

Introduced by Senator Alpert

January 25, 1999

An act to amend Section 8670.32 of the Government Code, relating to oil spills, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 221, as introduced, Alpert. Oil spill prevention.

Existing law, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, prohibits the operation of a nontank vessel, as defined, of 300 gross registered tons or greater in the marine waters of the state unless the owner or operator prepares and submits an oil spill contingency plan to the administrator for oil spill response, in accordance with prescribed procedures and requirements, and the plan is approved.

This bill would exempt a public vessel, as defined in the bill, from those requirements.

(2) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 8670.32 of the Government
- 2 Code is amended to read:
- 3 8670.32. (a) The following definitions govern the
- 4 construction of this section:

1 (1) “Nontank vessel” means a vessel, other than a tank
2 vessel, not designed to carry oil as cargo.

3 (2) “Reasonable worst case spill” means a spill of the
4 total volume of the largest fuel tank on the nontank
5 vessel.

6 (3) “Qualified individual” means a shore-based
7 representative of a covered nontank vessel owner or
8 operator that, at a minimum, shall be fluent in English,
9 located in the continental United States, be available on
10 a 24-hour basis, and have full written authority to
11 implement the covered nontank vessel’s contingency
12 plan.

13 (b) A nontank vessel of 300 gross registered tons or
14 greater shall not operate in the marine waters of the state
15 unless the owner or operator has an oil spill contingency
16 plan prepared, submitted, and approved in accordance
17 with this section.

18 (c) On or before September 1, 1999, each owner or
19 operator of a nontank vessel of 300 gross registered tons
20 or greater shall prepare an oil spill contingency plan for
21 that vessel, and submit the plan to the administrator for
22 review and approval. The plan may be specific to an
23 individual vessel or may be developed using either of the
24 following:

25 (1) A fleet plan submitted by an owner or operator
26 that has a number of vessels that transit the same or
27 substantially the same routes in marine waters of the
28 state. This fleet plan shall contain all prevention and
29 response elements required pursuant to this section. A
30 separate appendix for each vessel shall be included as an
31 attachment to the plan, and shall include both of the
32 following:

33 (A) Specification of the type and total amount of fuel
34 carried.

35 (B) Specification of the capacity of the largest fuel
36 tank.

37 (2) The owner or operator provides evidence of a
38 contract with the Pacific Merchant Shipping Association,
39 a nonprofit corporation, or other nonprofit maritime
40 association, to provide a statewide spill response plan



1 consistent with the requirements of this section, pursuant
2 to its applicable fee structure.

3 (d) The geographic regions covered by an individual
4 plan shall be defined in regulations adopted by the
5 administrator.

6 (e) In addition to all other contingency plan
7 requirements in this section, the plan shall contain, at a
8 minimum, a procedure for management of the resources
9 to be used in response to an oil spill.

10 (f) The vessel owner or operator shall submit any
11 information, or address any plan element that is required
12 by this section but not addressed by a statewide spill
13 response plan.

14 (g) The administrator shall adopt regulations and
15 guidelines to implement the requirements of this section.
16 All regulations and guidelines shall be developed in
17 consultation with the State Interagency Oil Spill
18 Committee and the oil spill Technical Advisory
19 Committee. The administrator shall hold a public hearing
20 on the regulations. The regulations and guidelines shall
21 provide for the best achievable protection of coastal and
22 marine resources and shall include provisions for public
23 review and comment on submitted contingency plans
24 prior to approval. The regulations shall ensure that a
25 contingency plan meets all of the following requirements:

26 (1) Be consistent with the protection and response
27 strategies as well as other elements addressed in the state
28 contingency plan and the appropriate area contingency
29 plan, and is not in conflict with the national contingency
30 plan.

31 (2) Be a written document, reviewed for feasibility
32 and approved by the owner or operator, or a person
33 designated by the owner or operator.

34 (3) Establish a specific chain of command and specify
35 the overall responsibilities of crew, supervisory,
36 contract, and volunteer personnel.

37 (4) Detail procedures for reporting oil spills to local,
38 state, and federal agencies, and include a list of contacts
39 to call in the event of a spill, threatened discharge, or
40 discharge.



1 (5) Specify lines of communication between the vessel
2 and the on-scene commanders, response teams, and local,
3 state, and federal response organizations.

4 (6) Provide for response planning, including
5 coordination with employees, outside contractors,
6 volunteers, and local, state, and federal agencies.

7 (7) Identify a qualified individual.

8 (8) Provide the name, address, telephone number,
9 and facsimile number of an agent for service of process,
10 located in the state and designated to receive legal
11 documents on behalf of the plan holder.

12 (9) Demonstrate that shipboard personnel have
13 knowledge of the notification requirements and other
14 provisions of the contingency plan.

15 (10) Provide for timely and effective oil spill response.
16 This may be provided directly or through membership in,
17 or contract with, a private or public cooperative or other
18 organization and shall be consistent with the state
19 contingency plan and the appropriate area contingency
20 plan, and not in conflict with the national contingency
21 plan.

22 (11) Provide evidence that the vessel is in compliance
23 with the International Safety Management Code,
24 established by the International Maritime Organization,
25 as applicable.

26 (h) Each contingency plan shall be submitted and
27 resubmitted to the administrator for review and approval
28 as specified in Section 8670.31.

29 (i) A nontank vessel, required to have a contingency
30 plan pursuant to this section, shall not enter marine
31 waters of the state unless the vessel owner or operator has
32 provided to the administrator evidence of financial
33 responsibility that demonstrates, to the administrator's
34 satisfaction, the ability to pay at least three hundred
35 million dollars (\$300,000,000) to cover damages caused by
36 a spill, and the owner or operator of the vessel has
37 obtained a certificate of financial responsibility from the
38 administrator for the vessel. If the evidence provided to
39 the administrator by the vessel owner or operator is a
40 federal certificate of financial responsibility, or other



1 evidence of financial responsibility that does not comply
2 with state requirements, and the administrator incurs
3 costs verifying that evidence over the amount the
4 administrator normally incurs when verifying evidence
5 of financial responsibility, the administrator may charge
6 the vessel owner or operator a reasonable fee for the
7 additional costs incurred.

8 (j) A nonprofit maritime association that provides spill
9 response services pursuant to a spill response plan
10 approved by the administrator, and its officers, directors,
11 members, and employees shall have limited liability as
12 follows:

13 (1) Section 8670.56.6 applies to any nonprofit maritime
14 association that provides spill response services pursuant
15 to its statewide spill response plan.

16 (2) A nonprofit maritime association providing spill
17 response plan services may require, through agreement
18 of the parties, as a condition of providing these services,
19 the owner or operator of the nontank vessel to defend,
20 indemnify, and hold harmless the association and its
21 officers, directors, members, and employees from all
22 claims, suits, or actions of any nature by whomever
23 asserted, even though resulting, or alleged to have
24 resulted from, negligent acts or omissions of the
25 association or of an officer, director, member, or
26 employee of the association in providing spill response
27 plan services under the contract.

28 (3) Membership in the association or serving as a
29 director of the association shall not, in and of itself, be
30 grounds for liability resulting from the activities of the
31 association in the preparation or implementation of a
32 contingency plan.

33 (4) This section shall not be deemed to include the
34 association or its officers, directors, members, or
35 employees as a responsible party, as defined in
36 subdivision (q) of Section 8670.3 of this code and in
37 subdivision (p) of Section 8750 of the Public Resources
38 Code for the purposes of this chapter, Article 3.5
39 (commencing with Section 8574.1) of Chapter 7 of this



1 code, and Division 7.8 (commencing with Section 8750)
2 of the Public Resources Code.

3 (5) This section does not limit the liability of any
4 responsible party, as defined in subdivision (q) of Section
5 8670.3. The responsible party is liable for all damages
6 arising from a spill, as provided in subdivision (c) of
7 Section 8670.56.6.

8 (k) Section 8670.56.6 applies to any person, including,
9 but not limited to, an oil spill cooperative, its agents,
10 subcontractors, or employees, that contract with the
11 nonprofit maritime association to provide spill response
12 services for the association spill response plan.

13 (l) (1) Except as provided in paragraph (2), any
14 nontank vessel that is subject to subdivision (b) or (i), and
15 that enters the waters of the state in violation of
16 subdivision (b) or (i), is subject to an administrative civil
17 penalty of up to one hundred thousand dollars (\$100,000).
18 The administrator shall assess the civil penalty against the
19 owner or operator of the vessel pursuant to Section
20 8670.68. Each day the owner or operator of such a nontank
21 vessel is in violation of subdivision (b) or (i) shall be
22 considered a separate violation.

23 (2) Paragraph (1) does not apply in any of the
24 following circumstances:

25 (A) A contingency plan has been submitted by the
26 vessel owner or operator to the administrator as required
27 by this section, and the office of the administrator is
28 reviewing the plan and has not denied approval.

29 (B) The nontank vessel has entered state waters after
30 the United States Coast Guard has determined that the
31 vessel is in distress.

32 (m) (1) Except as provided in paragraph (2), any
33 owner or operator of a nontank vessel that is subject to
34 subdivision (b) or (i) and who knowingly and
35 intentionally enters the waters of the state in violation of
36 subdivision (b) or (i), is guilty of a misdemeanor
37 punishable by up to one year of imprisonment in the
38 county jail, or by a fine of up to ten thousand dollars
39 (\$10,000), or by both imprisonment and a fine. Each day
40 the owner or operator of ~~such a~~ *the* nontank vessel is in



1 knowing and intentional violation of subdivision (b) or
2 (i) shall be considered a separate violation.

3 (2) Paragraph (1) does not apply in any of the
4 following circumstances:

5 (A) A contingency plan has been submitted by the
6 vessel owner or operator to the administrator as required
7 by this section, and the office of the administrator is
8 reviewing the plan and has not denied approval.

9 (B) The nontank vessel has entered state waters after
10 the United States Coast Guard has determined that the
11 vessel is in distress.

12 *(n) This section does not apply to public vessel. For*
13 *purposes of this section, a “public vessel” means a vessel*
14 *owned or bareboat chartered and operated by the United*
15 *States, or by a state or political subdivision thereof, or by*
16 *a foreign nation, except when the vessel is engaged in*
17 *commerce.*

18 SEC. 2. This act is an urgency statute necessary for the
19 immediate preservation of the public peace, health, or
20 safety within the meaning of Article IV of the
21 Constitution and shall go into immediate effect. The facts
22 constituting the necessity are:

23 In order to ensure that the California shipbuilding
24 industry remains competitive with other shipbuilding
25 industries in the United States and that California law
26 remains consistent with federal law in regards to oil spill
27 contingency plans and public vessels, it is necessary for
28 this act to take effect immediately.

