DRAFT

STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**08/15/11**	Bill No:	**Assembly Bill 1112**
Tax Program:	**Oil Spill Prevention and Administration Fee**	Author:	**Huffman**
Sponsor:	**Pacific Environment**	Code Sections:	**GC 8670.40**
Related Bills:		Effective Date:	**01/01/12**

BILL SUMMARY

Among other things, this bill would increase the current cap on the Oil Spill Prevention and Administration Fee from five cents ($0.05) to six and one-half cents ($0.065) beginning January 1, 2012, and, again, beginning July 1, 2014, to six and three-quarters cents ($0.0675) per barrel of crude oil or petroleum product, and would allow the oil spill Administrator to annually adjust the maximum fee for inflation.

Summary of Amendments

Among other things, the amendments to this bill since the previous analysis provide a staggered increase of the cap amount to six and one-half cents beginning January 1, 2012, instead of seven cents ($0.07), and, beginning July 1, 2014, to six and three-quarters cents per barrel.

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 annually 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, not to exceed five cents ($0.05) per barrel of crude oil or petroleum products, 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 BOE 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 BOE 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 BOE only collects the fee when the funds in the Oil Spill Response Trust Fund fall below the specified level.

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 and one-half cents cents ($0.065), beginning January 1, 2012, and, again, beginning July 1, 2014, to six and three-quarters cents ($0.0675) per barrel of crude oil or petroleum product. In addition to annually setting the fee, the Administrator would be permitted to annually adjust the maximum fee for inflation, as measured by the California Consumer Price Index (CPI). Additionally, the Administrator would be required to notify the BOE of the adjusted fee rate, which is to be rounded to no more than four decimal places and which is to take effect on the first day of the month beginning not less than 30 days from the date of notification.

This bill also specifies that the moneys deposited in the fund shall not be used to provide a loan to any other fund.

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.

Last year, the Legislature passed Assembly Bill 234 (Huffman), which would have increased the maximum fee to six cents ($0.06). Governor Schwarzenegger vetoed the bill, stating:

> This bill requires the administrator of the Office of Spill Prevention and Response (OSPR) to develop regulations addressing "pre-booming" of vessels involved in the transfers of oil fuel and oil cargo. The bill also increases the per-barrel fee, paid by tankers, and the non-tank vessel fee, that is used to support OSPR's administrative functions and authorizes the Administrator to adjust the maximum per-barrel fee annually for inflation according to the Consumer Price Index.
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> This bill is unnecessary. Pursuant to the authority already provided under existing law, OSPR is currently in the process of evaluating the benefit of requiring "pre-booming" standards on fuel transfer operations where it is safe and effective to do so. Additionally, the magnitude of the fee increase proposed to fund OSPR's regulatory activities per this bill far exceeds what OSPR estimates it would cost to promulgate the "pre-booming" regulations this bill would require.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by Pacific Environment and is intended to adjust the Oil Spill Prevention Administration Fund (Fund) revenues to current inflation levels and require the state's oil spill prevention agency to increase its oversight of vessels conducting oil transfers.

2. **The August 15, 2011 amendments** provide a staggered increase of the cap amount to six and one-half cents beginning January 1, 2012, and, again, beginning July 1, 2014, to six and three-quarters cents per barrel (instead of a straight seven cents ($0.07)) and specifies notification to the BOE when the fee is adjusted. These amendments also deleted the requirement, added by the May 27, 2011, amendments, that the State Auditor audit the Fund. **The July 12, 2011, amendments** deleted the provisions related to the non-tank vessel fee. The **June 23, 2011, amendments** changed the oil spill Administrator's responsibilities related to bunkering and lightering operations, proposed a cap increase amount of seven cents ($0.07) per barrel, instead of eight cents ($0.08), revised the structure of the nontank vessel fee, and revised reports unrelated to the BOE. The **May 27, 2011, amendments** required the State Auditor to conduct an audit of the Oil Spill Prevention and Administration Fund. The **April 13, 2011, amendments** pertained to a report to be prepared by the State Lands Commission by March 1, 2012, related to offshore oil drilling.

3. **A possible increase in the oil spill prevention and administration fee would not create administrative problems for the BOE.** The BOE currently administers and collects this fee. As previously explained, the Administrator sets the fee in accordance with an annual plan. The fee is currently set at the maximum rate of five cents ($0.05) per barrel of crude or petroleum product. If the maximum fee rate should increase to six and one-half cents ($0.065) or six and three-quarters cents ($0.0675), the BOE will have no difficulty in administering these fee increases. Similarly, subsequent annual inflationary adjustments made in the maximum fee rate by the Administrator would also not present an issue for the BOE. The BOE worked with the author's office last year on AB 234 (Huffman) to require that the Administrator provide the BOE with sufficient notice when the fee is set each year, with the new fee to be effective on the first day of the month beginning no fewer than 30 days following such notification, and that the new fee rate be rounded to no more than four decimal places. These suggestions, which have been incorporated into this bill, will ensure that the BOE can absorb costs related to possible rate changes.

COST ESTIMATE

The BOE 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 feepayers, and working with the Administrator to explain fee changes related to the inflation adjustment to the maximum oil spill prevention and administration fee. The BOE is reimbursed for its costs, as provided in statute.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Current Revenue

According to the BOE's FY 2009-10 Annual Report, the BOE collected over $25 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 $27 million.

Proposed Fee Increase

This bill would increase the current cap on the rate by 30% to $0.065 beginning January 1, 2012, and would again increase the cap on the rate by 4% to $0.0675 on July 1, 2014 per barrel of crude oil or petroleum products. Further, the bill allows the proposed fee to be adjusted annually for inflation, as measured by the California CPI. To give us an idea about the impact of the CPI adjustment, we looked at the Department of Finance’s CPI forecast, which is estimated to increase by an average of 2% over the next three fiscal years.

REVENUE SUMMARY

January 1, 2012

- Based on the average fees ($27 million) collected by BOE over the past few fiscal years and the proposed rate of $0.065 per barrel, it is estimated that revenues would increase by $8.1 million (30% × $27 million = $8.1 million).
- The revenue may increase by an additional $0.70 million [($27 million + $8.1 million = $35.1 million) x 2%] per fiscal year if the fee was increased according to the CPI provision of the bill.

July 1, 2014

- Based on the average fees ($35.1 million) that the BOE will collect during the next few fiscal years and the proposed rate of $0.0675 per barrel, it is estimated that revenues would increase by $1.4 million (4% × $35.1 million = $1.4 million).
- The revenue may increase by an additional $0.73 million [($35.1 million + $1.4 million = $36.5 million) x 2%] per fiscal year if the fee was increased according to the CPI provision of the bill.

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