

**Amend Government Code Section 8670.40 to (1) clarify who owes and pays the oil spill prevention fee, (2) exclude from fee imposition and collection petroleum products derived from fee-paid crude oil, and (3) delete the unnecessary oil pipeline operator registration requirement. This proposal also clarifies definitions in the Revenue and Taxation Code.**

**Source: Property and Special Taxes Department**

**Existing Law.** Existing law<sup>1</sup> imposes an oil spill prevention fee on each barrel of crude oil received from within or outside the state. The fee is also imposed on petroleum products received from outside the state at a marine terminal by any mode of delivery, provided it passed over, across, under, or through waters of the state. Marine terminal operators collect the fee 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.

Additionally, the prevention fee is collected by the refinery owner from the crude oil or petroleum products owner 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.

There is 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 decides petitions for redetermination and claims for refund, the BOE will not decide them if they challenge the rebuttable presumption. The BOE will forward such petitions or claims to the Administrator for a decision.

As a Governor's appointee in the Department of Fish and Wildlife, the Administrator also annually sets the fee rate. The current fee rate cap is \$0.065 per gallon.<sup>2</sup> 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.

The refinery, marine terminal, and pipeline operators must each register with the BOE.<sup>3</sup> The owner of the crude oil or petroleum products, the marine terminal operator, or the refinery operator pays the fee monthly to the BOE. If the fee has

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<sup>1</sup> Government Code (GC) Section 8670.40, as enacted recently by SB 861. See [BOE analysis of SB 861](#) for statutory changes enacted by that bill.

<sup>2</sup> The cap was scheduled to lower to \$0.05 on January 1, 2015, before the enactment of SB 861. Effective September 18, 2014, the fee cap remained at \$0.065.

<sup>3</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.

been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery, the fee will not be imposed or collected again. The marine terminal or refinery operator or the owner of the crude oil or petroleum products has the obligation to demonstrate that the fee has been previously paid on the same crude oil or petroleum product.

Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies. However, a separate fee funds oil spill response activities.

**This Proposal.** This proposal amends Government Code (GC) Section 8670.40 to:

- Clarify that either the marine terminal or refinery operator is required to collect and pay the fee to the BOE, not the owners of the crude oil or petroleum products;
- Exclude from fee collection and imposition the petroleum products derived from fee-paid crude oil;
- Delete the unnecessary pipeline operator registration requirements; and
- Revise certain Revenue and Taxation Code (RTC) definitions.

**Payment of fee.** This proposal amends GC Section 8670.40(b)(4) to delete the provision that allows the owner of the crude oil or petroleum product to pay the fee to the BOE. Current Section 8670.40(b)(1) and (2) are clear that the marine terminal or refinery operator are responsible for collection of the fee from the owner of the crude oil or petroleum products. Therefore, to avoid confusion, this proposal clarifies that only the marine terminal or refinery operator may pay the fee to the BOE.

**Petroleum products derived from fee-paid crude oil.** This proposal amends GC Section 8670.40(b)(5) so that a marine terminal and refinery operator may presume that the prevention fee has been imposed on petroleum products derived from fee-paid crude oil. Currently, the prevention fee is imposed on crude oil received at a marine terminal or refinery. The prevention fee is also imposed on petroleum products received at a refinery, whether from within or outside the state, and on petroleum products received from outside the state at a marine terminal. While SB 861 expanded the prevention fee to crude oil and petroleum products received at the refinery, the bill also added provisions that prevent the fee from being imposed or paid twice on the same crude oil or petroleum products. However, current law is not clear that petroleum products derived from fee-paid crude oil, once refined, are not new petroleum products subject to the fee. BOE staff believes the petroleum products derived from fee-paid crude oil are a new and distinct product and therefore subject to the prevention fee. In contrast, both the Administrator<sup>4</sup> and the oil

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<sup>4</sup> Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR) is responsible for implementation of SB 861. OSPR submitted an emergency regulation, operative October 23, 2014, that clarifies that the prevention fee is not intended to be imposed on petroleum products derived from fee-paid crude oil.

[https://govt.westlaw.com/calregs/Document/I1976B700622511E494DF8E988D408861?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I1976B700622511E494DF8E988D408861?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

industry<sup>5</sup> interpret Section 8670.40(b)(5) to mean that the prevention fee is not to be collected by a marine terminal or refinery operator on petroleum products derived from fee-paid crude oil.

This proposal is intended to codify the Administrator's and industry's interpretation. As stated in its [AB 2678 analysis](#), BOE staff believes that legislative intent language alone may be ineffective to relieve industry from the requirement to document that the prevention fee was previously paid on petroleum products that were derived from fee-paid crude oil. Therefore, clear statutory guidance is necessary to clarify the issue.

**Registration requirements.** This proposal deletes GC Section 8670.40(h), and amends RTC Section 46101, to clarify that pipeline operators are not required to register for and pay the prevention fee, but are required to register for the oil spill response fee program.

**Definitions.** Finally, this proposal adds RTC Section 46008 and deletes RTC Section 46018 to, respectively, provide a definition of a barrel to support fee imposition application, while deleting the unnecessary definition of oil, not needed for BOE administration. BOE staff uses the RTC definitions to clarify the GC provisions.

*Section 8670.40 of the Government Code is amended to read:*

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to pay the reasonable regulatory costs to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment shall not exceed six and one-half cents (\$0.065) per barrel of crude oil or petroleum products. The oil spill prevention and administration fee shall be based on each barrel of crude oil or petroleum products, as described in subdivision (b).

(b) (1) The oil spill prevention and administration fee shall be imposed upon a person owning crude oil at the time that the crude oil is received at a marine terminal, by any mode of delivery that passed over, across, under, or through waters of the state, from within or outside the state, and upon a person who owns petroleum products at the time that those petroleum products are received at a marine terminal, by any mode of delivery that passed over, across, under, or through waters of the state, from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products for each barrel of crude oil or petroleum products received.

(2) The oil spill prevention and administration fee shall be imposed upon a person owning crude oil or petroleum products at the time that the crude oil or petroleum products are received at a refinery within the state by any mode of delivery that passed over, across, under, or through waters of the state, whether from within or outside the state. The refinery shall collect the fee

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<sup>5</sup> Clean up language in the not enacted [AB 2678 \(Ridley-Thomas, 2014\)](#) contained legislative intent stating the prevention fee is imposed on crude oil or petroleum products upon first entry into the state and not upon subsequent movement of that same oil or products derived after that first delivery.

from the owner of the crude oil or petroleum products for each barrel received.

(3) (A) There is a rebuttable presumption that crude oil or petroleum products received at a marine terminal or a refinery have passed over, across, under, or through waters of the state. This presumption may be overcome by a marine terminal operator, refinery operator, or owner of the crude oil or petroleum products by showing that the crude oil or petroleum products did not pass over, across, under, or through waters of the state. Evidence to rebut the presumption may include, but shall not be limited to, documentation, including shipping documents, bills of lading, highway maps, rail maps, transportation maps, related transportation receipts, or another medium that shows the crude oil or petroleum products did not pass over, across, under, or through waters of the state.

(B) Notwithstanding the petition for redetermination and claim for refund provisions of the Oil Spill Response, Prevention, and Administration Fees Law (Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code), the State Board of Equalization shall not do either of the following:

(i) Accept or consider a petition for redetermination of fees determined pursuant to this section if the petition is founded upon the grounds that the crude oil or petroleum products did or did not pass over, across, under, or through waters of the state.

(ii) Accept or consider a claim for a refund of fees paid pursuant to this section if the claim is founded upon the grounds that the crude oil or petroleum products did or did not pass over, across, under, or through waters of the state.

(C) The State Board of Equalization shall forward to the administrator an appeal of a redetermination or a claim for a refund of fees that is based on the grounds that the crude oil or petroleum products did or did not pass over, across, under, or through waters of the state.

(4) The fees shall be remitted to the State Board of Equalization by ~~the owner of the crude oil or petroleum products,~~ the refinery operator, or the marine terminal operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a refinery or marine terminal during the preceding month. A fee shall not be imposed pursuant to this section with respect to crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has already been collected by a refinery or marine terminal operator registered under this chapter or paid to the State Board of Equalization with respect to the crude oil or petroleum product.

(5) The oil spill prevention and administration fee shall not be collected by a marine terminal operator or refinery operator or imposed on the owner of crude oil or petroleum products if the fee has been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery. ~~It shall be the obligation of the marine terminal operator, refinery~~

~~operator, or owner of crude oil or petroleum products to demonstrate that the fee has already been paid on the same crude oil or petroleum products. A marine terminal operator or refinery operator receiving petroleum products derived from crude oil refined in this state may presume that the fee was already collected.~~

(6) An owner of crude oil or petroleum products is liable for the fee until it has been paid to the State Board of Equalization, except that payment to a refinery operator or marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(7) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest and inflation, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies. The administrator shall notify the State Board of Equalization of the adjusted fee rate, which shall be rounded to no more than four decimal places, to be effective the first day of the month beginning not less than 30 days from the date of the notification.

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

(d) The State Board of Equalization shall collect the fee and adopt regulations for implementing the fee collection program.

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

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

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

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

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

(5) To reimburse the State Board of Equalization for its reasonable costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(6) To fund the Oiled Wildlife Care Network pursuant to Section 8670.40.5.

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

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

~~(h) Every person who operates a refinery, a marine terminal in waters of the state, or a pipeline shall register with the State Board of Equalization, pursuant to Section 46101 of the Revenue and Taxation Code.~~

(ih) The amendments to this section enacted in Senate Bill 861 of the 2013–14 Regular Session shall become operative 90 days after the effective date of Senate Bill 861 of 2013–14 Regular Session.

*Section 46008 of the Revenue and Taxation Code is added to read:*

46008. "Barrel" means 42 gallons of crude oil or petroleum products.

*Section 46018 of the Revenue and Taxation Code is deleted:*

~~46018. "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.~~

*Section 46101 of the Revenue and Taxation Code is amended to read:*

46101. Every person who operates a refinery in this state or a marine terminal in waters of the state shall register with the board for the oil spill prevention and administration fee program. Every person who operates a refinery in this state, a marine terminal in waters of the state, or operates a pipeline to transport crude oil out of the state or petroleum products out of into the state shall register with the board for the oil spill response fee program.

*Uncodified Section is added to read:*

It is the intent of the Legislature that the State Board of Equalization only collect the fee on crude oil or petroleum products upon first delivery to a refinery or marine terminal as described in subdivision (b) and not upon subsequent movement of that same oil or products derived after that first delivery.