



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	07/15/10	Bill No:	<a href="#">AB 234</a>
Tax:	<b>Oil Spill Prevention and Administration Fee</b>	Author:	<b>Huffman</b>
Related Bills:			

***This analysis only addresses the provisions that impact the Board.***

### **BILL SUMMARY**

This bill would increase the current cap on the Oil Spill Prevention and Administration Fee from five cents (\$0.05) to six cents (\$0.06) per barrel of crude oil or petroleum product and allows the oil spill administrator to annually adjust the fee for inflation.

### **ANALYSIS**

#### **CURRENT LAW**

Under existing law, Government Code Section 8670.40 imposes an **oil spill prevention and administration fee**, currently set at a rate of five cents (\$0.05) per barrel, 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. The fee is collected by the marine terminal operator from the owner of the crude oil or petroleum product based on each barrel that is received 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 originating from a production facility in marine waters and transported in the state through a pipeline operating across, under, or through the state's marine waters.

The fee amount is set by the Administrator, an appointee of the Governor in the Department of Fish and Game. The Administrator annually prepares a plan that projects revenue and expenses over three fiscal years and uses the projections to set the fee to meet the current and proposed state budget. The Administrator may allow for a surplus if revenues are expected to be exhausted or for possible contingencies.

The fee is paid to the State Board of Equalization (Board) on a monthly basis and deposited into the Oil Spill Prevention and Administration Fund. The moneys in this fund are not used for responding to an oil spill but, rather, are used to fund oil spill prevention programs and various studies related to oil spills.

The Board also collects an **oil spill response fee** as required by Government Code Section 8670.48. A uniform oil spill response fee is paid by specified marine terminal operators, pipeline operators, and refiners, in an amount not exceeding \$0.25 per barrel of petroleum product or crude oil. The Board only collects the fee when the funds in the Oil Spill Response Trust Fund fall below the specified level.

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### PROPOSED LAW

This bill would amend Government Code Section 8670.40 to increase the cap on the oil spill prevention and administration fee from five cents (\$0.05) to six cents (\$0.06) per barrel of crude oil or petroleum product. The Administrator may annually adjust the fee for inflation, as measured by the California Consumer Price Index (CPI).

### BACKGROUND

In 1990, Senate Bill 2040 (Chapter 1248, Keene) added and Senate Bill 7 (Chapter 10, Keene) amended Section 8670.40 to impose the Oil Spill Prevention and Administration Fee. These bills also enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which added provisions to the Government Code (§8670.1 et seq.), the Public Resources Code (§8750 et seq.), and the Revenue & Taxation Code (§46001 et seq.). The Act covers all aspects of marine oil spill prevention, administration, and response in California.

In 2008, the Legislature passed Assembly Bill 2032 (Hancock), which would have increased the maximum fee to eight cents (\$0.08). The governor vetoed the bill for the following reasons:

“This bill would authorize the Administrator of the Office of Spill Prevention and Response (OSPR) to increase the per barrel oil fee on oil delivered to a marine terminal or transported in the state by a pipeline through marine waters from the current 5 cents per barrel up to 8 cents per barrel.

The per-barrel fee was increased in 2002, and OSPR is currently using those increased funds to implement a number of strategies to improve preparedness and operations that will not result in costs above what is included in the 2008 Budget Bill.”

### COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author in response to a bunker fuel spill that occurred after a ship, the Dubai Star, spilled between 400 to 800 gallons of fuel while refueling in the San Francisco bay area on October 30, 2009. The purpose of this bill is to increase the revenue deposited into the Oil Spill Prevention and Administration Fund to cover OSPR's administrative costs.
- 2. The inflationary adjustment should be clarified.** The author may wish to clarify if the Administrator would be authorized to increase the fee above the specified \$0.06 rate, or if the fee can only be increased to \$0.06 through the annual CPI adjustment. Additionally, the language may need to be clarified to address whether the Administrator would be authorized to use the cumulative annual inflation over a period of time, or just the annual inflation for the year in which the adjustment is being made.
- 3. A possible increase in the oil spill prevention and administration fee would not create administrative problems for the Board, provided the Board receives sufficient lead time and any rate change occurs at the beginning of a month.** The Board currently administers and collects this fee. As previously explained, the Administrator would set the fee in accordance with an annual plan. The rate is currently set at five cents (\$0.05) per barrel of crude or petroleum product. If the rate should change to six cents (\$0.06), the Board will have no difficulty in administering a rate increase. Annual inflationary adjustments made by the

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Administrator would also not present an issue for the Board, provided that the Board receives sufficient notice when the new rate is set, that the new rate be effective on the first day of the month beginning no fewer than 30 days following such notification, and that the new rate is rounded to no more than four decimal places. In order to address these administrative concerns the Board suggests the following technical amendment:

8670.40. (b)(3) 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, 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 board 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 no fewer than 30 days from the date of such notification.

## **COST ESTIMATE**

Provided the Board receives sufficient lead time and that any rate change occur at the beginning of a month, the Board would incur minor costs to administer this measure, which would be absorbable in the current fiscal year. These costs would be attributable to, among other things, advising and answering inquiries from the public, identifying and noticing affected fee payers, and working with the Administrator to explain rate changes related to the inflation adjustment of the oil spill prevention and administration fee. The Board is reimbursed for its costs, as provided in statute.

## **REVENUE ESTIMATE**

### **BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

This bill would increase the upper limit on the oil spill prevention and administration fee from \$0.05 to \$0.06 per barrel of crude oil or petroleum product. It would also allow the Administrator of the OSPR to adjust the fee annually for inflation, as measured by the California CPI.

#### Current Revenue

According to the Board's 2008-09 Annual Report, the Board collected over \$27 million in oil spill prevention and administration fees at the current maximum rate of \$0.05 per barrel of crude oil or petroleum products. An analysis of the BOE data did not suggest any obvious trends in recent years; average fees collected over the past four fiscal years amount to \$28 million.

#### Revenue Increase

This bill would increase that maximum rate by 20% to \$0.06 per barrel of crude oil or petroleum products. If the fee was increased to the new maximum rate of \$0.06 per barrel, collections deposited into the Oil Spill Prevention and Administration Fund would increase annually by \$5.6 million (20% x \$28 million = \$5.6 million).

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The Department of Finance forecast estimates that the California CPI will increase by an annual average of 3.0% over the next 3 years, which could result in an annual increase in revenue of \$1 million per year [(\$28 million + \$5.6 million = \$33.6 million) x 3%].

**REVENUE SUMMARY**

- The estimated annual revenue gain from a fee increase to \$0.06 per barrel of crude oil or petroleum product would be approximately \$5.6 million.
- The revenue may increase by approximately \$1 million per year if the fee was increased according to the CPI provision of the bill.

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