

Senate Bill No. 414

Passed the Senate September 11, 2015

Secretary of the Senate

Passed the Assembly September 8, 2015

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 8670.12, 8670.13, 8670.28, and 8670.67.5 of, and to add Sections 8670.11, 8670.13.3, and 8670.55.1 to, the Government Code, relating to oil spill response.

LEGISLATIVE COUNSEL'S DIGEST

SB 414, 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 establish a schedule of drills and exercises that are required under the federal Salvage and Marine Firefighting regulations. The bill would require the administrator, on or before January 1, 2017, to submit to the Legislature a report assessing the best achievable technology of equipment for oil spill prevention, preparedness, and response and to update regulations governing the adequacy of oil spill contingency plans before July 1, 2018. The bill would require the administrator to direct the Harbor Safety Committees for various regions to assess, among other things, the presence and capability of tugs within their respective regions of responsibility to provide emergency towing of tank and nontank vessels to arrest their drift or guide emergency transit.

(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, in conducting the study and updates, to consult current peer-reviewed published scientific

literature. The bill would require the administrator, by May 1, 2016, to request that the federal California Dispersant Plan be updated, as provided, and to provide support and assistance in that regard.

(3) The act requires the administrator to license oil spill cleanup agents for use in response to oil spills.

This bill would require the administrator, if dispersants are used in response to an oil spill, to submit to the Legislature a written notification of, and a written justification for, the use of dispersants and a report on the effectiveness of the dispersants used, as provided.

(4) Existing law establishes the Oil Spill Technical Advisory Committee and requires the committee to provide recommendations to, among other entities, the administrator on the implementation of the act.

This bill would require the committee to convene a taskforce to evaluate the feasibility of using vessels of opportunity for oil spill response. The bill would require the taskforce to provide recommendations to the administrator and the Legislature on whether vessels of opportunity should be included in oil spill response planning.

(5) 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 eliminate that reduction in the penalty by the amount of oil recovered and properly disposed of.

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

SECTION 1. Section 8670.11 is added to the Government Code, to read:

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

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

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

(b) The administrator shall, consulting current peer-reviewed published scientific literature, study the use and effects of dispersants, incineration, bioremediation, and any other methods used to respond to a spill and, by May 1, 2016, request that the federal California Dispersant Plan be updated pursuant to subdivision (d). The study shall periodically be updated by the administrator, consulting current peer-reviewed published scientific literature, to ensure the best achievable protection from the use of those methods. Based upon substantial evidence in the record, the administrator may determine in individual cases that best achievable protection is provided by establishing requirements that provide the greatest degree of protection achievable without imposing costs that significantly outweigh the incremental protection that would otherwise be provided. The studies shall do all of the following:

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

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

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

(c) The studies shall be performed with consideration of current peer-reviewed published scientific literature and any studies

performed by federal, state, and international entities. The administrator may enter into contracts for the studies.

(d) The administrator shall support the federal Regional Response Team, as described in Section 300.115 of Title 40 of the Code of Federal Regulations, in the development, and shall request regular updates, of plans and procedures for use of dispersants and other chemical agents in California. The administrator's assistance may include, but is not limited to, providing the federal Regional Response Team with current peer-reviewed published scientific literature, and risk and consequence analysis.

SEC. 3. Section 8670.13 of the Government Code is amended to read:

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

(b) (1) On or before January 1, 2017, the administrator shall submit a report to the Legislature, pursuant to Section 9795, assessing the best achievable technology of equipment for oil spill prevention, preparedness, and response.

(2) The report shall evaluate studies of estimated recovery system potential as a methodology for rating equipment in comparison to effective daily recovery capacity.

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

(c) (1) Including, but not limited to, the report prepared pursuant to subdivision (b), the administrator shall update regulations governing the adequacy of oil spill contingency plans for best achievable technologies for oil spill prevention and response no later than July 1, 2018.

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

(d) (1) The administrator shall direct the Harbor Safety Committees, established pursuant to Section 8670.23, to assess the presence and capability of tugs within their respective geographic areas of responsibility to provide emergency towing of tank vessels and nontank vessels to arrest their drift or otherwise guide emergency transit.

(2) The assessments for harbors in the San Francisco Bay area and in Los Angeles-Long Beach area shall be initiated by May 1,

2016. The assessments for the other harbors shall be initiated by January 1, 2020.

(3) The assessment shall consider, but not be limited to, data from available United States Coast Guard Vessel Traffic Systems, relevant incident and accident data, any relevant simulation models, and identification of any transit areas where risks are higher.

(4) The assessment shall consider the condition of tank and nontank vessels calling on harbors, including the United States Coast Guard's marine inspection program and port state control program regarding risks due to a vessel's hull or engineering material deficiencies, or inadequate crew training and professionalism.

SEC. 4. Section 8670.13.3 is added to the Government Code, to read:

8670.13.3. If dispersants are used in response to an oil spill in state waters, the administrator shall provide written notification of their use to the Legislature within three days of the use. The administrator shall provide the Legislature with written justification of their use, including copies of key supporting documentation used by the federal on-scene coordinator and the federal Regional Response Team as soon as those material are released. Within two months of the use of dispersants in state waters, the administrator shall also provide a report to the Legislature on the effectiveness of the dispersants used, including, but not limited to, results of any available monitoring data to determine whether the dispersant use resulted in overall environmental benefit or harm. The written notification, justification, and report shall be submitted pursuant to Section 9795.

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

8670.28. (a) The administrator, taking into consideration the facility or vessel contingency plan requirements of the State Lands Commission, the Office of the State Fire Marshal, the California Coastal Commission, and other state and federal agencies, shall adopt and implement regulations governing the adequacy of oil spill contingency plans to be prepared and implemented under this article. All regulations shall be developed in consultation with the Oil Spill Technical Advisory Committee, and shall be consistent with the California oil spill contingency plan and not in conflict with the National Contingency Plan. The regulations shall provide

for the best achievable protection of waters and natural resources of the state. The regulations shall permit the development, application, and use of an oil spill contingency plan for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations shall, at a minimum, ensure all of the following:

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

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

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

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

(5) Each oil spill contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the facility or vessel. The protection measures shall include, but not be limited to, response to disabled vessels and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

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

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

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

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

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

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

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

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

(d) The administrator shall adopt regulations and guidelines for oil spill contingency plans with regard to mobile transfer units, small marine fueling facilities, and vessels carrying oil as secondary cargo that acknowledge the reduced risk of damage from oil spills from those units, facilities, and vessels while maintaining the best achievable protection for the public health and safety and the environment.

SEC. 6. Section 8670.55.1 is added to the Government Code, to read:

8670.55.1. (a) The committee shall convene a taskforce, including appropriate state and federal governmental representatives, nongovernmental organizations, oil spill response organizations, and commercial fishing and other potential vessels of opportunity, to evaluate and make recommendations regarding

the feasibility of using vessels of opportunity for oil spill response in marine waters. The evaluation shall examine the following:

(1) Appropriate functions of vessels of opportunity during an oil spill.

(2) Appropriate management of a vessels of opportunity spill response program.

(3) Vessels of opportunity equipment, training, and technology needs.

(4) Liability and insurance.

(5) Compensation.

(b) As part of the evaluation, the taskforce shall hold two public meetings, one in southern California and one in northern California, prior to making final recommendations.

(c) (1) On or before January 1, 2017, the committee shall provide to the administrator and to the Legislature final recommendations on whether vessels of opportunity should be included in oil spill response planning.

(2) The recommendations provided to the Legislature shall be provided pursuant to Section 9795.

(d) If appropriate, the administrator, by January 1, 2018, shall update regulations to provide for inclusion of vessels of opportunity in the oil spill prevention, response, and preparedness program.

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

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

(b) A penalty may be administratively imposed by the administrator in accordance with Section 8670.68 in an amount not to exceed twenty dollars (\$20) per gallon for a spill.

(c) Whenever the release of oil resulted from gross negligence or reckless conduct, the administrator shall, in accordance with Section 8670.68, impose a penalty in an amount not to exceed sixty dollars (\$60) per gallon for a spill.

Approved _____, 2015

Governor