



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

DRAFT

Date:	08/22/14	Bill No:	Assembly Bill 2678
Tax Program:	Oil Spill Prevention and Administration Fee	Author:	Ridley-Thomas
Sponsor:	Author	Code Sections:	GC 8670.40
Related Bills:	SB 861 (Ch. 35, Budget)	Effective Date:	01/01/15

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

BILL SUMMARY

Among its provisions, this bill amends the **oil spill prevention and administration fee** (prevention fee) program to:

- Add legislative intent that the prevention fee is imposed on crude oil or petroleum products upon first delivery in this state and not upon subsequent movement of the same oil or derivative petroleum products after the first delivery;
- Delete imposition of the prevention fee on crude oil received at a marine terminal; and
- Provide technical clarification that the prevention fee is imposed on a person owning crude oil or petroleum products at the time the crude oil or petroleum products are received at a refinery, by any mode of delivery that has passed over, across, under, or through waters of the state, and that originated from within or outside the state.

Summary of Amendments

Prior versions of this bill proposed changes to the Oil Spill Technical Advisory Committee. All those provisions were deleted from the current bill.

ANALYSIS

CURRENT LAW

Oil Spill Prevention and Administration Fee. Existing law¹ imposes a prevention fee 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 mode of delivery must have passed over, across, under, or through waters of the state. Marine terminal operators collect the fee 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.

Additionally, the prevention fee is imposed 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.

¹ Government Code (GC) Section 8670.40, as enacted recently by SB 861. See [BOE analysis of SB 861](#) for statutory changes enacted by that bill.

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The current fee rate cap is:

Rate Period	Rate Cap
01/01/12 – 09/17/14 ²	\$0.065
09/18/14 – ongoing	\$0.065

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.

There is a rebuttable presumption that crude oil or petroleum products received at a marine terminal or refinery have 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 decides petitions for redetermination and claims for refund, the BOE will not decide petitions for redetermination or claims for refund that challenge the rebuttable presumption. The BOE will be required to forward such petitions or claims to the Administrator for a decision.

The refinery, marine terminal, and pipeline operators must register with the BOE.³ The owner of the crude oil or petroleum products, the marine terminal operator, or the refinery operator pays the fee monthly to the BOE. The marine terminal or refinery operator neither collects the fee, nor is the fee imposed on the owner of the crude oil or petroleum products, if the fee has been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery. Either the marine terminal or refinery operator or the owner of the crude oil or petroleum products has the obligation to demonstrate that the fee previously has been paid on the same crude oil or petroleum product.

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. Existing law⁴ 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 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 a pipeline operating across, under, or through waters of the state, and upon a refinery operator for each barrel of crude oil received at a refinery within the state by any method of transport. Marine terminal operators collect the fee from the owners of the petroleum products 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.

² The cap was scheduled to lower to \$0.05 on January 1, 2015, before the enactment of SB 861.

³ The Oil Spill Prevention and Administration Fee is administered and collected by the 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 fee payers to register with the BOE.

⁴ GC Section 8670.48

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The Administrator, in consultation with the BOE sets the amount of the fee.⁵ 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;⁶
- 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.⁷

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 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 vessel or by pipeline, respectively.⁸

Moreover, the Administrator has the authority⁹ 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 occurs 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 depleted or exhausted or will 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 anticipated demands on the fund, 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.

⁵ 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 borrowings remain unpaid, unless the Treasurer certifies that the funds are not necessary for specified purposes.

⁶ 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.

⁷ GC Section 8670.48.3, specifies that, under certain 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, 2017.

⁸ 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.

⁹ GC Section 8670.48.5

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PROPOSED LAW

Oil Spill Prevention and Administration Fee. This bill amends Section 8670.40, to add legislative intent language that the prevention fee is imposed on crude oil or petroleum products upon first delivery in this state and not upon subsequent movement of that same oil or products derived after that first delivery. The bill also adds that nothing in this section shall prohibit the BOE from determining the appropriate collection point at the marine terminal or refinery.

The bill also deletes language that imposes the prevention fee on crude oil received at a marine terminal. The marine terminal continues to be responsible for collection of the fee imposed on petroleum products.

Finally, the bill also amends Section 8670.40 to provide technical clarification that the prevention fee is imposed on a person owning crude oil or petroleum products at the time the crude oil or petroleum products are received at a refinery, by any mode of delivery that has passed over, across, under, or through waters of the state, and that originated from within or outside the state.

BACKGROUND

In 1990, two bills¹⁰ enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which added several provisions¹¹ 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.

This year the Legislature enacted a budget trailer bill, Senate Bill 861 (Ch. 35, Stats. 2014), which generally expands the 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.

COMMENTS

- 1. Sponsor and Purpose.** According to the author's office, this bill provides guidance to implement SB 861, the budget trailer bill that expanded the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to all waters of the state and all significant modes of oil transportation.

¹⁰ 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.

¹¹ GC (§8670.1 et seq.), Public Resources Code (§8750 et seq.), and RTC (§46001 et seq.).

2. Purpose of legislative intent language. As previously explained, the BOE administers and collects the prevention fee. The prevention fee expansion led to the concern that the fee may be imposed twice, on either crude oil or petroleum products, and at either the marine terminal or the refinery. SB 861 amended paragraph (4), and added paragraph (5) of GC Section 8670.40(b) as follows:

*(4) The fees shall be remitted to the ~~board~~ State Board of Equalization by the owner of the crude oil or petroleum products, the refinery operator, or the marine terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a refinery or marine terminal or transported by pipeline during the preceding month. A fee shall not be imposed pursuant to this section with respect to crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has *already* been collected by a refinery or marine terminal operator registered under this chapter or paid to the ~~board~~ State Board of Equalization with respect to the crude oil or petroleum product.*

(5) The oil spill prevention and administration fee shall not be collected by a marine terminal operator or refinery operator or imposed on the owner of crude oil or petroleum products if the fee has been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery. It shall be the obligation of the marine terminal operator, refinery operator, or owner of crude oil or petroleum products to demonstrate that the fee has already been paid on the same crude oil or petroleum products.

The BOE interprets the last sentence of paragraph (5) to mean that the prevention fee is not imposed on the same fee-paid crude oil or the same fee-paid petroleum products. BOE staff understands that fee-paid crude oil and fee-paid petroleum products are fungible goods in that if stored with non-fee-paid inventory, it loses its separate identity. With respect to petroleum products derived from fee-paid crude oil, the BOE's interpretation is that once refined, petroleum products cannot be tied back to the fee-paid crude, as it is now a new product. BOE staff believes the petroleum products derived from fee-paid crude are a new and distinct product and also subject to the prevention fee as provided in SB 861. To state it another way, BOE staff contends that the fee was paid on the crude oil, not the derived petroleum products.

If the fee is assessed on petroleum products received at a refinery, and then that fee-paid petroleum product is received at another refinery, then the fee would not be assessed again if the proper documentation existed.

BOE staff notes that it does not believe the industry can properly document that the petroleum products derived from the fee-paid crude are in fact fee paid. If the BOE conducts audits to ensure proper reporting of the fee, as we currently do, it would appear the BOE staff would either take the position that all petroleum products moved between California refineries would presumably have the fee assessed, collected, and paid, or, alternatively, the industry would have the burden of providing as yet unknown documentation to tie back petroleum products derived from the fee-paid crude oil. As this issue appears to be unresolved, the BOE would need to work with the oil industry, OSPR, and other stakeholders to address this administrative issue.

3. The prevention fee will only be imposed on crude oil received at refineries. The bill would no longer require marine terminals to collect the fee from crude oil owners. According to OSPR and the oil industry, all crude oil received in California is ultimately received at a refinery in this state. Imposing the prevention fee only at the refinery may present administrative or policy issues.

BOE staff is unsure of the impact of centralizing the collection of the fee at the refinery, but would note that the marine terminal crude oil reports were used as a third-party source of information to verify the crude oil amounts received at the refinery. No longer having this third-party source of information could have long-term implications for the BOE during the audit process. The BOE would need to work with the oil industry to determine if there is another readily-available third-party source for this information, or if informational reporting requirements are needed.

4. Part of the legislative intent language is ambiguous. BOE staff suggests the author clarify the last sentence of Section 8670.40(a) which states, “Nothing in this section shall prohibit the State Board of Equalization from determining the appropriate collection point at the marine terminal or refinery.” BOE staff posit that the statute determines the imposition of the fee and specifies the collection responsibility of the marine terminal and refinery operator, obviating the need for the intent language. The intent language does not appear to offer greater clarification.

5. BOE staff will continue to work with OSPR and the oil industry to address implementation issues regarding SB 861. If passed, this bill is effective January 1, 2015, while the SB 861 prevention fee provisions are operative September 18, 2014. The BOE understands that OSPR will continue to provide guidance through emergency regulations as needed.

COST ESTIMATE

Absorbable costs would be incurred for computer programming and sending additional notices. BOE staff is implementing SB SB 861, and this bill would result in additional changes.

REVENUE ESTIMATE

There is no identifiable revenue impact associated with this bill. It is intended to clarify the intent of the original legislation.

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