AMENDED IN ASSEMBLY JULY 2, 2015

AMENDED IN ASSEMBLY JUNE 19, 2015

AMENDED IN ASSEMBLY JUNE 3, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL No. 414

Introduced by Senator Jackson
(Principal coauthor: Assembly Member Williams)

February 25, 2015

An act to amend Sections ~~8670.8.5,~~ 8670.12, 8670.13, *8670.28,* and 8670.67.5 of, and to add Sections 8670.11, 8670.12.1, ~~8670.13.3, 8670.31.5, and 8670.43~~ *and 8670.13.3* to, the Government Code, relating to oil spill response.

LEGISLATIVE COUNSEL'S DIGEST

SB 414, as amended, Jackson. Oil spill response.

(1) 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. The act authorizes the administrator to use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in waters of the state. Existing law requires the administrator to evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup. ~~Existing law authorizes oil spill response organizations to apply to the administrator for a rating for that organization's response capabilities.~~

This bill would require the administrator, in cooperation with the United States Coast Guard, to conduct an independent vessel traffic assessment for all deepwater ports that may inform an area rescue towing plan for the approaches to the ports and to establish a schedule of drills and exercises that are required under the federal Salvage and Marine Firefighting regulations. The bill would require the administrator to develop and implement regulations ~~for oil spill response organizations~~ *and guidelines requiring operators* to allow immediate response to an oil spill by contracted fishing vessels and fishing ~~crews. The bill would require the administrator, by regulation, to require oil spill response organizations to have specified oil spill response equipment.~~ *crews and providing for emergency drills and training.* The bill would require the administrator, on or before July 1, 2016, to submit to the Legislature a report assessing the best ~~available~~ *achievable* technology ~~and~~ *for* equipment ~~based on the estimated system recovery potential~~ for oil spill prevention and ~~response.~~ *response, as provided, and to update regulations based on the report before July 1, 2017.*

~~(2) The act requires operators of specified vessels and facilities to submit to the administrator an oil spill contingency plan to determine whether the plan meets applicable requirements. The act requires an operator to resubmit the plan to the administrator every 5 years.~~

~~This bill would require the administrator to adopt, by regulation, methodology to rate the oil spill prevention and response equipment listed in the plan to maintain the best achievable protection standards through the use of equipment that is the best available technology. The bill would require the administrator, every 5 years, to provide to the Legislature a report that justifies the regulations and methodology.~~

~~(3)~~

(2) The act requires the administrator to license oil spill cleanup agents for use in response to oil spills. The federal Coastal Zone Management Act of 1972 (federal act) requires federal agency activities to be carried out in a manner that is consistent, to the maximum extent practicable, with an approved state management plan. Existing federal law authorizes the California Coastal Commission, the designated state agency, to conduct federal consistency review to ensure federal agency activities are consistent with the California Coastal Management Program.

This bill would prohibit the use of chemical oil spill cleanup agents in the waters of the state.

~~(4)~~

(3) The act makes a person who causes or permits a spill or inland spill strictly liable for specified penalties for the spill on a per-gallon-released basis. The act provides that the amount of penalty is reduced by the amount of released oil that is recovered and properly disposed of.

This bill would provide that the above reduction in the penalty for spills, including inland spills, of greater than 500 gallons, is only applicable to the amount of oil recovered and properly disposed of within 2 weeks of the start of the spill.

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

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

~~SECTION 1. Section 8670.8.5 of the Government Code is amended to read:~~

~~8670.8.5. (a) The administrator may use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in waters of the state. The volunteers shall be deemed employees of the state for the purpose of workers' compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workers' compensation pursuant to this section shall be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46.~~

~~(b) (1) The administrator shall develop and implement regulations for oil spill response organizations to allow immediate response to an oil spill by contracted fishing vessels and fishing crews and that shall provide for regularly scheduled emergency drills and training in areas that include the following:~~

~~(A) Shoreline protection.~~

~~(B) Towing boom and skimmers.~~

~~(C) Working with minibarges.~~

~~(D) Loading and unloading equipment from response barges.~~

~~(2) In developing the regulations, the administrator shall consider the fishing vessel training program funded and maintained by Alyeska's Ship Escort/Response Vessel System, with regard to training, liability, insurance, compensation, and post response vessel cleanup.~~

~~SEC. 2.~~

SECTION 1. Section 8670.11 is added to the Government Code, to read:

8670.11. In addition to Section 8670.10, the administrator, in cooperation with the United States Coast Guard, shall establish a schedule of drills and exercises required pursuant to Section 155.4052 of Title 33 of the Code of Federal Regulations. The administrator shall make publicly available the established schedule.

~~SEC. 3.~~

SEC. 2. Section 8670.12 of the Government Code is amended to read:

8670.12. (a) The administrator shall conduct studies and evaluations necessary for improving oil spill response, containment, and cleanup and oil spill wildlife rehabilitation in waters of the state and oil transportation systems. The administrator may expend moneys from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38, enter into consultation agreements, and acquire necessary equipment and services for the purpose of carrying out these studies and evaluations.

(b) The administrator shall study the use and effects of dispersants, incineration, bioremediation, and any other methods used to respond to a spill. The study shall periodically be updated to ensure the best achievable protection from the use of those methods. Based upon substantial evidence in the record, the administrator may determine in individual cases that best achievable protection is provided by establishing requirements that provide the greatest degree of protection achievable without imposing costs that significantly outweigh the incremental protection that would otherwise be provided. The studies shall do all of the following:

(1) Evaluate the effectiveness of dispersants and other chemical, bioremediation, and biological agents in oil spill response under varying environmental conditions.

(2) Evaluate potential adverse impacts on the environment and public health including, but not limited to, adverse toxic impacts on water quality, fisheries, and wildlife with consideration to bioaccumulation and synergistic impacts, and the potential for human exposure, including skin contact and consumption of contaminated seafood.

(3) Recommend appropriate uses and limitations on the use of dispersants and other chemical, bioremediation, and biological agents to ensure they are used only in situations where the administrator determines they are effective and safe.

(c) The studies shall be performed in conjunction with any studies performed by federal, state, and international entities. The administrator may enter into contracts for the studies.

~~SEC. 4.~~

SEC. 3. Section 8670.12.1 is added to the Government Code, to read:

8670.12.1. The administrator, in cooperation with the United States Coast Guard, shall conduct an independent vessel traffic risk assessment for all deepwater ports that may inform an area rescue towing plan for the approaches to the ports.

~~SEC. 5.~~

SEC. 4. Section 8670.13 of the Government Code is amended to read:

8670.13. (a) The administrator shall periodically evaluate the feasibility of requiring new technologies to aid prevention, response, containment, cleanup, and wildlife rehabilitation.

(b) (1) On or before July 1, 2016, the administrator shall submit a report to the Legislature, pursuant to Section 9795, assessing the best ~~available~~ *achievable* technology ~~and~~ *of* equipment ~~based on the estimated system recovery potential~~ for oil spill prevention and response, including, but not limited to, prevention and response tugs, tractor tugs, ~~salve~~ *salvage* and marine firefighting tugs, oil spill skimmers and barges, and protective in-water boom equipment. *The assessment shall include all of the following:*

(A) Evaluation of equipment based on its estimated system recovery potential.

(B) Updating the methodology for rating equipment, such as oil containment, skimming, storage and oil and water separation technologies, and an explanation of why the new methodology provides the best achievable protection.

(C) Evaluation of the most current oil spill and response equipment for increase capability, including, but not limited to, new generation, high-efficiency disc skimmers, including high-efficiency skimming NOFI Current Busters, or their equivalent, and Elastec grooved disc skimmers, or their equivalent.

(D) Consideration of whether a purpose-built, prepositioned prevention and response tug with appropriate size, bollard pull, horsepower, propulsion, seakeeping, and maneuverability to meet Det Norske Veritas criteria for emergency towing would lead to increased capability to provide best achievable protection.

(2) In conducting the assessment, the administrator shall consult the *most recent* peer-reviewed research *on oil spill prevention and response, including, but not limited to, research* performed by the Prince William Sound Regional Citizens' Advisory Council as well as estimated system recovery potential research done at Genwest Systems, Inc., and Spiltec.

(3) Pursuant to Section 10231.5, this subdivision is inoperative on July 1, 2020.

(c) *(1)* Based on the report prepared pursuant to subdivision (b), the administrator shall ~~establish standards~~ *update regulations governing the adequacy of oil spill contingency plans* for best achievable technologies for oil spill prevention and response no later than July 1, 2017.

(2) The updated regulations shall enhance the capabilities for prevention, response, containment, cleanup, and wildlife rehabilitation.

~~SEC. 6.~~

SEC. 5. Section 8670.13.3 is added to the Government Code, to read:

8670.13.3. (a) Notwithstanding any law, chemical oil spill cleanup agents shall not be used in response to an oil spill within the waters of the state.

(b) For purposes of this section, "waters of the state" means any surface water, including saline water, within the boundary of the state.

SEC. 6. Section 8670.28 of the Government Code is amended to read:

8670.28. (a) The administrator, taking into consideration the facility or vessel contingency plan requirements of the State Lands Commission, the Office of the State Fire Marshal, the California Coastal Commission, and other state and federal agencies, shall adopt and implement regulations governing the adequacy of oil spill contingency plans to be prepared and implemented under this article. All regulations shall be developed in consultation with the Oil Spill Technical Advisory Committee, and shall be consistent

with the California oil spill contingency plan and not in conflict with the National Contingency Plan. The regulations shall provide for the best achievable protection of waters and natural resources of the state. The regulations shall permit the development, application, and use of an oil spill contingency plan for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations shall, at a minimum, ensure all of the following:

(1) All areas of state waters are at all times protected by prevention, response, containment, and cleanup equipment and operations.

(2) Standards set for response, containment, and cleanup equipment and operations are maintained and regularly improved to protect the resources of the state.

(3) All appropriate personnel employed by operators required to have a contingency plan receive training in oil spill response and cleanup equipment usage and operations.

(4) Each oil spill contingency plan provides for appropriate financial or contractual arrangements for all necessary equipment and services for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each area the plan addresses.

(5) Each oil spill contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the facility or vessel. The protection measures shall include, but not be limited to, response to disabled vessels and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(6) Each oil spill contingency plan identifies the types of equipment that can be used, the location of the equipment, and the time taken to deliver the equipment.

(7) Each facility, as determined by the administrator, conducts a hazard and operability study to identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure, and external events. For the hazards identified in the hazard and operability studies, the facility shall conduct an offsite consequence analysis that, for the most likely hazards, assumes pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each oil spill contingency plan contains a list of contacts to call in the event of a drill, threatened discharge of oil, or discharge of oil.

(9) Each oil spill contingency plan identifies the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.

(10) Standards for determining a reasonable worst case oil spill. However, for a nontank vessel, the reasonable worst case is a spill of the total volume of the largest fuel tank on the nontank vessel.

(11) Each oil spill contingency plan specifies an agent for service of process. The agent shall be located in this state.

(b) The regulations and guidelines adopted pursuant to this section shall also include provisions to provide public review and comment on submitted oil spill contingency plans.

(c) The regulations adopted pursuant to this section shall specifically address the types of equipment that will be necessary, the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, the regulations shall require that vessels engaged in lightering operations be boomed prior to the commencement of operations.

(d) The administrator shall adopt regulations and guidelines for oil spill contingency plans with regard to mobile transfer units, small marine fueling facilities, and vessels carrying oil as secondary cargo that acknowledge the reduced risk of damage from oil spills from those units, facilities, and vessels while maintaining the best achievable protection for the public health and safety and the environment.

(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from review by the Office of Administrative Law.

(f) (1) The administrator shall develop and implement regulations and guidelines requiring operators to allow immediate response to an oil spill by contracted fishing vessels and fishing

crews and providing for regularly scheduled emergency drills and training in areas that include all of the following:

(A) Shoreline protection.

(B) Towing boom and skimmers.

(C) Working with minibarges.

(D) Loading and unloading equipment from response barges.

(2) In developing the regulations, the administrator shall consider the fishing vessel training program funded and maintained by Alyeska's Ship Escort/Response Vessel System, with regard to training, liability, insurance, compensation, and post response vessel cleanup.

~~SEC. 7. Section 8670.31.5 is added to the Government Code, to read:~~

~~8670.31.5. (a) For offshore oil spill response, the administrator shall, by regulation, establish a methodology for rating equipment, such as oil containment, skimming, storage, and oil/water separation technologies, listed in an oil spill contingency plan to maintain the best achievable protection standards through the use of equipment that is the best available technology.~~

~~(b) The administrator shall provide a report to the Legislature every five years that justifies the regulations adopted and methodologies established pursuant to subdivision (a). The report to the Legislature shall be delivered as provided in Section 9795 of the Government Code.~~

~~SEC. 8. Section 8670.43 is added to the Government Code, to read:~~

~~8670.43. Pursuant to paragraph (4) of subdivision (e) of Section 8670.40, the administrator shall require, by regulation, all oil spill response organizations to have in their response fleets both of the following:~~

~~(a) At least two new-generation, high-efficiency disc skimmers. This equipment shall include high-efficiency skimming NOFI Current Busters, or their equivalent, and Elastec grooved disc skimmers, or their equivalent.~~

~~(b) A purpose-built, prepositioned prevention and response tug with appropriate size, bollard pull, horsepower, propulsion, seakeeping, and maneuverability to meet Det Norske Veritas criteria for emergency towing.~~

~~SEC. 9.~~

SEC. 7. Section 8670.67.5 of the Government Code is amended to read:

8670.67.5. (a) Regardless of intent or negligence, any person who causes or permits a spill shall be strictly liable civilly in accordance with subdivision (b) or (c).

(b) A penalty may be administratively imposed by the administrator in accordance with Section 8670.68 in an amount not to exceed twenty dollars ($20) per gallon for a spill. Except as provided in subdivision (d), the amount of the penalty shall be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law.

(c) Whenever the release of oil resulted from gross negligence or reckless conduct, the administrator shall, in accordance with Section 8670.68, impose a penalty in an amount not to exceed sixty dollars ($60) per gallon for a spill. Except as provided in subdivision (d), the amount of the penalty shall be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law.

(d) (1) For a spill of greater than 500 gallons, the penalty assessed pursuant to subdivision (b) or (c) shall only be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law within two weeks of the start of the spill.

(2) Notwithstanding Section 8670.69.7, any increase in the amount of a penalty assessed for an inland spill resulting from the operation of paragraph (1) shall be deposited in the Environmental Enhancement Fund pursuant to Section 8670.70.

(e) The administrator shall adopt regulations governing the method for determining the amount of oil that is cleaned up.

O

Senate Bill 414*

Rapid Oil Spill Response Act

Senator Jackson

SUMMARY

SB 414 will help make oil spill response faster, more effective, and more environmentally friendly by:

1. Requiring pipeline operators to contract with local fishing vessels and crews for immediate oil spill response.
2. Requiring the Office of Spill Prevention and Response (OSPR) to report to the Legislature the BAT for oil spill prevention and response and to implement standards based on that report.
3. Incentivizing faster oil spill cleanup by only allowing penalty offsets for oil recovered within the first two weeks of a spill.
4. Placing a ban on the use of chemical dispersants in state waters.

BACKGROUND

In 1969, the then-largest known oil spill blackened the pristine Santa Barbara coastline. That spill spawned Earth Day, giving birth to the environmental movement.

On May 19 of this year tragedy struck again when an onshore pipeline carrying crude oil ruptured and spilled over 100,000 gallons of oil, over 20,000 gallons of which ended up in the ocean off the Santa Barbara Coastline. To date this spill has caused significant negative impacts to the ocean, local beaches, wildlife, and the local economy. Although the investigation into the response and the oil spill—dubbed the Refugio Oil Spill—is ongoing, several deficiencies in our ability to immediately respond to these disasters and act quickly to protect our environment have been highlighted.

SOLUTION

In the wake of the Exxon Valdez spill, a very effective program was created for Prince William Sound that enables local fishing vessels and crews to immediately respond to oil spills. Local fishermen are the best suited to immediately respond to an oil spill since they are onsite, know the water and currents, and are interested in protecting their economic interests in the ocean. It took six hours for state resources to travel from the Los Angeles to Refugio Beach and even longer for cleanup activities to commence; if California had a program similar to the one in Prince William Sound then a more comprehensive response could have started at least six hours sooner, which would have reduced the negative impacts on our ocean, beaches, wildlife, and the economy.

SB 414 also specifies that penalty offsets for spilled oil may only be received for oil recovered within the first two weeks of a spill (currently offsets are allowed for all oil collected regardless of when it gets cleaned up). This policy shift will create an incentive for oil companies to clean up oil spills faster.

Finally, a National Academy of Science review in 2005 concluded that little to no evidence exists for the claims that dispersants "reduce the impact of oil on shorelines," or "reduce the impact to birds and mammals on the water surface." Indeed, spilled oil combined with dispersants is significantly more toxic than oil left to physically disperse on its own and is why Prince William Sound has banned their use. Although dispersants could not be used for this spill, SB 414 calls for a ban on the use of dispersants in response to oil spills due to their ineffectiveness and the environmental harm they cause.

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