall include a description of how the operators are
 6 using the best achievable technology, including, but not limited
 7 to, installation of leak detection technologies, automatic shutoff
 8 systems, or remote controlled sectionalized block valves, or any
 9 combination of these technologies, based on a risk analysis
 10 conducted by the operator, to reduce the amount of oil released in
 11 an oil spill to protect state waters and wildlife.

12 (2) *For purposes of this subdivision, and notwithstanding*
 13 *paragraph (2) of subdivision (c) of Section 8670.3, the State Fire*
 14 *Marshal shall determine what is the best achievable technology*
 15 *and shall consider the effectiveness and engineering feasibility of*
 16 *the technology when making this determination.*

17 (g) The oil spill contingency plan shall be available to response
 18 personnel and to relevant state and federal agencies for inspection
 19 and review.

20 (h) The oil spill contingency plan shall be reviewed periodically
 21 and updated as necessary. All updates shall be submitted to the
 22 administrator pursuant to this article.

23 (i) In addition to the regulations adopted pursuant to Section
 24 8670.28, the administrator shall adopt regulations and guidelines
 25 to implement this section. The regulations and guidelines shall
 26 provide for the best achievable protection of waters and natural
 27 resources of the state. The administrator may establish additional
 28 oil spill contingency plan requirements, including, but not limited
 29 to, requirements based on the different geographic regions of the
 30 state. All regulations and guidelines shall be developed in
 31 consultation with the Oil Spill Technical Advisory Committee.

32 (j) Notwithstanding subdivision (a) and paragraph (6) of
 33 subdivision (b), a vessel or facility operating where a spill could
 34 impact state waters that are not tidally influenced shall identify a
 35 rated OSRO in the contingency plan no later than January 1, 2016.

36 SEC. 3. Section 51013.1 is added to the Government Code, to
 37 read:

38 51013.1. (a) ~~Any~~ *By January 1, 2018, any new or replacement*
 39 *pipeline near environmentally and ecologically sensitive areas in*
 40 *the coastal zone shall use best achievable technology, including,*

1 but not limited to, the installation of leak detection technology,
2 automatic shutoff systems, or remote controlled sectionalized block
3 valves, or any combination of these technologies, based on a risk
4 analysis conducted by the operator, to reduce the amount of oil
5 released in an oil spill to protect state waters and wildlife.

6 (b) (1) By July 1, 2018, an operator of ~~a~~ *an existing* pipeline
7 near environmentally and ecologically sensitive areas in the coastal
8 zone shall submit a plan to ~~retrofit~~ *retrofit*, by *January 1, 2020*,
9 existing pipelines near environmentally and ecologically sensitive
10 areas in the coastal zone with the best achievable technology,
11 including, but not limited to, installation of leak detection
12 technologies, automatic shutoff systems, or remote controlled
13 sectionalized block valves, or any combination of these
14 technologies, based on a risk analysis conducted by the operator
15 to reduce the amount of oil released in an oil spill to protect state
16 waters and wildlife.

17 (2) *An operator may request confidential treatment of*
18 *information submitted in the plan required by paragraph (1) or*
19 *contained in any documents associated with the risk analysis*
20 *described in this section, including, but not limited to, information*
21 *regarding the proposed location of automatic shutoff valves or*
22 *remote controlled sectionalized block valves.*

23 (c) The State Fire Marshal shall adopt regulations pursuant to
24 ~~this section, including a definition of automatic shutoff systems,~~
25 *section* by July 1, 2017. *The regulations shall include, but not be*
26 *limited to, all of the following:*

27 (1) *A definition of automatic shutoff systems.*

28 (2) *A process to assess the adequacy of the operator's risk*
29 *analysis.*

30 (3) *A process by which an operator may request confidential*
31 *treatment of information submitted in the plan required by*
32 *paragraph (1) of subdivision (b) or contained in any documents*
33 *associated with the risk analysis described in this section.*

34 (4) *A determination of how near to an environmentally and*
35 *ecologically sensitive area a pipeline must be to be subject to the*
36 *requirements of this section based on the likelihood of the pipeline*
37 *impacting those areas.*

38 (d) An operator of a pipeline near environmentally and
39 ecologically sensitive areas in the coastal zone shall notify the

1 Office of the State Fire Marshal of any new construction or retrofit
2 of pipeline in these waters.

3 (e) For purposes of implementing this section, the State Fire
4 Marshal shall consult with the Office of Spill Prevention and
5 Response about the potential impacts to state water and wildlife.

6 (f) For purposes of this section, “environmentally and
7 ecologically sensitive areas” is the same term as described in
8 subdivision (d) of Section 8574.7.

9 (e)

10 (g) (1) For purposes of this section, “best achievable
11 technology” ~~has the same meaning as in subdivision (e) of Section~~
12 ~~8670.3.~~ *means that technology that provides the greatest degree*
13 *of protection, taking into consideration both of the following:*

14 (A) *Processes that are being developed, or could feasibly be*
15 *developed anywhere in the world, given overall reasonable*
16 *expenditures on research and development.*

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

18 (2) *The State Fire Marshal shall determine what is the best*
19 *achievable technology and shall consider the effectiveness and*
20 *engineering feasibility of the technology when making this*
21 *determination.*

22 SEC. 4. The provisions of this act are severable. If any
23 provision of this act or its application is held invalid, that invalidity
24 shall not affect other provisions or applications that can be given
25 effect without the invalid provision or application.

26 SEC. 5. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

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