



Date:	08/22/14	Bill No:	Senate Bill 1319
Tax Program:	Regional Railroad Accident Preparedness and Immediate Response Fee (RAPIR)	Author:	Hill, Wolk, Pavley
Sponsor:	Author	Code Sections:	GC Article 3.9 (commencing with Section 8574.30)
Related Bills:	AB 380 (Dickinson) SB 506 (Hill & Wolk) SB 861 (Budget)	Effective Date:	Upon enactment, but fee imposed within 6 months of rate establishment.

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

BILL SUMMARY

Among its provisions, this bill imposes an unspecified **Regional Railroad Accident Preparedness and Immediate Response (RAPIR) fee** on the owner of the hazardous material, as specified.

Summary of Amendments

Prior versions of this bill proposed changes to the rate and administration of the **oil spill prevention and administration fee program**. All those provisions were deleted from the current bill.

ANALYSIS

CURRENT LAW

HEALTH AND SAFETY CODE. Under existing law, the Health and Safety Code¹ imposes various hazardous waste fees on the generation, storage, treatment, and disposal of hazardous wastes. These fees are collected by either the BOE or the Department of Toxic Substances Control (DTSC). Revenues from the hazardous waste fees are used to fund DTSC’s administration of the hazardous waste regulatory program and the state Superfund program.

GOVERNMENT CODE. California law² imposes an oil spill prevention and administration fee upon crude oil or petroleum products received at a refinery or marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state.

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.

¹ Division 20, Chapters 6.5, 6.8, and 6.11 of the Health and Safety Code.

² Government Code Section 8670.40.

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Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies.

PUBLIC UTILITIES CODE. Existing law,³ requires the California Public Utilities Commission (CPUC) to annually determine a fee to be paid by every common carrier and related business subject to the jurisdiction of CPUC, including, but not limited to, every railroad corporation.

The annual fee is established to produce a total amount equal to the amount established in the authorized CPUC budget for the same year, including adjustments appropriated by the Legislature and an appropriate reserve, to regulate common carriers and related businesses, less the amount to be paid from special accounts or funds, reimbursements, federal funds, other revenues, and unencumbered funds from the preceding year.

For fiscal year 2013-14, the railroad corporation fees are fixed as follows:

Class I: Burlington Northern Santa Fe \$1,640,721.00
Union Pacific \$4,019,439.00

Class II and III (shortline) 0.27% of gross revenue, minimum of \$500 each

The annual fee is collected by CPUC and transmitted at least quarterly to the Treasurer for deposit into the Public Utilities Commission Transportation Reimbursement Account in the General Fund.

The fees paid by railroad corporations are required to be used for state-funded railroad investigation and enforcement activities of the commission, other than the rail safety activities funded by the Transportation Planning and Development Account.

In addition, current law⁴ requires all rail operators to provide a risk assessment to the CPUC that describes all of the following:

- Rail facility location and functions.
- Movement and storage of cargo, including hazardous material cargo, at the rail facility, including the frequency of that movement or storage.
- Information regarding rail operator safety practices, training programs, and emergency response procedures at the rail facility.
- Rail operator communication procedures with state and local personnel that would be involved in responding to an act of terrorism, sabotage, or other crimes at the rail facility.

Current law⁵ also covers hazardous materials transported by rail, which requires each railroad corporation that transports hazardous materials in the state to provide:

- A system map of the state to the Office of Emergency Services (OES) and to CPUC, showing practical groupings of mileposts on the system and mileposts of stations, terminals, junction points, road crossings, and the locations of natural gas and liquid pipelines in railroad rights-of-way.
- Annually to the OES a copy of a publication which identifies emergency handling guidelines for the surface transportation of hazardous materials, unless otherwise provided.

³ Section 421 of the Public Utilities Code.

⁴ The Local Community Rail Security Act of 2006, Article 7.3 (commencing with Section 7665), of Chapter 1 of Division 4 of the Public Utilities Code.

⁵ Hazardous Materials Transportation by Rail, Article 7.5 (commencing with Section 7671), of Chapter 1 of Division 4 of the Public Utilities Code.

- Specified information, if there is a train incident resulting in a release or an overturned railcar or an impact which threatens a release of a hazardous material.

PROPOSED LAW

RAPIR Fee. This bill imposes an unspecified fee on the owner of hazardous material at the time that hazardous material is transported by loaded tank car. The Director of the Governor's Office of Emergency Services (OES) shall establish a fee schedule based on each loaded tank car. That fee schedule determines the amounts paid by each hazardous materials owner. Hazardous materials owners pay the fee to the railroads, and the railroad remits the collected fees to the BOE.

Fee collection begins within six months of the Director establishing the fee schedule. The fee is based on each loaded tank car and due as follows:

- If the loaded tank car enters from outside this state, the fee is imposed on the owner of the hazardous material at the time the loaded tank car enters this state; or
- If the tank car is loaded within the state, the fee is imposed upon loading of the hazardous material into the tank car for transport in or through this state.
- Any owner or railroad that has paid the fees shall not be assessed additional fees for the same hazardous materials in the same tank cars on a different railroad.

Revenues collected, less refunds and expense reimbursement to the BOE, shall be deposited into the Regional Railroad Accident Preparedness and Immediate Response Fund (Fund), which this bill creates. The Fund will repay any moneys loaned to pay OES implementation costs. Upon appropriation by the Legislature, moneys in the Fund will be used to plan, develop, create, acquire, support, and maintain emergency response capabilities to prepare for, and respond to, railroad tank car accidents involving hazardous materials or releases of hazardous materials.

Definitions. This bill defines the following terms:

- "Director" means the Director of Emergency Services.
- "Hazardous material" means a material that the United States (US) Department of Transportation (DOT) has designated as a hazardous material for purposes of transportation in Part 172 of Title 49 of the Code of Federal Regulations (CFR).
- "Owner" means the person who has the ultimate control over, and the right to use or sell, the hazardous material being shipped. There is a rebuttable presumption that the shipper, consignor, or consignee of the hazardous material is the owner of the hazardous material. This presumption may be overcome by showing that the ownership of the hazardous material rests with someone other than the shipper, consignor, or consignee. Evidence to rebut the presumption may include, but not be limited to, documentation, including a bill of lading, shipping document, bill of sale, or other medium, that shows the ownership of the hazardous material rests in a person other than the shipper, consignor, or consignee.
- "Railroad" has the same meaning as defined in Section 229 of the PUC.
- "Tank car" means a railroad car or rolling stock designed to transport liquid and gaseous commodities, and includes those railroad cars subject to the requirements of Part 179 of Title 49 of the CFR, or a successor set of regulations adopted by the US DOT.

Railroads. Railroad operators that transport hazardous material by tank car shall register with the BOE. The fee is collected by the railroads from the owner of the hazardous material. Fees are paid to the BOE at the time the quarterly return is filed. Any fees collected by the railroad from the hazardous material owner that have not been remitted to the BOE are considered a debt owed to the state by the railroad required to collect and remit the fees.

Hazardous material owner. The hazardous material owner is liable for the fee until it has been paid to the BOE, except that payment to a railroad registered with the BOE for collection of the fee is sufficient to relieve the owner from further fee liability.

BOE administration. The BOE will assess and collect the tax in accordance with the Fee Collection Procedures Law (FCPL).⁶ The references in the FCPL to “fee” include the fee imposed by this bill, and the reference to “feepayer” includes the person required to pay the fee imposed by this bill.

The FCPL generally provides for the BOE’s administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE’s authority to adopt regulations related to the FCPL’s administration and enforcement.

Emergency regulation authority is also provided to the BOE.

Petition for redetermination and claim for refund. 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 are based on the grounds that the contents of the tank car is or is not a hazardous material. The BOE would be required to forward such petitions or claims to the Director for a decision

Returns. The railroads required to register with the BOE shall file quarterly returns, using electronic media, on or before the last day of the calendar month following the end of the calendar quarter. The railroad shall pay the fees to the BOE with the return, based on the number of loaded hazardous material tank cars transported within the state.

This bill is effective January 1, 2015, but the RAPIR fee is operative within six months after establishment of the schedule of fees.

BACKGROUND

In 1991, Senate Bill 48 (Thompson) required the BOE to implement the collection of the Hazardous Spill Prevention Fee to be paid by each surface transporter of hazardous materials on California highways and railroad lines, which was administered in cooperation with the Department of Toxic Substances Control (DTSC).

The fees were deposited into the Rail Accident Prevention and Response Fund, which that bill created, to provide funding for cleanup costs related to hazardous spills and to finance the Railroad Accident Prevention and Immediate Deployment Force operated by DTSC. The Hazardous Spill Prevention Fee expired on December 31, 1995.

In 2002, Assembly Bill 2479 (Jackson) would have required the BOE to implement the collection of a fee to be paid by each surface transporter of a substance of concern in accordance with regulations adopted by the DTSC. That bill failed to pass out of the Assembly Appropriations Committee.

In 2006, Assembly Bill 2822 (Mullin) would have required the BOE to implement the collection of a fee imposed upon each railroad corporation that transports a hazardous material in the state. That bill failed in the Assembly Transportation Committee.

⁶ Part 30 (commencing with Section 55001) of Division 2 of the RTC.

In 2014, the Legislature enacted a budget trailer bill, SB 861 (Ch. 35, Stats. 2014), which generally expands the oil spill prevention and administration fee (prevention fee) and the oil spill response fee to include inland waters of the state. SB 861 effectively expanded the prevention fee to apply to crude oil rail shipments that were entering California from other states and countries. The prevention fee was expanded to include crude oil and petroleum products received at a refinery in this state by any mode of delivery that passed over, across, under, or through waters of the state. The bill created a rebuttable presumption that crude oil or petroleum products received at a marine terminal or refinery passed over, across, under, or through waters of the state. The bill was effective June 20, 2014, but provided a 90-day delayed operative date for the prevention fee, which created a September 18, 2014, operative date. As explained below, crude oil rail shipments became a growing concern at the national and state levels of government.

IN GENERAL

In general, federal laws regarding railroads cover safety, hazardous material transportation, hazardous material emergencies, inspections, and security. Federal laws generally preempt most state regulations.⁷ The US DOT is the main federal agency responsible for federal rules and enforcement, more specifically, the [Federal Railroad Administration](#) (FRA) and the [Pipeline and Hazardous Materials Safety Administration](#) (PHMSA). The PHMSA is specifically responsible for the protection of people and the environment from the risks of hazardous materials transportation. With respect to the transportation of hazardous materials, federal laws generally preempt state laws and regulations. However, federal statutes provides that a State may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.⁸

In California, the state OES assists local governments in emergency preparedness, response, recovery, and hazard mitigation efforts. The CPUC shares authority with the federal government to enforce federal safety requirements and enforce state safety rules. The CPUC is responsible for regulating railroad safety where federal regulations do not preempt state authority. The [Federal Railroad Safety Act of 1970](#) (FRSA) and the [Rail Safety Improvement Act \(RSIA\) of 2008](#), generally preempt state laws and regulations that have the purpose or effect of regulating rail transportation and safety that are covered by federal laws and regulations.

At both the federal and the state level of governments, as well as national industry associations, the recent increase in oil transportation by rail has been investigated, reported, analyzed, and debated. Although information is available regarding reported and estimated amounts of oil by rail, it is not comprehensive information collected on all types of hazardous materials shipped by rail. According to some reports, the difficulty with regulating hazardous materials is that although the DOT requires shippers and carriers to identify hazardous materials and keep records, this information is considered proprietary and not accessible to the public. As such, it is currently difficult to obtain or estimate the

⁷ Section 20106 of Subchapter I of Chapter 201 of Part A of Subtitle V, of Title 49 of the US Code, relates to preemption of federal laws and regulations related to railroad safety and security.

⁸ Subdivision (f) of Section 5125 of Chapter 51 of Subtitle III of Title 49 of the US Code, specifies the hazardous materials transportation fee and reporting requirements by the State. Section 5125 is related to preemption of federal laws and regulations related to hazardous materials transportation.

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amount or frequency of hazardous material transported by rail.⁹

COMMENTS

1. **Sponsor and Purpose.** According to the author, this bill is intended to provide funding to improve local emergency response systems to deal with accidents, spills, fires, and explosions involving oil and other hazardous materials transported by train.
2. **The fee is imposed at an as yet unspecified rate on the owner of the hazardous material, but the railroad must collect the fee per loaded tank car.** The fee schedule determination will be made by OES. Within six months of that determination, the BOE will begin fee collection.¹⁰ In order to gain efficiencies and streamline administration, the railroads collect the fee from the owner of the hazardous material. As the return and fees are due at the end of the month following a calendar quarter, it is expected that the railroads would use their shipping information to bill the hazardous materials owners for transporting hazardous materials on their rail lines.

BOE staff will work with stakeholders, including OES and the railroads, to understand their business needs and communicate information, as the fee schedule is established and the BOE implementation progresses.

3. **BOE staff will continue to handle appeals and refunds, except those related to whether the tank car content is a hazardous material.** This bill defines “hazardous material” and places with OES the responsibility for deciding any appeal or claim for refund based on the grounds that the tank car material is not a hazardous material.
4. **Who owns the hazardous material?** By definition, “owner” means the person who has the ultimate control over, and the right to sell, the hazardous material being shipped. To assist the BOE and railroads with fee administration and collection, the shipper, consignor, or consignee of the hazardous material is rebuttably presumed to be the owner of the hazardous material.

The presumption may be overcome by showing that the ownership of the hazardous material rests with someone other than the shipper, consignor, or consignee. Evidence to rebut the presumption may include, but not be limited to, documentation, including a bill of lading, shipping document, bill of sale, or other medium that shows the ownership of the hazardous material rests in a person other than the shipper, consignor, or consignee. The BOE would decide any issues regarding the rebuttable presumption and the ownership of the hazardous materials transported by rail tank car subject to the fee.

5. **Payment in kind.** Subdivision (f) of Section 8574.32 allows the OES Director to authorize fee payments through contributions in kind of equipment, materials or services. BOE staff suggests deletion of this subdivision, as we were unable to locate fiscal guidance or procedures regarding payment in kind, or barter, in the Department of General Services, [State Administrative Manual](#) (SAM).

Alternatively, as the BOE is responsible for fee collection, we suggest the author provide additional statutory guidance regarding the Director’s authorization, including, but not limited to, the following: notification to the fee payer, the railroads, and the BOE; valuation process for materials, equipment, or services; application of payment in kind

⁹ [US Rail Transportation of Crude Oil, Background and Issues for Congress](#), California [Emergency Response to Rail Accidents, Regulatory Framework, Moving Crude Oil by Rail, Association of American Railroads, Oil by Rail Safety in California](#), State of California, Interagency Rail Safety Working Group.

¹⁰ BOE staff would prefer the fee to be due “on the first day of the first calendar quarter commencing AFTER six months of establishing the fee.”

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to the fees, including current or outstanding fee amounts; and state reporting requirements or accounting for payments in kind.

6. Fee establishment. BOE staff work with our partner agencies to ensure there is transparency in rate setting and to provide both the BOE and the affected industry sufficient time to respond to rate changes. To increase feepayer compliance and improve BOE administration of the program, BOE staff recommends statutory rate setting procedures. As this bill neither specifies statutory fee amounts nor provides fee rate caps, BOE staff suggests the Director annually determine the fee schedule, which is consistent with the rate setting for other BOE-administered fee programs. The rate should be effective for a standardized period, such as the beginning of a calendar year, or a fiscal year. Besides the initial rate setting, any subsequent fee schedule changes should be made at least 90 days prior to the effective date of the rates. Structured rate setting procedures provide sufficient time for the affected industry and the BOE to receive notice and make necessary business changes. BOE staff can assist the author’s office in drafting language.

7. Administrative start-up cost funding is essential. This bill requires the Director to establish a new fee schedule beginning January 1, 2015. Within six months of the established fee schedule, the BOE must begin to collect the fee. BOE estimates fee implementation to begin in the middle of fiscal year 2014-15, with fee collection at the beginning of fiscal year 2015-16. However, the BOE’s 2014-15 budget does not include the necessary funding to implement the bill. Consequently, the BOE requires an adequate appropriation to cover administrative implementation costs.

Upfront BOE implementation cost reimbursement is essential. BOE staff suggests the bill provide either a direct appropriation to the BOE for 2014-15 administrative costs or a loan from the General Fund (GF) to the Regional Railroad Accident Preparedness and Immediate Response Fund, which is the fund into which the RAPIR fees are deposited. The loan would be repaid from fees collected.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed fee program. Without an appropriation, it may be necessary for the BOE to divert GF dollars to implement the proposed fee program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.

8. Related bills. AB 380 (Dickinson), among other things, requires railroads to provide hazardous materials data to OES. SB 506 (Hill and Wolk), imposes a similar unspecified railroad tank car hazardous material fee on the owner of the hazardous material.

COST ESTIMATE

The BOE would incur substantial costs to adequately develop and administer a new fee program. These costs include registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. BOE costs are estimated to be:

Start Up FY 2014-15	FY 2015-16	FY 2016-17	Ongoing FY 2017-18, and each year thereafter
\$2.711 million	\$948,000	\$1.154 million	\$1.139 million

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REVENUE ESTIMATE

Because the bill does not specify a fee amount, the BOE is unable to determine a revenue impact associated with the proposed fee.

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