
SENATE BILL 5553

State of Washington 60th Legislature 2007 Regular Session

By Senators Spanel, Fraser, Rockefeller, Poulsen, Haugen, Regala, Tom, Kohl-Welles, Kline, Oemig and Keiser

Read first time 01/24/2007. Referred to Committee on Water, Energy & Telecommunications.

1 AN ACT Relating to protecting all of Washington's waters by
2 enhancing the state's oil spill program; amending RCW 82.23B.020,
3 90.56.500, 90.56.510, 79.100.100, 82.23B.010, 82.23B.030, and
4 82.23B.045; adding new sections to chapter 82.23B RCW; adding new
5 sections to chapter 90.56 RCW; creating a new section; and repealing
6 RCW 82.23B.040.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that the oil spill
9 advisory council was created by an act of the legislature in 2005.

10 (2) The legislature further finds that the oil spill advisory
11 council has successfully fulfilled its initial charge to deliver to the
12 governor and the legislature recommendations for the long-term funding
13 of the council's activities and for sustainable funding for oil spill
14 prevention, preparedness, and response activities.

15 (3) The intent of this act is to enact those recommendations of the
16 oil spill advisory council that require legislative action so that
17 Washington is in the best possible position to prevent and respond to
18 oil spills in all of Washington's waters, including the Columbia river,
19 the Pacific Ocean, the Strait of Juan de Fuca, and the Puget Sound.

1 Fully enacting the recommendations of the oil spill advisory council
2 requires the identification of revenue to support the state's oil spill
3 programs, which includes consistent and continued funding for a
4 contingency tug program, a permanent rescue tug at Neah Bay, the
5 activities of the permanent oil spill advisory council, and
6 contributions to the ongoing efforts to remove leaking derelict vessels
7 from Washington's treasured and valued waterways.

8 **Sec. 2.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to read
9 as follows:

10 (1) An oil spill response tax is imposed on the privilege of
11 receiving crude oil or petroleum products at a marine terminal within
12 this state from a waterborne vessel or barge operating on the navigable
13 waters of this state, regardless of whether the petroleum products are
14 subsequently exported from or sold for export from the state. The tax
15 imposed in this section is levied upon the owner of the crude oil or
16 petroleum products immediately after receipt of the same into the
17 storage tanks of a marine terminal from a waterborne vessel or barge
18 ~~((at))~~. Except as provided in section 4 of this act, the tax imposed
19 in this subsection shall be at the rate of one cent per barrel of crude
20 oil or petroleum product received.

21 (2) In addition to the tax imposed in subsection (1) of this
22 section, an oil spill administration tax is imposed on the privilege of
23 receiving crude oil or petroleum products at a marine terminal within
24 this state from a waterborne vessel or barge operating on the navigable
25 waters of this state, regardless of whether the petroleum products are
26 subsequently exported from or sold for export from the state. The tax
27 imposed in this section is levied upon the owner of the crude oil or
28 petroleum products immediately after receipt of the same into the
29 storage tanks of a marine terminal from a waterborne vessel or barge
30 ~~((at))~~. Except as provided in section 4 of this act, the tax imposed
31 in this subsection shall be at the rate of four cents per barrel of
32 crude oil or petroleum product received.

33 (3) The taxes imposed by this chapter shall be collected by the
34 marine terminal operator from the taxpayer. If any person charged with
35 collecting the taxes fails to bill the taxpayer for the taxes, or in
36 the alternative has not notified the taxpayer in writing of the
37 imposition of the taxes, or having collected the taxes, fails to pay

1 them to the department in the manner prescribed by this chapter,
2 whether such failure is the result of the person's own acts or the
3 result of acts or conditions beyond the person's control, he or she
4 shall, nevertheless, be personally liable to the state for the amount
5 of the taxes. Payment of the taxes by the owner to a marine terminal
6 operator shall relieve the owner from further liability for the taxes.

7 (4) Taxes collected under this chapter shall be held in trust until
8 paid to the department. Any person collecting the taxes who
9 appropriates or converts the taxes collected shall be guilty of a gross
10 misdemeanor if the money required to be collected is not available for
11 payment on the date payment is due. The taxes required by this chapter
12 to be collected shall be stated separately from other charges made by
13 the marine terminal operator in any invoice or other statement of
14 account provided to the taxpayer.

15 (5) If a taxpayer fails to pay the taxes imposed by this chapter to
16 the person charged with collection of the taxes and the person charged
17 with collection fails to pay the taxes to the department, the
18 department may, in its discretion, proceed directly against the
19 taxpayer for collection of the taxes.

20 (6) The taxes shall be due from the marine terminal operator, along
21 with reports and returns on forms prescribed by the department, within
22 twenty-five days after the end of the month in which the taxable
23 activity occurs.

24 (7) The amount of taxes, until paid by the taxpayer to the marine
25 terminal operator or to the department, shall constitute a debt from
26 the taxpayer to the marine terminal operator. Any person required to
27 collect the taxes under this chapter who, with intent to violate the
28 provisions of this chapter, fails or refuses to do so as required and
29 any taxpayer who refuses to pay any taxes due under this chapter, shall
30 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

31 (8) Upon prior approval of the department, the taxpayer may pay the
32 taxes imposed by this chapter directly to the department. The
33 department shall give its approval for direct payment under this
34 section whenever it appears, in the department's judgment, that direct
35 payment will enhance the administration of the taxes imposed under this
36 chapter. The department shall provide by rule for the issuance of a
37 direct payment certificate to any taxpayer qualifying for direct
38 payment of the taxes. Good faith acceptance of a direct payment

1 certificate by a terminal operator shall relieve the marine terminal
2 operator from any liability for the collection or payment of the taxes
3 imposed under this chapter.

4 (9)(a) All receipts from the tax imposed in subsection (1) of this
5 section shall be deposited into the state oil spill response account
6 created in RCW 90.56.500.

7 (b) All receipts from the tax imposed in subsection (2) of this
8 section shall be deposited into the oil spill prevention account
9 created in RCW 90.56.510.

10 ~~((10) Within forty five days after the end of each calendar
11 quarter, the office of financial management shall determine the balance
12 of the oil spill response account as of the last day of that calendar
13 quarter. Balance determinations by the office of financial management
14 under this section are final and shall not be used to challenge the
15 validity of any tax imposed under this chapter. The office of
16 financial management shall promptly notify the departments of revenue
17 and ecology of the account balance once a determination is made. For
18 each subsequent calendar quarter, the tax imposed by subsection (1) of
19 this section shall be imposed during the entire calendar quarter
20 unless:~~

21 ~~(a) Tax was imposed under subsection (1) of this section during the
22 immediately preceding calendar quarter, and the most recent quarterly
23 balance is more than nine million dollars; or~~

24 ~~(b) Tax was not imposed under subsection (1) of this section during
25 the immediately preceding calendar quarter, and the most recent
26 quarterly balance is more than eight million dollars.))~~

27 NEW SECTION. Sec. 3. A new section is added to chapter 82.23B RCW
28 to read as follows:

29 (1) The department shall collect a risk-based oil spill prevention
30 and response service transfer tax each time any refined oil product is
31 transferred from or to a vessel on, over, or near the waters of the
32 state.

33 (2) The risk-based oil spill prevention and response service
34 transfer tax shall be collected from the transferor based on the volume
35 of refined oil product transferred by the transferor over an identified
36 reporting period established by the department.

1 (3)(a) Except as provided in section 4 of this act, the risk-based
2 oil spill prevention and response service transfer tax is to be
3 collected at a rate of five cents per barrel of refined oil product
4 transferred.

5 (b) The department may assess the risk-based oil spill prevention
6 and response service transfer tax on a per gallon basis if the director
7 of the department concludes that a per gallon collection creates
8 administrative streamlining for the department or for the transferor.
9 If the department collects the fee on a per gallon basis, then the per
10 gallon amount collected must be forty-two one-hundredths of the per
11 barrel amount established in (a) of this subsection.

12 (4) The risk-based oil spill prevention and response service
13 transfer tax collected under this section must be deposited into the
14 state oil spill prevention account created in RCW 90.56.510.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.23B RCW
16 to read as follows:

17 On July 1, 2009, and at the end of each fiscal biennium thereafter,
18 the following taxes shall increase by the fiscal growth factor
19 identified in chapter 43.135 RCW:

20 (1) The risk-based oil spill prevention and response service
21 transfer tax created in section 3 of this act;

22 (2) The oil spill response tax created in RCW 82.23B.020; and

23 (3) The oil spill administration tax created in RCW 82.23B.020.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.56 RCW
25 to read as follows:

26 If funding from the oil spill prevention account created in RCW
27 90.56.510 or from another source allows, the department shall enter
28 into a contract or contracts that allow it to manage a contingency tug
29 program. The program must enable the department to periodically
30 authorize the placement of rescue or response tugs in strategic
31 locations as needed to protect Washington's waters.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.56 RCW
33 to read as follows:

34 (1) If funding from the oil spill prevention account created in RCW
35 90.56.510 or from another source allows, the department shall enter

1 into a contract or contracts to provide for a permanently stationed,
2 year-round rescue tug located in the western Strait of Juan de Fuca.
3 The tug shall have the primary mission to stand by and, when needed,
4 respond and provide towing services to disabled or drifting vessels in
5 order to prevent pollution events.

6 (2) The department shall give contracting preference to vessels of
7 sufficient power, maneuverability, and deck configuration to enable it
8 to respond in a timely manner to any vessel located within the response
9 area in sea-state conditions up to and including extreme weather.
10 Additional contracting preference must be given to vessels that have
11 the capability to provide spill response, firefighting, and early
12 salvage activities.

13 **Sec. 7.** RCW 90.56.500 and 1991 c 200 s 805 are each amended to
14 read as follows:

15 (1) The state oil spill response account is created in the state
16 treasury. The following must be deposited into the account:

17 (a) All receipts from the oil spill response tax created in RCW
18 82.23B.020(1) (~~shall be deposited in the account.~~);

19 (b) All costs reimbursed to the state by a responsible party or any
20 other person for responding to a spill of oil (~~shall also be deposited~~
21 ~~in the account~~)).

22 (2) Moneys in the account shall be spent only after appropriation.
23 The account is subject to allotment procedures under chapter 43.88 RCW.

24 (3)(a) The account shall be used exclusively to pay for the costs
25 associated with the response to spills of crude oil or petroleum
26 products into the navigable waters of the state. Payment of response
27 costs under this section shall be limited to spills which the director
28 has determined are likely to exceed fifty thousand dollars. Before
29 expending moneys from the account, the director shall make reasonable
30 efforts to obtain funding for response costs from the person
31 responsible for the spill and from other sources, including the federal
32 government.

33 (b) Reimbursement for response costs shall be allowed only for
34 costs which are not covered by funds appropriated to the agencies
35 responsible for response activities. Costs associated with the
36 response to spills of crude oil or petroleum products shall include:

- 1 ~~((1))~~ (i) Natural resource damage assessment and related
2 activities;
- 3 ~~((2))~~ (ii) Spill related response, containment, wildlife rescue,
4 cleanup, disposal, and associated costs;
- 5 ~~((3))~~ (iii) Interagency coordination and public information
6 related to a response; and
- 7 ~~((4))~~ (iv) Appropriate travel, goods and services, contracts, and
8 equipment.
- 9 (4) Any funds available in the account above nine million dollars
10 at the end of any fiscal year must be transferred to the oil spill
11 prevention account created in RCW 90.56.510.

12 **Sec. 8.** RCW 90.56.510 and 2000 c 69 s 22 are each amended to read
13 as follows:

14 (1) The oil spill prevention account is created in the state
15 treasury. The following must be deposited into the account:

16 (a) All receipts from the oil spill administration tax created in
17 RCW 82.23B.020(2) ~~((shall be deposited in the account.))~~;

18 (b) All receipts from the risk-based oil spill prevention and
19 response service transfer tax created in section 3 of this act;

20 (c) Transfers by the state treasurer from the oil spill response
21 account under RCW 90.56.500; and

22 (d) All direct legislative appropriations intended to fund
23 Washington's oil spill prevention, preparedness, and response program.

24 (2) Moneys from the account may be spent only after appropriation.
25 The account is subject to allotment procedures under chapter 43.88 RCW.
26 ~~((If, on the first day of any calendar month, the balance of the oil~~
27 ~~spill response account is greater than nine million dollars and the~~
28 ~~balance of the oil spill prevention account exceeds the unexpended~~
29 ~~appropriation for the current biennium, then the tax under RCW~~
30 ~~82.23B.020(2) shall be suspended on the first day of the next calendar~~
31 ~~month until the beginning of the following biennium, provided that the~~
32 ~~tax shall not be suspended during the last six months of the biennium.~~
33 ~~If the tax imposed under RCW 82.23B.020(2) is suspended during two~~
34 ~~consecutive biennia, the department shall by November 1st after the end~~
35 ~~of the second biennium, recommend to the appropriate standing~~
36 ~~committees an adjustment in the tax rate. For the biennium ending June~~
37 ~~30, 1999, and the biennium ending June 30, 2001, the state treasurer~~

1 ~~may transfer a total of up to one million dollars from the oil spill~~
2 ~~response account to the oil spill prevention account to support~~
3 ~~appropriations made from the oil spill prevention account in the~~
4 ~~omnibus appropriations act adopted not later than June 30, 1999.~~

5 ~~(2))~~ (3) Expenditures from the oil spill prevention account shall
6 be used exclusively for the following:

7 (a) To pay for the contingency tug requirements of section 5 of
8 this act;

9 (b) To pay for the rescue tug requirements of section 6 of this
10 act;

11 (c) To pay for the administration and operations of the oil spill
12 advisory council created in RCW 90.56.120;

13 (d) To pay for the removal of abandoned or derelict vessels
14 consistent with chapter 79.100 RCW through fund transfers to the
15 derelict vessel removal account created in RCW 79.100.100;

16 (e) To pay for the administrative costs related to the purposes of
17 this chapter, and chapters 90.48, 88.40, and 88.46 RCW~~((Starting~~
18 ~~with the 1995-1997 biennium, the legislature shall give activities of~~
19 ~~state agencies related to prevention of oil spills priority in funding~~
20 ~~from the oil spill prevention account.))~~; and

21 (f) To pay for the costs of other oil spill prevention ~~((include))~~
22 activities, including the costs of:

23 ~~((a))~~ (i) Routine responses not covered under RCW 90.56.500;

24 ~~((b))~~ (ii) Management and staff development activities;

25 ~~((c))~~ (iii) Development of rules and policies and the statewide
26 plan provided for in RCW 90.56.060;

27 ~~((d))~~ (iv) Facility and vessel plan review and approval, drills,
28 inspections, investigations, enforcement, and litigation;

29 ~~((e))~~ (v) Interagency coordination and public outreach and
30 education;

31 ~~((f))~~ (vi) Collection and administration of the tax provided for
32 in chapter 82.23B RCW; and

33 ~~((g))~~ (vii) Appropriate travel, goods and services, contracts,
34 and equipment.

35 (4) The first one million dollars available in the oil spill
36 prevention account each biennium must be used for the purposes
37 authorized in subsection (3)(a) of this section.

1 **Sec. 9.** RCW 79.100.100 and 2006 c 153 s 6 are each amended to read
2 as follows:

3 (1)(a) The derelict vessel removal account is created in the state
4 treasury. All receipts from RCW 79.100.050 and 79.100.060 and those
5 moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into
6 the account. The account is authorized to receive fund transfers from
7 the general fund or the oil spill response account created in RCW
8 90.56.500 as well as gifts, grants, and endowments from public or
9 private sources as may be made from time to time, in trust or
10 otherwise, for the use and benefit of the purposes of this chapter and
11 expend the same or any income according to the terms of the gifts,
12 grants, or endowments provided those terms do not conflict with any
13 provisions of this section or any guidelines developed to prioritize
14 reimbursement of removal projects associated with this chapter.

15 (b) Moneys in the account may only be spent after appropriation.
16 Expenditures from the account shall be used by the department to
17 reimburse authorized public entities for up to ninety percent of the
18 total reasonable and auditable administrative, removal, disposal, and
19 environmental damage costs of abandoned or derelict vessels when the
20 previous owner is either unknown after a reasonable search effort or
21 insolvent. Costs associated with removal and disposal of an abandoned
22 or derelict vessel under the authority granted in RCW 53.08.320 also
23 qualify for reimbursement from the derelict vessel removal account.

24 (c) In each biennium, up to twenty percent of the expenditures from
25 the account may be used for administrative expenses of the department
26 of licensing and department of natural resources in implementing this
27 chapter.

28 (2) If the balance of the account reaches one million dollars as of
29 March 1st of any year, exclusive of any fund transfers from the general
30 fund or the oil spill prevention account, the department must notify
31 the department of licensing and the collection of any fees associated
32 with this account must be suspended for the following fiscal year.

33 (3) Priority for use of this account is for the removal of derelict
34 and abandoned vessels that are in danger of sinking, breaking up, or
35 blocking navigation channels, or that present environmental risks such
36 as leaking fuel or other hazardous substances. The department must
37 develop criteria, in the form of informal guidelines, to prioritize
38 removal projects associated with this chapter, but may not consider

1 whether the applicant is a state or local entity when prioritizing.
2 The guidelines must also include guidance to the authorized public
3 entities as to what removal activities and associated costs are
4 reasonable and eligible for reimbursement.

5 (4) The department must keep all authorized public entities
6 apprized of the balance of the derelict vessel removal account and the
7 funds available for reimbursement. The guidelines developed by the
8 department must also be made available to the other authorized public
9 entities. This subsection (4) must be satisfied by utilizing the least
10 costly method, including maintaining the information on the
11 department's internet web site, or any other cost-effective method.

12 (5) An authorized public entity may contribute its ten percent of
13 costs that are not eligible for reimbursement by using in-kind
14 services, including the use of existing staff, equipment, and
15 volunteers.

16 (6) This chapter does not guarantee reimbursement for an authorized
17 public entity. Authorized public entities seeking certainty in
18 reimbursement prior to taking action under this chapter may first
19 notify the department of their proposed action and the estimated total
20 costs. Upon notification by an authorized public entity, the
21 department must make the authorized public entity aware of the status
22 of the fund and the likelihood of reimbursement being available. The
23 department may offer technical assistance and assure reimbursement for
24 up to two years following the removal action if an assurance is
25 appropriate given the balance of the fund and the details of the
26 proposed action.

27 **Sec. 10.** RCW 82.23B.010 and 1992 c 73 s 6 are each amended to read
28 as follows:

29 (~~Unless the context clearly requires otherwise,~~) The definitions
30 in this section apply throughout this chapter unless the context
31 clearly requires otherwise.

32 (1) "Barrel" means a unit of measurement of volume equal to forty-
33 two United States gallons of crude oil or petroleum product.

34 (2) "Crude oil" means any naturally occurring liquid hydrocarbons
35 at atmospheric temperature and pressure coming from the earth,
36 including condensate and natural gasoline.

37 (3) "Department" means the department of revenue.

1 (4) "Marine terminal" means a facility of any kind, other than a
2 waterborne vessel, that is used for transferring crude oil or petroleum
3 products to or from a waterborne vessel or barge.

4 (5) "Navigable waters" means those waters of the state and their
5 adjoining shorelines that are subject to the ebb and flow of the tide,
6 including the Columbia and Snake rivers.

7 (6) "Person" has the meaning provided in RCW 82.04.030.

8 (7) "Petroleum product" means any liquid hydrocarbons at
9 atmospheric temperature and pressure that are the product of the
10 fractionation, distillation, or other refining or processing of crude
11 oil, and that are used as, useable as, or may be refined as a fuel or
12 fuel blendstock, including but not limited to, gasoline, diesel fuel,
13 aviation fuel, bunker fuel, and fuels containing a blend of alcohol and
14 petroleum.

15 (8) "Refined oil product" has the same meaning given to the term
16 "oil" in RCW 90.56.010, except that the term refined oil product does
17 not include crude oil that has not been subject to any processing or
18 refining.

19 (9) "Taxpayer" means the person owning crude oil or petroleum
20 products immediately after receipt of the same into the storage tanks
21 of a marine terminal in this state from a waterborne vessel or barge
22 and who is liable for the taxes imposed by this chapter.

23 ((+9)) (10) "Waterborne vessel or barge" means any ship, barge, or
24 other watercraft capable of travelling on the navigable waters of this
25 state and capable of transporting any crude oil or petroleum product in
26 quantities of ten thousand gallons or more for purposes other than
27 providing fuel for its motor or engine.

28 **Sec. 11.** RCW 82.23B.030 and 1992 c 73 s 9 are each amended to read
29 as follows:

30 The taxes imposed under ((this chapter)) RCW 82.23B.020 shall only
31 apply to the first receipt of crude oil or petroleum products at a
32 marine terminal in this state and not to the later transporting and
33 subsequent receipt of the same oil or petroleum product, whether in the
34 form originally received at a marine terminal in this state or after
35 refining or other processing.

1 **Sec. 12.** RCW 82.23B.045 and 1992 c 73 s 8 are each amended to read
2 as follows:

3 (1) Any person having paid the tax imposed by (~~this chapter~~) RCW
4 82.23B.020 who uses petroleum products as a consumer, as that term is
5 defined in RCW 82.04.190, for a purpose other than as a fuel may claim
6 refund or credit against the tax imposed under (~~this chapter~~) RCW
7 82.23B.020. (~~For this purpose, the term consumer shall be defined as~~
8 ~~provided in RCW 82.04.190.~~)

9 (2) Any person having paid the tax imposed by (~~this chapter~~) RCW
10 82.23B.020 who uses petroleum products as a component or ingredient in
11 the manufacture of an item which is not a fuel may claim a refund or
12 credit against the tax imposed by (~~this chapter~~) RCW 82.23B.020.

13 (3) The amount of refund or credit claimed under this section may
14 not exceed the amount of tax paid by the person making such claim on
15 the petroleum products so consumed or used. The refund or credit
16 allowed by this section shall be claimed on such forms and subject to
17 such requirements as the department may prescribe by rule.

18 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.56 RCW
19 to read as follows:

20 The department of ecology and the department of revenue may adopt
21 rules necessary for its implementation of this act.

22 NEW SECTION. **Sec. 14.** RCW 82.23B.040 (Credit--Crude oil or
23 petroleum exported or sold for export) and 1992 c 73 s 10 & 1991 c 200
24 s 804 are each repealed.

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