

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1611 (Davies)
Version: June 11, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

Oil spills: potential casualties with submerged oil pipelines: vessels: reporting

DIGEST

This bill requires a potential casualty with a submerged oil pipeline, as described, to be treated as a threatened discharge of oil in waters of the state under existing law. The bill requires a vessel involved in that potential casualty to immediately report it to the Office of Emergency Services (OES), and provides for a civil penalty for failure to make the report of not less than \$10,000 and not more than \$1,000,000 for each violation, as provided.

EXECUTIVE SUMMARY

In 2021 roughly 25,000 gallons of oil were released into the ocean off the Coast of Orange County from a submerged oil pipeline. Investigators concluded that the spill was caused by the anchor of a vessel awaiting permission to enter the Port of Long Beach that likely hooked the pipeline and dragged it. This bill seeks to address this situation by providing that a vessel that has an anchor down in an area designated as proximate to a chartered pipeline zone and moves outside of the area with its anchor down is involved in a potential casualty with a submerged oil pipeline. The bill requires such a potential casualty to be treated as a threatened discharge of oil in waters of the state under existing provisions of law. The bill requires such a potential casualty to be immediately reported to OES and subjects a person who fails to make the report to a civil penalty, as provided.

This bill was previously analyzed by the Senate Natural Resources and Water Committee – where it passed by a vote of 5 to 0 – regarding issues related to the reporting of a potential casualty with a submerged oil pipeline. This analysis, however, is limited to the issues within the Committee’s jurisdiction – specifically, the civil penalties for failing to make the required report.

The bill is author sponsored. The bill is supported by the Coastal Conservation Association of California and opposed by the Pacific Merchant Shipping Association.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to provide for the safety of the natural environment and dictate procedures for addressing response to oil spills. (Gov. Code § 8670.1 *et seq.* and Public Resources Code § 8750 *et seq.*)
- 2) Establishes, within the Department of Fish and Wildlife, the Office of Spill Prevention and Response, to be led by an administrator who, acting at the direction of the Governor, is charged with implementing activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup. (Gov. Code § 8670.4.)
- 3) Requires, without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in waters of the state to report the discharge immediately to the Governor's Office of Emergency Services, as specified. (Gov. Code § 8670.25.5 (a).)
- 4) Requires the Governor's Office of Emergency Services to notify the administrator of the Office of Spill Prevention and Response, the State Lands Commission, the California Coastal Commission, the appropriate California regional water quality control board, and the appropriate local governmental agencies in the area surrounding the discharged oil, and take required actions, as specified. (Gov. Code § 8670.25.5 (b).)
- 5) Outlines the procedures that must be undertaken by a handler, or an employee, authorized representative, agent, or designee of the handler when a hazardous material, hazardous waste, or hazardous substance is released, or threatened to be released, including notification to the Governor's Office of Emergency Services. (Health & Safe. Code § 25510.)
- 6) Prohibits a tanker or barge from using any marine facility in this state unless the tanker or barge is in compliance with all applicable federal and state laws and regulations governing equipment, personnel, construction, financial responsibility, and operations relating to the prevention of oil spills. (Pub. Res. Code § 8752.)
- 7) Provides that a person who is convicted for knowingly doing any of the following acts may be punished by imprisonment in a county jail for up to a year or subject to fines of not less than \$5,000 and no more than \$1,000,000:
 - a) failing to notify the Office of Emergency Services of an oil spill;

- b) knowingly making a false or misleading oil spill report to the Governor's Office of Emergency Services;
 - c) continuing operations for which an oil spill contingency plan is required without an oil spill contingency plan approved, as specified; and
 - d) knowingly failing to follow the material provisions of an applicable oil spill contingency plan, except as specified. (Gov. Code § 8670.64 (c).)
- 8) Provides that the administrator of the Office of Spill Prevention and Response may prohibit an owner or operator of a marine terminal from delivering or accepting oil to or from any tanker or barge if the administrator finds, after noticed hearing, that the owner or operator has violated the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act and that previous convictions, judgments, or settlements for those violations occurred during the prior three years and meet all of the following criteria:
- a) the violations have not been corrected or reasonable progress toward correction has not been achieved;
 - b) the violations demonstrate a recurring pattern of noncompliance; or
 - c) the violations pose, or have posed, a significant risk to public health and safety or to the environment. (Pub. Res.Code § 8754 (a).)
- 9) Establishes the Oil Spill Response Trust Fund and provides that the fund may be used to provide for response activities in the event of an oil spill that impacts state waters, or in the event of an imminent threat of an oil spill. (Gov. Code § 8670.46.)
- 10) Establishes the Environmental Enhancement Fund to provide grant funds to nonprofit organizations, cities, counties, cities and counties, districts, state agencies, and departments; and, to the extent permitted by federal law, to federal agencies to support environmental enhancement projects located within or immediately adjacent to waters of the state. (Gov. Code § 8670.70.)
- 11) Defines "vessel" as ships of all kinds, steamboats, steamships, canal boats, barges, sailing vessels, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. (Har. & Nav. Code § 21.)
- 12) Provides, under federal law, that in order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, the Secretary of Homeland Security must designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and in high seas approaches, outside the territorial sea, to such ports or places. Requires such a designation to recognize, within the designated area, the paramount right of navigation over all other uses. (33 U.S.C. Section 1223.)

This bill:

- 1) Provides, without regard to intent or negligence, that when a vessel that has an anchor down in an area designated as proximate to a chartered pipeline in a duly published submerged oil pipeline zone, that vessel is a vessel involved in a potential casualty with a submerged oil pipeline when it moves outside of the anchorage with its anchor down.
- 2) Requires potential casualty with a submerged oil pipeline to be treated as a threatened discharge of oil in waters of the state under existing provisions of law.
- 3) Requires an operator of a vessel involved in a potential casualty with a submerged oil pipeline to immediately report the potential casualty to OES.
 - a) Requires OES to provide notice of the potential casualty to various state agencies, including the State Lands Commission.
 - b) Requires the State Lands Commission to notice specified state agencies about the potential casualty, and make a list of contact information by an unspecified date.
 - c) Requires OES in consultation with the State Lands Commission to provide the Legislature with a specified report.
- 4) Provides that a vessel operator who fails to makes the required report regarding a potential casualty is subject to a civil penalty of not less than \$10,000 and not more than \$1,000,000 for each violation.
 - a) Authorizes an action to be brought by the Attorney General, upon a complaint from the Office of Emergency Services, or by a district attorney.
 - b) Requires the one-half of the civil penalties collected to be deposited into the Oil Spill Response Trust Fund and the other half into the Environmental Enhancement Fund.
- 5) Requires the court, when determining the amount of the civil penalty to be assessed, to consider all of the following factors:
 - a) the amount of time that passed before the vessel operator provided the report required;
 - b) whether the vessel operator has previously failed to comply with the reporting requirements;
 - c) the amount of oil that was released as a result of the delay in complying with the reporting requirements; and
 - d) additional cleanup costs incurred as a result of the delay in complying with the reporting requirements.

COMMENTS

1. Stated need for the bill

The author writes:

AB 1611 is a common-sense reform to ensure we close all loopholes in our state's efforts to mitigate and prevent environmental disasters. By requiring notifications to the appropriate state and federal authorities about a pipeline strike or even potential hit of one, we can prevent disasters like we saw in Orange County in 2021. If the vessel that struck that pipeline had notified authorities, the operators of the pipeline could have checked on the damage and made the needed repairs before oil started leaking.

2. Enforcement

The Office of Spill Prevention and Response was established within the Department of Fish and Wildlife in response to California's historical experience with oil spills. That Office is tasked with preventing and preparing for oil spills and developing responses to mitigate their impact. Existing law establishes a reporting system for parties who become aware their pipelines or facilities are discharging oil into the state's waters, which requires those parties to notify the Governor's Office of Emergency Services (OES) who is then required to notify all of the agencies directly responsible for stopping the discharge and remedying the damage caused by the oil discharge. Under existing law, offshore oil operators and vessels transporting oil are required to file oil spill contingency plans with the state to provide a framework for how the operator will strive to avoid and mitigate oil spills.

Because oil spills are extremely harmful to the environment, state law imposes significant civil penalties for violating various provisions of law regarding oil spills and prevention. For example, if a person is convicted of failing to report an oil spill, lying about an oil spill, continuing operations without an approved oil spill contingency plan, or knowingly failing to follow an oil spill contingency plan, that person may be subject to jail time or a fine upward of one million dollars.

On October 2, 2021, an oil spill was spotted off the Orange County coastline. The spill ended up releasing almost 25,000 gallons of oil. It was eventually determined that the oil was being released from a pipeline connecting the Elly Platform, an offshore oil facility, to the mainland. Investigators determined that the anchor of a large vessel awaiting clearance to enter the Port of Long Beach likely hooked the pipeline and dragged it more than 150 feet.¹ This bill seeks to prevent similar situations from

¹ Fry, et al., *Newsom declares emergency as investigators probe whether anchor caused O.C. oil spill*, Los Angeles Times (Oct. 4, 2021), available at: <https://www.latimes.com/california/story/2021-10-04/california-oil-cleanup-intensifies-after-huntington-beach-spill>.

occurring. The Senate Natural Resources and Water Committee noted: “With limited exception, the jurisdiction and authority of state agencies ends three miles from the California coastline. Given what is known about the October 2021 oil spill in southern California, it is unclear that this bill, if it had been in effect, would necessarily have affected actions that appear to have occurred in federal waters.”²

Specifically the bill provides that, without regard to intent or negligence, when a vessel that has an anchor down in an area designated as proximate to a chartered pipeline in a duly published submerged oil pipeline zone, that vessel is a vessel involved in a potential casualty with a submerged oil pipeline when it moves outside of the anchorage with its anchor down. The bill requires a vessel operator involved in a potential casualty to immediately report the potential casualty to OES, in order for OES to notify other state agencies responsible for preventing and remedying oil spills. A vessel operator who fails to make the required report is subject to a civil penalty of not less than \$10,000 and not more than \$1,000,000 for each violation. The bill provides guidance to a court in determining the amount of the civil penalty to assess by requiring certain factors to be considered, include the amount of time the vessel operator delayed in providing notice, the extent of the environmental and economic damage that could have been mitigated but for the delay, and whether the vessel operator has failed to provide the required notice previously.

3. Proposed amendments

The Pacific Merchant Shipping Association writes in opposition requesting the civil penalty be lowered to the amount it was when the bill was introduced – not less than \$10,000 and not more than \$50,000. They note that a similar provision of law for failing to report the discharge or threatened discharge of oil in waters of the state to OES has a requirement that it be knowingly. (*see* Gov. Code 8670.64.) Additionally, the author’s intent is not to make a violation of these provisions subject to any crime. In light of this, the author may wish to amend the bill to require the failure to notify to be knowingly in line with Section 8670.64.

Existing Section 8670.65 of the Government Code provides that any person who knowingly violates any provision of the chapter that this bill is adding the reporting provisions to is guilty of a misdemeanor. The author’s intent is not to make a violation of the reporting provisions subject to punishment as a crime. As such, the author may wish to amend the bill to provide that a violation of those provisions are not subject to enforcement under Section 8670.65.

² Sen. Natural Res. And Wat. Comm. Analysis of Asm. Bill 1611 (2021-2022 Reg. Ses.) as amended June 6, 2022, at p. 5.

The specific amendments are:³

Amendment 1

Amends subdivision (e) of Section 8670.25.6 to read:

(e) A violation of this section is not subject to enforcement under Section 8670.64 or 8670.65.

Amendment 2

Amend subdivision (a) of Section 8670.64.5 of the Government Code to read:

(a) A vessel operator who *knowingly* fails to make the report required pursuant to subdivision (b) of Section 8670.25.6 shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one million dollars (\$1,000,000) for each violation.

4. Statements in support

The Coastal Conservation Association of California writes in support:

The oil spill last year resulted in significant environmental harm, including port closures and limitations on where recreational angling activities and charter boats could operate. As one of the many communities negatively impacted by this spill, including economic, recreational, and environmental impacts, we appreciate your attention to working towards preventing them or reducing their severity in the future.

5. Statements in opposition

The Pacific Merchant Shipping Association writes in opposition:

Specifically, we would *respectfully request reversion to the original introduced language of civil penalties of "not less than \$10,000 and not more than \$50,000,"* which PMSA did not oppose. The proposed civil penalty of \$1,000,000 for each violation is excessively punitive, arbitrary, and out of character as not in line with any other codified penalties for any similar reporting requirement violations. AB 1611 is a reporting statute; many current reporting penalties are in the range from a few

³ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

thousand dollars to tens of thousands; many of the higher penalties are for reporting false statements and knowingly and negligently failing to act.

Government Code § 8670.64, establishing penalties for responsible parties in an oil spill, has been repeatedly cited as supporting the penalty proposed for AB 1611. However, this very specifically applies to a person who knowingly fails, failure to and/or make a false or misleading report, and knowingly fails to have or follow their oil spill contingency plan. Likewise, under other provisions of the Health and Safety Code § 42400 - 42411, fines for reporting false statements are \$35,000. The AB 1611 criteria and basis for penalty is much narrower and does not involve a knowing or false report, and the proposed penalty is still at least *30,000 percent greater*. (emphasis in original)

SUPPORT

Coastal Conservation Association of California

OPPOSITION

Pacific Merchant Shipping Association

RELATED LEGISLATION

Pending Legislation:

SB 953 (Min, 2022) would require the State Lands Commission to negotiate the termination of its oil and gas leases in state waters, among other things. SB 953 was held on the suspense file in the Senate Appropriations Committee.

AB 1658 (Nguyen, 2022) would explicitly require that local oil spill response plans are consistent with the area oil spill response plans, among other things. AB 1658 is pending in the Senate Environmental Quality Committee.

AB 1657 (Nguyen, 2022) would redefine threatened discharges to waters of the state to be from offshore facilities only, among other things. AB 1657 is pending before the Senate Appropriations Committee.

AJR 25 (Nguyen, 2022) would request the US Congress and the President to immediately take action to increase resources for the enforcement of regulating vessel anchorages to prevent future oil spills related to anchor strikes and to reduce the backlog of cargo ships. AJR 25 is pending before the Assembly Transportation Committee.

AJR 24 (Nguyen, 2022) would request the US government locate unified command centers based on proximity and access to oil spills to make the unified command centers easily accessible to local agencies and local governments directly affected by the oil spill. AJR 24 is pending before the Assembly Emergency Management Committee.

Prior Legislation: AB 936 (Robert Rivas, Ch. 770, Stats. 2019) revised laws and the duties of the Administrator of the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Wildlife (DFW) to specifically address nonfloating oils.

PRIOR VOTES:

Senate Natural Resources and Water Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

Assembly Natural Resources Committee (Ayes 11, Noes 0)
