



*California State Board of Equalization,  
Legislative and Research Division*

# LEGISLATIVE BULLETIN

---



State Capitol Building (from the East) c.1945  
Photo courtesy of California State Archives

---

## SPECIAL TAXES AND FEES LEGISLATION 2014

**SPECIAL TAXES AND FEES LEGISLATION**  
**TABLE OF CONTENTS**

<b>CHAPTERED LEGISLATION ANALYSES</b>	<b>PAGE</b>
<a href="#"><u>Assembly Bill 1717 (Perea) Chapter 885</u></a> <i>Mobile Telephony Services Surcharge</i>	<a href="#"><u>2</u></a>
<a href="#"><u>Assembly Bill 1907 (Ridley-Thomas) Chapter 805</u></a> <i>Use Fuel Tax: Natural Gas: Gallon Equivalent</i>	<a href="#"><u>23</u></a>
<a href="#"><u>Assembly Bill 2009 (Weber) Chapter 105</u></a> <i>Managed Audit Program</i>	<a href="#"><u>25</u></a>
<a href="#"><u>Assembly Bill 2031 (Dahle) Chapter 810</u></a> <i>Lumber Products Assessment: Retailer Threshold</i>	<a href="#"><u>29</u></a>
<a href="#"><u>Assembly Bill 2048 (Dahle) Chapter 895</u></a> <i>Fire Prevention Fee: Clean Up</i>	<a href="#"><u>31</u></a>
<a href="#"><u>Senate Bill 445 (Hill) Chapter 547</u></a> <i>Underground Storage Tank Maintenance Fee: Extension</i>	<a href="#"><u>36</u></a>
<a href="#"><u>Senate Bill 861 (Committee on Budget and Fiscal Review) Chapter 35</u></a> <i>Lumber Products Assessment: Reimbursement Rate</i>	<a href="#"><u>39</u></a>
<i>Oil Spill Prevention, Administration and Response Fee Rate</i>	<a href="#"><u>40</u></a>
<b>TABLE OF SECTIONS AFFECTED</b>	<a href="#"><u>46</u></a>

**Assembly Bill 1717 (Perea) Chapter 885**

***Mobile Telephony Services Surcharge***

*Effective September 30, 2014. Among its provisions, amends Section 41020, amends, repeals, and adds Section 41030 of, and adds and repeals Section 41033 and Parts 21 and 21.1 of, the Revenue and Taxation Code.*

**BILL SUMMARY**

Among other things, this bill imposes upon each prepaid consumer a prepaid mobile telephony services (MTS) surcharge to be collected by a seller on each retail transaction involving prepaid mobile telephony services.

**Sponsor: CTIA – The Wireless Association**

**LAW PRIOR TO AMENDMENT**

**Surcharges and User Fee.**<sup>1</sup> Current law assesses a number of state surcharges and a user fee on telecommunications services. Telephone service providers collect these surcharges and the user fee from their customers and remit them to either the California Public Utilities Commission (CPUC) or the State Board of Equalization (BOE), as specified.

**CPUC-Mandated Telecommunications All-End-User Surcharges.** Currently, six CPUC-mandated telecommunications all-end-user surcharges support various public purpose programs in California. The all-end-user surcharges are remitted to the CPUC and the surcharge rates vary from program to program. The CPUC periodically adjusts the surcharge rates based on the forecast demand for the programs. The six all-end-user surcharge programs are as follows:

- **Universal LifeLine Telephone Service (ULTS) @ 1.15%.** This program provides discounted basic telephone (landline) services to eligible California households.
- **Deaf and Disabled Telecommunications Program (DDTP) @ 0.2%.** The CPUC implemented three telecommunications programs for California residents who are deaf, hearing impaired, or disabled.
- **California High Cost Fund-A (CHCF-A) @ 0.18%.** This fund provides a source of supplemental revenues to 14 small local exchange carriers (LECs) for the purpose of minimizing any rate disparity between rural and metropolitan areas.
- **California High Cost Fund-B (CHCF-B) @ 0.0%<sup>2</sup>.** This fund provides subsidies to carriers of last resort (COLRs) to provide basic local telephone service to residential customers in high-cost areas that certain carriers currently service, as specified. The fund keeps basic telephone service affordable to meet the CPUC's universal service goal.

<sup>1</sup> Information regarding CPUC-mandated surcharges and user fee is provided by the CPUC; for additional detail see [Surcharges and Taxes](#).

<sup>2</sup> The CHCF-B surcharge rate was temporarily reduced from 0.30% to 0.0%, effective February 1, 2014, because the CPUC determined that the current funds available in the CHCF-B fund's surplus reserve are sufficient to meet forecasted expenditures through January 1, 2015.

- **California Teleconnect Fund (CTF) @ 0.59%.<sup>3</sup>** Another program established by the CPUC to meet universal service goals. This fund provides a 50% discount on selected telecommunication services to qualifying schools, libraries, government-owned and operated hospitals and health clinics, and community-based organizations.
- **California Advanced Services Fund (CASF) @ 0.464%.** A program that provides grants to “telephone corporations” to fund unserved and underserved areas with broadband services.

**CPUC User Fee (Reimbursement Account) @ 0.18%.** The CPUC determines annually the appropriate fee to be paid by the telecommunications carriers. The CPUC calculates the user fee based on the telecommunications carrier's gross intrastate revenue, excluding inter-carrier sales, equipment sales, and directory advertising. The fee, which is remitted to the CPUC, finances the CPUC's annual operating budget.

Telecommunications carriers with annual gross intrastate revenues in excess of \$750,000 remit this fee quarterly, on or before the 15th of April, July, October, and January. Telecommunications carriers with annual gross intrastate revenues of \$750,000 or less remit the fee annually on or before January 15.

**Emergency Telephone Users Surcharge (911 Surcharge).** Under existing law,<sup>4</sup> the 911 Surcharge Act imposes a surcharge on amounts paid by every person in the state for:

- Intrastate telephone communication service in this state, and
- Voice over Internet Protocol (VoIP) service that provides access to the “911” emergency system by any service user utilizing the digits 9-1-1 in this state.

The 911 Surcharge Act requires a service supplier to collect the surcharge from each service user at the time it collects its billing from the service user. It also requires the surcharge to be added to, and stated separately in, a service supplier's billings to the service user.

**Prepaid Calling Cards.** [Regulation 2403](#), *Prepaid Telephone Calling Cards*, provides that the surcharge applies to the dollar amounts deducted or the value of the minutes deducted from the prepaid telephone calling card for intrastate telephone communication service. The surcharge does not apply to dollar amounts or minutes for interstate telephone communication services or minutes the user forfeits because of expiration.

The regulation authorizes a service supplier to apply the surcharge to an estimate of the charges for intrastate telephone communication service supplied through a prepaid telephone calling card subject to the surcharge. The regulation also allows the service supplier to base the estimate of charges on such call information as the service supplier reasonably believes demonstrates the approximate amount of intrastate telephone communication service charges subject to the surcharge.

If a prepaid telephone calling card contains a statement that the card price includes applicable taxes and fees, the regulation authorizes the service supplier responsible for surcharge collection and payment to reduce the taxable measure of such services by the amount of taxes and fees that are not subject to the 911 surcharge, including the 911 surcharge itself.

---

<sup>3</sup> Effective October 1, 2014, the CTF surcharge rate will increase from 0.590% to 0.930%.

<sup>4</sup> Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code (RTC).

**Rate.** The current surcharge rate is 0.75% of the amounts paid for intrastate telephone and VoIP services in this state, which is the maximum rate allowed by law. Service suppliers remit the surcharge to the BOE for deposit in the State Treasury to the credit of the State Emergency Telephone Number Account (Account) in the General Fund. The funds in the Account pay for 911 emergency telephone number system administration costs.

**Local Taxes, Fees, and Surcharges.** Locally imposed taxes, fees, and surcharges on communications services, such as 911 or access line taxes, fees, and surcharges and utility user taxes (UUTs), may also be imposed by cities and counties on the consumption of utility services, including telephone service.

## AMENDMENT

### Prepaid Mobile Telephony Services Surcharge Collection Act

This bill enacts the Prepaid Mobile Telephony Services Surcharge Collection Act (Act).<sup>5</sup> The Act imposes, on and after January 1, 2016, a prepaid mobile telephony services surcharge (MTS surcharge) on amounts paid by each prepaid consumer for prepaid MTS, in lieu of the surcharges and user fee imposed under existing law and collected and paid to the CPUC and BOE by telephone communication service providers. The Act requires a seller to collect the surcharge from the prepaid consumer at the time of each prepaid mobile telephony services “retail transaction” in this state. The bill requires the surcharge and local charges to be imposed as a percentage of the retail sales price. The bill also requires the surcharge to be separately stated on an invoice, receipt, or other similar document provided to the prepaid consumer, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

The bill defines a “retail transaction” to mean “the purchase of prepaid mobile telephony services, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business.”

**Surcharge Liability.** The bill imposes the MTS surcharge and local charges on a prepaid consumer rather than the seller; however, the bill requires the seller to collect and remit all of the MTS surcharges and local charges. Any unreturned amounts the seller erroneously represents and collects as the MTS surcharge and local charge owed by the prepaid consumer constitutes a seller’s debt to the state, or jointly to the state and to the local jurisdiction, for purposes of collection on behalf of, and payment to, the local jurisdiction imposing the charge.

Furthermore, the bill provides that a seller that collects an amount that exceeds the MTS surcharge and local charges owing may refund those amounts to the prepaid consumer. The seller may refund those amounts even though the surcharge amount was submitted to the BOE and no corresponding credit or refund has yet been secured.

The bill also provides that every prepaid consumer is liable for the MTS surcharge and local charges until paid to the state. However, a prepaid consumer’s payment to a registered seller relieves the consumer from further liability. Nothing in the Act imposes any obligation upon a seller to take any legal action to enforce the collection of the surcharge and local charges imposed.

---

<sup>5</sup> Part 21 (commencing with Section 42000) of Division 2 of the RTC.

**Administration.** Except as provided, this bill requires the BOE to administer and collect the MTS surcharge pursuant to the Fee Collection Procedures Law (FCPL).<sup>6</sup> For purposes of the Act, the bill clarifies the terms “fee” and “feepayer” as follows:

- “Fee” includes the MTS surcharge imposed by this bill; and
- “Feepayer” includes a person required to pay that surcharge, which includes a seller.

The FCPL generally provides for the BOE’s administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE’s authority to adopt regulations related to the FCPL’s administration and enforcement.

The bill requires a direct seller to remit that portion of the MTS surcharge that consists of the CPUC surcharges to the CPUC. In addition, a direct seller must remit the portion of the MTS surcharge that consists of the 911 surcharge to the BOE pursuant to the 911 Surcharge Act and the portion that consists of the local charge to the local agency imposing the charge. A direct seller must use the rates posted by the BOE when determining what amounts to remit to the PUC, BOE, and each local jurisdiction or local agency.

The bill specifically authorizes the BOE to prescribe and adopt tax administration and enforcement regulations including, but not limited to, collections, reporting, refunds, and appeals. In addition, the bill authorizes the BOE to prescribe, adopt, and enforce any emergency regulations as necessary to implement the Act.

The bill also requires the BOE to (1) establish procedures for a seller to document when a sale is not a retail transaction, and (2) establish procedures for sharing specified MTS surcharge collection information upon the request of the CPUC or the Office of Emergency Services (OES).

Furthermore, the bill relieves a seller from the liability to collect the prepaid MTS surcharge that became due and payable but was subsequently found to be worthless and written off for income tax purposes. If a seller is not required to file income tax returns, the bill allows a bad debt deduction or refund if the amount is charged off in accordance with generally accepted accounting principles. If a seller subsequently collects any amounts for which a bad debt deduction was taken or a refund was claimed, the amount so collected is required to be reported and paid to the BOE on the first return subsequently filed. The bill authorizes the BOE to promulgate regulations with respect to uncollected or worthless accounts, as necessary.

**Exemption.** The bill exempts from the prepaid MTS surcharge the retail purchase of prepaid MTS if all of the following apply:

- The prepaid consumer is certified as state or federal lifeline program eligible.
- The seller is an authorized lifeline service provider, as described.
- The exemption applies only to the amount paid for prepaid MTS that the lifeline program specifies as exempt from surcharges and fees that compromise the prepaid MTS surcharge.

---

<sup>6</sup> Part 30 (commencing with Section 55001) of Division 2 of the RTC.

STATE BOARD OF EQUALIZATION

For purposes of the exemption, the bill defines “state lifeline program” to mean the program furnishing lifeline voice communication service pursuant to the Moore Universal Telephone Service Act<sup>7</sup> (Moore Act).

**Registration, Reporting, and Payment.** The bill requires every seller to register with the BOE on a BOE-prescribed form. The bill also requires the BOE to establish a registration method that utilizes the existing seller’s permit registration process for sales and use tax purposes.

The MTS surcharge is due and payable to the BOE quarterly on or before the last day of the next month following each calendar quarter. In addition, a return for the preceding calendar quarter must be filed with the BOE using electronic media at the time of payment.

Existing law<sup>8</sup> authorizes the payment of the amount due and the filing of returns for periods other than the period or periods specified in the tax and fee laws administered under the FCPL.

The bill requires both the electronic application and tax return to be authenticated in a form or pursuant to a method as the BOE may prescribe.

The bill allows a seller that is not a direct seller to deduct and retain an amount equal to 2% of the total MTS surcharge and local charge collected by the seller on a pro rata basis and requires the seller to remit the remainder of the amounts collected to the BOE. A seller that is a lifeline service provider shall exclude from its remittance to the BOE any applicable lifeline exemption for prepaid MTS sold directly to a prepaid customer.

**MTS Surcharge Calculation.** The bill requires the BOE to calculate the MTS surcharge rate annually, no later than November 1 each year commencing November 1, 2015, by combining the following:

- **911 Surcharge Rate.** The surcharge rate reported pursuant to Section 41030(c) of the 911 Surcharge Act.

The bill amends 911 Surcharge Act Section 41030(b) to detail how the OES must determine the 911 surcharge rate, commencing with the calculation made on October 1, 2015, to be effective January 1, 2016. The rate is calculated by dividing OES’s 911 cost estimates for the current fiscal year by its estimate of certain charges for the year. In making the computation of the charges applicable to the intrastate portion of prepaid mobile telephone services, the OES is required to use “the computation method developed by the CPUC and reported to the OES.” Section 41030(d) further requires the OES to notify the BOE of the 911 surcharge amount collected and the surcharge amount applicable to prepaid MTS, by October 15 of each year.

- **CPUC End-User Surcharges.** The bill establishes the CPUC’s reimbursement (user) fee and telecommunication universal surcharges pursuant to Section 319(b) and (c) of the Public Utilities Code (PUC).

This measure adds PUC Section 319 to require the CPUC to compute, commencing October 1, 2015:

---

<sup>7</sup> Article 8 (commencing with Section 781) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code

<sup>8</sup> RTC §55041.1

## STATE BOARD OF EQUALIZATION

- A reimbursement fee as a percentage of the sales price for prepaid mobile telephony services, and
- The individual and cumulative amount of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services.

In addition, Section 319 requires the CPUC, on or before October 8 each year, to post the reimbursement fee, and individual and cumulative surcharge notice on its Internet Web site and notify both the OES and the BOE of the information. Except for that portion of the prepaid MTS surcharge that represents the PUC surcharges, the bill does not restrict the CPUC's authority to adjust the reimbursement fees or universal service surcharges or require that they only be adjusted once annually.

Furthermore, Section 319 provides the CPUC with enforcement authority "to ensure the proper remittance over retail transactions" of a prepaid MTS provider pursuant to the Act.

- **Local Taxes and Surcharges.** The bill requires the BOE to post on its Internet Web site, no later than each December 1, the combined total of the rates of the MTS surcharge and the rate or rates of local charges for each local jurisdiction. The posted combined rate applies to all retail transactions during the calendar year beginning April 1 following the posting. However, the bill provides an exception when a local agency notifies the BOE that the local charge(s) is inaccurate or no longer imposed or has decreased. In such cases, the bill requires the BOE to promptly post the recalculated rate(s). The change becomes operative on the first day of the calendar quarter commencing more than 60 days from the date of the local agency notification.

The bill further requires the BOE to separately post on its Internet Web site individual rates for each of the PUC surcharges, the 911 surcharge rate, and each of the individual local charges.

**Retail Sale Location.** The bill provides the MTS surcharge is imposed upon a percentage of the sales price of each retail transaction that occurs in this state. A retail transaction occurs *in this state* if the consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction). If this is not applicable, a retail transaction occurs in this state if the consumer's address is in this state (known-address transaction). A consumer's address is in this state under any one of the following circumstances:

- The retail sale involves the shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.
- The prepaid consumer's address is known by the seller to be in the state. The consumer's address is considered to be "known by the seller" if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith.
- The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.
- The mobile telephone number associates with a location in this state.

The bill states that a retail transaction occurs at only one location for local charge determination. The bill presumes the consumption of, use of, or access to prepaid MTS occurs at the “point-of-sale” retail transaction location. The bill further presumes a “known-address” retail transaction occurs by the location circumstances bulleted above, in descending order. The bill also presumes the consumption of, use of, or access to the prepaid MTS in a known-address transaction occurs at the known address.

**Transaction Location.** For a known-address transaction, the bill allows the seller to collect the MTS surcharge and local charges that correspond to the prepaid consumer’s five digit postal ZIP Code.

This measure discharges a seller from any liability for additional MTS surcharge or local charges and also relieves the seller from refunding amounts collected and remitted to the BOE if:

- A seller relies in good faith on BOE-provided information to match either a point-of-sale transaction location, or the five digit postal ZIP Code of the prepaid consumer’s known-address, to the applicable MTS surcharge and local charges amount;
- A seller collects that amount from the prepaid consumer; and
- A seller remits the amount to the BOE in compliance with the Act.

The bill also discharges the seller from liability for any additional local charges and relieves the seller from refunding amounts collected and remitted if the seller, with due diligence and in good faith, relies on credible information to match the prepaid consumer’s five digit postal ZIP code to the correct local charge, even if the ZIP code corresponds to more than one local charge in a known-address transaction.

**Miscellaneous Provisions.** The MTS surcharge applies to the entire price where prepaid mobile telephony services are sold in combination with mobile data services or any other services or products for a single price. However, if the prepaid MTS is sold with a cellular telephone and the purchase price for the prepaid cellular phone component of the bundled charge is disclosed to the consumer on a receipt, invoice, or other written electronic documentation provided to the prepaid consumer, the prepaid MTS surcharge and local charge may be calculated on an amount that excludes the separately stated cellular telephone price. Furthermore, the bill prohibits the application of the surcharge or local charges to a transaction where a minimal prepaid MTS amount is sold with a cellular telephone for a single, non-itemized bundled price. For these purposes, a minimal amount includes a service allotment denominated as 10 minutes or less, or \$5 or less.

The bill authorizes a credit against, but not to exceed, the MTS surcharge and local charges where the prepaid consumer paid emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The bill requires the credit apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

The bill also requires prepaid MTS providers to offer prepaid consumers the option to make payment for additional prepaid usage directly to the provider at the provider’s retail location or Internet Web site.

**Deposit of Revenues.** The bill requires the BOE to deposit all MTS surcharge revenues into the Prepaid Mobile Telephony Services Surcharge Fund (MTS Surcharge Fund). Deposited amounts must include all surcharges, interest, penalties, and other amounts

collected, less payments of refunds and reimbursement to the BOE for administration and collection expenses. The bill creates the MTS Surcharge Fund in the State Treasury and requires all moneys to be deposited as follows:

- The 911 surcharge portion of the MTS surcharge shall be deposited into the Prepaid MTS 911 Account, which this bill creates in the MTS Surcharge Fund. The bill further requires all moneys deposited into the Prepaid MTS 911 Account to be transferred to the State Emergency Telephone Number Account in the General Fund.
- The CPUC surcharges portion of the MTS surcharge shall be deposited into the Prepaid MTS PUC Account, which this bill also creates in the MTS Surcharge Fund. The bill further requires all moneys deposited in the Prepaid MTS PUC Account to be allocated and transferred to the respective universal service funds and to the PUC Reimbursement Account, as described.

Regarding reimbursement to the BOE, the bill requires the total combined annual expense incurred by the BOE for administration and collection of the MTS surcharge and local charges to be allocated on a pro rata basis according to revenue collected for that portion that is for (1) the 911 surcharge, (2) CPUC surcharges and fee, and (3) local charges.

The bill requires the BOE to prepare an annual report that shows the amount of both reimbursed and unreimbursed administrative costs incurred in the collection of the MTS surcharge.

**Definitions.** This bill includes several definitions of key terms, including, but not limited to, the following:

- “Direct seller” means a prepaid MTS provider or service supplier, as defined in RTC Section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited to, any of the following:
  - A telephone corporation, as defined by PUC Section 234
  - An interconnected VoIP service, as defined by PUC Section 285.
  - A retailer, as defined by RTC Section 6203, that is a member of the same commonly controlled group, as defined in Title 18 of the California Code of Regulations Section 25105, or that is a member of the same combined reporting group, as defined in Section 25106.5(b)(3), provided the entity is a telephone corporation or interconnected VoIP service.

For purposes of this definition, “sale” means any transfer of title, possession, exchange, or barter, conditional or otherwise.

- "Mobile data service" has the same meaning as defined in PUC Section 224.4, which provides:

*"Mobile data service" means the delivery of nonvoice information over a radio band licensed by the Federal Communications Commission, to a mobile device and includes nonvoice information communicated to a mobile telephony services handset, nonvoice information communicated to handheld personal digital assistant (PDA) devices and laptop computers, and mobile paging service carriers offering services on pagers and two-way messaging devices. "Mobile*

*data service” includes mobile broadband service offering connectivity over a radio band licensed by the Federal Communications Commission. Unless specified to the contrary, “mobile data service” does not include nonvoice information communicated through a wireless local area network operating in the unlicensed radio bands, commonly known as a “Wi-Fi” network.*

- "Mobile telephony service" or "MTS" has the same meaning as defined in Section 224.4 of the Public Utilities Code, which provides:

*"Mobile telephony service" means commercially available interconnected mobile phone services that provide voice communication access to the public switched telephone network (PSTN) by way of mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), digital Specialized Mobile Radio (SMR), or another radio band licensed by the Federal Communications Commission. "Mobile telephony services" does not include mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.*

- "Seller" means a person that sells prepaid mobile telephony service to a person in a retail transaction.

#### **Local Prepaid Mobile Telephony Services Collection Act**

This bill also enacts and repeals the Local Prepaid Mobile Telephony Services Collection Act<sup>9</sup> (Local Act). It provides that it "is the intention of the Legislature that this part shall preempt the provisions pertaining to the tax or charge rate, base, and method of collection contained in all local ordinances, rules, or regulation concerning the imposition of a local charge upon the consumption of prepaid mobile telephony services, to the extent those provisions are inconsistent with the provisions of this part and Part 21 (commencing with Section 42000). It is not the intent of the Legislature to otherwise preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges."

The Local Act imposes, on and after January 1, 2016, a local charge by a local agency on prepaid MTS collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid Mobile Telephony Services Surcharge Collection Act; provided that on or before September 1, 2015, the local agency enters into a contract with the BOE, as provided.

In the event that a local agency adopts a new local charge on prepaid MTS after September 1, 2015, the Local Act requires the local agency to enter into a contract with the BOE, as provided, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

In the contract, the local agency must certify to the BOE: (1) that its ordinance applies its local charge to prepaid MTS and that the local agency agrees to indemnify, and hold and save harmless, the BOE, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and, (2) the amount of the local 911 charge or the applicable tiered rate for a utility user tax.

If a local agency increases its local charge after September 1, 2015, the local agency

---

<sup>9</sup> Part 21.1 (commencing with Section 42100) of Division 2 of the RTC.

STATE BOARD OF EQUALIZATION

must provide the BOE with written notice of the increased local charge on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

Notwithstanding any other law, on and after January 1, 2016, the bill:

- Suspends the utility user tax on the consumption of prepaid MTS in the city or county at the rate specified in its ordinance. The bill provides applicable tiered rates based on the existing city or county rate. This provision is self-executing.
- Suspends a charge rate applicable to prepaid MTS for communication services or local “911” emergency telephone access. The bill specifies the applicable rate as 0% or a calculated rate percentage, based on the existing city and county per access line rate.

On and after January 1, 2016, the Local Act shall be:

- The exclusive collection method for the local UUT, local 911 charge, and any other local charge imposed on consumers using prepaid MTS, and for defining the scope of the tax or charge.
- The complete substitute for the UUT rate set forth in the local ordinance at the specified tiered rate. The bill also states that “this part shall not preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges.”

**Local Act Administration.** The bill requires the BOE to perform all functions incident to the collection of the local charges of a city or county, except from direct sellers. In addition the BOE must collect the local charges in the same manner as it collects the MTS surcharge under the MTS Act, subject to specified limitations. Those limitations, for which the city or county is responsible, include:

- Defending any claim regarding the validity of the ordinance in its application to prepaid MTS.
- Interpreting any provision of the ordinance, except to the extent specifically superseded by the Local Act.
- Responding to specified customer claims for refund.
- Certifying that the city or county ordinance applies the local charge to prepaid MTS and agrees to indemnify and hold harmless the BOE, its officers, agents, and employees for any and all liability for damages that may result from collection of the local charge.
- Reallocation of local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.
- Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the local agency’s ordinance.

For purposes of the Local Act, the bill clarifies that the references in the FCPL to “fee” include the local charge and references to “feepayer” include a person required to pay the local charge, including the seller.

The Local Act authorizes the BOE to prescribe and adopt rules and regulations as may be

necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

The Local Act limits the BOE's audit duties to verification that the seller complied with the Act and allows the BOE to contract with a third party to:

- Allocate and transmit collected local charges in the Prepaid Mobile Telephony Services Fund to the appropriate local jurisdictions.
- Audit proper collection and remittance of the local charge.
- Respond to requests from sellers, customers, boards, and others regarding local charges.

The bill applies existing disclosure laws to any third party contract, and prohibits contingent fee arrangements as payment for services rendered.

The Local Act also requires the BOE to make available to a requesting local agency any information that is reasonably available to the BOE regarding the proper collection and remittance of a local charge of that local agency by a seller, including a direct seller. Such information is subject to the confidentiality requirements of RTC Sections 7284.6, 7284.7, and 19542.

**Local Act: Deposit of Revenues.** The bill creates the Local Charges for Prepaid Mobile Telephony Services Fund in the State Treasury. All local charges imposed and collected by the BOE are to be held in trust for the local taxing jurisdiction. Local charges consist of all taxes, charges, interest, penalties, and other amounts collected by the BOE, less payments for refunds and reimbursement to the BOE for expenses to administer and collect the local charges. The bill requires the BOE to periodically transmit the funds to the local jurisdictions as promptly as feasible and at least once in each calendar quarter. The BOE must also furnish a quarterly statement to the local jurisdictions indicating the amounts paid and withheld.

The Local Act specifically states that a local agency shall pay to the BOE its pro rata share of the BOE's cost of collection and administration.

**Miscellaneous Provisions.** The Local Act contains provisions similar to the Bradley-Burns Uniform Local Sales and Use Tax Law and Transactions and Use Tax Law, including, but not limited to provisions that require the BOE to annually prepare a report showing the amount of both reimbursed and unreimbursed administrative local charges collection costs.

Sole responsibility lies with a city or county that has adopted an ordinance that imposes a charge that applies to prepaid MTS to:

1. Defend any claim regarding the validity of the ordinance in its application to prepaid mobile telephony service.
2. Interpret any provision of the ordinance, except to the extent specifically superseded by this statute.
3. Respond to claims for refund, including claims of exemption under the ordinance.

**911 Surcharge Act.** This bill states that, commencing January 1, 2016, a MTS surcharge must be imposed on amounts paid for prepaid MTS pursuant to the Act in lieu of the 911 surcharge.

## STATE BOARD OF EQUALIZATION

The bill also adds RTC Section 41033 to require that for each fiscal year, beginning with the 2016-17 fiscal year and ending with the 2018-19 fiscal year, the BOE calculate the following on or before November 1 at the end of that fiscal year:

- The total collections for the fiscal year of that portion of the prepaid MTS surcharge that is for the 911 surcharge, net of any reimbursement amounts that a seller was permitted to deduct and retain.
- Less the expenses incurred and reimbursed to the BOE for the fiscal year from that portion of the prepaid MTS surcharge that is for the 911 surcharge.

The bill requires the BOE to provide notification of whether the amount calculated in this section exceeds or is less than nine million nine hundred thousand dollars (\$9,900,000) on its Internet Web site by December 15 following the calculation. The BOE must also provide the underlying calculations, assumptions, and methodology.

If in any fiscal year the calculation results in an amount less than \$9,900,000, the bill imposes that deficiency on each prepaid MTS provider or direct seller on a pro rata basis. The bill tasks the BOE to bill each prepaid MTS provider or direct seller its pro rata share of the deficiency based upon each provider's percentage share of total California intrastate prepaid MTS revenues, as reported to the CPUC.

Within 45 days of request, the bill requires the CPUC to provide the BOE the following:

- The name and address of each prepaid MTS provider and direct seller;
- Each prepaid MTS provider's and direct seller's California intrastate prepaid MTS revenue;
- Each prepaid MTS provider's and seller's percentage share of total California intrastate prepaid MTS revenue for the prior fiscal year; and
- Any other information the BOE deems necessary.

Any amount billed to a prepaid MTS provider is due and payable to the BOE within 60 days. At the expiration of the 60-day period, interest begins to accrue and a penalty of 10% shall be added. Existing law requires the BOE to deposit deficiency amounts collected into the Account.

RTC Section 41033 also requires each prepaid MTS provider or direct seller to report to the BOE the amount of that portion of the prepaid MTS that is the 911 surcharge, remitted by the provider or seller pursuant to the Act. The report is due on or before September 1 each year beginning with the 2016-17 fiscal year, and ending with the 2018-19 fiscal year.

**Legislative Report.** To assist the Legislature in determining whether to extend the Act and Local Act beyond the January 1, 2020 repeal date, the bill requires the BOE to prepare, no later than July 1, 2017, the following:

- A report that identifies, for the 2016 calendar year, (1) the actual MTS surcharge revenues collected, (2) the number of sellers remitting the MTS surcharge and local charges, including the number of individual seller locations remitting local charges, and (3) the BOE's actual costs to implement the Act and Local Act.
- A revised estimate for the 2017–2019 calendar years of annual MTS surcharge and local charge revenues to be collected by the BOE and the BOE's annual implementation costs. The report shall also include any other significant anticipated

## STATE BOARD OF EQUALIZATION

change in revenues or BOE implementation costs if the Act and Local Act are extended beyond the January 1, 2020 repeal date.

**Savings Clause.** The bill adds uncodified language that preserves administrative provisions that are applicable for the collection of any provision of the Act, Local Act, and related implementing statutes, the liability for which accrued prior to January 1, 2020. It states the making of any refunds and the effecting of any credits; the disposition of money collected; nor shall the repeal affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before that repeal; but all rights and liabilities under that law shall continue, and may be enforced in the same manner, as if the repeal had not been made.

The bill also includes uncodified language that preserves administrative provisions that are applicable to the 911 surcharge and any charges imposed by the CPUC, as specified.

**Operative Date.** As an urgency measure, the bill is effective September 30, 2014. However, the MTS surcharge and local charges are operative January 1, 2016, and remain in effect until the provisions are repealed on January 1, 2020.

### Legislative History

In 2010, AB 2545 (De La Torre) would have required the CPUC to conduct a public process for the purpose of developing recommendations for an equitable and uniform method of collection for state and local government-imposed communications taxes, fees, and surcharges from prepaid communications end-user consumers. That bill was ordered to third reading in the Senate, but was subsequently moved to the Senate inactive file where the bill died.

During the 2011-12 Legislative Session, Assembly Member Fiona Ma introduced AB 1050, which would have imposed a MTS surcharge, similar to this bill. That bill died in the Senate Committee on Governance and Finance.

Last year's AB 300 (Perea) successfully passed the Legislature, but was vetoed by Governor Brown. In his veto message, the Governor stated:

This bill would establish an additional system for collecting and remitting fees, surcharges and taxes applicable to prepaid mobile services. These charges would be collected from prepaid customers and remitted to the Board of Equalization, while fees collected from postpaid customers would continue to be remitted directly to the Public Utilities Commission, State 911 Fund and local governments.

There is no question that the state needs an effective system for capturing local taxes related to the sale of prepaid phones. The solution, however, proposed by this bill is duplicative, complex and will result in significant and unnecessary costs to the state.

I encourage the author to partner with the local governments and State Agencies affected by these revenues and craft a bill with a more cost effective solution.

### COMMENTS

1. **Purpose.** The bill is intended to create a fair and uniform mechanism to ensure collection of state and local communications taxes and fees from consumers of prepaid mobile telephony services.

2. **Postpaid versus prepaid.** Both postpaid and prepaid service requires an eligible phone, SIM card, and service supplier (carrier) activation (e.g. directly from device, online, or by phone). While postpaid service requires detailed service user information verified through a credit check, prepaid service requires a zip code at a minimum. Both postpaid and prepaid services require the service user to pick a rate plan. Available prepaid rate plans include monthly plans, similar to postpaid service, to, for example, per-minute plans and per-day plans. Both services may also allow additional feature and service purchases, such as insurance, international services, family locator, additional data, music, and ringtones. Both services also offer a non-contract option; however, only postpaid services offer a contract option that usually subsidizes the cost of the phone. Lastly, both postpaid and prepaid services require a customer account.

The principal difference between postpaid and prepaid wireless plans is in the name: service suppliers collect postpaid charges after service consumption whereas service suppliers collect prepaid charges before or at the time of service consumption. Another difference is that postpaid service requires a service user credit check while prepaid service does not.

3. **Postpaid and prepaid services plans.** A postpaid user receives a bill from the service supplier for services consumed, such as the cost of the plan, extra services (music and ringtone downloads, roaming, child-use monitoring, international options, etc.), and for surcharges and fees. The postpaid user has several payment options, such as credit/debit card, check, or online bill payment.

As the name implies, a prepaid user pays in advance for rate plans, services, and features. Prepaid users also maintain an account with the service supplier but must credit their account before service consumption. Prepaid users may credit their account using the same payment methods offered to postpaid users, but they may also pay through refill cards (top-off cards). Top-off cards may be purchased at a third-party retail store or a carrier store through the use of check, credit card, or cash.

4. **Top-off cards similar to gift cards.** Top-off cards are simple to purchase and redeem, allow prepaid users to stay within a budget, and provide a convenient payment method for cash users. Top-off cards are similar to a gift card in that they are a form of payment.

As an example, a cash consumer purchases a \$50 top-off card at a retailer location. Although the card may “advertise” \$50 for all the text, talk, and data service you can use, the wording simply advertises a service supplier (carrier)-offered plan; the prepaid user has already selected their rate plan when the phone was activated. The \$50 redeemed to the user’s account may be used for more than paying for a rate plan; the credit may be used to purchase games, ringtones, music, and other services similar to postpaid service, including locator services and roaming. If the consumer would like to purchase more services, they need to buy another card.

5. **Is 911 surcharge pre-collection possible?** Could service suppliers pre-collect the 911 surcharge in the same manner as they pre-collect for rate plans, services, and other features? For example, could a service supplier immediately impose and collect the 911 surcharge at the time a user credits and/or adds value their prepaid account? To illustrate:

## STATE BOARD OF EQUALIZATION

Assume a new user selects a \$25 prepaid rate plan at activation that allows unlimited talk and text, plus 1 GB of data monthly. At the time of activation, the user redeems a \$50 top-off card, which credits the user's prepaid account by \$50. Immediately, the service supplier imposes and collects the 911 surcharge in the amount of \$0.06 from the user's \$50 account balance leaving a \$49.94 prepaid account balance.

At the beginning of the user's service period, the service supplier deducts \$25 from the prepaid account for the selected rate plan, leaving a \$24.94 balance. During this same billing cycle, the user purchases ringtones (\$9.98) and additional data (\$10). Since this is a prepaid account, the service supplier immediately deducts \$19.98 from the user's prepaid account leaving a \$4.96 account balance.

Nearing the next billing cycle, the user pays cash for a \$20 top-off card and redeems the credit to his account to bring the account balance to \$24.96. At the beginning of the billing cycle, the service supplier attempts to pre-collect for the \$25 rate plan; however, the account is short by \$0.04 and the service does not renew. The cash user must purchase another top-off card to bring the balance up to pay for the \$25 monthly rate plan to resume service.

Current law allows a service supplier to determine which charges are not subject to the surcharge based upon books and records. Current law also allows the service supplier to choose a reasonable and verifiable method to determine the interstate revenue portion not subject to the surcharge from the following:

- Books and records kept in the regular course of business; and
- Traffic or call pattern studies representative of the service supplier's business within California.

Applying existing law to the \$50 top-off card, the service supplier may apply a percentage of charges not subject to the 911 surcharge. For this example, the service supplier determines that 80% of their prepaid services represent non-telecommunication services. As such, the service supplier applies the inverse percentage, 20%, to the \$50 amount credited to the prepaid account to determine the telecommunication charges.

- \$50 top-off card redeemed x 20% telecommunication charges = \$10 telecommunication charges

The service supplier then determines the interstate portion as 25%, and applies the inverse percentage to the telecommunication charge amount to arrive at the intrastate telecommunication charges.

- \$10 telecommunication charges x 75% intrastate portion = \$7.50 intrastate telecommunication charges

The service supplier then applies the 911 surcharge to the intrastate telecommunication charges to determine the correct 911 surcharge amount. \$7.50 intrastate telecommunication charges x 0.0075% surcharge rate = \$0.06 "911" surcharge.

A service supplier may be unable to collect the surcharge if (1) the surcharge is collected at the end of a service cycle, and (2) the prepaid users prepaid account

balance is zero. While BOE believes existing law provides service suppliers the authority to pre-collect the 911 surcharge at top-off or other credit to the account, it may be prudent to add clarifying language to the 911 surcharge law to specifically allow a surcharge pre-collection. BOE staff is available to draft such language.

6. **Administrative MTS surcharge program start-up cost funding essential.** This bill imposes the MTS surcharge on and after January 1, 2016. Typically, the BOE requires 6 to 8 months to implement a new tax or fee program. However, due to the complexity of the MTS surcharge and local charge programs, and recent direct seller amendments, the BOE requires at least 12 months to successfully implement the MTS surcharge and local charge programs. The BOE must have funding during Fiscal Year (FY) 2014-15 to allow for the 12-month implementation time. This requires the BOE to begin implementation by January 1, 2015, which requires current year funding. Without FY 2014-15 funding, the BOE cannot begin implementation until July 1, 2015 (FY 2015-16) once the BOE receives administrative cost funding through the Budget Act. **As such, surcharge collections may be at risk without sufficient implementation time.**

Typically, the BOE seeks administrative cost reimbursement from the account or fund into which tax proceeds are deposited. However, this bill creates the MTS Surcharge Fund, which lacks funding to reimburse the BOE prior to collection of the tax. Upfront BOE implementation cost reimbursement is essential. Thus, BOE staff suggests the bill authorize a loan from the General Fund or other eligible fund to the MTS Surcharge Fund. The loan would be repaid from taxes collected.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed MTS program. **Without an appropriation, it may be necessary for the BOE to divert General Fund (GF) dollars to implement the proposed tax program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.**

7. **Service suppliers currently pay the 911 Surcharge for prepaid communication services.** The 911 Surcharge Act requires the BOE to enforce the provisions of that Act and authorizes the BOE to prescribe, adopt, and enforce rules and regulations relating to its administration and enforcement. In 2000, the BOE amended Regulation 2401, Definitions, and adopted Regulation 2403, Prepaid Telephone Calling Cards, to clarify the application of the 911 surcharge on dollar amounts or value of minutes deducted upon use of prepaid telephone and mobile telephone cards. These regulations were adopted to address confusion regarding the application of the tax to prepaid services within the telecommunications industry.

In general, the service suppliers state they report the 911 surcharge consistent with existing statutes and regulations. However, service suppliers argue that there is no statewide mechanism to collect the same communications fees and surcharges directly from prepaid wireless customers as are presently collected from post-paid customers. As such, service suppliers state they are not reimbursed for the 911 surcharge or for CPUC end-user fees from prepaid customers.

The surcharge proposed by this measure only applies to prepaid wireless services. Although the 911 surcharge applies to both prepaid calling cards and prepaid wireless services, the CPUC-related charges apply only to prepaid wireless services.

Consequently, the MTS surcharge, which includes CPUC-related charges, applies only to prepaid wireless services.

8. **Should the entire 911 surcharge program be revamped for a MTS surcharge?**

Along with concerns regarding the collection of the 911 surcharge on prepaid wireless services, BOE staff suggests a thorough review of the 911 Surcharge Act to determine a more up-to-date surcharge mechanism to provide a sufficient revenue stream to fund the statewide emergency telephone number system.

This bill proposes to carve out a segment of the 911 Surcharge program (prepaid wireless) and instead impose a prepaid MTS surcharge on retail sales of the service that includes prepaid MTS and mobile data service. As discussed previously, the prepaid MTS surcharge also includes CPUC-related charges and is imposed in conjunction with the specified local taxes, fees, or surcharges.

This measure intends to address the collection of end-user taxes and fees directly from the consumer where, generally, an established relationship does not exist between the service supplier and consumer. This occurs when consumers purchase prepaid MTS from traditional retailers rather than directly from a service supplier. Without that direct relationship, service suppliers assert that they are unable to collect the taxes and fees directly from the prepaid wireless consumer. On the other hand, service suppliers are able to bill taxes and fees to cell phone consumers on their monthly service bill (“postpaid” services). Consumers pay those taxes and fees directly to the service supplier, who remits those amounts to the appropriate government entities.

The current 911 Surcharge program faces many challenges that include prepaid wireless services. Technology is rapidly changing, as are the devices and services that provide access to the 911 emergency telephone system. Some of these devices provide direct access to 911 with no intrastate telecommunication services provided, such as [5Star Urgent Response](#) and old, decommissioned cell phones. Since these devices provide no intrastate telecommunication services, the 911 surcharge does not apply. As such, their use/service does not contribute to the state emergency telephone number account.

Furthermore, surcharge revenues continue to decline because costly landline services have given way to more economical wireless and other communication services, such as electronic mail and texting. As consumer behavior changes, so do the services and products offered by carriers. For example, carriers may offer prepaid unlimited data and text separate from prepaid voice service due to voice service’s decline. Under such a scenario, the MTS surcharge would apply only to the minimal per minute prepaid voice service, thus reducing the revenue estimated to be generated by this bill.

9. **MTS surcharge includes ancillary services.** In its current form, the surcharge consists of any and all state and locally authorized taxes, fees, and surcharges that are applicable to **mobile telephony services**, as described. Except as provided, the bill requires the surcharge to apply to the entire price if prepaid MTS is sold in combination with mobile data services or any other service or products for a single price.

The bill requires the MTS surcharge rate calculation to include the 911 surcharge and CPUC-surcharge rates applicable to **intrastate telephone communication services**, as determined by the OES and CPUC, respectively. However, the application of the resulting MTS surcharge rate still includes ancillary services, such as voice-mail service, data, and messaging (texting). Assuming no difference between post- and pre-paid wireless service cost, prepaid MTS consumers will pay a higher surcharge than post-paid wireless consumers since the 911 surcharge and CPUC surcharges do not apply to ancillary services.

10. **“Direct seller” provisions complicate administration.** In its current form, the bill carves out “direct sellers” to include, in part, prepaid MTS providers, service suppliers, and specified retailers. The bill further requires each of these direct sellers to remit that portion of the prepaid MTS surcharge that consists of the CPUC surcharges, 911 surcharge, and local charges to the CPUC, BOE, and local agencies, respectively. As such, this bill requires certain sellers (direct sellers) to remit (i.e. pay) the MTS surcharge to the CPUC, BOE, and local agencies, as provided, in a different manner than other MTS sellers. This complicates administration of the bill and, for the BOE, the existing 911 Surcharge program. The direct seller provisions split the BOE’s administration and collection of the MTS surcharge between the MTS surcharge program and the existing 911 surcharge program. This requires additional programming and resources to incorporate the direct seller remittance under the 911 surcharge program, specifically programming to track the deposit of direct seller remittances to two funds. Furthermore, splitting the MTS surcharge remittance between two BOE-administered programs sets a precedent for future tax and fee programs.
11. **Suggested amendments.** BOE staff had several concerns regarding the bill, which have, for the most part, been addressed through last year’s AB 300 stakeholder meetings and amendments.

Outstanding suggested amendments include the following:

- **PUC Section 319(e):** This subdivision provides the CPUC the authority to enforce proper remittance of a prepaid MTS provider pursuant to the Act. However, the Act consists of both the 911 surcharge and CPUC surcharges and fee. This subdivision should be amended to clarify that the CPUC’s enforcement authority extends only to that portion of the MTS surcharge that consists of the CPUC’s surcharges remitted by a direct seller. The BOE staff suggests the following amendment:

319.(e) The commission shall have enforcement authority to ensure the proper remittances ~~over retail transactions for that portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges, as defined in Section 42004 of the Revenue and Taxation Code,~~ of a prepaid MTS provider . . . to this subdivision.

- **RTC Section 41033:** Is it the author’s intent for the BOE’s deficiency calculation to take into account the additional BOE administrative costs under the 911 Surcharge Act to calculate, bill, and collect deficiency amounts, which is funded by the State Emergency Telephone Number Account, and bill prepaid MTS providers for that expense?

STATE BOARD OF EQUALIZATION

- **RTC Section 42004(b)(1):** BOE staff notes that the “direct seller” definition in RTC 42004(b)(1)(B) is confusing and serves no purpose as written. At a minimum, the definition should be amended as follows:

42004(b)(1) “Direct seller” means . . . any of the following:

(A) A telephone corporation, as defined by Section 234 of the Public Utilities Code.

(B) A provider of an interconnected Voice over Internet Protocol (VoIP) service, as defined in Section 285 of the Public Utilities Code.

- **RTC Section 42010(d)(1):** The bill adds subdivision (f) to Section 42010 to require a direct seller to remit the CPUC portion of the MTS surcharge to the CPUC, the 911 surcharge portion of the MTS surcharge to the BOE pursuant to the 911 Act, and the local charge portion of the MTS surcharge to the appropriate local agency. This remittance should be specified in subdivision (d)(1) rather than providing an exception to those direct sellers. Providing an exception could have unintended consequences. The BOE staff suggests moving the direct remittance requirements to Chapter 3 (commencing with Section 42020) and placing that reference in (d)(1). Furthermore, the 911 surcharge portion of the MTS surcharge should be remitted to the BOE along with all other remittances of the MTS surcharge under the Act rather than having those amount remitted under an entirely different program (911 Surcharge Act). Reporting a portion of the MTS surcharge under the 911 Surcharge Act results in accounting and audit difficulties, as well as additional administrative costs.

42010.(d)(1) Except for amounts retained pursuant to subdivision (e), ~~and except as provided in subdivision (f) for a seller that is a direct seller,~~ all amounts of the prepaid MTS surcharge and local charges collected by sellers shall be remitted to the Public Utilities Commission or board pursuant to Chapter 3 (commencing with Section 42020).

~~42010.(f) A direct seller shall remit the prepaid MTS surcharge and local charges as follows:~~

~~—(1) That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the commission with those reports required by the commission.~~

~~—(2) That portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the board pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) for those retail transactions with a prepaid consumer in the state.~~

~~—(3) Local charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge. Remittance of the local charges shall be separately identified from any other local taxes or other charges that are remitted to the local jurisdiction or local entity imposing the local tax or other charge.~~

To add remittance language to Chapter 3 (commencing with Section 42020):

42020.(a)(1) Except as provided in subdivision (f), the board shall administer and collect the prepaid MTS surcharge . . . with the board.

STATE BOARD OF EQUALIZATION

(f) A direct seller shall remit that portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges to the commission, and not to the board, for those retail transactions with a prepaid consumer in the state with those reports required by the commission.

To add comparable changes to the Local Act:

42103.(a) The board ... Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001)), except as provided in subdivision (g) and subject to the limitations set forth in Section 42105. For purposes of this part ... the seller.

(i) A direct seller shall remit that portion of the prepaid MTS surcharge that is for local charges, if applicable, to the local jurisdiction or local agency imposing the local charge. Remittance of the local charges shall be separately identified from any other local taxes or other charges that are remitted to the local jurisdiction or local entity imposing the local tax or other charge.

On a technical note, BOE staff recommends an amendment to move all references to local prepaid MTS from Part 21 (commencing with Section 42010) to Part 21.1 (commencing with Section 42101). Similar to the Uniform Local Sales and Use Tax Law and the Transaction and Use Tax Law, the local provisions are contained only within those laws, and the state Sales and Use Tax Law makes no mention of the local taxes.

Furthermore, should the deficiency calculation also take into account the additional BOE administrative costs under the 911 Surcharge Act, which is funded by the State Emergency Telephone Number Account, and bill prepaid MTS providers for that expense?

12. **MTS seller's recordkeeping and reporting would be complicated.** For sales and use tax purposes, MTS sellers likely hold seller's permits, file returns, and report applicable sales or use tax. In addition, prepaid MTS sellers might also sell tires, covered electronic devices, lumber products, and tobacco products, all of which impose a unique special tax or fee that existing law requires to be separately stated on their customers' receipt.

The various taxes require separate accounting records for MTS sellers that sell one or more of these specific commodities, which increases their record-keeping burden. Furthermore, a separate tax or fee statement on the customer receipt could result in additional retailer programming costs. However, this measure permits sellers to retain 2% of the MTS surcharge and local charges collected to defray their collection costs.

Furthermore, the Local Prepaid MTS Collection Act includes a UUT on the consumption of prepaid MTS service and a local 911 charge. This would further complicate a retailer's recordkeeping and reporting if they have retail locations in more than one jurisdiction that impose one or more local charges.

13. **This measure imposes a prepaid MTS surcharge at the time of each retail transaction for prepaid wireless services in this state.** The bill states that a retail transaction occurs in the state if the prepaid consumer makes the retail transaction at a retail location in this state, or if the prepaid consumer makes a known-address

transaction, as described. A known-address transaction that occurs in this state generally relates to an Internet-based or telephone-based transaction. In this case, the seller likely transfers the prepaid wireless services to the consumer by:

- Mail as a physical prepaid wireless card or a card bundled with a mobile phone; or
- Directly adding the prepaid minutes to the consumer's device.

In a known-address transaction, the seller may be located in this state or outside this state. It is questionable whether or not the state may legally require an out-of-state MTS retailer, who has no physical presence in California, to remit the surcharge on services sold to an in-state consumer. While service suppliers are currently registered with the BOE for purposes of the 911 Surcharge, some prepaid MTS sellers may be located outside this state even though they sell to California consumers.

14. **Related legislation.** [SB 1211](#) (Chapter 926, Stats. 2014, Padilla) requires the OES to develop a plan, including a timeline of target dates, for the development of a Next Generation 911 emergency communication system. That bill also amends RTC Section 41030, which AB 1717 also amends, to establish requirements for OES in determining the 911 surcharge rate. This bill contains double-jointing language with SB 1211.

**Assembly Bill 1907 (Ridley-Thomas) Chapter 805**  
**Use Fuel Tax: Natural Gas: Gallon Equivalent**

*Effective January 1, 2015. Among its provisions, amends Section 8651.6 of the Revenue and Taxation Code.*

**BILL SUMMARY**

This bill changes the excise tax rate for compressed natural gas from \$0.07 per 100 cubic feet to \$0.0887 per 5.66 pounds, and for liquefied natural gas from \$0.06 per gallon to \$0.1017 per 6.06 pounds.

**Sponsor: California Natural Gas Vehicle Coalition**

**LAW PRIOR TO AMENDMENT**

Under the Use Fuel Tax Law (UFTL),<sup>1</sup> the state imposes an excise tax of \$0.18 per gallon for use of fuels. For liquefied petroleum gas (LPG), liquid natural gas (LNG), ethanol, and methanol, which are use fuels, the excise tax rates per gallon are \$0.06, \$0.06, \$0.09, and \$0.09, respectively. Compressed natural gas (CNG) is taxed at \$0.07 per 100 cubic feet.<sup>2</sup>

More specifically, the UFTL defines “fuel”<sup>3</sup> to include any combustible gas or liquid used in an internal combustion engine for propulsion on the highway except fuel that is subject to the tax imposed by the Motor Vehicle Fuel Tax Law (MVFTL) or the Diesel Fuel Tax Law (DFTL).<sup>4</sup> Revenue and Taxation Code (RTC) Section 8651.6 of the UFTL sets the natural gas rate at \$0.07 per 100 cubic feet of CNG used, and at \$0.06 per gallon of LNG used. The owner or operator of a vehicle propelled by LPG, LNG, or CNG may pay an annual flat rate fuel tax based on the type or weight of the vehicle instead of the per gallon or cubic foot rate.<sup>5</sup>

Although the use fuel tax is imposed on the use of the fuel, the vendor who sells or delivers such fuel is required to collect the tax from the user and provide a receipt.<sup>6</sup>

**AMENDMENT**

This bill amends RTC Section 8651.6 to change the use fuel excise tax rate for CNG from \$0.07 per 100 cubic feet to \$0.0887 per 5.66 pounds, and for LNG from \$0.06 per gallon to \$0.1017 per 6.06 pounds.

Unrelated to the BOE, the bill makes changes to the Business and Professions Code provisions related to the retail sale of natural gas as a motor fuel. In general, the amendments provide for the authorized retail sale of CNG on a gasoline gallon equivalent (GGE), and for LNG to be sold on a diesel gallon equivalent (DGE).

<sup>1</sup> Part 3 (commencing with Section 8601) of Division 2 of the Revenue and Taxation Code (RTC).

<sup>2</sup> CNG is reported in the taxable units of 100 cubic feet, instead of gallons. To convert cubic feet to gallons, multiply the cubic feet by 1.2667.

<sup>3</sup> RTC § 8604.

<sup>4</sup> Part 2 (commencing with Section 7301), and Part 31 (commencing with Section 60001), of Division 2 of the RTC, respectively.

<sup>5</sup> RTC §8651.7.

<sup>6</sup> RTC §8732.

### In General

The Division of Measurement Standards at the California Department of Food and Agriculture<sup>7</sup> is generally responsible for the manner in which fuel is sold and measured in California. Current statutes specify that the retail sale of CNG is a sale of a motor fuel.<sup>8</sup> Additionally, a person selling motor fuel to the public must display a sign or price indicator showing the actual total price per gallon, or liter, including the fuel and sales taxes.<sup>9</sup>

The National Institute of Standards and Technology (NIST) at the United States Department of Commerce<sup>10</sup> is a physical science laboratory that establishes national measurement standards for various products and services. The standards for CNG and LNG are specified in regulations.<sup>11</sup> The regulations<sup>12</sup> provide definitions of CNG, LNG and GGE.<sup>13</sup> The GGE is equivalent to 5.660 lb. of natural gas. Additionally, the regulations cover the standard fuel specifications for CNG,<sup>14</sup> as well as the classification and method of sale of petroleum products. Both CNG and LNG have labeling specifications<sup>15</sup> however, only CNG has a GGE conversion factor.<sup>16</sup>

The [Clean Vehicle Education Foundation](#) (CVEF)<sup>17</sup> provides additional background on the GGE, as well as a technical explanation of the effort to standardize the DGE of both CNG and LNG as a motor fuel. According to the CVEF, the justification for a GGE and DGE measurement is to provide a familiar and acceptable measurement to consumers<sup>18</sup>

The [California Natural Gas Vehicle Coalition](#), the sponsor of this bill, provides a recent update on the industry efforts at the state and federal level to change the natural gas measure to GGE and DGE.<sup>19</sup>

### COMMENTS

1. **Purpose.** This bill is intended to codify within California law the GGE for CNG and establish a DGE for LNG to promote tax equity and the use of cleaner alternative fuel.
2. **The BOE would not have administrative issues with the excise tax rate change.** Although the bill changes the excise tax rates for CNG and LNG, the BOE does not foresee any administrative issues with this change.
3. **Does this bill maintain revenue neutrality?** Although not specified in the author's fact sheet, California Natural Gas Vehicle Coalition indicated in their March 10, 2014 CalINGV newsletter<sup>20</sup> that the change in the excise tax rates to a GGE and DGE unit would maintain revenue neutrality on these fuels.

<sup>7</sup> <http://www.cdffa.ca.gov/dms/>

<sup>8</sup> Business and Professions Code (BPC) §13404.

<sup>9</sup> BPC §13470.

<sup>10</sup> <http://www.nist.gov/>

<sup>11</sup> [NIST Handbook, 130 – 2014 Edition, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality.](#)

<sup>12</sup> [Uniform Engine Fuels and Automotive Lubricants Regulation.](#)

<sup>13</sup> Sections 1.12, 1.35, and 1.25, of the Uniform Engine Fuels and Automotive Lubricants Regulation, of the NIST Handbook 130-2014 (hereafter, Regulation).

<sup>14</sup> Section 2.9 of the Regulation. (There was no fuel specification for LNG.)

<sup>15</sup> Sections 3.11 and 3.12, respectively, of the Regulation.

<sup>16</sup> Section 3.11.2.2.2 (Conversion Factor), of the Regulation.

<sup>17</sup> A non-profit national organization that supports the development of alternative fuel systems including natural gas.

<sup>18</sup> <http://www.cleanvehicle.org/committee/technical/PDFs/DGEforCNGandLNGJustificationDocument.pdf>

<sup>19</sup> [http://www.cngvc.org/pdf/newsletters/CalINGVNews\\_040714.pdf](http://www.cngvc.org/pdf/newsletters/CalINGVNews_040714.pdf)

<sup>20</sup> [http://www.cngvc.org/pdf/newsletters/CalINGVNews\\_031014.pdf](http://www.cngvc.org/pdf/newsletters/CalINGVNews_031014.pdf)

**Assembly Bill 2009 (Weber) Chapter 105**

***Managed Audit Program***

*Effective January 1, 2015. Adds Sections 8258, 8258.1, 8258.2, 8258.3, 8258.4, 9259, 9259.1, 9259.2, 9259.3, 9259.4, 30457, 30457.1, 30457.2, 30457.3, 30457.4, 32458, 32458.1, 32458.2, 32458.3, 32458.4, 40177, 40177.1, 40177.2, 40177.3, 40177.4, 41133, 41133.1, 41133.2, 41133.3, 41133.4, 43507, 43507.1, 43507.2, 43507.3, 43507.4, 45855.6, 45855.6.1, 45855.6.2, 45855.6.3, 45855.6.4, 46607, 46607.1, 46607.2, 46607.3, 46607.4, 50155.6, 50155.6.1, 50155.6.2, 50155.6.3, 50155.6.4, 55306, 55306.1, 55306.2, 55306.3, 55306.4, 60611, 60611.1, 60611.2, 60611.3, and 60611.4 to the Revenue and Taxation Code.*

**BILL SUMMARY**

This Board of Equalization (BOE)-sponsored bill adds Managed Audit Program authority to the following Special Tax and Fee programs: Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

**Sponsor: Board of Equalization**

**LAW PRIOR TO AMENDMENT**

Under existing law,<sup>21</sup> the BOE is authorized to examine the books and records of any taxpayer or fee payer (taxpayer) to determine the correct tax or fee (tax) liability. The authority is granted in order to verify the accuracy of any return made, or, if no return is made by the taxpayer, to ascertain and determine the amount required to be paid.

Under existing Sales and Use Tax Law,<sup>22</sup> the BOE is authorized to utilize a Managed Audit Program (MAP) which allows taxpayers to perform audits of their own books and records, with BOE guidance, in order to determine tax deficiencies. In return for performing the managed audit, taxpayers are liable for only one-half of the interest related to an identified deficiency. Taxpayers' participation in the MAP is entirely voluntary.

Managed audits are essentially supervised self-audits. Under the existing MAP, the BOE is authorized to determine which taxpayer accounts are eligible to participate in a MAP and to enter into MAP Participation Agreements with eligible taxpayers. The auditor provides written and oral instructions to enable eligible taxpayers to perform audit verification and prepare working paper schedules necessary to complete certain portions of the audit. Candidates for a managed audit must:

- Have few or no statutory exemptions;

<sup>21</sup>Revenue and Taxation Code (RTC) §§8253 (Motor Vehicle Fuel Tax Law), 9254 (Use Fuel Tax Law), 30454 (Cigarette and Tobacco Products Tax Law), 32453 (Alcoholic Beverage Tax Law), 40174 (Energy Resources Surcharge Law), 41130 (Emergency Telephone Users Surcharge Law), 43502 (Hazardous Substances Tax Law), 45852 (Integrated Waste Management Fee Law), 46603 (Oil Spill Response, Prevention, and Administration Fees Law), 50153 (Underground Storage Tank Maintenance Fee Law), 55302 (Fee Collection Procedures Law), and 60606 (Diesel Fuel Tax Law).

<sup>22</sup>Article 2.5 (commencing with Section 7076) of Chapter 8 of Part 1 of Division 2 of the RTC.

## STATE BOARD OF EQUALIZATION

- Have a single or small number of clearly defined taxability issues;
- Agree to participate in the MAP; and
- Have the resources to comply with the managed audit instructions provided by the BOE.

The MAP is advantageous for both taxpayers and the BOE. For example, managed audits:

- Resolve questions about taxability during, rather than after, the audit process;
- Allow the BOE to reallocate audit resources to other audits or other revenue generating activities;
- Reduce the number of protested audits;
- Decrease disruption of taxpayers' regular business activities;
- Promote an ongoing cooperative relationship between taxpayers and the BOE;
- Educate taxpayers regarding how tax applies to their business transactions, which increases accurate reporting; and,
- Offer participating taxpayers a 50% interest "discount" on any tax liability disclosed as a result of the managed audit. MAP audits that result in a credit or refund are computed using the standard running balance method. Therefore, if the audit has both debit and credit periods, the one-half interest rate applies for debit periods while the full statutory credit interest rate applies for credit periods.

Despite its advantages, the MAP is authorized only under the Sales and Use Tax Law; existing law does not provide for a MAP under any of the BOE's special tax and fee programs.

### **AMENDMENT**

This bill extends the MAP authority that exists under the Sales and Use Tax program to the following BOE special tax and fee programs:

- Motor Vehicle Fuel Tax Law
- Use Fuel Tax Law
- Cigarette and Tobacco Products Tax Law
- Alcoholic Beverage Tax Law
- Energy Resources Surcharge Law
- Emergency Telephone Users Surcharge Law
- Hazardous Substances Tax Law
- Integrated Waste Management Fee Law
- Oil Spill Response, Prevention, and Administration Fees Law
- Underground Storage Tank Maintenance Fee Law
- Fee Collection Procedures Law
- Diesel Fuel Tax Law

The bill becomes effective on January 1, 2015.

## Background

The original MAP was added to the Sales and Use Tax Law by BOE-sponsored Senate Bill 1104 (Ch. 686, Stats. 1997, effective January 1, 1998) and contained a sunset date of January 1, 2001. In 2000, the BOE sponsored legislation (Assembly Bill (AB) 2898, Ch. 1052) to extend the sunset date of the MAP by two years, to January 1, 2003. The MAP was not reauthorized for 2003. AB 1043 (Ch. 87, Stats. 2003, effective January 1, 2004) reauthorized the BOE to utilize the MAP until January 1, 2009. In 2008, the BOE again sponsored legislation (AB 3079, Ch. 306) that eliminated the January 1, 2009 sunset date, thereby making the MAP permanent under the Sales and Use Tax Law.

## COMMENTS

1. **Purpose.** This bill adds MAP authority to various BOE Special Tax and Fee programs.
2. **Amendments.** **The April 10, 2014 amendments** made non-substantive, technical corrections to replace “fee payer” with “feepayer” in two sections, and replace “involves” with “involve.” **The March 27, 2014 amendments** clarified that the MAP provisions do not limit the BOE’s authority to examine the taxpayer’s books and records (identical to the Sales and Use Tax MAP provisions). The amendments also made BOE-suggested technical changes.
3. **Adds a new audit tool to the special tax and fee programs consistent with the sales and use tax program.** A number of taxpayers are required to hold both a seller’s permit and one or more special tax and fee permits. For example, a winery’s retail sales are subject to sales tax, and its import of wines is subject to the alcoholic beverage tax. Tire retailers make sales that are subject to sales tax and the California tire fee. Although taxpayers participating in a sales tax managed audit may also wish to participate in a special taxes managed audit, they cannot do so due to lack of statutory authority.

Special tax and fee account holders have transactions that are equally appropriate for a managed audit review. The tax issues related to their business operations are straightforward and many have the resources necessary to perform the audit work. The following examples illustrate special tax and fee transactions appropriate for a managed audit:

- A distilled spirits taxpayer claims nontaxable sales for resale to other distilled spirits taxpayers. The taxpayer could verify and document that its customers held valid distilled spirits permits with the BOE.
- An electronics retailer that sells computer monitors, laptop computers, and televisions is required to hold a covered electronic waste recycling (eWaste) fee permit in addition to its seller’s permit. This retailer could review its claimed exempt sales for resale and sales delivered outside California. The same documentation required to support an exemption from sales tax is also required to support an exemption from the eWaste fee.
- Cigarette and tobacco products distributors who also sell at retail are required to hold a Cigarette and Tobacco Products Retailer’s License in addition to a seller’s permit. Some of these distributors claim only a few exemptions for which verification is straightforward, such as sales to a common carrier engaged in

STATE BOARD OF EQUALIZATION

interstate or foreign passenger service or sales to United States military exchanges, commissaries, or ship stores.

This bill would add a new audit tool to the special tax and fee programs consistent with the sales and use tax program. Eligible taxpayers would receive the same benefits enjoyed by sales tax managed audit participants.

4. **Advantages for taxpayers.** BOE staff has found that taxpayers who participate in the MAP develop a better understanding of the laws that affect them and are able to report tax liability more accurately.

In addition, taxpayers who participate in the MAP receive a 50% reduction in the interest due on any unpaid liability discovered during the audit.

5. **Under the current MAP, the BOE may void a MAP Participation Agreement if it determines that:**

- The taxpayer has failed to complete the managed audit by the due date specified in the MAP Participation Agreement.
- The apparent nature or complexity of the taxpayer's operations or transactions require greater levels of review, research, or verification than was originally anticipated.
- The taxpayer has refused to cooperate with BOE staff during the verification process or has refused to cooperate with BOE staff performing the audit work for any transactions specified in the MAP Participation Agreement.
- Any penalties for negligence or fraud are imposed during the audit period.
- The taxpayer has not paid the tax, interest, or penalties due as a result of the managed audit (1) within 30 days of the issuance date of the related Notice of Determination (billing), or (2) as agreed upon in a formal installment payment agreement.

If the MAP Participation Agreement is voided, the taxpayer will not receive the benefit of the reduced interest rate.

**Assembly Bill 2031 (Dahle) Chapter 810**  
***Lumber Products Assessment: Retailer Threshold***

*Effective January 1, 2015. Amends Section 4629.5 of the Public Resources Code.*

**BILL SUMMARY**

This BOE sponsored bill establishes a threshold of annual sales of \$25,000 in qualifying lumber products, under which a retailer is not required to collect and report the lumber product assessment (LPA).

**Sponsor: Board of Equalization**

**LAW PRIOR TO AMENDMENT**

Beginning on January 1, 2013, the Legislature enacted Assembly Bill 1492,<sup>1</sup> imposing a 1% assessment on a person who purchases lumber products and engineered wood products to be collected by the retailer at the time of sale.

Currently, the statute does not provide any type of exclusion for otherwise qualified businesses that have few to no sales of wood products subject to the LPA. These businesses must file zero or small dollar returns.

Beginning October 23, 2012, the BOE adopted emergency regulations to determine the retailer reimbursement amount.<sup>2</sup> After additional revisions and consideration, the BOE adopted Regulation 2001 on September 10, 2013.<sup>3</sup> Regulation 2001 allows a retailer required to collect the LPA to retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs. The total authorized retailer reimbursement amount is \$735. Regulation 2001 was effective January 1, 2014.

**AMENDMENT**

This bill amends PRC Section 4629.5 to define a “retailer” as one who has sales of qualified lumber products and engineered wood products of \$25,000 or more during the previous calendar year. This bill also requires retailers that are not required to collect the LPA, to notify purchasers of their responsibility to report the LPA to the BOE.

**Background**

All retailers that may make sales of lumber products or engineered wood products are required to register with the BOE and report the LPA on those sales, regardless of the amount of sales. During calendar year 2013, approximately 29,600 businesses accounts, with approximately 39,600 retail locations were registered to collect the LPA. To date, the BOE closed the accounts of over 33,000 retail locations because they were filing zero returns and/or were not making sales of wood products subject to the LPA.

<sup>1</sup> Article 9.5 (commencing with Section 4629) Chapter 8 of Part 2 of Division 4 of the Public Resources Code (PRC) [Assembly Bill 1492, Chapter 289, Statutes 2012]

<sup>2</sup> Regulation 2000 of Chapter 4.1 (Lumber Products Assessment), of Division 2 of Title 18 of the California Code of Regulations.

<sup>3</sup> Regulation 2001 of Chapter 4.1 (Lumber Products Assessment), of Division 2 of Title 18 of the California Code of Regulations.

STATE BOARD OF EQUALIZATION

Of the remaining registered accounts, approximately 995 retail locations reported LPA sales of less than \$25,000 for calendar year 2013.

**COMMENTS**

1. **Purpose.** This bill is intended to ease the burden for qualifying, small sellers of wood products by eliminating the expense of collecting and reporting the LPA.
2. **Product Tracking.** If the small seller threshold provision is enacted, retailers must still continue to track their sales of qualifying wood products and engineered wood products to determine if they fall under the threshold.
3. **Zero Returns.** The BOE deregistered accounts that reported zero sales of lumber products subject to the LPA during calendar year 2013.

**Assembly Bill 2048 (Dahle) Chapter 895**  
***Fire Prevention Fee: Clean Up***

*Effective January 1, 2015. Amends Sections 4211, 4212, 4213, 4214, 4221, and 4225 of, and adds Sections 4213.1 and 4220.1 to, the Public Resources Code.*

**BILL SUMMARY**

Among its provisions, this bill makes changes to numerous fire prevention fee processes, including:

- Makes optional the Fire Board's annual rate adjustment;
- Provides fee relief for a natural disaster;
- Adds an "administrative protest" procedure to be administered by CAL FIRE;
- Eliminates the requirement to notify both the BOE and the Fire Board of a petition for redetermination; and
- Replaces the recurring 20% penalty with a one-time 10% penalty, and prohibits the 20% penalty from being imposed or added to the fee that remains unpaid.

**Sponsor: Assemblymember Dahle**

**LAW PRIOR TO AMENDMENT**

**Fire Prevention Fee.** Existing law<sup>4</sup> requires the BOE to collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).<sup>5</sup> The fee benefits the California Department of Forestry and Fire Protection (CAL FIRE), which is responsible for fire prevention and suppression in areas that the State Board of Forestry and Fire Protection (Fire Board) has determined are state responsibility areas (SRAs). As required,<sup>6</sup> the Fire Board adopted emergency regulations to establish a fire prevention fee. The fee amount is not permitted to exceed \$150 per habitable structure on a parcel located within an SRA, except as it is adjusted annually by the Fire Board. Public Resources Code (PRC) Section 4102 defines an SRA as an area over which the Fire Board determines that the prevention and suppression of fires is primarily the financial responsibility of the state. PRC Section 4125 requires the Fire Board to classify all state lands and determine the areas in which the state has primary financial responsibility for fire prevention and suppression.

Beginning July 1, 2013, the Fire Board must annually adjust the fire prevention fee rate.<sup>7</sup> The adjustment reflects the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States. While the Fire Board set the fiscal year (FY) 2013-14 fee at \$152.33, most bills will be for \$117.33, as most owners will receive a \$35 reduction in the

<sup>4</sup> Public Resources Code (PRC) §4213.

<sup>5</sup> Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code (RTC).

<sup>6</sup> PRC §4212(a).

<sup>7</sup> PRC §4212(b).

fee.<sup>8</sup>

**Collection and Administration.** Commencing with FY 2011-12, the BOE collects the fire prevention fee annually. The FCPL governs the BOE's collection function.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

By each January 1, CAL FIRE transmits to the BOE the name, address, and assessment amount of each person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that feepayers may use to obtain responses to their fee questions.

Annual fire prevention fee assessments are due and payable to the BOE 30 days after assessment. The amount assessed becomes final at the end of the 30-day period, unless a feepayer files a petition for redetermination within that period. If a feepayer files a timely petition for redetermination, all legal collection actions are held until CAL FIRE's final determination.

The BOE lacks authority to decide or review any petition for redetermination or claim for refund of a fee that CAL FIRE determines is due. CAL FIRE handles all appeals, and for those cases that CAL FIRE determines the person is entitled to a refund, that person may file a refund claim with the BOE.<sup>9</sup>

The fire prevention fee may not be collected if, in any given fiscal year, the SRA Fire Prevention Fund (Fund) has sufficient funds to finance specified prevention activities. The law requires the Fund to be used to cover any startup costs incurred over a two-year period.

## AMENDMENT

This bill makes numerous changes to the fire prevention fee provisions.

**Definitions.** This bill amends PRC Section 4211 to codify definitions related to the fire prevention fee that are already defined in pertinent regulations or a related statute. "Habitable structure" is substantially similar to the definition used in the fire prevention fee regulations. "Owner of a habitable structure" is substantially similar to the definition of "property owner," which is defined in the fire prevention fee regulations.<sup>10</sup> "Person" as defined in this bill is substantially similar to the definition "person" in the FCPL.<sup>11</sup>

**Fire Board annual rate adjustment.** This bill amends PRC Section 4212 to replace the word "shall" with "may," providing the Fire Board with discretion to annually change the fire prevention fee rate.

**Imposition of the fire prevention fee.** This bill adds PRC Section 4213.1 to clarify that

<sup>8</sup> If a habitable structure is also within the boundaries of a local agency that provides fire protection services, the property owner will receive a \$35 reduction for each habitable structure. Over 90% of habitable structures in an SRA are also covered by a local fire protection agency.

<sup>9</sup> PRC Section 4213(a)(3)(A) and (B) does not allow BOE to accept claims for refund on the basis that the person is not subject to the fee, or that the fee is improperly calculated. However, the BOE may directly process certain administrative refund claims (e.g. overpayments).

<sup>10</sup> Section 1665.2 (Definitions), of Chapter 13 (State Responsibility Area Fees), of Division 1.5 of Title 14 of the California Code of Regulations.

<sup>11</sup> RTC §55002.

the fee is imposed upon the owner of a habitable structure within the SRA, if that person owned the habitable structure on July 1 of the year for which the fee is due. This provision codifies the current fire prevention fee regulations regarding responsibility for payment of the fee.<sup>12</sup>

**New disaster relief provision.** An exemption from the fire prevention fee is added in PRC Section 4213.1, providing relief for the owner of a habitable structure that is subsequently deemed uninhabitable as a result of a natural disaster during the year for which the fee is due. If the habitable structure has not been repaired or rebuilt, then the exemption may apply to one subsequent year.

The Fire Board is responsible for preparing certification requirement forms and may grant an exemption if the habitable structure owner satisfies the following conditions:

- Owner certifies that the structure is not habitable as a result of a natural disaster.
- Owner either :
  - documents that the habitable structure passed a defensible space inspection conducted by CAL FIRE or its agent within one year of the date the structure was damaged or destroyed, or
  - certifies that clearance, as required under PRC Section 4291, was in place at the time that the structure was damaged or destroyed as a result of a natural disaster.

**CAL FIRE administrative protest procedure.** This bill adds PRC Section 4220.1 to authorize CAL FIRE to treat a petition for redetermination filed after the 30-day time period as an administrative protest or a claim for refund. CAL FIRE may treat the administrative protest as a timely petition for redetermination or claim for refund if it determines that the facts presented indicate that the fire fee may have been excessive or that the amount or the application of the fee may have been in error.

**Petition for redetermination filing requirement.** PRC Section 4221 is amended to change the petition for redetermination filing requirement so that separate copies of the petition no longer need to be sent to the Fire Board and the BOE. A petition for redetermination must be sent to CAL FIRE or its designee.

**20% penalty replaced with a 10% penalty.** The bill eliminates the recurring 20% penalty in PRC Section 4225 and instead imposes a one-time 10% penalty. Unlike the current 20% penalty, the new penalty will *not* be imposed for each 30-day period during which the fee remains unpaid.

Additionally, on and after January 1, 2015, for those unpaid amounts that have previously been assessed the recurring 20% penalty, the 20% penalty will not continue to be assessed for each 30-day period that the fee remains unpaid.

### **Background**

On July 7, 2011, Governor Brown signed ABx1 29 (Chapter 8, Stats. 2011) which required the BOE to collect the new fire prevention fee, commencing with FY 2011-12. However, collection of the fee was delayed due to several factors, including adoption of the emergency regulations and the costs of implementation.

Governor Brown's signing message for ABx1 29 states, in part, "A fee consistent with the

---

<sup>12</sup> PRC §§1665.2 ("Definitions") and 1665.4 (Imposition of the Fee).

STATE BOARD OF EQUALIZATION

‘beneficiary pays principle,’ such as the one intended in this bill, can achieve significant General Fund savings. However, as currently drafted, the revenues may not materialize. I am directing the Department of Finance and CAL FIRE to work with the Legislature during the remaining legislative session to identify necessary clean-up language to realize these revenues.”

Since then, numerous unsuccessful bills have been introduced to repeal, replace, or provide a fire fee exemption. Bills introduced during the last two legislative sessions include:

Bill No.	Session	Author	Fire Fee Bills
AB 23	2013-14	Donnelly	Proposed repeal of the fire prevention fee.
AB 124	2013-14	Morrell	Proposed repeal of the fire prevention fee.
AB 468	2013-14	Chesbro	Proposed repeal of the fire prevention fee and replacement with a 4.8% surcharge on commercial and residential fire and multi-peril insurance policy premiums.
AB 929	2013-14	Jones	Was intended to implement reimbursement procedures for persons who have paid a fire prevention fee covering a structure that was previously in a SRA, but that was determined to no longer be within a SRA’s boundaries.
SB 17	2013-14	Gaines	Legislative intent to repeal the fire prevention fee.
SB 125	2013-14	Gaines	Proposed exemption from the fire prevention fee for those properties with a habitable structure that lies within both a SRA and the boundaries of a local fire district that provides fire protection service.
SB 147	2013-14	Gaines	Proposed exemption from the fire prevention fee for those property owners with income of less than 200% of the federal poverty level.
ABx1 24	2011-12	Blumenfield	Proposed a fire protection fee to fund fire suppression and prevention and emergency response efforts in SRAs.
ABx1 45	2011-12	Jeffries	Proposed repeal of the fire prevention fee.
AB 1506	2011-12	Jeffries and Cook	Proposed repeal of the fire prevention fee.
AB 2474	2011-12	Chesbro	Proposed a credit of up to \$150 against the fire prevention fee of amounts paid to a local agency for fire protection services.
SB 1040	2011-12	Evans	Proposed repeal of the fire prevention fee.

**COMMENTS**

1. **Purpose.** This bill is intended to clarify the fire prevention fee statutes. The authors wish to provide homeowners with fee relief after a catastrophic fire or natural disaster while also aligning penalty provisions with other BOE-administered fees.

2. **BOE should receive concurrent notification of petition for redetermination.** Under proposed changes, a petition for redetermination must be sent to CAL FIRE or its designee, but not the BOE. Currently, a copy of the petition for redetermination is sent to the BOE, which allows the BOE receive concurrent notice of the petition and hold collection actions until CAL FIRE's final determination. BOE staff will continue to work with CAL FIRE to ensure timely notification to the BOE of a filed petition.
3. **The 20% penalty on unpaid accounts would no longer be imposed.** The 20% fire prevention fee penalty is not a standard penalty that is charged to any of the other unpaid tax or fee accounts in programs administered by the BOE. Although the 20% penalty would no longer be assessed on outstanding fee amounts, the penalties accrued up to January 1, 2015 will still be due and owing.
4. **BOE staff does not have administrative issues with other provisions.** The bill's provisions dealing with definitions, rate adjustments, fee imposition, and disaster relief are all administered by CAL FIRE and/or the Fire Board. Accordingly, the BOE has no administrative concerns or comments.
5. **Related bills.** Assembly Bill 1519 (Donnelly) also proposed deleting the 20% fire prevention fee penalty that is added to final redeterminations for each 30-day period the fee remains unpaid. AB 1519 was held in the Assembly Natural Resources Committee. Assembly Bill 1954 (Harkey) proposed changing the finality date of a petition for redetermination from 30 to 90 days, and within that 90 days, allowing a feepayer to appeal to the BOE those redeterminations that deny all or part of a refund. AB 1954 was held in the Assembly Revenue and Taxation Committee. SB 1413 (Wyland) would have extended the date the annual fire prevention fee assessments are due and payable from 30 to 60 days. SB 1413 was held in Assembly Appropriations.

**Senate Bill 445 (Hill) Chapter 547**  
***Underground Storage Tank Maintenance Fee: Extension***

*Effective September 25, 2014, but the fee increase is operative on first day of first quarter more than 90 days following effective date (January 1, 2015). Among its provisions, amends Section 25299.43 of the Health and Safety Code.*

**BILL SUMMARY**

This bill increases the underground storage tank maintenance fee rate by six mills (\$0.006) per gallon beginning the first day of the first calendar quarter commencing 90 days after enactment until January 1, 2026.

**Sponsor: Senator Hill**

**LAW PRIOR TO AMENDMENT**

Current law<sup>13</sup> requires underground storage tank (UST) owners to pay a storage fee of six mills (\$0.006) on each gallon of petroleum (including, but not limited to, gasoline and diesel fuel) placed in their underground storage tanks beginning in 1991. In addition, over the period 1995 to 2006, an additional eight mills (\$0.008) was imposed under Health and Safety Code (HSC) Section 25299.43, for a total storage fee of fourteen mills (\$0.014) per gallon of petroleum placed in the tank.

The fees are reported and paid to the BOE, pursuant to the Underground Storage Tank Maintenance Fee Law,<sup>14</sup> and are deposited into the UST Cleanup Fund. These funds are earmarked for the cleanup of leaking tanks. The HSC provisions, including the storage fee, commonly known as the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989<sup>15</sup> (UST Act), sunsets on January 1, 2016.

**AMENDMENT**

This bill increases the UST maintenance fee rate by six mills (\$0.006) per gallon from January 1, 2015 until January 1, 2026. The total UST maintenance fees will be twenty mills (\$0.020) on each gallon of petroleum placed in an underground storage tank. This bill also extends the UST Act sunset date from January 1, 2016 to January 1, 2026.

This bill contains an urgency clause and is effective September 25, 2014. However, the six mills (\$0.006) per gallon maintenance fee rate increase begins January 1, 2015.

**Background**

The UST Cleanup Fund was originally established in 1989 by Senate Bill 299 (Keene). Subsequent legislation related to fees, fund accounts, repeal dates, and various other provisions.

Assembly Bill 291 (Ch. 569, Stats. 2011) extended the temporary six mills (\$0.006) per gallon UST maintenance fee from January 1, 2012 to January 1, 2014.

<sup>13</sup> Health and Safety Code Section 25299.41.

<sup>14</sup> Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

<sup>15</sup> Chapter 6.75, Petroleum Underground Storage Tank Cleanup, (commencing with Section 25299.40) of Division 20 of the HSC.

## STATE BOARD OF EQUALIZATION

Assembly Bill 1188 (Ch. 649, Stats. 2009), among other things, temporarily increased the UST maintenance fee by an additional six mills (\$0.006) per gallon between January 1, 2010, and December 31, 2011.

Senate Bill 1161 (Ch. 616, Stats. 2008), among other things, extended the sunset date of the fee to January 1, 2016.

Assembly Bill 1906 (Ch. 774, Stats. 2004) increased the fee by one mill (\$0.001) effective January 1, 2005, and by another one mill (\$0.001) effective January 1, 2006.

### COMMENTS

1. **Purpose.** According to the author, the additional UST maintenance fee funds will ensure that sites are not abandoned mid-cleanup and the property can be returned to productive use.
2. **This bill would not be problematic for the BOE to administer.** The Legislature authorized a temporary rate increase of six mills (\$0.006) in 2010, and extended the temporary rate for an additional two years. The temporary rate expired January 1, 2014.
3. **Related bills.** Assembly Bill 282 (Wieckowski) would have extended the temporary underground storage tank maintenance fee rate increase of six mills (\$0.006) per gallon for an additional two years, from January 1, 2014, to January 1, 2016. The bill was held in the Senate Appropriations Committee.

**Senate Bill 861 (Committee on Budget and Fiscal Review) Chapter 35**  
***Lumber Products Assessment: Reimbursement Rate***  
***Oil Spill Prevention, Administration, and Response Fee: Rate***

*Effective June 20, 2014, but the oil spill fees are operative September 18, 2014. Amends Sections 8670.40 and 8670.48 of the Government Code, amends Section 4629.5 of the Public Resources Code, and amends Sections 46002, 46006, 46007, 46010, 46013, 46017, 46023, 46028, and 46101 of, adds Section 46001.5 to, and repeals Sections 46008, 46014, 46015, 46019, 46024, 46025 of, and repeals and adds Sections 46011, 46018 and 46027 of, the Revenue and Taxation Code.*

**BILL SUMMARY**

Among its provisions, this bill amends the **lumber products assessment** statute to codify the BOE regulation that set the amount of the retailer reimbursement of startup costs.

The bill also amends the **oil spill prevention and administration fee** (prevention fee) program to:

- Delete the \$0.05 scheduled prevention fee rate cap as of January 1, 2015, and maintain the current fee rate cap at \$0.065 per barrel;
- Include crude oil or petroleum products received at a marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state;
- Delete the fee imposition on pipeline operators;
- Extend the prevention fee to the owner of crude oil or petroleum products at the time it is received at a refinery within this state by any mode of delivery that has passed over, across, under, or through waters of the state; and
- Create a rebuttable presumption that crude oil or petroleum products received at a marine terminal or refinery in this state have passed over, across, under, or through waters of the state.
- Specify that the BOE shall not decide petitions for redetermination or claims for refund based on the rebuttable presumption, and require the BOE to forward such petitions or claims to the Administrator for a decision.
- Require every oil refinery, marine terminal, and pipeline operator to register with the BOE.
- Provide a 90-day delayed operative date.

Other provisions of this bill amend the **oil spill response fee** (response fee) program to:

- Clarify that the marine terminal operator collects the per-barrel fee from the owner of the petroleum products;
- Specify that the fee paid by a pipeline operator applies to petroleum products transported by pipeline in waters of the state; and
- Delete the fee exemption for “independent crude oil producers.”

## STATE BOARD OF EQUALIZATION

The bill also adds definitions to the Oil Spill Response, Prevention, and Administration Fees Law,<sup>16</sup> provides emergency regulation authority, and adds uncodified language that authorizes the Director of Finance to augment the BOE budget appropriation related to the prevention fee.

**Sponsor: Committee on Budget and Fiscal Review**

<p><b>LUMBER PRODUCTS ASSESSMENT</b> <i>Public Resources Code §4629.5</i></p>
---

### **LAW PRIOR TO AMENDMENT**

Existing law<sup>17</sup> imposes a 1% assessment on purchasers of lumber products or engineered wood products to be collected by a retailer at the time of the sale. The law allows retailers to retain an amount equal to the amount of reimbursement for any costs associated with the collection of the assessment, as determined by the BOE pursuant to emergency regulations.<sup>18</sup>

Beginning October 23, 2012, the BOE adopted emergency regulations to determine the retailer reimbursement amount.<sup>19</sup> After additional revisions and consideration, the BOE adopted Regulation 2001 on September 10, 2013.<sup>20</sup> Regulation 2001 allows a retailer required to collect the lumber products assessment to retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs. The total authorized retailer reimbursement amount is \$735. Regulation 2001 was effective January 1, 2014.

### **AMENDMENT**

This bill amends PRC Section 4629.5 to authorize a retailer to retain a reimbursement amount pursuant to Sections 2000 and 2001 of Title 18 of the California Code of Regulations, as approved by the BOE at its September 10, 2013 meeting, for startup costs associated with the collection of the assessment.

### **COMMENTS**

This bill codifies the amount of retailer reimbursement as determined and adopted by the BOE in Regulations 2000 and 2001.

---

<sup>16</sup> Part 24 (commencing with Section 46001) of Division 2 of the RTC.

<sup>17</sup> Article 9.5 (commencing with Section 4629) of Chapter 8 of Part 2 of Division 4 of the PRC.

<sup>18</sup> PRC §4629.5.

<sup>19</sup> Regulation 2000 of Chapter 4.1 (Lumber Products Assessment), of Division 2 of Title 18 of the California Code of Regulations.

<sup>20</sup> Regulation 2001 of Chapter 4.1 (Lumber Products Assessment), of Division 2 of Title 18 of the California Code of Regulations.

**OIL SPILL PREVENTION AND ADMINISTRATION FEE****OIL SPILL RESPONSE FEE***GC §8670.40 and GC §8670.48**RTC §46001.5 et seq.***LAW PRIOR TO AMENDMENT**

**Oil Spill Prevention and Administration Fee.** Existing law<sup>21</sup> imposes a prevention fee upon crude oil received at a marine terminal from within or outside the state, and upon petroleum products received at a marine terminal from outside the state. Marine terminal operators collect the fee from the owners of the crude oil or petroleum product based on each barrel the terminal receives from a vessel operating in, through, or across the state's marine waters. Additionally, a pipeline operator pays the fee for each barrel of crude oil that originates from marine-based production facilities and is transported across, under, or through the state's marine waters by pipeline.

The current fee rate cap is:

Rate Period	Rate Cap
01/01/12 – 12/31/14	\$0.065
01/01/15 – ongoing	\$0.05

As a Governor's appointee in the Department of Fish and Wildlife, the Administrator annually sets the fee rate. The Administrator is required to prepare a plan that projects revenues and expenses over three fiscal years. The fee amount is set so that the projected revenue will meet current and proposed state budget needs. The Administrator may also allow for a surplus if revenues will not be adequate to meet contingencies and shortfalls.

Marine terminal and pipeline operators pay the fee monthly to the BOE. Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies. However, the fee does not fund oil spill response activities.

**Oil Spill Response Fee.**<sup>22</sup> Existing law<sup>23</sup> imposes a response fee, not to exceed twenty-five cents (\$0.25), upon the owner of petroleum products for each barrel of petroleum products received at a marine terminal within this state by means of a vessel from a point of origin outside this state. It is also imposed upon a pipeline operator for each barrel of petroleum product transported into the state by pipeline, and upon a refinery operator for each barrel of crude oil<sup>24</sup> received at a refinery within the state. Marine terminal operators collect the fee from the owners of the petroleum product at the time the petroleum products are received at the marine terminal from a vessel that originated outside this state. Both the pipeline and refinery operator pay the fee to the BOE.

<sup>21</sup> Government Code (GC) §8670.40.

<sup>22</sup> In general, certain marine terminal operators, pipeline operators, and refiners pay a uniform oil spill response fee, in an amount not exceeding \$0.25 per barrel of petroleum product or crude oil. The fee is only collected when the funds in the Oil Spill Response Trust Fund (Fund) fall below the designated amount.

<sup>23</sup> GC Section §8670.48

<sup>24</sup> The specified fee shall not be imposed by a refiner on crude oil produced by an independent crude oil producer.

## STATE BOARD OF EQUALIZATION

The Administrator, in consultation with the BOE, sets the amount of the fee.<sup>25</sup> The fee is collected when the Administrator determines collection is necessary for the following specified reasons:

- The fund amounts are less than or equal to 95% of the specified designated amount;<sup>26</sup>
- Additional money is required to pay for specified purposes, generally related to the costs of response and cleanup of oil spills into marine waters; or
- The revenues are necessary to repay a draw upon security or borrowed money.<sup>27</sup>

The Administrator, in consultation with the BOE and with the approval of the Treasurer, may direct the BOE to cease collection when it is determined that further collection is not necessary.

An additional response fee shall be imposed in any month when the total cumulative year-to-date barrels of crude oil transported outside the state by means of vessel or pipeline exceed 6% by volume the total barrels of crude oil and petroleum products subject to the fee, as described above, for the prior calendar year. The additional response fee is imposed on a marine terminal operator and a pipeline operator for each barrel of crude oil that is transported from within this state to a destination outside this state, either by marine vessel or by pipeline, respectively.<sup>28</sup>

Moreover, the Administrator has the authority<sup>29</sup> to raise the \$0.25 response fee to a maximum of one dollar (\$1.00) per barrel, provided the fee increase is in maximum increments of \$0.25 and not more frequently than once every three months. The Administrator may only raise the fee by finding all of the following:

- Demands for expenditures from the Oil Spill Response Trust Fund (Fund) have severely depleted or exhausted or will severely deplete or exhaust the Fund;
- The Governor requests that the Treasurer borrow money and the Treasurer finds that the fee is insufficient for the Treasurer to borrow enough money to meet reasonably anticipated demands on the fund, and to repay those borrowings or that the fee is insufficient to repay and secure draws against the financial security obtained by the Treasurer; and
- Failure to raise the fee will result in unmet or unpaid authorized contracts or expenditures related to any borrowing or financial security.

All response fees collected are deposited in the Fund.

---

<sup>25</sup> The Administrator shall not set the amount of the fee at less than \$0.25, unless a lower amount will cause the fund to reach its designated amount within four months. The fee may also not be less than \$0.25 if the Administrator or the Treasurer has drawn upon security or borrowed money and those loans remain unpaid, unless the Treasurer certifies that the funds are not necessary for specified purposes.

<sup>26</sup> The designated amount, currently at \$109,750,000, is specified in RTC Section 46012. The designated amount is comprised of two components, \$54,875,000 in cash, and \$54,875,000 in financial security. Amounts held in the Fund may accumulate up to the designated amount.

<sup>27</sup> GC Section 8670.48.3, specifies that, under specified conditions, the Administrator is not obligated to resume collection of the response fee if a loan or other transfer from the Fund to the General Fund reduces the balance of the Fund to less than 95% of the designated amount. In general, the specified conditions are that a loan from the Fund is required, and that the loan be repaid by June 30, 2014.

<sup>28</sup> Generally speaking, the additional response fee takes effect when the outgoing barrels of crude oil and petroleum products exceed the incoming barrels of crude oil and petroleum products.

<sup>29</sup> GC §8670.48.5

**AMENDMENT**

**Oil Spill Prevention and Administration Fee.** This bill amends the prevention fee provisions to:

- Delete the \$0.05 scheduled prevention fee rate cap as of January 1, 2015, and maintain the current fee rate cap at \$0.065 per barrel;
- Include crude oil or petroleum products received at a marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state;
- Delete the fee imposition on pipeline operators;
- Extend the prevention fee to the owner of crude oil or petroleum products at the time it is received at a refinery within this state by any mode of delivery that has passed over, across, under, or through waters of the state;
- Create a rebuttable presumption that crude oil or petroleum products received at a marine terminal or refinery in this state have passed over, across, under, or through waters of the state;
- Specify that BOE shall not decide petitions for redetermination or claims for refund based on the rebuttable presumption, and requires BOE to forward such petitions or claims to the Administrator for a decision;
- Require every oil refinery, marine terminal, and pipeline operator to register with the BOE; and
- Provide a 90-day delayed operative date.

**Fee Rate Cap.** This bill eliminates the \$0.05 fee rate cap for calendar year 2015, and continues the fee rate cap at \$0.065 per barrel.

**Marine Terminal Receipts.** This bill expands the fee to require collection by the marine terminal operator from the owner of the crude oil or petroleum products, based on each barrel of crude oil received from within or outside the state, or petroleum products received from outside the state at a marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state.

**Pipeline Operator.** Current law imposes the fee on pipeline operators for each barrel of crude oil that originates from marine-based production facilities and is transported across, under, or through the state's marine waters by pipeline. This bill deletes this imposition.

**Refinery Operator.** This bill imposes the prevention fee on the owner of crude oil or petroleum products at the time it is received at a refinery within the state by any mode of delivery that has passed over, across, under, or through waters of the state, whether from within or outside the state.

**Rebuttable Presumption.** This bill creates a rebuttable presumption that crude oil or petroleum products received at a marine terminal or refinery has passed over, across, under, or through waters of the state. The presumption may be overcome by the marine terminal or refinery operator, or the owner of the crude oil or petroleum products by providing evidence to rebut the presumption.

Although the BOE handles and decides petitions for redetermination and claims for refund, the BOE shall not decide petitions for redetermination or claims for refund that challenge the rebuttable presumption. The bill requires the BOE to forward such petitions or claims to the Administrator for a decision.

**Delayed Operative Date.** This bill provides a 90-day delayed operative date from enactment for the amended prevention fee provisions.

**Registration with BOE.** This bill clarifies that refinery, marine terminal, and pipeline operators must register with the BOE, consistent with the current prevention fee law.<sup>30</sup>

**Definitions, Regulations, and Funding.** The bill also provides definitions in the RTC to obtain consistency with the GC provisions and improve administration by the BOE. Emergency regulation authority is also provided to the BOE in the RTC. Moreover, the Director of Finance is authorized to augment the BOE budget appropriation related to the prevention fee, as specified.

**Oil Spill Response Fee.** This bill amends the response fee, as follows:

- Clarifies that the marine terminal operator collects the per-barrel fee from the owner of the petroleum products at the time the petroleum products are received at the marine terminal by means of a vessel from a point of origin outside this state.
- Specifies that the fee paid by a pipeline operator applies to petroleum products transported by pipeline operating across, under, or through waters of the state.
- Specifies that the refinery operator pay the response fee for each barrel of crude oil received at a refinery within the state by any method of transport.
- Deletes the fee exemption for “independent crude oil producers.”
- Requires a marine terminal operator to pay the fee for each barrel of crude oil transported by a vessel, from within the state to a destination outside the state.
- States that the use of funds includes response to an imminent threat of a spill.

**Marine Terminal Collects.** Current law imposes the fee upon the owner of petroleum products for each barrel of petroleum products received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The owner of the petroleum products is liable for the fee until it has been paid to the state, except that payment to a registered marine terminal operator relieves the owner of liability. This bill clarifies that the marine terminal operator shall primarily collect and remit the fees to the BOE.

**Pipeline Operator.** This bill specifies that the fee paid by a pipeline operator applies to petroleum products transported by pipeline in waters of the state – not just marine waters.

**Refinery Operator.** Current law imposes the response fee on the refinery operator for each barrel of crude oil received at a refinery within the state. This bill specifies that the fee applies to crude oil received at the refinery by any method of transport.

**Independent Crude Oil Operators Exemption.** Current law does not impose the fee on crude oil produced by an independent oil producer. An “independent crude oil producer” is defined as a “crude oil producer who does not refine the oil into a product, and who does not own a retail gasoline marketing facility.” This bill deletes this exemption.

**Marine Terminal Receipts.** Current provisions impose an additional response fee on a marine terminal operator for each barrel of crude oil that is transported from within this state to a destination outside this state by marine vessel. This bill specifies that the fee

---

<sup>30</sup> The Oil Spill Prevention and Administration Fee is administered and collected by the BOE consistent with Part 24 (commencing with Section 46001) of Division 2 of the RTC. Article 2, Section 46101 of the RTC, requires these same fee payers to register with the BOE.

paid by the marine terminal operator applies to each barrel of crude oil that is transported from within this state to a destination outside this state by a vessel – not just a marine vessel.

**Use of Funds.** Current statutes specify several authorized uses of the response funds. This bill states that the use of funds includes response to an imminent threat of a spill.

**Definitions and Funding.** Definitions are added to the RTC to improve consistency and administration. Uncodified language addresses the BOE's unabsorbable administrative costs to implement the prevention fee provisions.

This bill is effective June 20, 2014, but the amended prevention fee sections are operative September 18, 2014.

### Background

In 1990, two bills<sup>31</sup> enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which added several provisions<sup>32</sup> to address marine oil spill prevention, administration, and response activities in California.

In 2010, the Legislature passed Assembly Bill 234 (Huffman), which would have increased the maximum amount of the fee to \$0.06. Governor Schwarzenegger vetoed the bill.

Assembly Bill 1112 (Ch. 583, Stats. 2011) temporarily increased the fee cap from \$0.05 to \$0.065, from January 1, 2012, to January 1, 2015. Thereafter, the fee rate cap decreases to \$0.05.

### COMMENTS

1. **Purpose.** This budget trailer bill implements various Natural Resources Code provisions, including the amendments to expand the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to all waters of the state and all significant modes of oil transportation.
2. **This bill maintains the current prevention fee rate cap.** As previously explained, the Administrator sets the fee rate in accordance with an annual plan. Currently, the BOE administers and collects this fee, set at the maximum of \$0.065. Current statute specifies a fee rate cap of \$0.05 on and after January 1, 2015.  
  
The bill expands the prevention fee to refineries not previously subject to the fee. A specified rate provides certainty to the refineries and allows them to prepare for a new fee and modify their business practices as needed. A 90-day delayed operative date provides the BOE and industry time to implement and prepare for the fee expansion.
3. **The prevention fee is imposed on crude oil or petroleum products received at refineries within the state.** The bill imposes the prevention fee on the owner of the crude oil or petroleum products received at a refinery within this state that has passed over, across, under, or through waters of the state, whether from within or outside the state. The refinery operator collects the fee from the owner of the crude oil or petroleum products for each barrel of crude oil or petroleum products received at the

---

<sup>31</sup> Senate Bill 2040 (Chapter 1248, Keene) added and Senate Bill 7 (Chapter 10, Keene) amended GC Section 8670.40 to impose the Oil Spill Prevention and Administration Fee.

<sup>32</sup> GC (§8670.1 et seq.), PRC (§8750 et seq.), and RTC (§46001 et seq.).

refinery, that has not yet been assessed a fee at another refinery or marine terminal.

4. **BOE staff will continue to handle appeals and refunds, except those related to the “waters of the state” rebuttable presumption.** The bill imposes the prevention fee on the owner of the crude oil or petroleum products received at the marine terminal or refinery, by any mode of delivery that passed over, across, under, or through waters of the state. This bill provides a rebuttable presumption that all crude oil or petroleum products received at a marine terminal or refinery, by any mode of delivery has passed over, across, under, or through waters of the state. Any appeal or refund claim that is based on the rebuttable presumption will be handled and decided by the Administrator.

The Administrator currently has the responsibility to submit to the Governor and the Legislature a California Oil Spill Contingency Plan (Plan). That Plan addresses oil spill contingencies for both marine and inland surface waterways.<sup>33</sup> Among other things, this bill amends the Administrator’s responsibilities to address marine and inland spills. The Administrator duties include the critical task to coordinate state efforts to respond to an oil spill, including the assessment of railroad tracks and maintained roads.

5. **Administrative provisions.** This bill adds RTC definitions to obtain consistency with the GC provisions and improve administration by the BOE. Emergency regulation authority is also provided to the BOE in the RTC. Uncodified language authorizes the Director of Finance to augment the BOE budget appropriation related to the prevention fee.

---

<sup>33</sup> GC 8574.8

**TABLE OF SECTIONS AFFECTED**

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
<b>Revenue &amp; Taxation Code</b>				
<b><i>Motor Vehicle Fuel Tax Law</i></b>				
§8258	Add	<a href="#">AB 2009</a>	Ch. 105	Managed Audit Program (MAP): BOE determines eligible accounts
§8258.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§8258.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§8258.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§8258.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Use Fuel Tax Law</i></b>				
§8651.6	Amend	<a href="#">AB 1907</a>	Ch. 805	Use fuel excise tax rate measurement: CNG and LNG
§9259	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§9259.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§9259.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§9259.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§9259.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Cigarette and Tobacco Products Tax Law</i></b>				
§30457	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§30457.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§30457.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§30457.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§30457.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Alcoholic Beverage Tax Law</i></b>				
§32458	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§32458.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§32458.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§32458.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§32458.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities

STATE BOARD OF EQUALIZATION

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
<b><i>Energy Resources Surcharge Law</i></b>				
§40177	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§40177.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§40177.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§40177.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§40177.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Emergency Telephone Users Surcharge Law</i></b>				
§41020	Amend	<a href="#">AB 1717</a>	Ch. 885	Exclude “prepaid mobile telephony services” from the emergency telephone users surcharge
§41030	Amend Repeal Add	<a href="#">AB 1717</a>	Ch. 885	Mobile telephony services surcharge rate determination
§41033	Add Repeal	<a href="#">AB 1717</a>	Ch. 885	State Emergency Telephone Number Account funding guarantee: MTS Surcharge
§41133	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§41133.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§41133.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§41133.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§41133.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Mobile Telephony Services Surcharge Law</i></b>				
Division 2, Part 21 (commencing with §42001)	Add Repeal	<a href="#">AB 1717</a>	Ch. 885	Mobile Telephony Services Surcharge
<b><i>Local Prepaid Mobile Telephony Services Collection Law</i></b>				
Division 2, Part 21.1 (commencing with §42100)	Add Repeal	<a href="#">AB 1717</a>	Ch. 885	Local Prepaid Mobile Telephony Services Surcharge

STATE BOARD OF EQUALIZATION

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
<b><i>Hazardous Substance Tax Law</i></b>				
§43507	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§43507.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§43507.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§43507.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§43507.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Integrated Waste Management Fee Law</i></b>				
§45855.6	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§45855.6.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§45855.6.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§45855.6.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§45855.6.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Oil Spill Response, Prevention, and Administration Fees Law</i></b>				
§46001.5	Add	<a href="#">SB 861</a>	Ch. 35	Regulations
§46002	Amend	<a href="#">SB 861</a>	Ch. 35	Administration and collection
§46006	Amend	<a href="#">SB 861</a>	Ch. 35	“Administrator” definition
§46007	Amend	<a href="#">SB 861</a>	Ch. 35	“Barges” definition
§46008	Repeal	<a href="#">SB 861</a>	Ch. 35	“Barrel” definition
§46010	Amend	<a href="#">SB 861</a>	Ch. 35	“Crude oil” definition
§46011	Repeal Add	<a href="#">SB 861</a>	Ch. 35	“Discharge” definition “Facility” definition
§46013	Amend	<a href="#">SB 861</a>	Ch. 35	“Feepayer” definition
§46014	Repeal	<a href="#">SB 861</a>	Ch. 35	“Independent crude producer” definition
§46015	Repeal	<a href="#">SB 861</a>	Ch. 35	“Local government” definition
§46017	Amend	<a href="#">SB 861</a>	Ch. 35	“Marine terminal” definition
§46018	Repeal Add	<a href="#">SB 861</a>	Ch. 35	“Marine waters” definition “Oil” definition
§46019	Repeal	<a href="#">SB 861</a>	Ch. 35	“Operator” definition
§46023	Amend	<a href="#">SB 861</a>	Ch. 35	“Refinery” definition
§46024	Repeal	<a href="#">SB 861</a>	Ch. 35	“Responsible party” definition

## STATE BOARD OF EQUALIZATION

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
<b><i>Oil Spill Response, Prevention, and Administration Fees Law, cont.</i></b>				
§46025	Repeal	<a href="#">SB 861</a>	Ch. 35	“Spill” definition
§46027	Repeal Add	<a href="#">SB 861</a>	Ch. 35	“State oil spill contingency plan” definition “State waters” definition
§46028	Amend	<a href="#">SB 861</a>	Ch. 35	“Tanker” definition
§46101	Amend	<a href="#">SB 861</a>	Ch. 35	Persons required to register with the BOE
§46607	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§46607.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§46607.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§46607.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§46607.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Underground Storage Tank Maintenance Fee Law</i></b>				
§50155.6	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§50155.6.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§50155.6.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§50155.6.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§50155.6.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Fee Collection Procedures Law</i></b>				
§55306	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§55306.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§55306.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§55306.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§55306.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities
<b><i>Diesel Fuel Tax Law</i></b>				
§60611	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: BOE determines eligible accounts
§60611.1	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: eligibility
§60611.2	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: information required to conduct self-audit
§60611.3	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: authority to examine records
§60611.4	Add	<a href="#">AB 2009</a>	Ch. 105	MAP: interest on liabilities

STATE BOARD OF EQUALIZATION

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
<b>Government Code</b>				
§8670.40	Amend	<a href="#">SB 861</a>	Ch. 35	Oil Spill Prevention and Administration Fee: imposition expansion
§8670.48	Amend	<a href="#">SB 861</a>	Ch. 35	Oil Spill Prevention and Administration Fee: use of funds
<b>Health and Safety Code</b>				
§25299.43	Amend	<a href="#">SB 445</a>	Ch. 547	Underground storage tank fee: rate increase
<b>Public Resources Code</b>				
§4211	Amend	<a href="#">AB 2048</a>	Ch. 895	Fire Prevention Fee: definitions
§4212	Amend	<a href="#">AB 2048</a>	Ch. 895	Fire Prevention Fee: rate setting discretion
§4213	Amend	<a href="#">AB 2048</a>	Ch. 895	Fire Prevention Fee: CAL Fire assessment information due to BOE
§4213.1	Add	<a href="#">AB 2048</a>	Ch. 895	Fire Prevention Fee: imposition clarification, uninhabitable structure exemption
§4214	Amend	<a href="#">AB 2048</a>	Ch. 895	Fire Prevention Fee: habitable structure clarification
§4220.1	Add	<a href="#">AB 2048</a>	Ch. 895	Fire Prevention Fee: untimely petition for redetermination
§4221	Amend	<a href="#">AB 2048</a>	Ch. 895	Fire Prevention Fee: petition for redetermination filing requirement
§4225	Amend	<a href="#">AB 2048</a>	Ch. 895	Fire Prevention Fee: late payment penalty revision
§4629.5	Amend	<a href="#">AB 2031</a>	Ch. 810	Lumber Product Assessment: "retailer" definition
§4629.5	Amend	<a href="#">SB 861</a>	Ch. 35	Lumber Product Assessment: retailer reimbursement