

AMENDED IN SENATE AUGUST 23, 1999
AMENDED IN SENATE JULY 7, 1999
AMENDED IN ASSEMBLY JUNE 2, 1999
AMENDED IN ASSEMBLY MAY 13, 1999
AMENDED IN ASSEMBLY APRIL 27, 1999
AMENDED IN ASSEMBLY APRIL 20, 1999
AMENDED IN ASSEMBLY APRIL 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 680

Introduced by Assembly Member Lempert

February 23, 1999

An act to amend Section 12017 of the Fish and Game Code, and to amend Sections 8670.3, 8670.64, ~~8670.4.5~~, 8670.66, 8670.67, and 8670.70 of, and to add Sections 8670.2.5, 8670.4.5, 8670.67.3, and 8670.75 to, the Government Code, relating to oil spills, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 680, as amended, 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, for purposes of spills or discharges of oil into nonmarine waters of the state, the bill would limit the definition of the term “person” under the act. The bill would specify that the act does not apply to a discharge or spill of oil to *groundwater or dry* land, unless a specified amount of the oil enters the surface water.

(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. Existing law imposes civil and administrative penalties upon persons who fail to comply with specified plans, orders, or notification requirements with regard to discharges or spills.

Under existing law, the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund is continuously appropriated to the Department of Fish and Game for specified restoration purposes relating to pollution abatement, and resource restoration and preservation.

This bill would make such a spill or discharge of oil into nonmarine waters of the state on or after January 1, 2000, or noncompliance with those plans, orders, or notification requirements after that date, subject to specified criminal, civil, and administrative 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, civil, or administrative 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 an appropriation by providing for the deposit of those penalties into a continuously appropriated account. 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: yes. 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. 1.5. Section 12017 of the Fish and Game Code is
6 amended to read:

7 12017. (a) Notwithstanding Section 13001, any
8 recovery or settlement of money received pursuant to
9 the following sections shall be deposited in the Fish and
10 Wildlife Pollution Account:

11 (1) Section 2014.

12 (2) Article 1 (commencing with Section 5650) of
13 Chapter 2 of Part 1 of Division 6.

14 (3) Section 12015 or 12016.

15 (4) Chapter 4 (commencing with Section 151) of
16 Division 1.5 of the Harbors and Navigation Code.

17 (5) Section 13442 of the Water Code.

18 (6) Proceeds or recoveries from pollution and
19 abatement actions.

20 (7) Section 8670.75 of the Government Code.

21 (b) Moneys in the account are continuously
22 appropriated to the department, except as provided in
23 Section 13230.

24 (c) Funds in the account shall be expended for the
25 following purposes:

26 (1) Abatement, cleanup, and removal of pollutants
27 from the environment.

28 (2) Response coordination, planning, and program
29 management.

30 (3) Resource injury determination.

31 (4) Resource damage assessment.



1 (5) Economic valuation of resources.

2 (6) Restoration or rehabilitation at sites damaged by
3 pollution.

4 (d) Notwithstanding subdivision (c), funds in the
5 account in excess of one million dollars (\$1,000,000) as of
6 July 1 of each year may also be expended for the
7 preservation of California plants, wildlife, and fisheries.

8 (e) Funds in the account may be expended for
9 cleanup and abatement if a reasonable effort has been
10 made to have the responsible party pay cleanup and
11 abatement costs and funds are not available for
12 disbursement from the emergency reserve account of the
13 Hazardous Waste Control Account in the General Fund
14 pursuant to Section 25354 of the Health and Safety Code.

15 (f) The department may use funds in the account to
16 pay the costs of consultant contracts for resource injury
17 determination or damage assessment during hazardous
18 material or oil spill emergencies. These contracts are not
19 subject to Part 2 (commencing with Section 10100) of
20 Division 2 of the Public Contract Code.

21 SEC. 2. Section 8670.2.5 is added to the Government
22 Code, to read:

23 8670.2.5. The Legislature further finds and declares as
24 follows:

25 (a) Each year, billions of gallons of crude oil and
26 petroleum products are stored or transported by pipeline
27 or other means across and adjacent to the waters of the
28 state.

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

32 (c) Although spill prevention programs may reduce
33 the risk of a significant discharge of petroleum into the
34 nonmarine waters of the state, fines and penalties
35 associated with those spills or discharges are insufficient
36 when compared to similar spills or discharges into the
37 marine waters of the state.

38 (d) Penalties resulting from spills or discharges into
39 the nonmarine waters of the state occurring from
40 pipelines under the jurisdiction of the Office of the State



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

11 SEC. 3. Section 8670.3 of the Government Code is
12 amended to read:

13 8670.3. Unless the context requires otherwise, the
14 following definitions shall govern the construction of this
15 chapter:

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

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

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

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



1 the requirements to provide the best achievable
2 protection for coastal and marine resources.

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

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

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

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

39 (h) “Marine waters” means those waters subject to
40 tidal influence, except for waters in the Sacramento-San



1 Joaquin Delta upstream from a line running north and
2 south through the point where Contra Costa,
3 Sacramento, and Solano Counties meet.

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

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

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

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

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

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

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

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

37 (C) Except as provided in subparagraph (D), in the
38 case of any vessel or marine facility, title or control of
39 which was conveyed due to bankruptcy, foreclosure, tax
40 delinquency, abandonment, or similar means to an entity



1 of state or local government, any person who owned, held
2 an ownership interest in, operated, or otherwise
3 controlled activities concerning the vessel or facility
4 immediately beforehand.

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

10 (2) “Owner” or “operator” does not include a person
11 who, without participating in the management of a vessel
12 or marine facility, holds indicia of ownership primarily to
13 protect the person’s security interest in the vessel or
14 marine facility.

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

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

30 (1) A pipeline under the jurisdiction of the Office of
31 the State Fire Marshal, as described in Chapter 5.5
32 (commencing with Section 51010) of Division 1 of Title
33 5, or the United States Department of Transportation, but
34 does not include a pipeline used exclusively for the
35 gathering, transmission, or distribution of natural gas.

36 (2) Oil field production facilities, whether active,
37 inactive, or abandoned, and the gathering lines,
38 pipelines, and flow lines associated therewith, under the
39 jurisdiction of the Division of Oil, Gas, and Geothermal
40 Resources of the Department of Conservation.



1 (3) A railroad.

2 (4) A refinery.

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

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

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

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

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

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

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

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

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

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

28 (1) A mobile transfer unit.

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

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

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

38 (C) Had an annual throughput volume of
39 over-the-water transfers of oil that did not exceed



1 3,000,000 gallons during the most recent preceding
2 12-month period.

3 (u) “Spill” or “discharge” means any release of at least
4 one barrel (42 gallons) of oil into marine waters or into
5 waters of the state other than marine waters that is not
6 authorized by any federal, state, or local government
7 entity.

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

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

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

17 (y) “Vessel” means a barge, as defined in subdivision
18 (b), or a tanker, as defined in subdivision (x).

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

22 (aa) “Waters of the state” ~~shall have the same meaning~~
23 ~~as set forth in subdivision (e) of Section 13050 of the~~
24 ~~Water Code, except for the purposes of this chapter,~~
25 ~~“waters of the state” does not include groundwater.~~
26 *means any water, surface or underground, including*
27 *saline waters, within the boundaries of the state.*

28 SEC. 4. Section 8670.4.5 is added to the Government
29 Code, to read:

30 8670.4.5. (a) With respect to discharges or spills of oil
31 into the waters of the state other than marine waters, this
32 chapter does not apply to a discharge or spill of oil to
33 *groundwater or dry land*, including, but not limited to,
34 dry arroyos, unless at least 42 gallons of oil enters the
35 surface water, including, but not limited to, a lake, river,
36 bay, stream, wetland, canal, basin, or other waterway.

37 (b) *The limitation specified in subdivision (a) shall*
38 *apply to this chapter only and shall have no effect upon*
39 *any other law.*



1 (c) Any term, definition, or limitation contained in
2 subdivision (a) shall not be construed to affect a term,
3 definition, or limitation in any other law.

4 SEC. 5. Section 8670.64 of the Government Code is
5 amended to read:

6 8670.64. (a) Any person who commits any of the
7 following acts, shall, upon conviction, be punished by
8 imprisonment in the county jail for not more than one
9 year or by imprisonment in the state prison:

10 (1) Except as provided in Section 8670.27, knowingly
11 fails to follow the directions or orders of the administrator
12 in connection with an oil spill.

13 (2) Knowingly fails to notify the Coast Guard that a
14 vessel is disabled within one hour of the disability and the
15 vessel, while disabled, causes a discharge of oil which
16 enters marine waters. For the purposes of this paragraph,
17 “vessel” means a vessel, as defined in Section 21 of the
18 Harbors and Navigation Code, of 300 gross registered tons
19 or more.

20 (3) Knowingly engages in or causes the discharge or
21 spill of oil into marine waters or any person who
22 reasonably should have known that the person was
23 engaging in or causing the discharge or spill of oil into
24 marine waters unless the discharge is authorized by the
25 United States, the state, or another agency with
26 appropriate jurisdiction.

27 (4) Knowingly fails to begin cleanup, abatement, or
28 removal of spilled oil as required by Section 8670.25.

29 (5) Knowingly, intentionally, or with gross negligence
30 engages in, or causes, the discharge or spill of oil into the
31 waters of the state other than marine waters, unless the
32 discharge is authorized by the United States, the state, or
33 another agency with appropriate jurisdiction.

34 (b) Any person who negligently engages in or causes
35 the discharge of oil into the waters of the state other than
36 marine waters, unless the discharge is authorized by the
37 United States, the state, or another agency with
38 appropriate jurisdiction, is guilty of a misdemeanor
39 punishable by imprisonment in *the* county jail for not
40 more than one year.



1 (c) The court shall also impose upon a person
2 convicted of violating paragraph (1), (2), (3), or (4) of
3 subdivision (a), a fine of not less than five thousand
4 dollars (\$5,000) or more than five hundred thousand
5 dollars (\$500,000) for each violation. For purposes of this
6 subdivision, each day or partial day that a violation occurs
7 is a separate violation.

8 (d) (1) The court shall also impose upon a person
9 convicted of violating paragraph (5) of subdivision (a) or
10 of violating subdivision (b), a fine in the amounts set forth
11 below for each violation:

12 (A) For a discharge or spill of 42 or more, but less than
13 210, gallons of oil into the surface water as described in
14 Section 8670.4.5, the fine shall not exceed twenty-five
15 thousand dollars (\$25,000).

16 (B) For a discharge or spill of 210 or more, but less than
17 5,000, gallons of oil into the surface water as described in
18 Section 8670.4.5, the fine shall be not less than five
19 thousand dollars (\$5,000) and not more than twenty-five
20 thousand dollars (\$25,000). The fine imposed pursuant to
21 this subparagraph may be in addition to any civil
22 administrative penalty imposed pursuant to Section
23 8670.67, but the total amount of the fine and the civil
24 administrative penalty imposed shall not exceed fifty
25 thousand dollars (\$50,000).

26 (C) For a discharge or spill of 5,000 or more, but less
27 than 10,000, gallons of oil into the surface water as
28 described in Section 8670.4.5, the fine shall be not less
29 than five thousand dollars (\$5,000) and not more than one
30 hundred seventy-five thousand dollars (\$175,000).

31 (D) For a discharge or spill of 10,000 or more, but less
32 than 15,000, gallons of oil into the surface water as
33 described in Section 8670.4.5, the fine shall be not less
34 than five thousand dollars (\$5,000) and not more than two
35 hundred fifty thousand dollars (\$250,000).

36 (E) For a discharge or spill of 15,000 gallons or more of
37 oil into the surface water as described in Section 8670.4.5,
38 the fine shall not be less than five thousand dollars
39 (\$5,000) and not more than three hundred fifty thousand
40 dollars (\$350,000).



1 (2) Each day or partial day that a violation occurs is a
2 separate violation.

3 (3) This subdivision applies only to oil discharges or
4 spills into waters of the state other than marine waters.

5 (4) Except as specified in subparagraph (B) of
6 paragraph (1), the maximum fine amounts specified in
7 paragraph (1) shall also be the maximum aggregate
8 amount that may be imposed for the fine imposed under
9 this section, the civil penalty imposed pursuant to Section
10 8670.66 and the civil administrative penalty imposed
11 pursuant to Section 8670.67.

12 (e) (1) Any person who knowingly does any of the
13 acts specified in paragraph (2) shall, upon conviction, be
14 punished by a fine of not less than two thousand five
15 hundred dollars (\$2,500) or more than two hundred fifty
16 thousand dollars (\$250,000), or by imprisonment in the
17 county jail for not more than one year, or by both the fine
18 and imprisonment. Each day or partial day that a
19 violation occurs is a separate violation. If the conviction
20 is for a second or subsequent violation of this subdivision,
21 the person shall be punished by imprisonment in the state
22 prison or in the county jail for not more than one year, or
23 by a fine of not less than five thousand dollars (\$5,000) or
24 more than five hundred thousand dollars (\$500,000), or
25 by both the fine and imprisonment:

26 (2) The acts subject to this subdivision are all of the
27 following:

28 (A) Fails to notify the Office of Emergency Services in
29 violation of Section 8670.25.5.

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

33 (C) Except as provided in Section 8670.27, knowingly
34 fails to follow the material provisions of the applicable
35 contingency plans.

36 SEC. 6. Section 8670.66 of the Government Code is
37 amended to read:

38 8670.66. (a) Any person who intentionally or
39 negligently does any of the following acts shall be subject
40 to a civil penalty of not less than twenty-five thousand



1 dollars (\$25,000) or more than five hundred thousand
2 dollars (\$500,000) for each violation, and each day or
3 partial day that a violation occurs is a separate violation:

4 (1) Except as provided in Section 8670.27, fails to
5 follow the directions or orders of the administrator in
6 connection with an oil spill.

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

14 (3) Discharges or spills oil into marine waters, or into
15 waters of the state other than marine waters, unless the
16 discharge is authorized by the United States, the state, or
17 other agency with appropriate jurisdiction.

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

20 (b) Except as provided in subdivision (a), any person
21 who intentionally or negligently violates any provision of
22 this chapter, or Division 7.8 (commencing with Section
23 8750) of the Public Resources Code, or any permit, rule,
24 regulation, standard, or requirement issued or adopted
25 pursuant to those provisions, shall be liable for a civil
26 penalty not to exceed two hundred fifty thousand dollars
27 (\$250,000) for each violation of a separate provision, or,
28 for continuing violations, for each day that violation
29 continues.

30 (c) If the act involves the discharge or spill of oil into
31 the waters of the state other than marine waters as
32 prohibited by paragraph (3) of subdivision (a), the
33 maximum civil penalty that may be imposed pursuant to
34 this section shall not exceed the amount set forth as a
35 maximum fine for corresponding conduct in subdivision
36 (d) of Section 8670.64.

37 (d) No person shall be liable for a civil penalty imposed
38 under this section and for a civil penalty imposed
39 pursuant to Section 8670.67 for the same act or failure to
40 act.



1 SEC. 7. Section 8670.67 of the Government Code is
2 amended to read:

3 8670.67. (a) Except as set forth in subdivisions (c)
4 and (d), any person who intentionally or negligently does
5 any of the following acts shall be subject to an
6 administrative civil penalty not to exceed one hundred
7 thousand dollars (\$100,000) for each violation as imposed
8 by the administrator pursuant to Section 8670.68, and
9 each day or partial day that a violation occurs is a separate
10 violation:

11 (1) Except as provided in Section 8670.27, fails to
12 follow the applicable contingency plans or the direction
13 or orders of the administrator in connection with an oil
14 spill.

15 (2) Fails to notify the Coast Guard that a vessel is
16 disabled within one hour of the disability and the vessel,
17 while disabled, causes a discharge of oil which enters
18 marine waters. For the purposes of this paragraph,
19 “vessel” means a vessel, as defined in Section 21 of the
20 Harbors and Navigation Code, of 300 gross registered tons
21 or more.

22 (3) Discharges or spills oil into marine waters, or into
23 waters of the state other than marine waters, unless the
24 discharge is authorized by the United States, the state, or
25 other agency with appropriate jurisdiction.

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

28 (b) Except as provided in subdivision (a), any person
29 who intentionally or negligently violates any provision of
30 this chapter, or Division 7.8 (commencing with Section
31 8750) of the Public Resources Code, or any permit, rule,
32 regulation, standard, cease and desist order, or
33 requirement issued or adopted pursuant to those
34 provisions, shall be liable for an administrative civil
35 penalty as imposed by the administrator pursuant to
36 Section 8670.68, not to exceed one hundred thousand
37 dollars (\$100,000) for each violation of a separate
38 provision, or, for continuing violations, for each day that
39 violation continues.



1 (c) If the act involves the discharge or spill of oil into
2 waters of the state other than marine waters as prohibited
3 by paragraph (3) of subdivision (a), the civil
4 administrative penalty for discharges or spills of less
5 than 5,000 gallons shall not exceed twenty-five thousand
6 dollars (\$25,000) for each violation and the civil
7 administrative penalty for such an action regarding a
8 discharge or spill of 5,000 gallons or more of oil into waters
9 of the state other than marine waters shall be one
10 hundred thousand dollars (\$100,000) for each violation.
11 Each day or partial day that a violation occurs is a separate
12 violation.

13 (d) No person shall be liable for a civil penalty imposed
14 under this section and for a civil penalty imposed
15 pursuant to Section 8670.66 for the same act or failure to
16 act.

17 SEC. 8. Section 8670.67.3 is added to the Government
18 Code, to read:

19 8670.67.3. In determining the amount of criminal,
20 civil, or civil administrative penalties to impose, for a
21 discharge or spill into the waters of the state other than
22 marine waters, the court or administrator shall take into
23 consideration all relevant circumstances including, but
24 not limited to, all of the following:

25 (a) The nature, circumstance, extent, and gravity of
26 the violation.

27 (b) The extent of harm caused.

28 (c) The ability of the defendant to pay.

29 (d) Any voluntary cleanup efforts undertaken by the
30 defendant.

31 (e) The degree of culpability of the defendant.

32 (f) Any prior history of spills, discharges, or other
33 violations, by the defendant.

34 (g) The economic benefit, if any, to the defendant
35 from the violation.

36 (h) *Whether or not the defendant has been diligent in*
37 *implementing practices to reduce the possibility of an oil*
38 *spill to the surface water, such as practices designed to*
39 *prevent oil spills by railroads in diesel refueling*



1 *operations and to respond rapidly to spills caused by train*
2 *derailments or other causes.*

3 (i) Any other factors the interests of justice may
4 require.

5 SEC. 9. Section 8670.70 of the Government Code is
6 amended to read:

7 8670.70. The Environmental Enhancement Fund is
8 hereby created in the State Treasury. All penalties
9 collected under Article 9 (commencing with Section
10 8670.57) shall be deposited in the Environmental
11 Enhancement Fund, except as specified in Sections
12 8670.68.5 and 8670.75. The money in the fund shall only be
13 used for environmental enhancement projects and shall
14 not be used for the cleanup of an oil spill or the restoration
15 required after an oil spill. The money in the fund shall be
16 available to the administrator for environmental
17 enhancement projects, upon appropriation therefor by
18 the Legislature.

19 SEC. 10. Section 8670.75 is added to the Government
20 Code, to read:

21 8670.75. (a) All penalties collected under Article 9
22 (commencing with Section 8670.57) that are derived
23 from spills or discharges into the waters of the state other
24 than marine waters shall be deposited in the Fish and
25 Wildlife Pollution Account in the Fish and Game
26 Preservation Fund and expended in accordance with
27 Section 12017 of the Fish and Game Code.

28 (b) With respect to discharges or spills of oil into the
29 waters of the state other than marine waters all of the
30 following conditions shall apply:

31 (1) This chapter shall not be construed to prevent the
32 Attorney General, a district attorney, or city attorney
33 from filing a criminal or civil action for the same violation
34 under any other law that may apply. ~~However, in an~~
35 ~~action filed pursuant to this chapter, a fine or civil penalty~~
36 ~~may not be imposed for the same violation under both this~~
37 ~~act and any other law or combination of laws that may~~
38 ~~apply. If a fine or civil penalty is imposed for the same~~
39 ~~violation in another action pursuant to another law, the~~
40 ~~maximum fine or civil penalty for which the defendant is~~



1 ~~liable under subdivision (d) of Section 8670.64 or~~
2 ~~subdivision (e) of Section 8670.66 shall be reduced by the~~
3 ~~amount of the fine or civil penalty imposed in the other~~
4 ~~action.~~

5 ~~(2) Nothing in this subdivision shall be construed to~~
6 ~~prevent the Attorney General, a district attorney, or a city~~
7 ~~attorney from seeking or obtaining both a fine and civil~~
8 ~~penalty under this chapter and seeking or obtaining any~~
9 ~~other legal or equitable remedies, other than a fine or~~
10 ~~civil penalty, provided by law for the same violation,~~
11 ~~including, but not limited to, injunctive relief, restitution,~~
12 ~~damages, recovery of cleanup costs, environmental~~
13 ~~restoration, or an award of attorney and court costs, if~~
14 ~~applicable.~~

15 ~~(3) This chapter shall also not be construed to prohibit~~
16 ~~the Attorney General, a district attorney, or a city~~
17 ~~attorney from seeking a criminal fine or civil penalty, or~~
18 ~~both, under this chapter and, in addition, seeking any~~
19 ~~other legal or equitable remedy, other than a criminal~~
20 ~~fine or civil penalty, pursuant to any other law for the~~
21 ~~same violation including, but not limited to, injunctive~~
22 ~~relief, restitution, damages, recovery of cleanup costs,~~
23 ~~environmental restoration, or an award of attorney fees~~
24 ~~and court costs, if applicable.~~

25 ~~(2) If, in the same proceeding, the Attorney General,~~
26 ~~a district attorney, or a city attorney seeks a criminal fine~~
27 ~~or civil penalty, or both, under both this chapter and any~~
28 ~~other applicable law, a criminal fine or civil penalty shall~~
29 ~~not be imposed for the same violation under both this~~
30 ~~chapter and that other law. This paragraph does not affect~~
31 ~~the right of the people to seek a criminal fine or civil~~
32 ~~penalty, or both, under this chapter and other legal or~~
33 ~~equitable relief for the same violation, as described in~~
34 ~~paragraph (1).~~

35 ~~(3) If a criminal fine or civil penalty, or both, has been~~
36 ~~imposed for the same violation in another action pursuant~~
37 ~~to another law, the maximum criminal fine or civil~~
38 ~~penalty for which the defendant is liable under~~
39 ~~subdivision (d) of Section 8670.64 or subdivision (c) of~~
40 ~~Section 8670.66 shall be reduced by the amount of the~~



1 *criminal fine or civil penalty imposed in the other action.*
 2 *This paragraph does not require a reduction in the*
 3 *maximum criminal fine or civil penalty under this*
 4 *chapter if other legal or equitable relief is sought for the*
 5 *same violation, as described in paragraph (1).*

6 (4) If a civil administrative penalty is imposed
 7 pursuant to subdivision (c) of Section 8670.67, the
 8 maximum civil administrative penalty that may be
 9 imposed pursuant to that section shall be reduced by the
 10 amount of the civil administrative penalty imposed under
 11 any other law for the same violation. This paragraph does
 12 not require a reduction in a maximum civil
 13 administrative penalty that may be imposed under
 14 subdivision (c) of Section 8670.67 for any relief other than
 15 a civil administrative penalty ordered by an
 16 administrative agency for the same violation, including,
 17 but not limited to, orders related to cleanup, abatement,
 18 environmental restoration, recovery of damages,
 19 restitution, and costs.

20 ~~(4)~~

21 (5) Except as otherwise expressly provided in this
 22 chapter, nothing in this ~~Chapter~~ *chapter* is intended to
 23 add to or reduce the rights or liabilities of any person
 24 under any other law.

25 SEC. 11. The changes in the
 26 Lempert-Keene-Seastrand Oil Spill Prevention and
 27 Response Act, Chapter 7.4 (commencing with Section
 28 8670.1) of Division 1 of Title 2 of the Government Code,
 29 by this act shall apply to violations of Sections 8670.64,
 30 8670.66, and 8670.67 of the Government Code that occur
 31 on or after January 1, 2000.

32 SEC. 12. No reimbursement is required by this act
 33 pursuant to Section 6 of Article XIII B of the California
 34 Constitution because the only costs that may be incurred
 35 by a local agency or school district will be incurred
 36 because this act creates a new crime or infraction,
 37 eliminates a crime or infraction, or changes the penalty
 38 for a crime or infraction, within the meaning of Section
 39 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

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