

## Assembly Bill No. 1549

### CHAPTER 940

An act to amend Sections 8670.3, 8670.28, 8670.37.5, 8670.48, 8670.49, and 8670.62 of, and to add Section 8670.17.2 to, the Government Code, and to amend Section 46012 of the Revenue and Taxation Code, relating to oil spills, and making an appropriation therefor.

[Approved by Governor October 15, 1995. Filed  
with Secretary of State October 16, 1995.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1549, Sher. Oil spills: definitions: contingency plans: oil spill response fees.

(1) Existing law, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, defines a "small craft refueling dock" and a "small marine fueling facility" for purposes of the act.

This bill would revise those definitions and make related changes. The bill would, in this connection, revise the definition of small marine fueling facility to include a mobile transfer unit, as defined, to permit dispensing of small amounts of persistent oil, as described, and to delete a provision that such a facility does not include a system that dispenses small amounts of nonpersistent lubrication oil, as prescribed. The bill would make related changes.

The bill would also define "vessels carrying oil as secondary cargo" for purposes of the act.

(2) Under the act, the administrator for oil spill response is required to adopt and implement regulations and guidelines governing the adequacy of oil spill contingency plans.

This bill would require the administrator to 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.

The bill would also revise the procedures governing the adoption by the administrator of regulations governing tugboat escorts for tankers and barges entering, leaving, or navigating in the harbors of the state and would specify related matters.

(3) The act requires the administrator to establish rescue and rehabilitation stations for marine mammals.

This bill would require the administrator to establish a network of those stations, and would make related changes regarding the funding and performance of those activities. The bill would require

the administrator to appoint a rescue and rehabilitation advisory board to advise the administrator regarding those stations.

(4) Under the act, a uniform oil spill response fee, as specified, is imposed during any period that the Oil Spill Response Trust Fund contains less than a designated amount, as prescribed, adjusted for inflation on and after July 1, 1997. The money in the fund is continuously appropriated for specified purposes. The fee, and interest on deposits in the fund, may be used for specified purposes.

This bill would increase that designated amount, as specified, thereby making an appropriation for specified purposes, delay any adjustment for inflation until June 30, 2003, revise the purposes for which the fee revenues may be used, and revise provisions for use of interest on deposits in the fund. The bill would require the administrator to make a specified report to the Legislature.

(5) This bill would incorporate additional changes in Section 8670.3 of the Government Code, proposed by SB 1083, to be operative only if SB 1083 and this bill are both chaptered and become effective on or before January 1, 1996, and this bill is chaptered last.

Appropriation: yes.

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

SECTION 1. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) "Barges" means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(c) (1) "Best achievable protection" means that the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

(2) It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the



measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) “Best achievable technology” means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) “Local government” means any chartered or general law city, chartered or general law county, or any city and county.

(f) “Marine facility” means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a “marine facility.” For the purposes of this chapter, a small craft refueling dock is not a “marine facility.”

(g) “Marine terminal” means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(h) “Marine waters” means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(i) “Mobile transfer unit” means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(j) “Nonpersistent oil” means a petroleum-based oil, such as gasoline, diesel, or jet fuel, which evaporates relatively quickly. Specifically, it is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(k) “Oil” means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation



fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(l) “Onshore facility” means any facility of any kind which is located entirely on lands not covered by marine waters.

(m) (1) “Owner” or “operator” means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) “Owner” or “operator” does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) “Operator” does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(n) “Person” means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. “Person” also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(o) “Pipeline” means any pipeline used at any time to transport oil.

(p) “Responsible party” or “party responsible” means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(q) “Small craft” means waterborne craft, other than a tanker or barge, which is less than 20 meters in length.

(r) “Small craft refueling dock” means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of



persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has a total usable tank storage capacity not exceeding 75,000 gallons.

(s) “Small marine fueling facility” means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, which dispenses primarily nonpersistent oil, and may dispense small amounts of persistent oil, primarily to small craft, and meets all of the following criteria:

(A) Has tank storage capacity not exceeding 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(t) “Spill” or “discharge” means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity.

(u) “State Interagency Oil Spill Committee” means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(v) “State oil spill contingency plan” means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(w) “Tanker” means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(x) “Vessel” means a tanker or barge as defined in this section.

(y) “Vessel carrying oil as secondary cargo” means a tanker or barge that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

SEC. 1.5. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) “Administrator” means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) “Barges” means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(c) (1) “Best achievable protection” means that the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training



procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

(2) It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility." For the purposes of this chapter, a small craft refueling dock is not a "marine facility."

(g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.



(i) “Mobile transfer unit” means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(j) “Nonpersistent oil” means a petroleum-based oil, such as gasoline, diesel, or jet fuel, which evaporates relatively quickly. Specifically, it is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(k) “Oil” means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(l) “Oil spill cleanup agent” means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(m) “Onshore facility” means any facility of any kind which is located entirely on lands not covered by marine waters.

(n) (1) “Owner” or “operator” means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) “Owner” or “operator” does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) “Operator” does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(o) “Person” means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. “Person” also includes any



city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(p) “Pipeline” means any pipeline used at any time to transport oil.

(q) “Responsible party” or “party responsible” means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(r) “Small craft” means waterborne craft, other than a tanker or barge, which is less than 20 meters in length.

(s) “Small craft refueling dock” means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has a total usable tank storage capacity not exceeding 75,000 gallons.

(t) “Small marine fueling facility” means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, which dispenses primarily nonpersistent oil, and may dispense small amounts of persistent oil, primarily to small craft, and meets all of the following criteria:

(A) Has tank storage capacity not exceeding 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(u) “Spill” or “discharge” means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity.

(v) “State Interagency Oil Spill Committee” means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(w) “State oil spill contingency plan” means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(x) “Tanker” means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.



(y) “Vessel” means a tanker or barge as defined in this section.

(z) “Vessel carrying oil as secondary cargo” means a tanker or barge that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

SEC. 2. Section 8670.17.2 is added to the Government Code, to read:

8670.17.2. (a) The administrator shall adopt regulations governing tugboat escorts for tankers and barges entering, leaving, or navigating in the harbors of the state. The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(b) The regulations adopted pursuant to subdivision (a) shall include, but not be limited to, a determination of the circumstances under which tankers and barges are required to be accompanied by a tugboat or tugboats of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbors of the state. In making that determination, the administrator shall be guided by the recommendations of the harbor safety committees established pursuant to Section 8670.23.

(c) The administrator may adopt regulations which differ from the recommendations of the harbor safety committees only after a public hearing. If the administrator proposes to adopt regulations which require the use of tugboat escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which is recommended by the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in a public hearing, adopt findings, based on substantial evidence, that the proposed regulations provide adequate protection and are consistent with the purposes of this chapter.

(d) A public hearing held in accordance with Section 11346.8 shall satisfy the public hearing requirement of subdivision (d) of this section.

(e) The Legislature hereby finds and declares that the appropriate use of tugboat escorts can improve vessel safety, particularly in the harbors of San Francisco, San Pablo, and Suisun Bays, and that the regulations concerning tugboat escorts in those harbors shall be adopted as quickly as practicable and may be adopted before the adoption of all other regulations required by this section.

SEC. 3. Section 8670.28 of the Government Code is amended to read:

8670.28. (a) The administrator, taking into consideration the marine facility or vessel contingency plan requirements of the national and state contingency plans, the State Lands Commission, the State Fire Marshal, and the California Coastal Commission shall adopt and implement regulations and guidelines governing the



adequacy of oil spill contingency plans to be prepared and implemented under this section. All regulations and guidelines shall be developed in consultation with the State Interagency oil spill Committee, and the oil spill Technical Advisory Committee, and shall be consistent with the state oil spill contingency plan and not in conflict with the National Contingency Plan. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The regulations and guidelines shall permit the development, application, and use of blanket contingency plans for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations and guidelines shall, at a minimum, ensure all of the following:

(1) All areas of the marine waters of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. For the purposes of this section, “marine waters” includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(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 receives training in oil spill response and cleanup equipment usage and operations.

(4) Each contingency plan for a vessel or marine facility demonstrates that the marine facility or vessel has plans in place, including 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 part of the coast the plan addresses.

(5) Each 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 marine facility or vessel. The protection measures shall include, but not be limited to, response to disabled tankers 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 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 marine facility 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 which, for the most likely hazards, assumes



pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each 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 marine facility identifies in its contingency plan 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 worst case oil spill.

(11) Each contingency plan includes a timetable for implementing the plan.

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

(b) The regulations and guidelines shall also include provisions for public review and comment on submitted contingency plans prior to approval.

(c) The regulations 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, 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.

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

SEC. 4. Section 8670.37.5 of the Government Code is amended to read:

8670.37.5. (a) The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network.



(b) The first rescue and rehabilitation station established pursuant to this section shall be located within the sea otter range on the central coast. The administrator shall establish regional oiled wildlife rescue and rehabilitation facilities in the Los Angeles Harbor area, the San Francisco Bay area, the San Diego area, the Monterey Bay area, the Humboldt County area, and the Santa Barbara area, and may establish those facilities in other coastal areas of the state as the administrator determines to be necessary. One or more of the oiled wildlife rescue and rehabilitation stations shall be open to the public for educational purposes and shall be available for marine wildlife health research. Wherever possible in the establishment of these facilities, the administrator shall improve existing authorized marine mammal rehabilitation facilities and may expand or take advantage of existing educational or scientific programs and institutions for oiled wildlife rehabilitation purposes. Expenditures shall be reviewed by the agencies and organizations specified in subdivision (c).

(c) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Coastal Commission, the Marine Mammal Center, and the International Bird Rescue Center in the design, planning, construction, and operation of the rescue and rehabilitation stations. All proposals for the rescue and rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the state oil spill contingency plan, shall be consistent with the coastal protection element.

(d) The administrator may enter into agreements with nonprofit organizations to establish and equip wildlife rescue and rehabilitation stations and to ensure that they are operated in a professional manner in keeping with the pertinent guidance documents issued by the Office of Oil Spill Prevention and Response in the Department of Fish and Game. The implementation of any such agreement shall not constitute a state public works project. Any such agreement shall be deemed a contract for wildlife rehabilitation as authorized by Section 8670.62.

(e) (1) Five hundred thousand dollars (\$500,000) of federal escrow funds received by the state pursuant to Section 8(g) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. Sec. 1337(g)), shall, upon approval in the 1991–92 Budget Act, be appropriated or allocated for appropriation, as the case may be, from the Federal Trust Fund, each year for three years for the purposes described in subdivision (a).

(2) Additional funding shall be provided for the purposes described in subdivision (a) from four years of interest earned on the funds deposited in the Oil Spill Response Trust Fund as authorized



in subdivision (l) of Section 8670.48 or through the Budget Act process upon the request by the administrator.

(f) In the event of a spill, the responsible party may request that the administrator perform the rescue and rehabilitation of oiled wildlife required of the responsible party pursuant to this chapter if the responsible party and the administrator enter into an agreement for the reimbursement of the administrator's costs incurred in taking the requested action. If the administrator performs the rescue and rehabilitation of oiled wildlife, the administrator shall primarily utilize the network of rescue and rehabilitation stations established pursuant to subdivision (a), unless more immediate care is required. Any of those activities conducted pursuant to this section or Section 8670.56.5 or 8670.61.5 shall be performed under the direction of the administrator. Nothing in this subdivision shall be construed as removing the responsible party from liability for the costs of, nor the responsibility for, the rescue and rehabilitation of oiled wildlife, as established by this chapter. Nothing in this subdivision shall be construed as prohibiting an owner or operator from retaining, in a contingency plan prepared pursuant to this article, wildlife rescue and rehabilitation services different from the rescue and rehabilitation stations established pursuant to this section.

(g) (1) The administrator shall appoint a rescue and rehabilitation advisory board to advise the administrator regarding operation of the network of rescue and rehabilitation stations established pursuant to subdivision (a), including the economic operation and maintenance of the network. For the purpose of assisting the administrator in determining what constitutes the best achievable treatment for oiled wildlife, the advisory board shall provide recommendations to the administrator on the care achieved by current standard treatment methods, new or alternative treatment methods, the costs of treatment methods, and any other information which the advisory board believes that the administrator might find useful in making that determination. The administrator shall consult the advisory board in preparing the administrator's submission to the Legislature pursuant to subparagraph (A) of paragraph (2) of subdivision (l) of Section 8670.48. The administrator shall present the recommendations of the advisory board to the Oil Spill Technical Advisory Committee created pursuant to Article 8 (commencing with Section 8670.54), upon the request of the committee.

(2) The advisory board shall consist of a balance between representatives of the oil industry, wildlife rehabilitation organizations, and academia. One academic representative shall be from a veterinary school within this state. The United States Fish and Wildlife Service and the National Marine Fisheries Service shall be requested to participate as ex-officio members.



(3) (A) The Legislature hereby finds and declares that since the administrator may rely on the expertise provided by the volunteer members of the advisory board and may be guided by their recommendations in making decisions that relate to operation of the network of rescue and rehabilitation stations, those members should be entitled to the same immunity from liability that is provided other public employees.

(B) Members of the advisory board, while performing functions within the scope of advisory board duties, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the advisory board.

SEC. 5. Section 8670.48 of the Government Code is amended to read:

8670.48. (a) (1) A uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), shall be imposed upon every person owning petroleum products at the time the petroleum products are received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The fee shall be remitted to the State Board of Equalization by the terminal operator on the 25th day of each month based upon the number of barrels of petroleum products received during the preceding month.

(2) Every owner of petroleum products is liable for the fee until it has been paid to the state, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(b) Every operator of a pipeline shall also pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), transported into the state by means of a pipeline operating across, under, or through the marine waters of the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of petroleum products so transported into the state during the preceding month.

(c) (1) Every operator of a refinery shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), received at a refinery within the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of crude oil so received during the preceding month.

(2) The fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The



board shall not identify a company as exempt from the fee requirements of this section if that company was reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.

(3) For purposes of this chapter, “independent crude oil producer” means any person or entity producing crude oil within this state who performs no refining of crude oil into product, and who possesses or owns no retail gasoline marketing facilities.

(d) Every marine terminal operator shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), that is transported from within this state by means of marine vessel to a destination outside this state.

(e) Every operator of a pipeline shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), transported out of the state by pipeline.

(f) (1) The fees required pursuant to this section shall be collected during any period that the administrator determines that either the amount in the fund is less than or equal to 95 percent of the amount specified in paragraph (1) of subdivision (h), or additional moneys are required to pay for the purposes specified in subdivision (k).

(2) Whenever the administrator, in consultation with the State Board of Equalization, estimates that the amount in the fund will reach the amount specified in paragraph (1) of subdivision (h), and the money in the fund is not required for the purposes specified in subdivision (k), the administrator shall direct the State Board of Equalization to cease collecting the fee. In no event shall the fee cease to be imposed if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the continued imposition of the fee is not required for the purposes specified in paragraph (7) of subdivision (k).

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all feepayers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents (\$0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount within four months. The fee shall not be less than twenty-five cents (\$0.25) for each barrel of petroleum products or crude oil if the Treasurer has



borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the money in the fund is not required for the purposes specified in paragraph (7) of subdivision (k).

(g) The fees imposed by subdivisions (d) and (e) shall be imposed in any calendar year beginning the month following the month when the total cumulative year-to-date barrels of crude oil transported outside the state by all fee payers by means of vessel or pipeline exceeds 6 percent by volume of the total barrels of crude oil and petroleum products subject to oil spill response fees under subdivisions (a), (b), and (c) for the prior calendar year.

(h) For purposes of this chapter, “designated amount” means an amount equal to one hundred nine million seven hundred fifty thousand dollars (\$109,750,000), subject to the following:

(1) Fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000) shall be retained in the fund as cash.

(2) Fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000) shall be immediately accessible in the fund in the form of financial security obtained by the Treasurer as authorized by subdivision (p).

(3) Commencing June 30, 2003, the amounts designated in this subdivision shall be adjusted for inflation, in accordance with an index that the administrator may reasonably choose.

(i) (1) The administrator shall authorize refunds of any money collected, for reporting periods after January 31, 1991, in excess of the amount specified in paragraph (1) of subdivision (h) and any amounts determined by the administrator to be necessary to provide for any of the purposes specified in paragraphs (1) to (6), inclusive, of subdivision (k) and, if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, any amounts the Treasurer has certified to the administrator are required for the purposes specified in paragraph (7) of subdivision (k). The board, as directed by the administrator and in accordance with Section 46653 of the Revenue and Taxation Code, shall refund the excess amount of fees collected to each fee payer who paid the fee to the state, in proportion to the amount that each fee payer paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the specified amount, and only for those periods which commenced on or after January 31, 1991. If the total amount of money in the fund exceeds the amount specified in this subdivision by 10 percent or less, refunds need not be ordered by the administrator. Nothing in this section shall require the refund of



excess fees as provided in this subdivision more frequently than once each year.

(2) Any amount of fees collected in excess of the specified amount for periods prior to February 1, 1991, shall be refunded as follows:

(A) First, to feepayers who paid oil spill response fees under subdivision (d) or (e) of Section 8670.48 of the Government Code as added by Chapter 1248 of the Statutes of 1990.

(B) Second, to feepayers in proportion to the amount each feepayer paid into the fund for the period from September 24, 1990, to January 31, 1991, inclusive, less any amounts refunded pursuant to paragraph (1).

(j) The board shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

(k) The fee described in this section shall be collected solely for any of the following purposes:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To provide emergency loans and to cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters which cannot otherwise be compensated by responsible parties or the federal government.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (g) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the arrangement of fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000), adjusted for inflation as specified in paragraph (3) of subdivision (h), of financial security as authorized by subdivision (p).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(7) To pay principal, interest, premium, if any, and fees, charges, and costs of any kind imposed in connection with funds borrowed pursuant to Article 7.5 (commencing with Section 8670.53.1).

(8) To pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations created pursuant to Section 8670.37.5.

(l) (1) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount. Interest earned for four years commencing on July 1, 1994, on funds deposited pursuant to paragraph (1) of subdivision (h) in the Oil Spill



Response Trust Fund, as determined jointly by the Controller and the Director of Finance, shall be available upon appropriation by the Legislature in the Budget Act to establish, equip, operate, and maintain the network of rescue and rehabilitation stations for oiled wildlife as described in Section 8670.37.5 and to support technology development and research related to oiled wildlife care. Interest earned on the financial security portion of the fund, pursuant to paragraph (2) of subdivision (h), shall not be available for this purpose. If the fund exceeds the designated amount, the interest not needed to equip, operate, and maintain the network of rescue and rehabilitation stations, or for appropriate technology development and research regarding oiled wildlife care, shall be deposited into the Oil Spill Prevention and Administration Fund, for the purposes authorized by Article 6 (commencing with Section 8670.38).

(2) (A) For the fiscal year beginning July 1, 1998, and each year thereafter for five years, consistent with this article, the administrator shall submit for appropriation, through the Governor's budget, an amount up to one million three hundred thousand dollars (\$1,300,000), of the interest earned on the funds deposited into the Oil Spill Response Trust Fund, for the purpose of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5 and for support of technology development and research related to oiled wildlife care. Through the budget process, the Legislature shall review and approve the appropriation. The remaining interest shall be deposited into the Oil Spill Prevention and Administration Fund, pursuant to paragraph (1).

(B) The administrator shall report to the Legislature not later than June 30, 2002, on the progress and effectiveness of the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5, and the adequacy of the Oil Spill Response Trust Fund to meet the purposes for which it was established.

(C) Subparagraph (A) shall remain in effect only until June 30, 2003, and as of that date shall become inoperative and all of the interest earned on the funds deposited into the Oil Spill Response Trust Fund shall then be deposited into the Oil Spill Prevention and Administration Fund created pursuant to Article 6 (commencing with Section 8670.38), unless an earlier enacted statute, which is chaptered on or before June 30, 2003, otherwise provides for the disposition of the interest.

(D) At the administrator's request, the funds made available pursuant to this paragraph may be directly appropriated to a suitable program for wildlife health and rehabilitation within a school of veterinary medicine within this state, provided that an agreement exists, consistent with this chapter, between the administrator and an appropriate representative of the program for carrying out this



purpose. The administrator shall attempt to have such an agreement in place at all times. The agreement shall ensure that the training of, and the care provided by, the program staff are at levels that are consistent with those standards generally accepted within the veterinary profession.

(E) The funds made available pursuant to this paragraph shall not be considered an offset to any other state funds appropriated to the program, the program's associated school of veterinary medicine, or the program's associated college or university, and the funds shall not be used for any other purpose. If an offset does occur or the funds are used for an unintended purpose, expenditure of any appropriation of funds pursuant to this paragraph may be terminated by the administrator and the administrator may request a reappropriation to accomplish the intended purpose. The administrator shall annually review and approve the proposed uses of any funds made available pursuant to this paragraph.

(m) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the moneys in the fund shall be used solely for the purposes specified in subdivision (k).

(n) For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(o) It is the intent of the Legislature, in enacting this section, that the fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer.

(p) The Treasurer shall purchase fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000), adjusted for inflation as specified in paragraph (3) of subdivision (h), of financial security which may be drawn upon immediately by the administrator upon making the determinations as required by Section 8670.49. The financial security shall be in a form as described in subdivision (a) of Section 8670.53.3.

(q) Nothing in this section limits the authority of the administrator to raise the oil spill response fees pursuant to Section 8670.48.5 of the Government Code.

SEC. 6. Section 8670.49 of the Government Code is amended to read:

8670.49. (a) Except to pay for the arrangement of the financial security as authorized by paragraph (5) of subdivision (k) and subdivision (p) of Section 8670.48, to pay for the construction, equipping, operation, and maintenance of rescue and rehabilitation facilities, and technology development for oiled wildlife care from interest earned on funds deposited in the fund as authorized by



subdivision (l) of Section 8670.48, and to pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations pursuant to subdivision (f) of Section 8670.37.5, the administrator may only expend money from the fund if a discharge of oil into marine waters has occurred and the following determinations have been made:

(1) Except as authorized by Section 8670.51.1, a responsible party does not exist or the responsible party is unable or unwilling to provide adequate and timely cleanup and to pay for the damages resulting from the spill. The administrator shall make a reasonable effort to have the party responsible remove the oil or agree to pay for any actions resulting from the spill that may be required by law, provided that the efforts are not detrimental to fish, plant, animal, or bird life in the affected waters. The reasonable effort of the administrator shall include attempting to access the responsible parties' insurance or other proof of financial responsibility.

(2) Federal oil spill funds are not available or will not be available in an adequate period of time. Notwithstanding this subdivision, the administrator may expend money from the fund for authorized expenditures when a reimbursement procedure is in place to receive reimbursements from federal oil spill funds.

(b) Upon making the determinations specified in subdivision (a), the administrator shall immediately make whatever payments are necessary for responding to, containing, or cleaning up, the spill, including any wildlife rehabilitation required by law and payment of claims pursuant to Sections 8670.51 and 8670.51.1.

SEC. 7. Section 8670.62 of the Government Code is amended to read:

8670.62. (a) Any person who discharges oil into marine waters, upon order of the administrator, shall do all of the following:

(1) Clean up the oil.

(2) Abate the effects of the discharge.

(3) In the case of a threatened discharge, take other necessary remedial action.

(b) Upon failure of any person to comply with a cleanup or abatement order, the Attorney General or a district attorney, at the request of the administrator, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(c) Consistent with the state contingency plan, the administrator may expend available money to perform any response; containment; cleanup; wildlife rehabilitation, which includes assessment of resource injuries and damages, or remedial work required pursuant to subdivision (a) which, in the administrator's judgment, is required



by the circumstances or the urgency of prompt action required to prevent pollution, nuisance, or injury to the environment of the state. The action may be taken in default of, or in addition to, remedial work by the responsible party or other persons, and regardless of whether injunctive relief is sought. The administrator may perform the work in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the administrator may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work. The contracts shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(d) If the discharge is cleaned up, or attempted to be cleaned up, the effects thereof abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharged the oil, or threatened to cause or permit the discharge of the oil within the meaning of subdivision (a), shall be liable to that governmental agency for the reasonable costs actually incurred in cleaning up that waste, abating the effects thereof, or taking other remedial action. The amount of the costs shall be recoverable in a civil action by, and paid to, the applicable governmental agency and the administrator, to the extent the administrator contributed to the cleanup costs from the Oil Spill Response Trust Fund or other available funds.

(e) If, despite reasonable effort by the administrator to identify the party responsible for the discharge of oil or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work must be performed, the administrator shall not be required to issue an order under this section. The absence of a responsible party shall not in any way limit the powers of the administrator under this section.

(f) "Threaten," for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

SEC. 8. Section 46012 of the Revenue and Taxation Code is amended to read:

46012. "Designated amount" means an amount equal to one hundred nine million seven hundred fifty thousand dollars (\$109,750,000), subject to the following:



(a) Fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000) shall be retained in the Oil Spill Response Trust Fund as cash.

(b) Fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000), shall be accessible in the Oil Spill Response Trust Fund in the form of financial security obtained by the Treasurer.

(c) Commencing June 30, 2003, the amounts designated in this section shall be adjusted for inflation as specified in paragraph (3) of subdivision (h) of Section 8670.48 of the Government Code.

SEC. 9. The Legislature hereby finds and declares that this act does not cause any net increase in costs because there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

SEC. 10. Section 1.5 of this bill incorporates amendments to Section 8670.3 of the Government Code proposed by both this bill and SB 1083. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 8670.3 of the Government Code, and (3) this bill is enacted after SB 1083, in which case Section 1 of this bill shall not become operative.

