



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced	<b>02/22/02</b>	Bill No:	<b>AB 2682</b>
Tax:	<b>Petroleum Pollution Cleanup Fee</b>	Author:	<b>Chu</b>
Board Position:		Related Bills:	<b>SB 1994 (Soto)</b>

### BILL SUMMARY

This bill would require the owner or operator of every refinery in the state to pay a fee of \$0.30 for each barrel of crude oil refined at that refinery. Among other things, the fee would provide funding to local governments to remediate petroleum contamination of groundwater and marine and terrestrial surface water, and to the State Air Resources Board to provide funding to purchase of new, lower emitting school buses pursuant to guidelines adopted by the State Air Resources Board.

### ANALYSIS

#### Current Law

The Board of Equalization currently collects two different fees on crude oil and petroleum products transported into, across, and/or through this state. These fees are the oil spill administration and prevention fee and the oil spill response fee.

Existing law, under Section 8670.40 of the Government Code, imposes an oil spill administration and prevention fee not to exceed \$0.04 per barrel upon every person owning crude oil at the time the crude oil is received at a marine terminal from within or outside the state, or upon owners of petroleum products received at a marine terminal from outside this state. In addition, every operator of a pipeline is liable for the fee for each barrel of crude oil originating from a production facility in marine waters and transported by means of a pipeline operating across, under, or through the marine waters of this state. The current rate is \$0.04 per barrel and the funds are used to implement oil spill prevention programs and finance environmental and economic studies relating to the effects of oil spills.

Existing law, under Section 8670.48 of the Government Code, imposes an oil spill response fee not exceeding \$0.25 per barrel on every person owning petroleum products at the time the petroleum products are received at a marine terminal in this state by means of a vessel from a point of origin outside this state. The fee is also imposed on an operator of a pipeline transporting petroleum products by means of a pipeline operating across, under, or through the marine waters of this state and an operator of a refinery receiving crude oil at a refinery in this state. This section further imposes the fee on every marine terminal operator transporting crude oil from within this

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state by means of a marine vessel and upon each pipeline operator for crude oil transported out of this state by pipeline. The fees are collected during any period that funds are required to meet the designated amounts for promptly responding to containment and cleanup of oil spills into marine waters. The Oil Spill Response Trust Fund reached its \$50 million maximum level in 1991-92, and no response fees have been collected since then.

### Proposed Law

This bill would add Division 29 (commencing with Section 38000) to the Public Resources Code as the California Clean Communities and Petroleum Pollution Cleanup Act of 2002. Among its provisions, Section 38050 would require the Board to administer a \$0.30 per barrel fee upon the owner or operator of every refinery in the state for each barrel of crude oil refined at that refinery. The fees would be deposited in the California Petroleum Pollution Cleanup Fund, which this bill would create. Among other things, the fund would be used to remediate petroleum contamination of groundwater and marine and terrestrial surface water and to fund the purchase of new, lower emitting school buses pursuant to guidelines adopted by the State Air Resources Board.

### Background

In 1997, Assembly Bill 1368 (Villaraigosa) would have added Chapter 9 (commencing with Section 44275) to Part 5 of Division 26 of the Health and Safety Code as the California Air Quality and Energy Efficiency Program. Among other things, the Board would have been required to administer a \$0.30 per barrel fee on crude oil received at a refinery within this state through December 31, 2010. The provisions of that measure to establish the program and impose a fee were amended out on May 1, 1997.

### COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by V. John White and Associates and is intended to create a sustainable and consistent funding mechanism to regional water boards for the development and implementation of total maximum daily loads (TMDL) standards. In addition, it would provide funds to local governments to: 1) comply with TMDL standards, 2) implement storm water pollution prevention and mitigation, 3) clean up current petroleum-related pollution, and 4) protect against further contamination.
2. **Suggested technical amendments.** In order for the Board to administer the proposed fee under provisions consistent with other Board-administered fees, it is suggested that the following section be added to this bill:

38050.5. For purposes of this chapter, the board may collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

In addition to the suggested administrative language, the bill should be amended to specify a due date for the fee and return, authorize the payment of refunds on overpayments of the fee and reimbursement for the Board's costs of administration.

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Board staff is willing to work with the author's office in drafting appropriate amendments.

It was also noted that the language contained in Section 38050(a) differs from the bill's intent language, which states "*A fee per-barrel of petroleum refined within the state, imposed at the refinery gate*, would provide that mechanism."

- 3. Question of liability.** This bill generally provides that the owner or operator of every refinery in the state shall pay a fee for each barrel of crude oil refined at that refinery. Imposing the fee on both the owner and operator would create an ambiguity in the law as to the person who must bear the legal incidence of the fee. In addition, establishing a liability for the fee that could be imposed on the owner or the operator would significantly expand the Board's workload in administering the fee.

It is suggested that liability for the fee be placed on the operator of the refinery rather than the owner. This approach would avoid a problem encountered under existing Underground Storage Tank Maintenance Fee Law in which the owner of a tank that is leased to the operator is unable to obtain the necessary information from the operator in order to file and pay the fee. The underground storage tank fee program has also created problems for some uninformed tank owners who have not been in a position to know the existence of that program because they have leased their tanks to operators who use the tanks or operate a business using the property so leased.

- 4. Additional terms need defining.** Many of the terms used in this proposal are defined in the Oil Spill Response, Prevention and Administration Fee Law. These terms include barrel, crude oil refined, operator, and refinery. This bill should incorporate those definitions into the proposed Chapter 1.
- 5. This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2003, which is in the middle of the state's fiscal year. In order to begin to develop the fee payer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2002-03 budget.
- 6. Related legislation.** Senator Soto has also introduced SB 1994, which is identical to this measure.

## **COST ESTIMATE**

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would 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. A cost estimate of this workload is pending.

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**REVENUE ESTIMATE**

**Background, Methodology, and Assumptions**

Based on the California Energy Commission’s monthly reports, 637.5 million barrels of crude oil were refined in California in 2001. This bill initiates a fee in the amount of \$0.30 for each barrel of crude oil refined in California. Had this fee been in effect in 2001, \$191.3 million would have been transferred to the California Petroleum Pollution Cleanup Fund ( $\$0.30 \times 637.5$  million barrels = \$191.3 million).

The Commission estimates that 90.5 percent of crude oil is used to produce petroleum products other than diesel fuel. Based on this ratio, it is estimated that \$173.1 million would have been transferred to the Petroleum Polluted Water Remediation Account ( $90.5\% \times \$191.3$  million = \$173.1 million).

The Commission estimates that 9.5 percent of crude oil is used to produce diesel fuel. Based on this ratio, it is estimated that the diesel fuel revenue portion would have been \$18.2 million ( $9.5\% \times \$191.3$  million = \$18.2 million). Fifty percent of this diesel fee portion i.e. \$9.1 million would have been transferred to the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund ( $50\% \times \$18.2$  million = \$9.1 million). The other 50 percent (\$9.1 million) would have been allocated to the State Air Resources Board.

**Revenue Summary**

This bill would generate approximately \$191.3 million annually for the California Petroleum Pollution Cleanup Fund (which this bill would create in the State Treasury) to be allocated as follows:

Petroleum Polluted Water Remediation Account	\$ 173.1 million
Carl Moyer Memorial Air Quality Standards Attainment Trust Fund	\$ 9.1 million
State Air Resources Board (school buses)	<u>\$ 9.1 million</u>
	\$ 191.3 million

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