

**Introduced by Senator Wiener
(Coauthors: Senators Allen, Beall, Hill, McGuire, Skinner, and
Stern)**

February 17, 2017

An act to amend Sections 8670.29, 8670.30, and 8670.35 of the Government Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

SB 709, as introduced, Wiener. Oil spill response and contingency planning.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. Existing law requires the administrator to adopt and implement regulations governing the adequacy of oil spill contingency plans to be prepared and implemented and requires the regulations to provide for the best achievable protection of coastal and marine waters. Existing law requires an owner or operator of a facility, small marine fueling facility, or mobile transfer unit, or an owner or operator of a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo, while operating in the waters of the state or where a spill could impact waters of the state, to have an oil spill contingency plan that complies with the rules, regulations, and policies established by the administrator, that meets specified minimum requirements, and that has been submitted to, and approved by, the administrator.

This bill would, if nonfloating oil, such as tar sand, is present, require that the oil spill contingency plan that is filed with and approved by the administrator identifies one oil spill response organization (OSRO) capable of oil spill response activities related to that nonfloating oil. The bill would additionally require the oil spill contingency plan to describe procedures, techniques, and demonstrated technologies effective for responding to a spill of the nonfloating oil.

Existing law authorizes an OSRO to apply to the administrator for a rating of that OSRO’s response capabilities. Upon receiving a completed application for rating, the administrator is required to review the application and rate the OSRO based on the OSRO’s satisfactory compliance with criteria established by the administrator, including specified elements.

This bill would require that those elements include the type of oil, including nonfloating oils, such as tar sands, the OSRO is capable of recovering and containing. The bill would require that certain regulations adopted by the administrator be consistent with the 2016 United States Coast Guard OSRO classification program.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8670.29 of the Government Code is
2 amended to read:
3 8670.29. (a) In accordance with the rules, regulations, and
4 policies established by the administrator pursuant to Section
5 8670.28, an owner or operator of a facility, small marine fueling
6 facility, or mobile transfer unit, or an owner or operator of a tank
7 vessel, nontank vessel, or vessel carrying oil as secondary cargo,
8 while operating in the waters of the state or where a spill could
9 impact waters of the state, shall have an oil spill contingency plan
10 that has been submitted to, and approved by, the administrator
11 pursuant to Section 8670.31. An oil spill contingency plan shall
12 ensure the undertaking of prompt and adequate response and
13 removal action in case of a spill, shall be consistent with the
14 California oil spill contingency plan, and shall not conflict with
15 the National Oil and Hazardous Substances Pollution Contingency
16 Plan (NCP).

1 (b) An oil spill contingency plan shall, at a minimum, meet all
2 of the following requirements:

3 (1) Be a written document, reviewed for feasibility and
4 executability, and signed by the owner or operator, or his or her
5 designee.

6 (2) Provide for the use of a recognized incident command system
7 to be used during a spill.

8 (3) Provide procedures for reporting oil spills to local, state,
9 and federal agencies, and include a list of contacts to call in the
10 event of a drill, threatened spill, or spill.

11 (4) Describe the communication plans to be used during a spill,
12 if different from those used by a recognized incident command
13 system.

14 (5) Describe the strategies for the protection of environmentally
15 sensitive areas.

16 (6) Identify at least one rated OSRO for each rating level
17 established pursuant to Section 8670.30. Each identified rated
18 OSRO shall be directly responsible by contract, agreement, or
19 other approved means to provide oil spill response activities
20 pursuant to the oil spill contingency plan. A rated OSRO may
21 provide oil spill response activities individually, or in combination
22 with another rated OSRO, for a particular owner or operator. *If*
23 *nonfloating oil, such as tar sand, is present, the contingency plan*
24 *shall identify at least one OSRO capable of oil spill response*
25 *activities related to that nonfloating oil.*

26 (7) Identify a qualified individual.

27 (8) Provide the name, address, and telephone and facsimile
28 numbers for an agent for service of process, located within the
29 state and designated to receive legal documents on behalf of the
30 owner or operator.

31 (9) Provide for training and drills on elements of the plan at
32 least annually, with all elements of the plan subject to a drill at
33 least once every three years.

34 (10) *If nonfloating oil, such as tar sand, is present, describe*
35 *procedures, techniques, and demonstrated technologies effective*
36 *for responding to a spill of the nonfloating oil, including a*
37 *description of any limitations of those procedures, techniques, and*
38 *technologies and alternative procedures, techniques and*
39 *demonstrated technologies that can overcome these limitations.*

- 1 (c) An oil spill contingency plan for a vessel shall also include,
2 but is not limited to, all of the following requirements:
- 3 (1) The plan shall be submitted to the administrator at least
4 seven days prior to the vessel entering waters of the state.
- 5 (2) The plan shall provide evidence of compliance with the
6 International Safety Management Code, established by the
7 International Maritime Organization, as applicable.
- 8 (3) If the oil spill contingency plan is for a tank vessel, the plan
9 shall include both of the following:
- 10 (A) The plan shall specify oil and petroleum cargo capacity.
11 (B) The plan shall specify the types of oil and petroleum cargo
12 carried.
- 13 (4) If the oil spill contingency plan is for a nontank vessel, the
14 plan shall include both of the following:
- 15 (A) The plan shall specify the type and total amount of fuel
16 carried.
17 (B) The plan shall specify the capacity of the largest fuel tank.
- 18 (d) An oil spill contingency plan for a facility shall also include,
19 but is not limited to, all of the following provisions, as appropriate:
- 20 (1) Provisions for site security and control.
21 (2) Provisions for emergency medical treatment and first aid.
22 (3) Provisions for safety training, as required by state and federal
23 safety laws for all personnel likely to be engaged in oil spill
24 response.
25 (4) Provisions detailing site layout and locations of
26 environmentally sensitive areas requiring special protection.
27 (5) Provisions for vessels that are in the operational control of
28 the facility for loading and unloading.
- 29 (e) Unless preempted by federal law or regulations, an oil spill
30 contingency plan for a railroad also shall include, but is not limited
31 to, all of the following:
- 32 (1) A list of the types of train cars that may make up the consist.
33 (2) A list of the types of oil and petroleum products that may
34 be transported.
35 (3) A map of track routes and facilities.
36 (4) A list, description, and map of any prestaged spill response
37 equipment and personnel for deployment of the equipment.
- 38 (f) The oil spill contingency plan shall be available to response
39 personnel and to relevant state and federal agencies for inspection
40 and review.

1 (g) The oil spill contingency plan shall be reviewed periodically
2 and updated as necessary. All updates shall be submitted to the
3 administrator pursuant to this article.

4 (h) In addition to the regulations adopted pursuant to Section
5 8670.28, the administrator shall adopt regulations and guidelines
6 to implement this section. The regulations and guidelines shall
7 provide for the best achievable protection of waters and natural
8 resources of the state. The administrator may establish additional
9 oil spill contingency plan requirements, including, but not limited
10 to, requirements based on the different geographic regions of the
11 state. All regulations and guidelines shall be developed in
12 consultation with the Oil Spill Technical Advisory Committee.

13 (i) Notwithstanding subdivision (a) and paragraph (6) of
14 subdivision (b), a vessel or facility operating where a spill could
15 impact state waters that are not tidally influenced shall identify a
16 rated OSRO in the contingency plan no later than January 1, 2016.

17 SEC. 2. Section 8670.30 of the Government Code is amended
18 to read:

19 8670.30. (a) An oil spill response organization may apply to
20 the administrator for a rating of that OSRO's response capabilities.
21 The administrator shall establish rating levels for classifying
22 OSROs pursuant to subdivision (b).

23 (b) Upon receiving a completed application for rating, the
24 administrator shall review the application and rate the OSRO based
25 on the OSRO's satisfactory compliance with criteria established
26 by the administrator, which shall include, but is not limited to, all
27 of the following elements:

28 (1) The geographic region or regions of the state where the
29 OSRO intends to operate.

30 (2) Timeframes for having response resources on-scene and
31 deployed.

32 (3) The type of equipment that the OSRO will use and the
33 location of the stored equipment.

34 (4) The volume of oil that the OSRO is capable of recovering
35 and containing.

36 (5) *The type of oil, including nonfloating oils, such as tar sands,*
37 *the OSRO is capable of recovering and containing.*

38 (c) The administrator shall not issue a rating until the applicant
39 OSRO completes an unannounced drill. The administrator may
40 call a drill for every distinct geographic area in which the OSRO

1 requests a rating. The drill shall test the resources and response
2 capabilities of the OSRO, including, but not limited to, on water
3 containment and recovery, environmentally sensitive habitat
4 protection, and storage. If an OSRO fails to successfully complete
5 a drill, the administrator shall not issue the requested rating, but
6 the administrator may rate the OSRO at a rating lesser than the
7 rating sought with the application. If an OSRO is denied a
8 requested rating, the OSRO may reapply for rating.

9 (d) A rating issued pursuant to this section shall be valid for
10 three years unless modified, suspended, or revoked. The
11 administrator shall review the rating of each rated OSRO at least
12 once every three years. The administrator shall not renew a rating
13 unless the OSRO meets criteria established by the administrator,
14 including, at a minimum, that the rated OSRO periodically tests
15 and drills itself, including testing protection of environmentally
16 sensitive sites, during the three-year period.

17 (e) The administrator shall require a rated OSRO to demonstrate
18 that the rated OSRO can deploy the response resources required
19 to meet the applicable provisions of an oil spill contingency plan
20 in which the OSRO is listed. These demonstrations may be
21 achieved through inspections, announced and unannounced drills,
22 or by any other means.

23 (f) (1) Except as provided in paragraph (6), each rated OSRO
24 shall satisfactorily complete at least one unannounced drill every
25 three years after receiving its rating.

26 (2) The administrator may modify, suspend, or revoke an
27 OSRO's rating if a rated OSRO fails to satisfactorily complete a
28 drill.

29 (3) The administrator may require the satisfactory completion
30 of one unannounced drill of each rated OSRO prior to being
31 granted a modified rating, and shall require satisfactory completion
32 of one unannounced drill for each rated OSRO prior to being
33 granted a renewal or prior to reinstatement of a revoked or
34 suspended rating.

35 (4) A drill for the protection of environmentally sensitive areas
36 shall conform as close as possible to the response that would occur
37 during a spill but sensitive sites shall not be damaged during the
38 drill.

39 (5) The response resources to be deployed by a rated OSRO
40 within the first six hours of a spill or drill shall be dedicated

1 response resources or be owned and controlled by a rated OSRO
2 that are sufficient to meet the spill response planning requirements
3 of the OSRO’s client owner or operator. This requirement does
4 not preclude a rated OSRO from bringing in additional response
5 resources. The administrator may, by regulation, permit a lesser
6 requirement for dedicated or OSRO owned and controlled response
7 resources for shoreline protection.

8 (6) The administrator may determine that actual satisfactory
9 spill response performance during the previous three years may
10 be substituted in lieu of a drill.

11 (7) The administrator shall issue a written report evaluating the
12 performance of the OSRO after every unannounced drill called by
13 the administrator.

14 (8) The administrator shall determine whether an unannounced
15 drill called upon an OSRO by a federal agency during the previous
16 three years qualifies as an unannounced drill for the purposes of
17 this subdivision.

18 (g) Each rated OSRO shall provide reasonable notice to the
19 administrator about each future drill, and the administrator, or his
20 or her designee, may attend the drill.

21 (h) The costs incurred by an OSRO to comply with this section
22 and the regulations adopted pursuant to this section, including
23 drills called by the administrator, shall be the responsibility of the
24 OSRO. All local, state, and federal agency costs incurred in
25 conjunction with participation in a drill shall be borne by each
26 respective agency.

27 (i) (1) A rating awarded pursuant to this section is personal and
28 applies only to the OSRO that receives that rating and the rating
29 is not transferable, assignable, or assumable. A rating does not
30 constitute a possessory interest in real or personal property.

31 (2) If there is a change in ownership or control of the OSRO,
32 the rating of that OSRO is null and void and the OSRO shall file
33 a new application for a rating pursuant to this section.

34 (3) For purposes of this subdivision, a “change in ownership or
35 control” includes, but is not limited to, a change in corporate status,
36 or a transfer of ownership that changes the majority control of
37 voting within the entity.

38 (j) The administrator may charge a reasonable fee to process an
39 application for, or renewal of, a rating.

1 (k) The administrator shall adopt regulations to implement this
2 section as appropriate. At a minimum, the regulations shall
3 appropriately address all of the following:

- 4 (1) Criteria for successful completion of a drill.
- 5 (2) The amount and type of response resources that are required
6 to be available to respond to a particular volume of spilled oil
7 during specific timeframes within a particular region.
- 8 (3) Regional requirements.
- 9 (4) Training.
- 10 (5) The process for applying for a rating, and for suspension,
11 revocation, appeal, or other modification of a rating.
- 12 (6) Ownership and employment of response resources.
- 13 (7) Conditions for canceling a drill due to hazardous or other
14 operational circumstances.

15 (l) Any letter of approval issued from the administrator before
16 January 1, 2002, that rates an OSRO shall be deemed to meet the
17 requirements of this section for three years from the date of the
18 letter’s issuance or until January 1, 2003, whichever date occurs
19 later.

20 SEC. 3. Section 8670.35 of the Government Code is amended
21 to read:

22 8670.35. (a) The administrator, taking into consideration the
23 California oil spill contingency plan, shall promulgate regulations
24 regarding the adequacy of oil spill elements of area plans required
25 pursuant to Section 25503 of the Health and Safety Code. In
26 developing the regulations, the administrator shall consult with
27 the Oil Spill Technical Advisory Committee.

28 (b) The administrator may offer, to a unified program agency
29 with jurisdiction over or directly adjacent to waters of the state, a
30 grant to complete, update, or revise an oil spill element of the area
31 plan.

32 (c) Each oil spill element established under this section shall
33 include provisions for training fire and police personnel in oil spill
34 response and cleanup equipment use and operations.

35 (d) Each oil spill element prepared under this section shall be
36 consistent with the local government’s local coastal program as
37 certified under Section 30500 of the Public Resources Code, the
38 California oil spill contingency plan, ~~and~~ the National Contingency
39 ~~Plan. Plan, and the 2016 United States Coast Guard OSRO~~
40 *classification program.*

1 (e) If a grant is awarded, the administrator shall review and
2 approve each oil spill element established pursuant to this section.
3 If, upon review, the administrator determines that the oil spill
4 element is inadequate, the administrator shall return it to the agency
5 that prepared it, specifying the nature and extent of the
6 inadequacies, and, if practicable, suggesting modifications. The
7 unified program agency shall submit a new or modified element
8 within 90 days after the element was returned, responding to the
9 findings and incorporating any suggested modifications.

10 (f) The administrator shall review the preparedness of unified
11 program agencies to determine whether a program of grants for
12 completing oil spill elements is desirable and should be continued.
13 If the administrator determines that local government preparedness
14 should be improved, the administrator shall request the Legislature
15 to appropriate funds from the Oil Spill Prevention and
16 Administration Fund for the purposes of this section.

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