

ASSEMBLY BILL

No. 680

Introduced by Assembly Member Lempert

February 23, 1999

An act to amend Sections 8670.3, 8670.64, 8670.66, 8670.67, and 8670.70 of, and to add Sections 8670.2.5, 8670.67.3, and 8670.75 to the Government Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

AB 680, as introduced, Lempert. Oil spill prevention: nonmarine waters.

(1) The existing Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, among other things, governs the prevention of oil spills into marine waters, as defined.

This bill would define the term "waters of the state" for purposes of the act, and would, for purposes of spills or discharges of oil into nonmarine waters of the state, limit the definition of the term "person" under the act.

(2) Under the act, it is a crime to, among other things, knowingly engage in or cause the spill or discharge of at least one barrel (42 gallons) of oil into marine waters, and the intentional or negligent spill or discharge of that quantity of oil into marine waters is also subject to specified civil penalties, as prescribed.

This bill would make such a spill or discharge of oil into nonmarine waters of the state on or after January 1, 2000, subject to those criminal and civil penalties. The bill would therefore impose a state-mandated local program by creating a new crime.

The bill would require specified factors to be considered in determining the amount of criminal or civil penalties to be imposed for such a spill or discharge. The bill would require all penalties collected that are derived from those spills or discharges to be deposited in the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund. The bill would make conforming changes and prescribe related matters.

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

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

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

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

1 SECTION 1. It is the intent of the Legislature that this
2 act does not apply to spills or discharges of oil or
3 petroleum products by agricultural operations into
4 waters of the state, other than marine waters.

5 SEC. 2. Section 8670.2.5 is added to the Government
6 Code, to read:

7 8670.2.5. The Legislature further finds and declares as
8 follows:

9 (a) Each year, billions of gallons of crude oil and
10 petroleum productions are stored or transported by
11 pipeline or other means across and adjacent to the waters
12 of the state.

13 (b) Recent discharges in California and other parts of
14 the nation have shown that the discharge of oil can be a
15 significant threat to the environment.

16 (c) Although spill prevention programs may reduce
17 the risk of a significant discharge of petroleum into the
18 nonmarine waters of the state, fines and penalties
19 associated with those spills or discharges are insufficient
20 when compared to similar spills or discharges into the
21 marine waters of the state.



1 (d) Penalties resulting from spills or discharges into
2 the nonmarine waters of the state occurring from
3 pipelines under the jurisdiction of the Office of the State
4 Fire Marshal or the United States Department of
5 Transportation; from oil production wells, whether
6 active, inactive, or abandoned, and the gathering lines,
7 pipelines, and flow lines associated therewith, under the
8 jurisdiction of the Department of Conservation; from
9 refineries; and from spills or discharges resulting from the
10 transport of oil or petroleum products by rail or vessel
11 should be comparable to those imposed for the spill or
12 discharge of oil or petroleum products into the marine
13 waters of the state.

14 SEC. 3. Section 8670.3 of the Government Code is
15 amended to read:

16 8670.3. Unless the context requires otherwise, the
17 following definitions shall govern the construction of this
18 chapter:

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

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

25 (c) (1) "Best achievable protection" means that the
26 highest level of protection ~~which~~ *that* can be achieved
27 through both the use of the best achievable technology
28 and those manpower levels, training procedures, and
29 operational methods ~~which~~ *that* provide the greatest
30 degree of protection achievable. The administrator's
31 determination of best achievable protection shall be
32 guided by the critical need to protect valuable coastal
33 resources and marine waters, while also considering (1)
34 (A) the protection provided by the measures, (2) (B) the
35 technological achievability of the measures, and (3) (C)
36 the cost of the measures.

37 (2) It is not the intent of the Legislature that the
38 administrator use a cost-benefit or cost-effectiveness
39 analysis or any particular method of analysis in
40 determining which measures to require. Instead, it is the



1 intent of the Legislature that the administrator give
2 reasonable consideration to the protection provided by
3 the measures, the technological achievability of the
4 measures, and the cost of the measures when establishing
5 the requirements to provide the best achievable
6 protection for coastal and marine resources.

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

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

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

38 (g) “Marine terminal” means any marine facility used
39 for transferring oil to or from tankers or barges. For the
40 purposes of this section, a marine terminal includes all



1 piping not integrally connected to a tank facility as
2 defined in subdivision ~~(k)~~ (l) of Section 25270.2 of the
3 Health and Safety Code.

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

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

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

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

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

31 (m) “Onshore facility” means any facility of any kind
32 ~~which~~ *that* is located entirely on lands not covered by
33 marine waters.

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

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



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

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

12 (D) An entity of the state or local government ~~which~~
13 *that* acquired ownership or control of a vessel or marine
14 facility, when the entity of the state or local government
15 has caused or contributed to a spill or discharge of oil into
16 marine waters.

17 (2) “Owner” or “operator” does not include a person
18 who, without participating in the management of a vessel
19 or marine facility, holds indicia of ownership primarily to
20 protect ~~his or her~~ *the person’s* security interest in the
21 vessel or marine facility.

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

26 (o) “Person” means any individual, trust, firm, joint
27 stock company, or corporation, including, but not limited
28 to, a government corporation, partnership, and
29 association. “Person” also includes any city, county, city
30 and county, district, and the state or any department or
31 agency thereof, and the federal government, or any
32 department or agency thereof, to the extent permitted by
33 law. *For the purposes of spills or discharges of oil or*
34 *petroleum products into the waters of the state, other*
35 *than marine waters, “person” is limited to an owner or*
36 *operator of any of the following:*

37 (1) *A pipeline under the jurisdiction of the Office of*
38 *the State Fire Marshal, as described in Chapter 5.5*
39 *(commencing with Section 51010) of Division 1 of Title*
40 *5, or the United States Department of Transportation.*



1 (2) *Oil field production facilities, whether active,*
2 *inactive, or abandoned, and the gathering lines,*
3 *pipelines, and flow lines associated therewith, under the*
4 *jurisdiction of the Division of Oil, Gas, and Geothermal*
5 *Resources of the Department of Conservation.*

6 (3) *A railroad.*

7 (4) *A refinery.*

8 (5) *A vessel to be used, or designed to be used, for the*
9 *commercial transport of oil or petroleum products.*

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

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

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

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

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

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

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

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

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

34 (1) A mobile transfer unit.

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



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

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

6 (C) Had an annual throughput volume of
 7 over-the-water transfers of oil that did not exceed
 8 3,000,000 gallons during the most recent preceding
 9 12-month period.

10 (u) “Spill” or “discharge” means any release of at least
 11 one barrel (42 gallons) of oil into marine waters ~~which~~ *or*
 12 *into waters of the state other than marine waters that is*
 13 not authorized by any federal, state, or local government
 14 entity.

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

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

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

24 (y) “Vessel” means a ~~tanker or barge as defined in this~~
 25 ~~section~~ *barge, as defined in subdivision (b), or a tanker,*
 26 *as defined in subdivision (x).*

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

30 (aa) “Waters of the state” means any water, surface or
 31 underground, including saline waters, within the
 32 boundaries of the state.

33 SEC. 4. Section 8670.64 of the Government Code is
 34 amended to read:

35 8670.64. (a) Any person who commits any of the
 36 following acts, shall, upon conviction, be punished by
 37 imprisonment in the county jail for not more than one
 38 year or by imprisonment in the state prison:



1 (1) Except as provided in Section 8670.27, knowingly
2 fails to follow the direction or orders of the administrator
3 in connection with an oil spill.

4 (2) Knowingly fails to notify the Coast Guard that a
5 vessel is disabled within one hour of the disability and the
6 vessel, while disabled, causes a discharge of oil which
7 enters marine waters. For the purposes of this paragraph,
8 “vessel” means a vessel, as defined in Section 21 of the
9 Harbors and Navigation Code, of 300 gross registered tons
10 or more.

11 (3) Knowingly engages in or causes the discharge or
12 spill of oil into marine waters, *or into waters of the state*
13 *other than marine waters*, or any person who reasonably
14 should have known that ~~he or she~~ *the person* was
15 engaging in or causing the discharge or spill of oil into
16 marine waters, *or into waters of the state other than*
17 *marine waters*, unless the discharge is authorized by the
18 United States, the state, or another agency with
19 appropriate jurisdiction.

20 (4) Knowingly fails to begin cleanup, abatement, or
21 removal of spilled oil as required ~~in~~ *by* Section 8670.25.

22 (b) The court shall also impose upon a person
23 convicted of violating subdivision (a), a fine of not less
24 than five thousand dollars (\$5,000) or more than five
25 hundred thousand dollars (\$500,000) for each violation.
26 For purposes of this subdivision, each day or partial day
27 that a violation occurs is a separate violation.

28 (c) (1) Any person who knowingly does any of the
29 acts specified in paragraph (2) shall, upon conviction, be
30 punished by a fine of not less than two thousand five
31 hundred dollars (\$2,500) or more than two hundred fifty
32 thousand dollars (\$250,000), or by imprisonment in the
33 county jail for not more than one year, or by both the fine
34 and imprisonment. Each day or partial day that a
35 violation occurs is a separate violation. If the conviction
36 is for a second or subsequent violation of this subdivision,
37 the person shall be punished by imprisonment in the state
38 prison or in the county jail for not more than one year, or
39 by a fine of not less than five thousand dollars (\$5,000) or



1 more than five hundred thousand dollars (\$500,000), or
2 by both the fine and imprisonment:

3 (2) The acts subject to this subdivision are all of the
4 following:

5 (A) Fails to notify the Office of Emergency Services in
6 violation of Section ~~8670.25~~ 8670.25.5.

7 (B) Continues operations for which contingency plans
8 are required without a contingency plan approved
9 pursuant to Article 5 (commencing with Section 8670.28).

10 (C) Except as provided in Section 8670.27, knowingly
11 fails to follow the material provisions of the applicable
12 contingency plans.

13 SEC. 5. Section 8670.66 of the Government Code is
14 amended to read:

15 8670.66. (a) Any person who intentionally or
16 negligently does any of the following acts shall be subject
17 to a civil penalty of not less than twenty-five thousand
18 dollars (\$25,000) or more than five hundred thousand
19 dollars (\$500,000) for each violation, and each day or
20 partial day that a violation occurs is a separate violation:

21 (1) Except as provided in Section 8670.27, fails to
22 follow the direction or orders of the administrator in
23 connection with an oil spill.

24 (2) Fails to notify the Coast Guard that a vessel is
25 disabled within one hour of the disability and the vessel,
26 while disabled, causes a discharge of oil which enters
27 marine waters. For the purposes of this paragraph,
28 “vessel” means a vessel, as defined in Section 21 of the
29 Harbors and Navigation Code, of 300 gross registered tons
30 or more.

31 (3) Discharges or spills oil into marine waters, *or into*
32 *waters of the state other than marine waters*, unless the
33 discharge is authorized by the United States, the state, or
34 other agency with appropriate jurisdiction.

35 (4) Fails to begin cleanup, abatement, or removal of
36 spilled oil as required in Section 8670.25.

37 (b) Except as provided in subdivision (a), any person
38 who intentionally or negligently violates any provision of
39 this chapter, or Division 7.8 (commencing with Section
40 8750) of the Public Resources Code, or any permit, rule,



1 regulation, standard, or requirement issued or adopted
2 pursuant to those provisions, shall be liable for a civil
3 penalty not to exceed two hundred fifty thousand dollars
4 (\$250,000) for each violation of a separate provision, or,
5 for continuing violations, for each day that violation
6 continues.

7 (c) No person shall be liable for a civil penalty imposed
8 under this section and for a civil penalty imposed
9 pursuant to Section 8670.67 for the same act or failure to
10 act.

11 SEC. 6. Section 8670.67 of the Government Code is
12 amended to read:

13 8670.67. (a) Any person who intentionally or
14 negligently does any of the following acts shall be subject
15 to an administrative civil penalty not to exceed one
16 hundred thousand dollars (\$100,000) for each violation as
17 imposed by the administrator pursuant to Section 8670.68,
18 and each day or partial day that a violation occurs is a
19 separate violation:

20 (1) Except as provided in Section 8670.27, fails to
21 follow the applicable contingency plans or the direction
22 or orders of the administrator in connection with an oil
23 spill.

24 (2) Fails to notify the Coast Guard that a vessel is
25 disabled within one hour of the disability and the vessel,
26 while disabled, causes a discharge of oil which enters
27 marine waters. For the purposes of this paragraph,
28 “vessel” means a vessel, as defined in Section 21 of the
29 Harbors and Navigation Code, of 300 gross registered tons
30 or more.

31 (3) Discharges or spills oil into marine waters, *or into*
32 *waters of the state other than marine waters*, unless the
33 discharge is authorized by the United States, the state, or
34 other agency with appropriate jurisdiction.

35 (4) Fails to begin cleanup, abatement, or removal of
36 spilled oil as required by Section 8670.25.

37 (b) Except as provided in subdivision (a), any person
38 who intentionally or negligently violates any provision of
39 this chapter, or Division 7.8 (commencing with Section
40 8750) of the Public Resources Code, or any permit, rule,



1 regulation, standard, cease and desist order, or
2 requirement issued or adopted pursuant to those
3 provisions, shall be liable for an administrative civil
4 penalty as imposed by the administrator pursuant to
5 Section 8670.68, not to exceed one hundred thousand
6 dollars (\$100,000) for each violation of a separate
7 provision, or, for continuing violations, for each day that
8 violation continues.

9 (c) No person shall be liable for a civil penalty imposed
10 under this section and for a civil penalty imposed
11 pursuant to Section 8670.66 for the same act or failure to
12 act.

13 SEC. 7. Section 8670.67.3 is added to the Government
14 Code, to read:

15 8670.67.3. In determining the amount of criminal
16 penalties to impose under paragraph (3) of subdivision
17 (a) of Section 8670.64 and the amount of civil penalties to
18 impose under paragraph (3) of subdivision (a) of Section
19 8670.66 or paragraph (3) of subdivision (a) of Section
20 8670.67 for causing the discharge or spill of oil into waters
21 of the state other than marine waters, the court or
22 administrative body, as the case may be, shall consider the
23 amount of oil that has entered the nonmarine waters of
24 the state, any efforts made by the defendant to mitigate
25 the effects of the discharge or spill, and the ability of the
26 defendant to pay the penalty.

27 SEC. 8. Section 8670.70 of the Government Code is
28 amended to read:

29 8670.70. The Environmental Enhancement Fund is
30 hereby created in the State Treasury. All penalties
31 collected under Article 9 (commencing with Section
32 8670.57) shall be deposited ~~into~~ in the Environmental
33 Enhancement Fund, except as specified in ~~Section~~
34 *Sections 8670.64 and 8670.75*. The money in the fund shall
35 only be used for environmental enhancement projects:
36 ~~The moneys and~~ shall not be used for the cleanup of an
37 oil spill or the restoration required after an oil spill. The
38 money is ~~available for appropriation by the Legislature in~~
39 ~~the fund shall be available~~ to the administrator for ~~the~~
40 ~~purposes stated in this section~~ *environmental*



1 *enhancement projects, upon appropriation therefor by*
2 *the Legislature.*

3 SEC. 9. Section 8670.75 is added to the Government
4 Code, to read:

5 8670.75. All penalties collected under Article 9
6 (commencing with Section 8670.57) that are derived
7 from spills or discharges into the waters of the state other
8 than marine waters shall be deposited in the Fish and
9 Wildlife Pollution Account in the Fish and Game
10 Preservation Fund and expended in accordance with
11 Section 12017 of the Fish and Game Code.

12 SEC. 10. The changes in the
13 Lempert-Keene-Seastrand Oil Spill Prevention and
14 Response Act, Chapter 7.4 (commencing with Section
15 8670.1) of Division 1 of Title 2 of the Government Code,
16 by this act shall apply to violations of Sections 8670.64,
17 8670.66, and 8670.67 of the Government Code that occur
18 on or after January 1, 2000.

19 SEC. 11. No reimbursement is required by this act
20 pursuant to Section 6 of Article XIII B of the California
21 Constitution because the only costs that may be incurred
22 by a local agency or school district will be incurred
23 because this act creates a new crime or infraction,
24 eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section
26 17556 of the Government Code, or changes the definition
27 of a crime within the meaning of Section 6 of Article
28 XIII B of the California Constitution.

