

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 2, 2015

AMENDED IN ASSEMBLY JUNE 19, 2015

AMENDED IN ASSEMBLY JUNE 3, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 414

Introduced by Senator Jackson

(Principal coauthor: Assembly Member Williams)

February 25, 2015

An act to amend Sections 8670.12, 8670.13, 8670.28, and 8670.67.5 of, and to add Sections 8670.11, 8670.12.1, and 8670.13.3 to, the Government Code, relating to oil spill response.

LEGISLATIVE COUNSEL'S DIGEST

SB 414, as amended, Jackson. Oil spill 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. The act authorizes the administrator to use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in waters of the state. Existing law requires the administrator to evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup.

This bill would require the administrator, in cooperation with the United States Coast Guard, to conduct an independent vessel traffic

assessment for all deepwater ports that may inform an area rescue towing plan for the approaches to the ports and to establish a schedule of drills and exercises that are required under the federal Salvage and Marine Firefighting regulations. The bill would require the administrator to develop and implement regulations and guidelines requiring operators to allow immediate response to an oil spill by contracted fishing vessels and fishing crews and providing for emergency drills and training. The bill would require the administrator, on or before July 1, 2016, to submit to the Legislature a report assessing the best achievable technology for equipment for oil spill prevention and response, as provided, and to update regulations based on the report before July 1, 2017.

(2) *The act requires the administrator to study the use and effects of methods used to respond to oil spills and to periodically update the study to ensure the best achievable protection from the use of those methods.*

This bill would require the administrator to update the California Dispersant Plan by January 1, 2017, and, in conducting the study and updates, to consult current peer-reviewed published scientific literature.

(2)

(3) The act requires the administrator to license oil spill cleanup agents for use in response to oil spills. The federal Coastal Zone Management Act of 1972 (federal act) requires federal agency activities to be carried out in a manner that is consistent, to the maximum extent practicable, with an approved state management plan. Existing federal law authorizes the California Coastal Commission, the designated state agency, to conduct federal consistency review to ensure federal agency activities are consistent with the California Coastal Management Program.

The Marine Life Protection Act requires the Department of Fish and Wildlife to adopt a master plan to guide the adoption and implementation of the Marine Life Protection Program to protect the state's marine life, habitat, and ecosystem, and decisions on siting new Marine Protected Areas and major modifications of existing Marine Protected Areas.

This bill would prohibit the use of chemical oil spill cleanup agents ~~in the waters of the state~~. *within the boundaries of California marine protected areas.*

(3)

(4) The act makes a person who causes or permits a spill or inland spill strictly liable for specified penalties for the spill on a

per-gallon-released basis. The act provides that the amount of penalty is reduced by the amount of released oil that is recovered and properly disposed of.

This bill would provide that the above reduction in the penalty for spills, including inland spills, of greater than 500 gallons, is only applicable to the amount of oil recovered and properly disposed of within 2 weeks of the start of the spill.

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 8670.11 is added to the Government
2 Code, to read:

3 8670.11. In addition to Section 8670.10, the administrator, in
4 cooperation with the United States Coast Guard, shall establish a
5 schedule of drills and exercises required pursuant to Section
6 155.4052 of Title 33 of the Code of Federal Regulations. The
7 administrator shall make publicly available the established
8 schedule.

9 SEC. 2. Section 8670.12 of the Government Code is amended
10 to read:

11 8670.12. (a) The administrator shall conduct studies and
12 evaluations necessary for improving oil spill response, containment,
13 and cleanup and oil spill wildlife rehabilitation in waters of the
14 state and oil transportation systems. The administrator may expend
15 moneys from the Oil Spill Prevention and Administration Fund
16 created pursuant to Section 8670.38, enter into consultation
17 agreements, and acquire necessary equipment and services for the
18 purpose of carrying out these studies and evaluations.

19 (b) The administrator ~~shall~~ *shall, consulting current*
20 *peer-reviewed published scientific literature,* study the use and
21 effects of dispersants, incineration, bioremediation, and any other
22 methods used to respond to a spill. ~~The study~~ *spill and, by January*
23 *1, 2017, update the California Dispersant Plan. The study and*
24 *plan shall periodically be updated updated by the administrator,*
25 *consulting current peer-reviewed published scientific literature,*
26 to ensure the best achievable protection from the use of those
27 methods. Based upon substantial evidence in the record, the
28 administrator may determine in individual cases that best

1 achievable protection is provided by establishing requirements
2 that provide the greatest degree of protection achievable without
3 imposing costs that significantly outweigh the incremental
4 protection that would otherwise be provided. The studies shall do
5 all of the following:

6 (1) Evaluate the effectiveness of dispersants and other chemical,
7 bioremediation, and biological agents in oil spill response under
8 varying environmental conditions.

9 (2) Evaluate potential adverse impacts on the environment and
10 public health including, but not limited to, adverse toxic impacts
11 on water quality, fisheries, and wildlife with consideration to
12 bioaccumulation and synergistic impacts, and the potential for
13 human exposure, including skin contact and consumption of
14 contaminated seafood.

15 (3) Recommend appropriate uses and limitations on the use of
16 dispersants and other chemical, bioremediation, and biological
17 agents to ensure they are used only in situations where the
18 administrator determines they are effective and safe.

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

22 SEC. 3. Section 8670.12.1 is added to the Government Code,
23 to read:

24 8670.12.1. The administrator, in cooperation with the United
25 States Coast Guard, shall conduct an independent vessel traffic
26 risk assessment for all deepwater ports that may inform an area
27 rescue towing plan for the approaches to the ports.

28 SEC. 4. Section 8670.13 of the Government Code is amended
29 to read:

30 8670.13. (a) The administrator shall periodically evaluate the
31 feasibility of requiring new technologies to aid prevention,
32 response, containment, cleanup, and wildlife rehabilitation.

33 (b) (1) On or before July 1, 2016, the administrator shall submit
34 a report to the Legislature, pursuant to Section 9795, assessing the
35 best achievable technology of equipment for oil spill prevention
36 and response, including, but not limited to, prevention and response
37 tugs, tractor tugs, salvage and marine firefighting tugs, oil spill
38 skimmers and barges, and protective in-water boom equipment.
39 The assessment shall include all of the following:

1 (A) Evaluation of equipment based on its estimated system
2 recovery potential.

3 (B) Updating the methodology for rating equipment, such as
4 oil containment, skimming, storage and oil and water separation
5 technologies, and an explanation of why the new methodology
6 provides the best achievable protection.

7 (C) Evaluation of the most current oil spill and response
8 equipment for increase capability, including, but not limited to,
9 new generation, high-efficiency disc skimmers, including
10 high-efficiency skimming NOFI Current Busters, or their
11 equivalent, and Elastec grooved disc skimmers, or their equivalent.

12 (D) Consideration of whether a purpose-built, prepositioned
13 prevention and response tug with appropriate size, bollard pull,
14 horsepower, propulsion, seakeeping, and maneuverability to meet
15 Det Norske Veritas criteria for emergency towing would lead to
16 increased capability to provide best achievable protection.

17 (2) In conducting the assessment, the administrator shall consult
18 the most recent peer-reviewed research on oil spill prevention and
19 response, including, but not limited to, research performed by the
20 Prince William Sound Regional Citizens' Advisory Council as
21 well as estimated system recovery potential research done at
22 Genwest Systems, Inc., and Spiltec.

23 (3) Pursuant to Section 10231.5, this subdivision is inoperative
24 on July 1, 2020.

25 (c) (1) Based on the report prepared pursuant to subdivision
26 (b), the administrator shall update regulations governing the
27 adequacy of oil spill contingency plans for best achievable
28 technologies for oil spill prevention and response no later than
29 July 1, 2017.

30 (2) The updated regulations shall enhance the capabilities for
31 prevention, response, containment, cleanup, and wildlife
32 rehabilitation.

33 SEC. 5. Section 8670.13.3 is added to the Government Code,
34 to read:

35 8670.13.3. (a) ~~Notwithstanding any law, chemical oil spill~~
36 ~~cleanup agents shall not be used in response to an oil spill within~~
37 ~~the waters of the state. boundaries of any California marine~~
38 ~~protected area established pursuant to the Marine Life Protection~~
39 ~~Act (Chapter 10.5 (commencing with Section 2850) of Division 3~~
40 ~~of the Fish and Game Code).~~

1 ~~(b) For purposes of this section, “waters of the state” means any~~
2 ~~surface water, including saline water, within the boundary of the~~
3 ~~state.~~

4 SEC. 6. Section 8670.28 of the Government Code is amended
5 to read:

6 8670.28. (a) The administrator, taking into consideration the
7 facility or vessel contingency plan requirements of the State Lands
8 Commission, the Office of the State Fire Marshal, the California
9 Coastal Commission, and other state and federal agencies, shall
10 adopt and implement regulations governing the adequacy of oil
11 spill contingency plans to be prepared and implemented under this
12 article. All regulations shall be developed in consultation with the
13 Oil Spill Technical Advisory Committee, and shall be consistent
14 with the California oil spill contingency plan and not in conflict
15 with the National Contingency Plan. The regulations shall provide
16 for the best achievable protection of waters and natural resources
17 of the state. The regulations shall permit the development,
18 application, and use of an oil spill contingency plan for similar
19 vessels, pipelines, terminals, and facilities within a single company
20 or organization, and across companies and organizations. The
21 regulations shall, at a minimum, ensure all of the following:

22 (1) All areas of state waters are at all times protected by
23 prevention, response, containment, and cleanup equipment and
24 operations.

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

28 (3) All appropriate personnel employed by operators required
29 to have a contingency plan receive training in oil spill response
30 and cleanup equipment usage and operations.

31 (4) Each oil spill contingency plan provides for appropriate
32 financial or contractual arrangements for all necessary equipment
33 and services for the response, containment, and cleanup of a
34 reasonable worst case oil spill scenario for each area the plan
35 addresses.

36 (5) Each oil spill contingency plan demonstrates that all
37 protection measures are being taken to reduce the possibility of
38 an oil spill occurring as a result of the operation of the facility or
39 vessel. The protection measures shall include, but not be limited
40 to, response to disabled vessels and an identification of those

1 measures taken to comply with requirements of Division 7.8
2 (commencing with Section 8750) of the Public Resources Code.

3 (6) Each oil spill contingency plan identifies the types of
4 equipment that can be used, the location of the equipment, and the
5 time taken to deliver the equipment.

6 (7) Each facility, as determined by the administrator, conducts
7 a hazard and operability study to identify the hazards associated
8 with the operation of the facility, including the use of the facility
9 by vessels, due to operating error, equipment failure, and external
10 events. For the hazards identified in the hazard and operability
11 studies, the facility shall conduct an offsite consequence analysis
12 that, for the most likely hazards, assumes pessimistic water and
13 air dispersion and other adverse environmental conditions.

14 (8) Each oil spill contingency plan contains a list of contacts to
15 call in the event of a drill, threatened discharge of oil, or discharge
16 of oil.

17 (9) Each oil spill contingency plan identifies the measures to
18 be taken to protect the recreational and environmentally sensitive
19 areas that would be threatened by a reasonable worst case oil spill
20 scenario.

21 (10) Standards for determining a reasonable worst case oil spill.
22 However, for a nontank vessel, the reasonable worst case is a spill
23 of the total volume of the largest fuel tank on the nontank vessel.

24 (11) Each oil spill contingency plan specifies an agent for service
25 of process. The agent shall be located in this state.

26 (b) The regulations and guidelines adopted pursuant to this
27 section shall also include provisions to provide public review and
28 comment on submitted oil spill contingency plans.

29 (c) The regulations adopted pursuant to this section shall
30 specifically address the types of equipment that will be necessary,
31 the maximum time that will be allowed for deployment, the
32 maximum distance to cooperating response entities, the amounts
33 of dispersant, and the maximum time required for application,
34 should the use of dispersants be approved. Upon a determination
35 by the administrator that booming is appropriate at the site and
36 necessary to provide best achievable protection, the regulations
37 shall require that vessels engaged in lightering operations be
38 boomed prior to the commencement of operations.

39 (d) The administrator shall adopt regulations and guidelines for
40 oil spill contingency plans with regard to mobile transfer units,

1 small marine fueling facilities, and vessels carrying oil as secondary
2 cargo that acknowledge the reduced risk of damage from oil spills
3 from those units, facilities, and vessels while maintaining the best
4 achievable protection for the public health and safety and the
5 environment.

6 (e) The regulations adopted pursuant to subdivision (d) shall be
7 exempt from review by the Office of Administrative Law.
8 Subsequent amendments and changes to the regulations shall not
9 be exempt from review by the Office of Administrative Law.

10 (f) (1) The administrator shall develop and implement
11 regulations and guidelines requiring operators to allow immediate
12 response to an oil spill by contracted fishing vessels and fishing
13 crews and providing for regularly scheduled emergency drills and
14 training in areas that include all of the following:

- 15 (A) Shoreline protection.
- 16 (B) Towing boom and skimmers.
- 17 (C) Working with minibarges.
- 18 (D) Loading and unloading equipment from response barges.

19 (2) In developing the regulations, the administrator shall
20 consider the fishing vessel training program funded and maintained
21 by Alyeska’s Ship Escort/Response Vessel System, with regard
22 to training, liability, insurance, compensation, and post response
23 vessel cleanup.

24 SEC. 7. Section 8670.67.5 of the Government Code is amended
25 to read:

26 8670.67.5. (a) Regardless of intent or negligence, any person
27 who causes or permits a spill shall be strictly liable civilly in
28 accordance with subdivision (b) or (c).

29 (b) A penalty may be administratively imposed by the
30 administrator in accordance with Section 8670.68 in an amount
31 not to exceed twenty dollars (\$20) per gallon for a spill. Except as
32 provided in subdivision (d), the amount of the penalty shall be
33 reduced for every gallon of released oil that is recovered and
34 properly disposed of in accordance with applicable law.

35 (c) Whenever the release of oil resulted from gross negligence
36 or reckless conduct, the administrator shall, in accordance with
37 Section 8670.68, impose a penalty in an amount not to exceed
38 sixty dollars (\$60) per gallon for a spill. Except as provided in
39 subdivision (d), the amount of the penalty shall be reduced for

1 every gallon of released oil that is recovered and properly disposed
2 of in accordance with applicable law.

3 (d) (1) For a spill of greater than 500 gallons, the penalty
4 assessed pursuant to subdivision (b) or (c) shall only be reduced
5 for every gallon of released oil that is recovered and properly
6 disposed of in accordance with applicable law within two weeks
7 of the start of the spill.

8 (2) Notwithstanding Section 8670.69.7, any increase in the
9 amount of a penalty assessed for an inland spill resulting from the
10 operation of paragraph (1) shall be deposited in the Environmental
11 Enhancement Fund pursuant to Section 8670.70.

12 (e) The administrator shall adopt regulations governing the
13 method for determining the amount of oil that is cleaned up.

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