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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 1. GENERAL [8000 - 8899.95] (Division 1 enacted by Stats. 1943, Ch. 134.)

CHAPTER 7.4. Oil Spill Response and Contingency Planning [8670.1 - 8670.73] (Chapter 7.4 added by Stats. 1990, Ch. 1248, Sec. 17.)

ARTICLE 7. Oil Spill Response Trust Fund [8670.46 - 8670.53] (Article 7 added by Stats. 1990, Ch. 1248, Sec. 17.)

8670.46. (a) The Oil Spill Response Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340, the money in the fund is continuously appropriated to the administrator for expenditure, without regard to fiscal years, for the purposes of this article.

(b) For the purposes of this article, "fund" refers to the Oil Spill Response Trust Fund.

(Added by Stats. 1990, Ch. 1248, Sec. 17. Effective September 24, 1990.)

8670.47. (a) The administrator shall administer the fund in accordance with this article.

(b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.

(c) The administrator is responsible for ensuring that there are adequate moneys available in the fund to carry out the purposes of this chapter.

(Added by Stats. 1990, Ch. 1248, Sec. 17. Effective September 24, 1990.)

8670.47.5. The following shall be deposited into the fund:

(a) The fee required pursuant to Section 8670.48.

(b) Any federal funds received to pay for response, containment, abatement, and rehabilitation costs from an oil spill in waters of the state.

(c) Any money borrowed by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1) or any draw on the financial security obtained by the Treasurer pursuant to subdivision (o) of Section 8670.48.

(d) Any interest earned on the moneys in the fund.

(e) Any costs recovered from responsible parties pursuant to Section 8670.53 and subdivision (e) of Section 8670.53.1.

(Amended by Stats. 2014, Ch. 35, Sec. 40. (SB 861) Effective June 20, 2014.)

8670.48. (a) (1) A uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), shall be imposed upon a person who owns petroleum products at the time the petroleum products are received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The fee shall be collected by the marine terminal and remitted to the State Board of Equalization by the terminal operator on the 25th day of each month based upon the number of barrels of petroleum products received during the preceding month.

(2) An owner of petroleum products is liable for the fee until it has been paid to the state, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(b) An operator of a pipeline shall also pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), transported into the state by means of a pipeline operating across, under, or through the waters of the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of petroleum products so transported into the state during the preceding month.

(c) An operator of a refinery shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), received at a refinery within the state by any method of transport. The fee shall be paid on the 25th day of each month based upon the number of barrels of crude oil so received during the preceding month.

(d) A marine terminal operator shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), that is transported from within this state by means of a vessel to a destination outside this state.

(e) An operator of a pipeline shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), transported out of the state by pipeline.

(f) (1) The fees required pursuant to this section shall be collected during any period for which the administrator determines that collection is necessary for any of the following reasons:

(A) The amount in the fund is less than or equal to 95 percent of the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code.

(B) Additional money is required to pay for the purposes specified in subdivision (k).

(C) The revenue is necessary to repay a draw on a financial security obtained by the Treasurer pursuant to subdivision (o) or borrowing by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1), including any principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings or financial security.

(2) The administrator, in consultation with the State Board of Equalization, and with the approval of the Treasurer, may direct the State Board of Equalization to cease collecting the fee when the administrator determines that further collection of the fee is not necessary for the purposes specified in paragraph (1).

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all feepayers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents (\$0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code within four months. The fee shall not be less than twenty-five cents (\$0.25) for each barrel of petroleum products or crude oil if the administrator has drawn upon the financial security obtained by the Treasurer pursuant to subdivision (o) or if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the money in the fund is not necessary for the purposes specified in paragraph (1).

(g) The fees imposed by subdivisions (d) and (e) shall be imposed in any calendar year beginning the month following the month when the total cumulative year-to-date barrels of crude oil transported outside the state by all feepayers by means of vessel or pipeline exceed 6 percent by volume of the total barrels of crude oil and petroleum products subject to oil spill response fees under subdivisions (a), (b), and (c) for the prior calendar year.

(h) For purposes of this chapter, "designated amount" means the amounts specified in Section 46012 of the Revenue and Taxation Code.

(i) The administrator, in consultation with the State Board of Equalization and with the approval of the Treasurer, shall authorize refunds of any money collected that is not necessary for the purposes specified in paragraph (1) of subdivision (f). The State Board of Equalization, as directed by the administrator, and in accordance with Section 46653 of the Revenue and Taxation Code, shall refund the excess amount of fees collected to each feepayer who paid the fee to the state, in proportion to the amount that each feepayer paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the specified amount. If the total amount of money in the fund exceeds the amount specified in this subdivision by 10 percent or less, refunds need not be ordered by the administrator. This section does not require the refund of excess fees as provided in this subdivision more frequently than once each year.

(j) The State Board of Equalization shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

(k) The fee described in this section shall be collected solely for any of the following purposes:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into waters of the state, including damage assessment costs and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into waters of the state that cannot otherwise be compensated by responsible parties or the federal government.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (h) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the cost of obtaining financial security in the amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, as authorized by subdivision (o).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(7) To pay principal, interest, premium, if any, and fees, charges, and costs of any kind incurred in connection with moneys drawn by the administrator on the financial security obtained by the Treasurer pursuant to subdivision (o) or borrowed by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1).

(8) [Reserved]

(9) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges.

(l) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code. If the amount in the fund exceeds that designated amount, the interest shall be deposited into the Oil Spill Prevention and Administration Fund, and shall be available for the purposes authorized by Article 6 (commencing with Section 8670.38).

(m) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the money in the fund shall be used solely for the purposes specified in subdivision (k).

(n) [Reserved]

(o) The Treasurer shall obtain financial security, in the designated amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, in a form that, in the event of an oil spill, may be drawn upon immediately by the administrator upon making the determinations required by paragraph (2) of subdivision (a) of Section 8670.49. The financial security may be obtained in any of the forms described in subdivision (b) of Section 8670.53.3, as determined by the Treasurer.

(p) This section does not limit the authority of the administrator to raise oil spill response fees pursuant to Section 8670.48.5.

(Amended by Stats. 2014, Ch. 35, Sec. 41. (SB 861) Effective June 20, 2014.)

8670.48.5. (a) The administrator may raise the fees specified in Section 8670.48 to a maximum of one dollar (\$1) per barrel, provided that the fee may only be raised by maximum increments of twenty-five cents (\$0.25) not more frequently than once every three months. The administrator shall raise the fee only upon making all of the following findings:

(1) There have been, or are existing, demands for expenditures from the fund for allowable purposes that have severely depleted or exhausted, or will severely deplete or exhaust, the fund.

(2) The Governor has requested the Treasurer to borrow the moneys and the Treasurer finds that the fee is insufficient for the Treasurer to borrow enough money to meet the reasonably anticipated demands on the fund for authorized expenditures, including providing moneys for the costs of response, containment, and cleanup of oil spills, damage assessment costs, wildlife rehabilitation, emergency loans, and damage claims, and to repay those borrowings, or the Treasurer finds that the fee is insufficient to repay and secure existing draws by the administrator on the financial security obtained by the Treasurer pursuant to subdivision (o) of Section 8670.48 or borrowings by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1).

(3) Failure to raise the fee in the amount proposed will result in unmet or unpaid, authorized expenditures or noncompliance with any resolutions or contracts entered into in connection with obtaining the financial security pursuant to subdivision (o) of Section 8670.48 or borrowings by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1).

(b) At least 30 days prior to the day the increased fee shall be effective, the administrator shall inform the Legislature of his or her intent to raise the fee.

(c) Each incremental increase shall be effective until the later of (1) the delivery by the Treasurer of a certificate to the administrator as authorized by subdivision (f) of Section 8670.53.3 or (2) the expiration date established by the administrator not to exceed one year. The increase may be renewed by the administrator before its expiration upon making the findings required by subdivision (a).

(d) It is the intent of the Legislature that the fund shall not be used for any purpose other than those set forth in this chapter.

(Amended by Stats. 2007, Ch. 373, Sec. 7. Effective October 10, 2007.)

8670.49. (a) (1) The administrator may only expend money from the fund to pay for any of the following, subject to the lien established in Section 8670.53.2:

(A) To pay the cost of obtaining financial security as authorized by paragraph (5) of subdivision (k) and subdivision (o) of Section 8670.48.

(B) To pay the principal, interest, premium, if any, and fees, charges, and costs of any kind incurred in connection with moneys drawn by the administrator on the financial security obtained by the Treasurer, or the moneys borrowed by the Treasurer, as authorized by paragraph (7) of subdivision (k) of Section 8670.48.

(C) To pay for the expansion, in the VTS area, pursuant to Section 445 of the Harbors and Navigation Code, of the vessel traffic service system (VTS system) authorized pursuant to subdivision (f) of Section 8670.21.

(2) If a spill has occurred, the administrator may expend the money in the fund for the purposes identified in paragraphs (1), (2), (3), (4), and (6) of subdivision (k) of Section 8670.48 only upon making the following determinations:

(A) Except as authorized by Section 8670.51.1, a responsible party does not exist or the responsible party is unable or unwilling to provide adequate and timely cleanup and to pay for the damages resulting from the spill. The administrator shall make a reasonable effort to have the party responsible remove the oil or agree to pay for any actions resulting from the spill that may be required by law, provided that the efforts are not detrimental to fish, plant, animal, or bird life in the affected waters. The reasonable effort of the administrator shall include attempting to access the responsible parties' insurance or other proof of financial responsibility.

(B) Sufficient federal oil spill funds are not available or will not be available in an adequate period of time.

(3) Notwithstanding any other provision of this subdivision, the administrator may expend money from the fund for authorized expenditures when a reimbursement procedure is in place to receive reimbursements for those expenditures from federal oil spill funds.

(b) Upon making the determinations specified in paragraph (2) of subdivision (a), the administrator shall immediately make whatever payments are necessary for responding to, containing, or cleaning up the spill, including any wildlife rehabilitation required by law and payment of claims pursuant to Sections 8670.51 and 8670.51.1, subject to the lien established by Section 8670.53.2.

(Amended by Stats. 2014, Ch. 35, Sec. 43. (SB 861) Effective June 20, 2014.)

8670.50. (a) Money from the fund may only be expended to cover the costs incurred by the state and local governments and agencies for any of the following:

(1) Responding promptly to, containing, and cleaning up the discharge, if those efforts are any of the following:

(A) Undertaken pursuant to the state and local oil spill contingency plans established under this chapter, and the California oil spill contingency plan established under Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(B) Undertaken consistent with the standardized emergency management system established pursuant to Section 8607.

(C) Undertaken at the direction of the administrator.

(2) Meeting the requirements of Section 8670.61.5 relating to wildlife rehabilitation.

(3) Making the payments authorized by subdivision (k) of Section 8670.48.

(b) In the event of an oil spill, the administrator shall make whatever expenditures are necessary and appropriate from the fund to cover the costs described in subdivision (a), subject to the lien established pursuant to Section 8670.53.2.

(Amended by Stats. 2014, Ch. 35, Sec. 44. (SB 861) Effective June 20, 2014.)

8670.51. (a) When a person has obtained a final judgment for damages resulting from an oil spill in waters of the state, but is unable, within one year after the date of its entry, to enforce the judgment pursuant to Title 9 (commencing with Section 680.010) of the Code of Civil Procedure, or is unable to obtain satisfaction of the judgment from the federal government within 90 additional days, the administrator shall pay an amount not to exceed those amounts that cannot be recovered from a responsible party and the fund shall be subrogated to all rights, claims, and causes of action that the claimant has under this chapter, Article 3. 5 (commencing

with Section 8574.1) of Chapter 7, Section 8670.61.5, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) Any person may apply to the fund for compensation for damages and losses suffered as a result of an oil spill in waters of the state under any of the following conditions:

- (1) The responsible party or parties cannot be ascertained.
- (2) A responsible party is not liable for noneconomic damages caused by another.
- (3) Subdivision (i) of Section 8670.56.6 is applicable to the claim.

(c) The administrator shall not approve any claim in an amount that exceeds the amount to which the person would otherwise be entitled pursuant to Section 8670.56.5, and shall pay claims from the fund that are approved pursuant to this section.

(Amended by Stats. 2014, Ch. 35, Sec. 45. (SB 861) Effective June 20, 2014.)

8670.51.1. (a) (1) Upon learning of an oil spill, the administrator shall immediately designate the responsible party, who, if that designation is not challenged, shall immediately, widely advertise the manner in which it shall accept and pay claims.

(2) If the designation of the administrator is challenged, the administrator shall immediately, widely advertise the manner in which he or she shall accept, process, and pay claims. If the administrator's designation is later upheld, all costs incurred by the administrator, including interest and appropriate penalties, shall be assessed against the responsible party.

(3) If the administrator is unable to designate a responsible party, the administrator shall immediately, widely advertise the manner in which the administrator shall accept, process, and pay claims. In the absence of a designated responsible party the claimant shall submit his or her claim to the federal fund. If there is no response within 60 days, the claimant may submit his or her claim to the fund.

(b) Claims under the amount of fifty thousand dollars (\$50,000) may be submitted directly to the fund. The claimant shall not be required to make a demand on the responsible party or any federal fund. It is the intent of the Legislature that these claims be processed as expeditiously as possible, and the administrator shall contract with professional adjusters to handle the claims as fairly and professionally as possible. Claimants shall assign or subrogate all rights against the responsible party to the fund before payment and release.

(c) Claims in excess of the amount of fifty thousand dollars (\$50,000) shall first be presented to the designated responsible party for payment. If a satisfactory response is not forthcoming within 60 days, the claimant shall submit his or her claim to the appropriate federal fund. If a satisfactory response is not forthcoming from the appropriate federal fund within 60 days, the claimant may submit the claim to the fund. If the administrator does not designate a responsible party, the claim shall be submitted directly to the appropriate federal fund.

(d) (1) If the federal fund completely rejects a claim, makes a partial offer, or the claimant rejects an offer, the claimant may, nevertheless, apply for reimbursement from the fund, provided that all evidence developed during the federal fund process shall be admissible during the processing of the claim. The administrator shall specifically consider any federal offer.

(2) Any federal payment shall be offset against any payment from the fund.

(3) The claimant shall assign or subrogate all rights under federal law to the fund. Any payment of claims from the fund shall require assignment or subrogation of the claimant's rights under state law to the fund.

(e) The administrator may levy fines against frivolous claims pursuant to Section 128.5 of the Code of Civil Procedure.

(f) Entities that pay into the fund shall have no standing to contest claims against the fund for claims less than one million dollars (\$1,000,000). The entities may petition the administrator to have standing for claims between one million dollars (\$1,000,000) and three million dollars (\$3,000,000). The entities shall have standing for claims in excess of three million dollars (\$3,000,000).

(g) An advisory committee comprised of entities that pay into the fund and other interested parties shall be created and the administrator shall consult with the committee on the manner in which payments are made from the fund.

(h) Claims for reimbursement from the fund shall be made within three years from the date the loss occurred.

(i) Dissatisfied claimants may sue the fund within six months of the administrator's final decision regarding a claim.

(j) The administrator shall develop and adopt regulations regarding the manner in which claims shall be required to be submitted, processed, heard, and challenged.

(k) Punitive damages shall not be paid from the fund.

(Amended by Stats. 1993, Ch. 1190, Sec. 5. Effective October 11, 1993.)

8670.53. The Attorney General, in consultation with the administrator, shall undertake actions to recover all costs to the funds from any responsible party for an oil spill into waters of the state for which expenditures are made from the fund. The recovery of costs pursuant to this section shall not foreclose the Attorney General from any other actions allowed by law.

(Amended by Stats. 2014, Ch. 35, Sec. 46. (SB 861) Effective June 20, 2014.)