

HOUSE BILL REPORT

E2SHB 2347

As Passed House:
February 18, 2014

Title: An act relating to enhancing the safety of the transportation of oil.

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

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Farrell, Hudgins, Carlyle, Wylie, Tarleton, Van De Wege, Bergquist, Tharinger, Pollet, Appleton, Kagi, Ryu, S. Hunt, Jenkins, Riccelli, Lias, Stanford, Reykdal, Roberts, Senn, Dunshee, Goodman, Freeman, Sawyer, Fey, Fitzgibbon, Green, Habib and Walkinshaw).

Brief History:

Committee Activity:

Environment: 1/22/14, 2/4/14 [DPS];
Appropriations: 2/10/14 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 2/18/14, 57-37.

Brief Summary of Engrossed Second Substitute Bill

- Directs the Washington State University to conduct a study of the state's capacity to respond to oil train accidents.
- Requires the Department of Ecology (DOE) to compile quarterly oil transportation reports which incorporate information submitted by certain oil facilities.
- Authorizes the DOE, if certain types of oil storage or processing facilities are sited or expanded, to adopt rules before January 1, 2020 to require tug escorts for oil tankers in Grays Harbor and on the Columbia River, and to require additional tug escorts for oil tankers in Puget Sound.
- Creates a penalty of between \$1,000 and \$1,500 for oil spills in certain waters that involve an oil barge towed by a tug that the DOE finds to have acted recklessly or negligently.

HOUSE COMMITTEE ON ENVIRONMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Senn, Vice Chair; Farrell, Fey, Kagi, Morris, Ortiz-Self and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Harris, Nealey and Overstreet.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Green, Haigh, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Morrell, Pettigrew, Seaquist, Springer, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Christian, Fagan, Haler, Harris, G. Hunt, Parker, Schmick and Taylor.

Staff: Dan Jones (786-7118).

Background:

Modes of Oil Transportation.

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 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 5 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.

United States 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 and Oil Facility Siting.

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 Washington 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. The Puget Sound Partnership, with input from the DOE and other maritime stakeholders, recently completed a vessel traffic risk assessment study of spill risks associated the movement of vessels in Puget Sound under various scenarios.

The Energy Facility Site Evaluation Council (EFSEC) is responsible for making certification recommendations to the Governor for certain new energy facility construction or existing facility expansion proposals. Among the types of projects that the EFSEC has jurisdiction to review are proposals to:

- construct oil processing facilities with over 25,000 barrel per day capacity,
- expand the processing capacity of an existing facility by over 25,000 barrels per day;

- construct facilities with a receiving capacity of over 50,000 barrels per day of oil that has been or will be transported over marine waters; and
- expand the receiving capacity of facilities, other than storage facilities, by over 50,000 barrels per day of oil that has been or will be transported over marine waters.

Oil facility projects which do not meet the size criteria meriting a review by the EFSEC are instead subject to the permitting processes established by the local jurisdiction in which the project is proposed. Certain state agencies, including the DOE, may also have a role in administering air, water, hazardous waste management, and other permits that oil processing or storage facilities may need to operate.

Penalty Provisions.

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 Washington Attorney General upon the request of the state Board of Pilotage Commissioners.

Oil spills in state waters are subject to civil penalties of up to \$10,000 per day per violation, plus additional criminal penalties for willful violations. State law also requires parties responsible for oil spills to pay natural resource damages associated with the spill according to either a prescribed schedule or based on an assessment of the damages to natural resources.

Summary of Engrossed Second Substitute Bill:

Emergency Preparedness Study.

Washington State University (WSU) is directed to consult with state agencies to study the state's preparedness and capacity to recover from 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 WSU must report its findings to the Legislature by December 1, 2014.

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 the 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 February 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. The DOE is prohibited from making public certain facility-specific, unaggregated information.

Tug Escorts for Oil Tankers.

The DOE is directed to submit a report to the Legislature by December 1, 2014, with recommendations as to whether new tug escort requirements are needed for oil tankers in state waters. The DOE must consult with stakeholders in developing the rule-making recommendations included in the report, and examine certain navigational safety and vessel traffic risk information.

The DOE is given rulemaking authority to require tug escorts for oil tankers over 40,000 tons in the Columbia River and Grays Harbor, and to adopt additional tug escort requirements for oil tankers in Puget Sound. However, this rulemaking authority is contingent upon the siting or expansion of an oil facility that meets certain criteria, and absent a qualifying siting event, the DOE may not adopt new tug escort rules for oil tankers in those waters. In order for the DOE's rulemaking authority to vest, one of the following events must take place:

- the Governor approves an EFSEC recommendation to site a new oil processing or receiving facility;
- the Governor approves an EFSEC recommendation to expand the processing capacity of an existing facility by 25,000 barrels per day, or to expand the receiving capacity of a non-storage facility by 50,000 barrels per day;
- a state agency or local jurisdiction makes a final determination or issues a final permit to site a new oil processing or storage facility that is required to establish an oil spill contingency plan; or
- a state agency or local jurisdiction makes a final determination or issues a final permit to expand the processing or refining capacity of an existing facility by more than 15,000 barrels of oil per day, unless the facility already has a receiving capacity of over 50,000 barrels of oil per day.

The DOE's Columbia River tug escort rule-making authority also vests if the state of Oregon or a local jurisdiction in Oregon issues a final permit or makes a final determination to site or expand an oil processing or storage facility in the Columbia river watershed that would have needed an oil spill contingency plan if the facility were instead located in Washington.

The DOE is given rule-making authority to require that escort tugs possess sufficient capacity for safe escort.

The rule-making process that the DOE must follow prior to and in adopting any new tug escort rules is specified to require outreach to stakeholders, the consideration of the findings

from the 2014 Puget Sound vessel traffic risk assessment and any Columbia River vessel traffic risk assessments, and consideration of the weather, vessel traffic, and geographic differences between the Puget Sound, Grays Harbor, and the Columbia River.

The DOE's authority to initiate rule-making related to tug escorts expires January 1, 2020.

Oil Barges Towed by Tugs.

A penalty of between \$1,000 and \$1,500 dollars per gallon of oil spilled is established for certain oil spills from oil barges which:

1. involve an oil barge towed by a tug;
2. occur 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. result from a tug owner or operator's recklessness or negligence, as determined by the DOE. The DOE may not determine that the owner or operator of a tug acted recklessly or negligently for the purposes of assessing penalties if there were two qualified individuals in the control bridge of the tug.

This penalty is in addition to existing Clean Water Act penalties and natural resource damages assessed for oil spills.

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 oil tankers that violate 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: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4 relating to the study conducted by the Washington State University, which takes effect immediately, and section 14, relating to the jurisdiction of the pollution control hearings board, which takes effect June 30, 2019.

Staff Summary of Public Testimony (Environment):

(In support) In light of the many new terminal facilities which have been proposed in Washington, and new methods of oil extraction in North America, there is a rapidly changing local environment for the transportation of oil. We need to take a close look at the gaps in terms of emergency response and preparedness, and also need more information about the movement of oil. We need to know about the risks that these oil trains pose to our communities. We used to collect much of the oil transportation information that this bill

would require disclosure of, but those reports were discontinued years ago. State laws generally do a good job of preventing marine casualties, but there are some gaps because some of these laws were enacted decades ago, and need to be updated to reflect a more modern understanding of risks. We have had lots of near misses, and are overdue for an accident. Even small spills can have devastating environmental impacts. Double-hulled oil tankers are not a fail-safe. Our safety regime has decreased while risks have increased. This bill will allow the DOE to update their standards by rule to cover more areas and require more tug escorts for oil tankers, and will incentivize good behavior by oil transporters. The bill is tailored to avoid federal preemption issues. We are not wed to all of the changes that were included in the original bill. Successful action in this area will require collaboration with industry partners.

(Other) We have a strong program here in Washington, but this bill lays out some good protective measures. We can't support the bill because of its fiscal impacts.

(With concerns) There should be a study prior to the adoption of any new regulations. Some of the language in the bill isn't clear. Requiring facilities to submit oil transportation information must be accompanied by a meaningful mechanism for avoiding the public disclosure of information that should remain confidential. There should be no additional rule development until existing rule updates are completed by the DOE, and we are concerned about how the rule-making authorities in the bill would work. The Columbia River has a lot of unique characteristics, and should be treated differently than other water bodies. Tug escorts in poor weather are a safety concern and could induce a collision. Pilotage requirements are already in place in most state waters, and require the navigation of tankers by pilots with local knowledge, which averts a lot of the spill risk. This bill did not sufficiently incorporate stakeholder feedback or seek to reach out to existing forums, the United States Coast Guard, Oregon, and others with technical expertise and a role in the maritime oil transportation system. Without proper analysis, many of the changes in the bill would not be effective risk mitigation tools.

(Opposed) A lot of the information that the bill would require oil facilities and transporters to report is proprietary in nature and sensitive because of public safety concerns. The safety of rail tank cars is the primary issue in this debate, and is an issue that we are already working with the federal government to resolve. The Columbia River is a unique environment, unlike Puget Sound and other state waters, and shouldn't be subject to the same tug escort requirements. Tug escorts on the Columbia River would do more harm than good by interfering with navigational safety. It would be unprecedented to require a tug escort along an inland waterway. Some of the policies this bill seeks to enact are preempted by federal law. Having two people in the wheelhouse of a tug doesn't enhance the safety of the operation of the vessel. The strength of the existing maritime transportation system is founded on the collaboration of industry and other stakeholders, and the development of this bill did not incorporate the input of those stakeholders.

Staff Summary of Public Testimony (Appropriations):

(In support) This state is in the midst of massive changes in the way oil is transported. In the past, the main concern was incoming oil from Alaska, but now this region is poised to

become a major exporter because of new tar sand reserves and other oil coming into the state by rail. There are about 10 proposals for new terminals or expansions of existing terminals.

This bill puts in place prevention measures for spills on water and information on the movement of oil generally. These measures reduce the costs to the state when there is a spill and will pay off in the long term. The costs are to the Oil Spill Prevention Account, not the State General Fund.

(Neutral) This state has a strong oil spill response program. This bill addresses important oil spill concerns, but it has a fiscal impact that is not in the Governor's budget so the Department of Ecology (DOE) cannot support the bill.

(Opposed) The issues in this bill are important but two major modifications are needed. First, the DOE is given broad rule-making authority that would be a more appropriate responsibility for the Legislature. Second, the bill requires the petroleum industry to provide large amounts of data, such as the volume of oil being transported. The petroleum industry would prefer strong confidentiality for that information, similar to the level of confidentiality that exists in California.

Persons Testifying (Environment): (In support) Representative Farrell, prime sponsor; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; Eric De Place, Sightline Institute; Bruce Wishart, Puget Sound Keeper Alliance; Mike Doherty, Clallam County Commissioner; Ben Stuckert, Spokane City Council; Jerry Joyce, Seattle Audubon; Chad Bowechop, Makah Tribe; Naki Stevens, Sound Action; Phil Johnson, Jefferson County Commissioner; Fred Felleman, Friends of the Earth; John Pennington, Washington Emergency Managers Association; Darcy Nonemacher, Washington Environmental Council; and Todd Hass, Puget Sound Partnership.

(Other) Denise Clifford, Department of Ecology.

(With concerns) Frank Holmes, Western States Petroleum Association; Rick Wickman and Liz Wainwright, Maritime Fire and Safety Association; Mike Titone, Columbia River Seaship Operators Association; Gerry O'Keefe, Washington Public Ports Association; Gary Lewin and Dan Jordan, Columbia River Bar Pilots; Jonathan Ward, Puget Sound Pilots; and Paul Amos and Anne McIntyre, Columbia River Pilots.

(Opposed) Johan Hellman, BNSF Railway Company; Charles Costanzo, American Waterways Operators; Sven Christensen, Harley Marine Services; Carol Bua, Tidewater Bargelines; and Dick Lauer, Sause Bros.

Persons Testifying (Appropriations): (In support) Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; Bruce Wishart, Puget Sound Keeper Alliance; and Lucy Luddington.

(Neutral) Dale Jensen, Department of Ecology.

(Opposed) Greg Hanon, Washington States Petroleum Association.

Persons Signed In To Testify But Not Testifying (Environment): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.