



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

Date Introduced:	02/24/06	Bill No:	AB 2822
Tax:	Hazardous Material Transportation	Author:	Mullin
Related Bills:			

BILL SUMMARY

This bill would require the Board of Equalization (Board) to implement the collection of a fee imposed upon each railroad corporation that transports a hazardous material in the state.

ANALYSIS

Current Law

HEALTH AND SAFETY CODE

Under existing law, the Health and Safety Code imposes various hazardous waste fees on the generation, storage, treatment, and disposal of hazardous wastes. These fees are collected by either the Board 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.

PUBLIC UTILITIES CODE

Under existing law, Section 421 of the Public Utilities Code 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 2005/06, the railroad corporation fees are fixed as follows:

Railroad Corporations:

Class I:

Burlington Northern Santa Fe \$1,267,665.40

Union Pacific \$3,106,094.60

Class II and III (shortline) 0.22% of gross revenue, minimum of \$500 each

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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, Public Utilities Code Section 7673 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 showing 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.
- 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

This bill would add Section 7714.6 to the Public Utilities Code to require each railroad corporation that transports a hazardous material in the state to pay a fee for purposes related to the cost of developing and maintaining a local emergency response capability with regard to that transportation. To be subject to the fee, the railroad corporation would also have to be subject to Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code, "*Transportation of Hazardous Material*."

The fee would be set by the CPUC to generate an amount that is in accordance with subsection (g) of Section 5125 of Title 49 of the United States Code to fund grants to cities and counties for the costs of developing and implementing a capability for emergency response to an incident involving a hazardous material being transported by rail.

The Board would be required to implement the collection of the fee imposed in accordance with regulations developed and adopted by the Secretary of the California Environmental Protection Agency (Secretary).

All fees collected would be deposited in the Local Emergency Response Hazardous Spill Subaccount, which this bill would establish in the Hazardous Spill Prevention Account of the Railroad Accident Prevention and Response Fund. The Secretary would be authorized to expend those fee revenues, upon appropriation by the Legislature, to issue grants to cities and counties for the costs of developing and implementing a capability for emergency response to an incident involving a hazardous material being transported by rail.

The Secretary would also be required to develop and adopt regulations and guidelines necessary to carry out and enforce the provisions of this bill.

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This bill would become effective January 1, 2007.

Background

In 1991, Senate Bill 48 (Thompson) required the Board 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 Board 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.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to provide funding to properly and timely prepare for a catastrophic chemical exposure event. According to the author, "the variety and make up of the chemicals being stored on unsecured siding tracks present a unique set of issues on what type of response would be needed in case of a spill. The likeliness of a spill is increased by the lack of security. The proximity of densely populated areas exacerbates the need for heightened preparation."
2. **The bill needs administrative and collection provisions.** It is suggested that this bill be amended to specify that the Board is authorized to collect the hazardous material transportation fee pursuant to the Fee Collection Procedures Law. The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions.

Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law. To provide consistency with other Board-administered fees, it is suggested that proposed Section 7714.6 be amended to provide the following:

7714.6. (b)(1) The State Board of Equalization shall implement the collection of the fee imposed pursuant to this section in accordance with regulations adopted pursuant to this section. The State Board of Equalization shall administer and collect the fee imposed pursuant to this section under the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The State Board of Equalization

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may adopt regulations to carry out this section, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

It is also suggested that the bill 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. Board staff is willing to work with the author's office in drafting appropriate amendments.

3. **Basis of the fee.** This bill would require the CPUC to set the fee at an amount sufficient to, in part, fund grants to cities and counties for the costs of developing and implementing a capability for emergency response to an incident involving a hazardous material being transported by rail. However, it is not clear upon what the fee would be based. For example, would a railroad corporation pay a flat fee, a fee based on the weight or amount of the substance transported, or a per trip fee?

Furthermore, the bill does not specify how often the DTSC would revise the fee schedule. Monthly, quarterly, annually? It is also unclear as to how the fee rates, or the means for establishing the fee rates, would be established.

4. **Additional terms need defining.** This bill does not contain a definition for the terms "hazardous material" or "transports." As such, this bill should be amended to define these terms.

However, the terms "railroad corporation" and "commission" are defined in Public Utilities Code Sections 230 and 7710, respectively, and apply to proposed Section 7714.6 of the Public Utilities Code.

5. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2007, which is in the middle of the state's fiscal year. In order to begin to develop the fee payer base and reporting forms and to 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 2006-07 budget.

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.

REVENUE ESTIMATE

This measure does not specify the amount of the proposed fee. Accordingly, a revenue estimate could not be prepared.

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