
Environment Committee

HB 2347

Brief Description: Enhancing the safety of the transportation of oil.

Sponsors: Representatives Farrell, Hudgins, Carlyle, Wylie, Tarleton, Van De Wege, Bergquist, Tharinger, Pollet, Appleton, Kagi, Ryu, S. Hunt, Jinkins, Riccelli, Lias, Stanford, Reykdal, Roberts, Senn, Dunshee, Goodman, Freeman, Sawyer, Fey, Fitzgibbon, Green, Habib and Walkinshaw.

Brief Summary of Bill

- Requires the Department of Ecology to compile quarterly oil transportation reports which incorporate information submitted by certain oil facilities.
- Requires that oil tankers entering Grays Harbor and the Columbia River be escorted by at least one tug.
- Authorizes the Department of Ecology to require two tug escorts, tanker-tug tethering, or other tug escort requirements for certain oil tankers entering Puget Sound, Grays Harbor, and the Columbia River.
- Triples the natural resource damages assessed for oil spills in certain waters that involve an oil tug and barge found by the Department of Ecology to have acted recklessly or negligently.
- Directs the Office of Financial Management to conduct a study of the State's capacity to respond to oil train accidents.

Hearing Date: 1/22/14

Staff: Jacob Lipson (786-7196).

Background:

Modes of Oil Transportation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Oil, including crude oil and refined petroleum products, is sometimes transported by vessel, pipeline, or train between the point of extraction, processing facilities, and other destinations. The types of vessels used to transport oil include oil tankers and tank barges towed by tugs.

Certain vessel design features may affect the spill risks associated with overwater transportation of oil. Some oil transportation vessels are designed with double hulls, so as to reduce the risk of spillage if the outer hull is compromised. Likewise, certain oil transportation vessels are equipped with backup systems to steer or power the vessel in the event of systemic failure.

Tug Escorts.

Tug escorts can be a tool to assist vessels in distress that have lost control of their power or steering. Tug escorts may help a distressed vessel by applying corrective forces to the sides or rear of the vessel. Assistance to a distressed vessel may involve either pushing directly against the vessel, or using a tethered line to pull the vessel. In routine escort circumstances where the escorted vessel is not in distress, tugs are sometimes tethered to the escorted vessel for part or all of the duration of the escort.

In 1975, the Legislature imposed certain limitations on the activities of oil tankers in Puget Sound. The 1975 law limited the size of laden oil tankers in Puget Sound to 125,000 deadweight tons, and created certain oil tanker vessel design safety requirements for oil tankers entering Puget Sound which could be avoided if an oil tanker was under the escort of a tug. In 1978, the United States Supreme Court ruled in *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978) that much of the 1975 state law was preempted by the federal Ports and Waterways Safety Act of 1972, which had alternately directed and given authority for the U.S. Coast Guard to promulgate various vessel and marine safety requirements. In particular, the court ruled that the state's prohibition on 125,000 ton oil tankers was preempted, as were the state's vessel safety design standards. However, the *Ray* court's decision preserved the state's ability to establish tug escort requirements for specific geographic areas in absence of the adoption of conflicting federal tug escort requirements. Washington law currently requires oil tankers entering Puget Sound to have one tug escort with a minimum horsepower equivalent to five percent of the deadweight tonnage of the vessel the tug is escorting.

Other Federal Requirements.

Subsequent to the 1978 *Ray* decision, federal law was amended to prohibit oil tankers larger than 125,000 deadweight tons from entering Puget Sound.

Federal law also requires that single-hulled oil tankers above 5,000 gross tons entering Puget Sound be escorted by two tugs. However, single-hulled oil tankers are scheduled to be entirely phased out of use in American waters by 2015.

Coast Guard regulations issued pursuant to the federal Ports and Waterways Safety Act establish requirements for the manning of vessels, including the manning standards for tugs that tow oil barges.

Other State Programs Related to Oil Transportation.

State law requires that oil tankers operating in Puget Sound and the Columbia River be piloted by a state-licensed pilot. Certain cargo vessels operating in Grays Harbor and Willapa Bay must also be piloted by a state-licensed pilot. Pilotage requirements have been established by rule by the state Board of Pilotage Commissioners.

The state Department of Ecology (DOE) administers an oil spill preparedness, prevention and response program. Among other statutes administered by DOE's oil spills program, state law directs oil refinery, terminal, pipeline, and vessel operators to put in place oil spill contingency plans.

Penalty Provisions and Natural Resource Damage Assessments.

Violation of oil tanker escort requirements is a gross misdemeanor, and may also trigger civil penalties of up to \$10,000 per day. Civil penalties may be sought by a county prosecutor or the state attorney general upon the request of the state Board of Pilotage Commissioners.

Natural resources damaged by an oil spill are subject to certain compensation requirements under state law. In circumstances where it is possible to quantify the value of the natural resource damages and achieve the restoration of injured resources, compensation by the responsible party will be based on two components determined by a natural resource damage assessment. The first component is the amount that is necessary to restore damaged resources to pre-injury conditions. The second is the lost value incurred during the period of time between resource injury and restoration.

In circumstances where the damages associated with an oil spill are difficult to quantify, and restoration of the damaged resources is not feasible, the responsible party or parties must compensate for natural resource damages pursuant to a prescribed fee schedule. The state's natural resource damage fee schedule prescribes damage assessments of between \$3 and \$300 per gallon of oil spilled for spills over 1,000 gallons in volume. For spills less than 1,000 gallons in volume, natural resource damages are assessed at between \$1 and \$100 per gallon of oil spilled.

Summary of Bill:

Tug Escorts for Oil Tankers.

When laden with oil, oil tankers larger than 5,000 gross tons may not enter the following restricted areas without at least one tug escort:

- Puget Sound;
- within two miles of Grays Harbor and Willapa Bay;
- within three miles of the mouth of the Columbia River; and
- any inland portion of the Columbia River.

Certain oil tankers are excluded from the above tug escort requirements, and must instead comply with existing U.S. Coast Guard regulations, which:

- prohibit oil tankers larger than 125,000 deadweight tons from entering Puget Sound; and
- require two tugs to escort laden, single-hulled oil tankers of 5,000 gross tons or larger when entering Puget Sound.

The DOE is given the authority to adopt supplemental escort tug rules for oil tankers entering the Puget Sound, Grays Harbor, Willapa Bay, and Columbia River restricted areas. Supplemental tug escort requirements may include requirements for oil tankers entering restricted areas to be escorted by more than one escort tug, be tethered to the escort tugs, or adopt other safeguards.

The DOE may not adopt supplemental tug escort requirements for oil tankers with redundant systems. Redundant systems are defined as two separate propulsion and steering systems designed to ensure that a fire or flood affecting one system does not affect the second steering or propulsion system.

Existing standards are maintained which require escort tugs to have a horsepower equivalent to at least 5 percent of the deadweight tons of escorted oil tankers. The DOE is also given rulemaking authority to require that escort tugs possess additional navigational capabilities.

Oil Transportation Information.

The DOE must post a quarterly report on the terrestrial and maritime transportation of oil on its website. The report must include information currently collected by the DOE under existing programs related to oil transportation and spills, as well as information collected by federal agencies. In addition, the DOE's report must include information to be submitted by oil refineries and certain oil storage, handling, and transfer facilities about their weekly arrivals and departures of oil. The information submitted to DOE by oil refineries and other facilities must include:

- the number of tank vessels and rail cars that transferred or delivered oil at the facility each week;
- the volume and type of oil that arrived at the facility and its mode of arrival and departure; and
- the route taken by oil arriving at the facility by rail car.

Facilities must submit this information to the DOE by November 1, May 1, August 1, and November 1 of each year, beginning November 1, 2014. Prior to posting the oil transportation report online, the DOE must aggregate information if such a disclosure would result in unfair competitive disadvantage to facility owners or operators.

Oil Barges Towed by Tugs.

The natural resource damages assessed for oil spills are tripled if the spill:

1. involves an oil barge towed by a tug;
2. occurs in Puget Sound, near the mouth of Grays Harbor or Willapa Bay, near the mouth of the Columbia River, or upriver on the Columbia River; and
3. is the result of a barge owner or operator's recklessness or negligence, as determined by the DOE. The DOE may not determine that the owner or operator of an oil barge acted recklessly or negligently if there were two qualified individuals in the control bridge of the tug.

Natural resource damages for oil barge spills in restricted areas are tripled, regardless of whether the fee schedule process or the damage assessment study process is used.

Emergency Preparedness Study.

The Office of Financial Management is directed to coordinate state agencies to study the state's preparedness and capacity to respond to an accident involving railcars transporting oil. The study must contain several components, including:

- an examination of projected future volumes of oil transportation by rail;
- a preliminary identification of communities at greatest risk of an oil train accident; and
- the potential impacts to transportation networks and critical infrastructure from an oil train accident.

The Office of Financial Management must report its findings to the legislature by October 15, 2014.

Other Provisions.

After July 1, 2014, rule-making authority pertaining to oil tanker tug escorts is transferred from the Board of Pilotage Commissioners to the DOE. The DOE may issue penalties of up to \$10,000 per day for violations by oil tankers of tug escort requirements. Penalties are appealed to the Pollution Control Hearings Board.

Provisions that established oil tanker design standards that were ruled to be preempted in the *Ray* decision are removed from statute.

A severability clause is included.

Appropriation: None.

Fiscal Note: Requested on January 15, 2014.

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