

**Fisheries, Ecology & Parks
Committee**

HB 3020

Brief Description: Reducing the risk of oil spills and spill damage.

Sponsors: Representatives Cooper, Rockefeller, Kagi, Sullivan, Chase, Simpson, G., Simpson, D., Lantz, Dickerson, Lovick and Upthegrove.

Brief Summary of Bill

- Requires that a boom be deployed prior to the transfer of oil between any person or facility and a vessel with an oil capacity over 250 barrels.
- Restricts tank vessels from contracting or agreeing to transfer oil from a tank vessel to a facility or a vessel with a capacity over 250 barrels unless specified staff are present.
- Requires the Department of Ecology to adopt rules for financial responsibility for onshore and offshore facilities by January 1, 2007.
- Changes the definition of "facility" for purposes of oil spill laws to include the transfer of oil from a structure to any vessel with an oil carrying capacity over 250 barrels.

Hearing Date: 2/3/04

Staff: Jeff Olsen (786-7157).

Background:

Oil Spill Program

The Legislature enacted oil spill prevention and response measures in 1991 to promote the safety of marine transportation and to protect state waters from oil spills. The Director of the Department of Ecology (Department) has the primary authority to oversee prevention, abatement, response, containment and cleanup efforts for oil spills in state waters. The oil spill program requires oil spill prevention plans, contingency response plans, and financial responsibility requirement for vessels and facilities that may discharge oil into navigable waters.

In addition to state law, federal laws prescribe regulations for the operation, equipping, personnel qualification, and manning of tank vessels, *46 U.S.C. Chapter 3703*. The state adopted rules for regulating oil tankers that were challenged in court. In March 2000, the United States Supreme Court concluded that the federal savings clause does not authorize state rules regulating vessel operation, design, or manning. *United States v. Locke, 529 U.S. 89 (2000)* [Intertanko].

Financial Responsibility

Washington law includes financial responsibility requirements for vessels transporting petroleum products and for facilities storing, handling, or transferring oil or hazardous substances in bulk on or near navigable waters. The documentation of financial responsibility must demonstrate the ability to meet state and federal financial liability requirements for actual costs of oil spill removal, natural resource damages, and necessary expenses. In establishing financial responsibility requirements for onshore and offshore facilities, the Department shall consider factors such as the amount of oil that could be spilled, clean up costs, frequency of facility operations, damages resulting from a spill, and commercial availability and affordability of financial responsibility. To date, the Department has not adopted financial responsibility rules for facilities.

Definition of Facility

For the purposes of oil spill laws, "facility" is defined to include any structure, pipeline, equipment, or device that transfers oil in bulk to or from a tank vessel or pipeline. The facility must be near the navigable waters of the state and be used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

Prevention and Contingency Planning

Owners and operators of onshore and offshore facilities must prepare and submit oil spill contingency and prevention plans. Oil spill prevention plans must establish compliance with federal law and certify compliance with a number of personnel and equipment requirements. Prevention plans are valid for five years and may be combined with contingency plans. Facilities may opt to submit contingency plans for tank vessels unloading at the facility.

Each onshore and offshore facility must have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state. The contingency plans must meet a number of standards including the methods of response to various size spills and repositioning of oil spill containment and cleanup equipment.

The Department will approve plans that have adequate personnel, equipment, notification procedures, and logistical arrangements. In reviewing plans, the Department must consider the nature of vessel traffic and the amount of oil and hazardous substances transported in the area covered by a plan, navigational hazards, prior history of spills in the area, and the sensitivity of the environment. Plans must be reviewed and updated at least once every five years.

Facility Operation Standards and Manuals

The Department adopts standards for onshore and offshore facilities regarding the equipment and operation of the facilities for the transfer, storage, and handling of oil. Owners and operators of facilities must prepare operations manuals describing the equipment and procedures used for transfer, storage, and handling of oil. The Department also adopts standards for facility personnel training and certification.

Refueling, bunkering, or lightering

Persons or facilities conducting ship refueling and bunkering, or lightering of petroleum products, are required to have containment and recovery equipment readily available according to standards adopted by the Department. In addition, any person or facility transferring oil between an onshore or offshore facility and a tank vessel are also required to have containment and recovery

equipment readily available. The Department has rule-making authority to adopt standards for the circumstances under which containment equipment should be deployed.

Penalties

Covered vessels may not transfer oil to or from an onshore or offshore facility unless the facility has an approved contingency plan, an approved oil spill prevention plan, or financial responsibility requirements in compliance with state or federal standards. The Director of the Department may assess a civil penalty of up to \$100,000 each day that the owner or operator of a covered vessel is in violation.

Facilities may not operate without an approved contingency plan, oil spill prevention plan, or financial responsibility requirements in compliance with state or federal law. Facilities also may not transfer cargo or passengers to or from a covered vessel that does not have an approved contingency and prevention plan, or financial responsibility in compliance with state and federal law. The unlawful operation of a facility is a gross misdemeanor, and second and subsequent offenses are a class C felony. There are also civil penalties for the unlawful operation of a facility. The Director of the Department may assess a civil penalty of up to \$100,000 each day that the owner or operator of a covered vessel is in violation.

Summary of Bill:

Financial Responsibility

The Department must adopt rules for financial responsibility requirements for onshore and offshore facilities by January 1, 2007. When developing the requirements, the Department shall consider the amount of oil that could be spilled, cleanup costs, the frequency of operations, damages that may occur, and the affordability of the financial responsibility.

Definition of Facility

The definition of "facility" is modified to include the transfer of oil from a facility to any vessel with an oil carrying capacity over 250 barrels. Facilities fitting the new definition would be subject to requirements to develop oil spill prevention plans, contingency plans, and operations manuals. In addition, facilities not having approved oil spill prevention, contingency, and financial responsibility requirements would be subject to up to \$100,000 per day civil penalties and criminal penalties.

Contingency Plans for Facilities

Facility contingency plans must state the measures that have been taken to reduce the likelihood of a spill during an oil transfer including the use of spill prevention and detection equipment, the time of day, weather and current conditions, vessel type and safety record, and the amount of oil or hazardous substance being transferred.

Refueling, bunkering, or lightering

Any person or facility conducting ship refueling and bunkering, or the lightering of petroleum products, must deploy a boom prior to the transfer of oil to a vessel with a carrying capacity over 250 barrels of oil. An oil boom must also be deployed prior to the transfer of oil between an onshore or offshore facility and a covered vessel with an oil capacity over 250 barrels. Booms must provide a completely contained area around the vessel that meet standards adopted by the Department.

Tank Vessels

Tank vessels may not contract or agree to transfer oil to or from a facility or a vessel with a carrying capacity over 250 barrels unless qualified staff are present. Qualified staff include a tankerman and tankerman-assistant meeting federal standards.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.