

AMENDED IN ASSEMBLY JUNE 25, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1192

Introduced by Senator Evans

February 22, 2012

An act to amend Sections 8670.40~~and~~, 8670.41, *and 8670.48* of, and to add Section 8670.43 to, the Government Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1192, as amended, Evans. Oil spill prevention and administrative fee.

Existing law imposes an oil spill prevention and administration fee in an amount determined by the administrator to implement oil spill prevention activities, but not to exceed, until January 1, 2015, \$0.065 per barrel of crude oil or petroleum products, on persons owning crude oil or petroleum products at a marine terminal. The fee is deposited into the Oil Spill Prevention and Administration Fund in the State Treasury. Upon appropriation by the Legislature, moneys in the fund are available for specified purposes, including to cover the costs incurred by the Oiled Wildlife Care Network for training and field collection, and search and rescue activities.

This bill would extend the authority to use money in the fund to *pay for* other costs incurred by the Oiled Wildlife Care Network, *including costs of training and field collection, and search and rescue activities*, and would increase the maximum annual assessment from \$0.065 to \$0.068 per barrel of crude oil or petroleum products. The bill would subsequently decrease the annual assessment, beginning January 1,

2015, to a maximum of \$0.053 per barrel of crude oil or petroleum products.

Existing law permits the administrator to charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing oil spill prevention relating to nontank vessels.

This bill would require the fee to be at least \$3,500 per nontank vessel but would give the administrator discretion to reduce the fee for nontank vessels that pose a reduced risk of pollution.

Existing law requires the administrator to submit for each fiscal year, as a part of the Governor's Budget, a proposed appropriation from interest earned on moneys deposited into the Oil Spill Response Trust Fund, in an amount not to exceed \$2,000,000, for the purposes of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations, proactive oiled wildlife search and collection rescue efforts, and supporting technology development and research related to oiled wildlife care. Existing law requires that any remaining interest earned be deposited into the Oil Spill Prevention and Administration Fund.

This bill would authorize the administrator to include in this proposed appropriation an additional amount, not to exceed \$2,000,000, from the Oil Spill Prevention and Administration Fund for the purpose of training and field collection, search and rescue activities, and equipping, operating, and maintaining the Oiled Wildlife Care Network. *The bill would also allow another additional amount, not to exceed the difference between the interest earned and \$2,000,000, to be included in the proposed appropriation from funds deposited into the Oil Spill Response Trust Fund if this proposed appropriation exceeds the interest earned on the funds deposited into the Oil Spill Response Trust Fund available for the fiscal year for which the appropriation is proposed.*

Vote: majority. 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 8670.40 of the Government Code is
- 2 amended to read:
- 3 8670.40. (a) The State Board of Equalization shall collect a
- 4 fee in an amount determined by the administrator to be sufficient

1 to carry out the purposes set forth in subdivision (e), and a
2 reasonable reserve for contingencies. The annual assessment shall
3 not exceed six and eight-tenths cents (\$0.068) per barrel of crude
4 oil or petroleum products. Beginning January 1, 2015, the annual
5 assessment shall not exceed five and three-tenths cents (\$0.053)
6 per barrel of crude oil or petroleum products.

7 (b) (1) The oil spill prevention and administration fee shall be
8 imposed upon a person owning crude oil at the time that crude oil
9 is received at a marine terminal from within or outside the state,
10 and upon a person who owns petroleum products at the time that
11 those petroleum products are received at a marine terminal from
12 outside this state. The fee shall be collected by the marine terminal
13 operator from the owner of the crude oil or petroleum products
14 based on each barrel of crude oil or petroleum products so received
15 by means of a vessel operating in, through, or across the marine
16 waters of the state. In addition, an operator of a pipeline shall pay
17 the oil spill prevention and administration fee for each barrel of
18 crude oil originating from a production facility in marine waters
19 and transported in the state by means of a pipeline operating across,
20 under, or through the marine waters of the state. The fees shall be
21 remitted to the board by the terminal or pipeline operator on the
22 25th day of the month based upon the number of barrels of crude
23 oil or petroleum products received at a marine terminal or
24 transported by pipeline during the preceding month. A fee shall
25 not be imposed pursuant to this section with respect to crude oil
26 or petroleum products if the person who would be liable for that
27 fee, or responsible for its collection, establishes that the fee has
28 been collected by a terminal operator registered under this chapter
29 or paid to the board with respect to the crude oil or petroleum
30 product.

31 (2) An owner of crude oil or petroleum products is liable for
32 the fee until it has been paid to the board, except that payment to
33 a marine terminal operator registered under this chapter is sufficient
34 to relieve the owner from further liability for the fee.

35 (3) On or before January 20, the administrator shall annually
36 prepare a plan that projects revenues and expenses over three fiscal
37 years, including the current year. Based on the plan, the
38 administrator shall set the fee so that projected revenues, including
39 any interest, are equivalent to expenses as reflected in the current
40 Budget Act and in the proposed budget submitted by the Governor.

1 In setting the fee, the administrator may allow for a surplus if the
2 administrator finds that revenues will be exhausted during the
3 period covered by the plan or that the surplus is necessary to cover
4 possible contingencies. The administrator shall notify the board
5 of the adjusted fee rate, which shall be rounded to no more than
6 four decimal places, to be effective the first day of the month
7 beginning not less than 30 days from the date of the notification.

8 (c) The moneys collected pursuant to subdivision (a) shall be
9 deposited into the fund.

10 (d) The board shall collect the fee and adopt regulations for
11 implementing the fee collection program.

12 (e) The fee described in this section shall be collected solely
13 for all of the following purposes:

14 (1) To implement oil spill prevention programs through rules,
15 regulations, leasing policies, guidelines, and inspections and to
16 implement research into prevention and control technology.

17 (2) To carry out studies that may lead to improved oil spill
18 prevention and response.

19 (3) To finance environmental and economic studies relating to
20 the effects of oil spills.

21 (4) To implement, install, and maintain emergency programs,
22 equipment, and facilities to respond to, contain, and clean up oil
23 spills and to ensure that those operations will be carried out as
24 intended.

25 (5) To respond to an imminent threat of a spill in accordance
26 with the provisions of Section 8670.62 pertaining to threatened
27 discharges. The cumulative amount of an expenditure for this
28 purpose shall not exceed the amount of one hundred thousand
29 dollars (\$100,000) in a fiscal year unless the administrator receives
30 the approval of the Director of Finance and notification is given
31 to the Joint Legislative Budget Committee. Commencing with the
32 1993–94 fiscal year, and each fiscal year thereafter, it is the intent
33 of the Legislature that the annual Budget Act contain an
34 appropriation of one hundred thousand dollars (\$100,000) from
35 the fund for the purpose of allowing the administrator to respond
36 to threatened oil spills.

37 (6) To reimburse the board for costs incurred to implement this
38 chapter and to carry out Part 24 (commencing with Section 46001)
39 of Division 2 of the Revenue and Taxation Code.

(7) To cover *annual* costs incurred by the Oiled Wildlife Care Network established by Section 8670.37.5, *including costs of training and field collection, and search and rescue activities, pursuant to subdivision (g) of Section 8670.37.5, not to exceed two million dollars (\$2,000,000)*, in accordance with Section 8670.43.

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

(g) The moneys deposited in the fund shall not be used to provide a loan to any other fund.

SEC. 2. Section 8670.41 of the Government Code is amended to read:

8670.41. (a) The administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing this chapter relating to nontank vessels and shall be at least three thousand five hundred dollars (\$3,500) per nontank vessel.

(b) Notwithstanding subdivision (a), the administrator may charge a reduced fee under this section for nontank vessels determined by the administrator to pose a reduced risk of pollution, including, but not limited to, vessels used for research or training and vessels that are moored permanently or rarely move.

(c) The administrator shall deposit all revenue derived from the fees imposed under this section in the Oil Spill Prevention and Administration Fund established in the State Treasury under Section 8670.38.

(d) Revenue derived from the fees imposed under this section may be spent for the purposes listed in subdivision (e) of Section 8670.40, and may not be used for responding to an oil spill.

SEC. 3. Section 8670.43 is added to the Government Code, to read:

8670.43. For each fiscal year, consistent with this article, the administrator shall submit, as a proposed appropriation in the Governor's Budget, an amount, not to exceed two million dollars (\$2,000,000), from the Oil Spill Prevention and Administration Fund for the purpose of training and field collection, search and rescue activities pursuant to subdivision (g) of Section 8670.37.5,

1 and equipping, operating, and maintaining the Oiled Wildlife Care
2 Network.

3 *SEC. 4. Section 8670.48 of the Government Code is amended*
4 *to read:*

5 8670.48. (a) (1) A uniform oil spill response fee in an amount
6 not exceeding twenty-five cents (\$0.25) for each barrel of
7 petroleum products, as set by the administrator pursuant to
8 subdivision (f), shall be imposed upon a person who owns
9 petroleum products at the time the petroleum products are received
10 at a marine terminal within this state by means of a vessel from a
11 point of origin outside this state. The fee shall be remitted to the
12 State Board of Equalization by the terminal operator on the 25th
13 day of each month based upon the number of barrels of petroleum
14 products received during the preceding month.

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

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

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

33 (2) The fee shall not be imposed by a refiner, or a person or
34 entity acting as an agent for a refiner, on crude oil produced by an
35 independent crude oil producer as defined in paragraph (3). The
36 board shall not identify a company as exempt from the fee
37 requirements of this section if that company was reorganized, sold,
38 or otherwise modified with the intent of circumventing the
39 requirements of this section.

1 (3) For purposes of this chapter, “independent crude oil
2 producer” means a person or entity producing crude oil within this
3 state who does not refine crude oil into a product, and who does
4 not possess or own a retail gasoline marketing facility.

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

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

16 (f) (1) The fees required pursuant to this section shall be
17 collected during any period for which the administrator determines
18 that collection is necessary for any of the following reasons:

19 (A) The amount in the fund is less than or equal to 95 percent
20 of the designated amount specified in subdivision (a) of Section
21 46012 of the Revenue and Taxation Code.

22 (B) Additional money is required to pay for the purposes
23 specified in subdivision (k).

24 (C) The revenue is necessary to repay a draw on a financial
25 security obtained by the Treasurer pursuant to subdivision (o) or
26 borrowing by the Treasurer pursuant to Article 7.5 (commencing
27 with Section 8670.53.1) including any principal, interest, premium,
28 fees, charges, or costs of any kind incurred in connection with
29 those borrowings or financial security.

30 (2) The administrator, in consultation with the State Board of
31 Equalization, and with the approval of the Treasurer, may direct
32 the State Board of Equalization to cease collecting the fee when
33 the administrator determines that further collection of the fee is
34 not necessary for the purposes specified in paragraph (1).

35 (3) The administrator, in consultation with the State Board of
36 Equalization, shall set the amount of the oil spill response fees.
37 The oil spill response fees shall be imposed on all feepayers in the
38 same amount. The administrator shall not set the amount of the
39 fee at less than twenty-five cents (\$0.25) for each barrel of
40 petroleum products or crude oil, unless the administrator finds that

1 the assessment of a lesser fee will cause the fund to reach the
2 designated amount specified in subdivision (a) of Section 46012
3 of the Revenue and Taxation Code within four months. The fee
4 shall not be less than twenty-five cents (\$0.25) for each barrel of
5 petroleum products or crude oil if the administrator has drawn
6 upon the financial security obtained by the Treasurer pursuant to
7 subdivision (o) or if the Treasurer has borrowed money pursuant
8 to Article 7.5 (commencing with Section 8670.53.1) and principal,
9 interest, premium, fees, charges, or costs of any kind incurred in
10 connection with those borrowings remain outstanding or unpaid,
11 unless the Treasurer has certified to the administrator that the
12 money in the fund is not necessary for the purposes specified in
13 paragraph (1).

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

21 (h) For purposes of this chapter, “designated amount” means
22 the amounts specified in Section 46012 of the Revenue and
23 Taxation Code.

24 (i) The administrator, in consultation with the State Board of
25 Equalization and with the approval of the Treasurer, shall authorize
26 refunds of any money collected that is not necessary for the
27 purposes specified in paragraph (1) of subdivision (f). The State
28 Board of Equalization, as directed by the administrator, and in
29 accordance with Section 46653 of the Revenue and Taxation Code,
30 shall refund the excess amount of fees collected to each fee payer
31 who paid the fee to the state, in proportion to the amount that each
32 fee payer paid into the fund during the preceding 12 monthly
33 reporting periods in which there was a fee due, including the month
34 in which the fund exceeded the specified amount. If the total
35 amount of money in the fund exceeds the amount specified in this
36 subdivision by 10 percent or less, refunds need not be ordered by
37 the administrator. This section does not require the refund of excess
38 fees as provided in this subdivision more frequently than once
39 each year.

1 (j) The State Board of Equalization shall collect the fee and
2 adopt regulations implementing the fee collection program. All
3 fees collected pursuant to this section shall be deposited in the Oil
4 Spill Response Trust Fund.

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

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

11 (2) To cover response and cleanup costs and other damages
12 suffered by the state or other persons or entities from oil spills into
13 marine waters, which cannot otherwise be compensated by
14 responsible parties or the federal government.

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

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

19 (5) To pay for the cost of obtaining financial security in the
20 amount specified in subdivision (b) of Section 46012 of the
21 Revenue and Taxation Code, as authorized by subdivision (o).

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

24 (7) To pay principal, interest, premium, if any, and fees, charges,
25 and costs of any kind incurred in connection with moneys drawn
26 by the administrator on the financial security obtained by the
27 Treasurer pursuant to subdivision (o) or borrowed by the Treasurer
28 pursuant to Article 7.5 (commencing with Section 8670.53.1).

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

33 (l) (1) The interest that the state earns on the funds deposited
34 into the Oil Spill Response Trust Fund shall be deposited in the
35 fund and shall be used to maintain the fund at the designated
36 amount specified in subdivision (a) of Section 46012 of the
37 Revenue and Taxation Code. Interest earned until July 1, 1998,
38 on funds deposited pursuant to subdivision (a) of Section 46012
39 of the Revenue and Taxation Code, as determined jointly by the
40 Controller and the Director of Finance, shall be available upon

1 appropriation by the Legislature in the Budget Act to establish,
2 equip, operate, and maintain the network of rescue and
3 rehabilitation stations for oiled wildlife as described in Section
4 8670.37.5 and to support technology development and research
5 related to oiled wildlife care. Interest earned on the financial
6 security portion of the fund, required to be accessible pursuant to
7 subdivision (b) of Section 46012 of the Revenue and Taxation
8 Code shall not be available for that purpose. If the amount in the
9 fund exceeds that designated amount, the interest not needed to
10 equip, operate, and maintain the network of rescue and
11 rehabilitation stations, or for appropriate technology development
12 and research regarding oiled wildlife care, shall be deposited into
13 the Oil Spill Prevention and Administration Fund, and shall be
14 available for the purposes authorized by Article 6 (commencing
15 with Section 8670.38).

16 (2) (A) (i) For each fiscal year, consistent with this article,
17 the administrator shall submit, as a proposed appropriation in the
18 Governor's Budget, an amount up to two million dollars
19 (\$2,000,000) of the interest earned on the funds deposited into the
20 Oil Spill Response Trust Fund for the purpose of equipping,
21 operating, and maintaining the network of oiled wildlife rescue
22 and rehabilitation stations and proactive oiled wildlife search and
23 collection rescue efforts established pursuant to Section 8670.37.5
24 and for support of technology development and research related
25 to oiled wildlife care. ~~The remaining interest, if any, shall be~~
26 ~~deposited into the Oil Spill Prevention and Administration Fund~~
27 ~~pursuant to paragraph (1).~~

28 (ii) *The proposed appropriation submitted pursuant to this*
29 *paragraph shall be made up of the interest earned on the funds*
30 *deposited into the Oil Spill Response Trust Fund. If there is any*
31 *remaining interest earned in excess of the amount appropriated,*
32 *such funds shall be deposited into the Oil Spill Prevention and*
33 *Administration Fund pursuant to paragraph (1).*

34 (iii) *If the proposed appropriation submitted pursuant to this*
35 *subparagraph exceeds the interest earned on the funds deposited*
36 *into the Oil Spill Response Trust Fund available for the fiscal year*
37 *for which the appropriation is proposed, then an additional amount*
38 *not to exceed the difference between the interest earned and two*
39 *million dollars (\$2,000,000) may be included in the proposed*
40 *appropriation from funds deposited into the Oil Spill Response*

1 *Trust Fund specifically for this purpose to the extent that such*
2 *funds are appropriated in Section 8670.43.*

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

9 (C) At the administrator's request, the funds made available
10 pursuant to this paragraph may be directly appropriated to a suitable
11 program for wildlife health and rehabilitation within a school of
12 veterinary medicine within this state, provided that an agreement
13 exists, consistent with this chapter, between the administrator and
14 an appropriate representative of the program for carrying out that
15 purpose. The administrator shall attempt to have an agreement in
16 place at all times. The agreement shall ensure that the training of,
17 and the care provided by, the program staff are at levels that are
18 consistent with those standards generally accepted within the
19 veterinary profession.

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

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

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

- 1 (o) The Treasurer shall obtain financial security, in the
2 designated amount specified in subdivision (b) of Section 46012
3 of the Revenue and Taxation Code, in a form which, in the event
4 of an oil spill, may be drawn upon immediately by the administrator
5 upon making the determinations required by paragraph (2) of
6 subdivision (a) of Section 8670.49. The financial security may be
7 obtained in any of the forms described in subdivision (b) of Section
8 8670.53.3, as determined by the Treasurer.
- 9 (p) This section does not limit the authority of the administrator
10 to raise oil spill response fees pursuant to Section 8670.48.5.