STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

DRAFT

Date:	**Enrolled**	Bill No:	**Senate Bill 861**
Tax Program:	**Lumber Products Assessment** **Oil Spill Prevention and Administration Fee** **Oil Spill Response Fee**	Author:	**Committee on Budget & Fiscal Review**
Sponsor:		Code Sections:	**GC 8670.40 and 8670.48** **PRC 4629.5** **RTC 46001.5 et seq.**
Related Bills:	**AB 1466 (Budget)** **SB 1319 (Pavley)**	Effective Date:	**Upon enactment, but oil spill fees operative 90 days after enactment.**

This analysis is limited to the provisions which impact the Board of Equalization (BOE).

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."

The bill also adds definitions to the Oil Spill Response, Prevention, and Administration Fees Law,[1] 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.

ANALYSIS

LUMBER PRODUCTS ASSESSMENT
Public Resources Code §4629.5

CURRENT LAW

Lumber Products Assessment. Existing law[2] 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, administered and collected by the BOE. 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.[3]

Beginning October 23, 2012, the BOE adopted emergency regulations to determine the retailer reimbursement amount.[4] After additional revisions and consideration, the BOE adopted Regulation 2001 on September 10, 2013. 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.[5]

PROPOSED LAW

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.

COMMENT

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

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[1] Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code (RTC)
[2] Article 9.5 (commencing with Section 4629) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code (PRC).
[3] PRC Section 4629.5.
[4] Regulation 2000 of Chapter 4.1 (Lumber Products Assessment), of Division 2 of Title 18 of the California Code of Regulations.
[5] Regulation 2001 of Chapter 4.1 (Lumber Products Assessment), of Division 2 of Title 18 of the California Code of Regulations.

ANALYSIS

OIL SPILL PREVENTION AND ADMINISTRATION FEE AND OIL SPILL RESPONSE FEE
GC §8670.40 and GC §8670.48

RTC §46001.5 et seq.

CURRENT LAW

Oil Spill Prevention and Administration Fee. Existing law[6] 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.[7] Existing law[8] 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[9] 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.

[6] Government Code (GC) Section 8670.40.
[7] 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.
[8] GC Section 8670.48
[9] The specified fee shall not be imposed by a refiner on crude oil produced by an independent crude oil producer.

The Administrator, in consultation with the BOE sets the amount of the fee.[10] 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;[11]
- 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.[12]

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.[13]

Moreover, the Administrator has the authority[14] 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.

[10] 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.

[11] 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.

[12] 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.

[13] 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.

[14] GC Section 8670.48.5

PROPOSED LAW

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.
- 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 so that collection would be required 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 BOE would be required 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.[15]

Definitions, Regulations, and Funding. The bill also provides definitions in the RTC provisions to obtain consistency with the Government Code 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 <u>by any method of transport</u>.

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

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[15] The Oil Spill Prevention and Administration Fee is administered and collected by the Board of Equalization (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 feepayers to register with the BOE.

state to a destination outside this state by marine vessel. This bill specifies that the fee 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 immediately, but the amended prevention fee sections are operative 90 days after the effective date.

BACKGROUND

In 1990, two bills[16] enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which added several provisions[17] 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 refinery, that has not yet been assessed a fee at another refinery or marine terminal.

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[16] 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.

[17] GC (§8670.1 et seq.), Public Resources Code (§8750 et seq.), and RTC (§46001 et seq.).

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.[18] 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 Government Code 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.

6. **Related bills.** AB 1466 (Comm. on Budget) is identical to SB 861. SB 1319 (Pavley) proposes similar amendments to the prevention and response fee provisions except the fees would be determined by the Administrator to pay the reasonable regulatory costs.

COST ESTIMATE

There are no costs associated with the lumber products assessment provision.

This bill makes several amendments to the prevention fee that will affect the BOE's administrative functions. The bill expands the prevention fee to crude oil received at a refinery within this state by any mode of transport, whether from within or outside the state, that has passed over, across, under, or through waters of the state. This expansion requires the BOE to identify and register new feepayers, substantially increases the complexity of audits, appeals, and refund determinations, requires the BOE to research and obtain third party information to verify incoming crude oil receipts, revise returns, regulations, publications, and online information, as well as work with the Administrator to determine the appropriate revenue reporting needs.

[18] GC 8574.8

These costs are estimated to be as follows:

Start Up FY 2014-15	FY 2015-16	Ongoing FY 2016-17, and each year thereafter
$402,000	$352,000	$348,000

REVENUE ESTIMATE

There is no revenue impact associated with the lumber products assessment provision.

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

It is our understanding that the extension of the prevention fee would apply primarily to crude oil being refined in California, but not currently subject to the fee. We believe that the assessment of refined petroleum products accounts for a relatively small portion of the total revenues related to the prevention fee.

The California Energy Commission publishes weekly data on crude petroleum input into refineries in California.[19] Tabulations of these data show that in fiscal year 2012-13, 575.4 million barrels of crude oil came into California refineries. The BOE's *Annual Report* data indicates that the prevention fee revenues were $31.337 million in fiscal year 2012-13. We assume these revenues are all derived from prevention fees imposed on crude oil. At a fee rate of $0.065 per barrel, the 2012-13 revenues convert to approximately 482.1 million barrels of crude oil (31.337 / 0.065 = 482.1).

The difference between fiscal year 2012-13 refinery input and crude oil on which a fee has been paid is 93.3 million barrels (575.4 – 482.1 = 93.3). At a fee rate of $0.065 per barrel, the additional prevention fee revenues are estimated to be $6.1 million.

Tabulations of the California Energy Commission data to an annual basis indicate that barrels of crude oil input changed little between 2012 and 2013. Our analysis of recent trends in crude oil production and forecasts of gasoline and diesel consumption suggest little change in crude petroleum input into refineries in California over the next several years. Therefore, we will assume no growth in barrels refined, and no growth in the associated prevention fee revenues occurs from 2012 to 2016. Although the amount of crude oil being refined is assumed to be the same, the sources of crude oil and the methods of delivery may change.

The California Energy Commission also publishes monthly data on rail shipments of crude oil into California.[20] These data indicate that rail shipments have increased from about 1.1 million barrels in 2012 to 6.3 million barrels in 2013. The 2013 rail shipments account for about 7% of the 93.3 million of total 2012-13 barrels not subject to the prevention fee.

REVENUE SUMMARY

We estimate additional prevention fee revenues to be approximately $6.1 million per year over the next two fiscal years.

Qualifying Remarks.

- The additional prevention fee revenue estimate is for crude oil receipts only, and it does not include revenues associated with refined petroleum products.

[19] Source: http://energyalmanac.ca.gov/petroleum/fuels_watch
[20] Source: http://energyalmanac.ca.gov/petroleum/statistics/2012_crude_by_rail.html

- There is a rebuttable presumption that all crude oil received at a refinery in this state that has been transported by any method has passed across, over, under, or through waters of the state.
- We believe that all crude oil coming into California is likely to be refined in some way. We assume no change in the quantity of oil input to refineries from that of fiscal year 2012-13.
- If this legislation is not passed, the prevention fee rate will decline from $0.065 per barrel to $0.05 per barrel. Additionally, to the extent that rail shipments could displace marine shipments (in which case the fee is already assessed under current law), revenues would be lower.
- This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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