



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date:	Enrolled	Bill No:	<u>Assembly Bill 1112</u>
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 increases temporarily, from January 1, 2012, to January 1, 2015, the current cap on the Oil Spill Prevention and Administration Fee from five cents (\$0.05) to six and one-half cents (\$0.065) per barrel of crude oil or petroleum product.

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 (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.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

PROPOSED LAW

This bill amends Government Code Section 8670.40 to temporarily 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) per barrel of crude oil or petroleum product, from January 1, 2012 to January 1, 2015. The cap would then fall back to the current five cents per barrel, effective January 1, 2015.

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.

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.
- 2. Key Amendments.** The **September 2, 2011 amendments** included the temporary increase of the current cap on the fee from five cents (\$0.05) to six and one-half cents (\$0.065) from January 1, 2012 to January 1, 2015. The bill also deleted the provisions that would have allowed the Administrator to annually adjust the fee cap for inflation. The **August 15, 2011 amendments** provided a staggered increase of the cap amount to six and one-half cents (\$0.065) beginning January 1, 2012, and, again, beginning July 1, 2014, to six and three-quarters cents (\$0.675) per barrel (instead of a straight seven cents (\$0.07)) and specified notification to the BOE when the fee is adjusted. These amendments also deleted the requirement added on May 27, 2011 that the State Auditor audit the Fund. **The July 12, 2011**

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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), and then subsequently decrease, the BOE will have no difficulty in administering the fee changes. 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, and identifying and noticing affected fee payers. 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 increases, from January 1, 2012, to January 1, 2015, the current cap on the rate by 30% to \$0.065 per barrel of crude oil or petroleum products.

REVENUE SUMMARY

January 1, 2012 – December 31, 2014 Revenues

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 per year (30% × \$27 million = \$8.1 million), or \$24.3 million over the three-year period.

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