

HOUSE BILL REPORT

E2SHB 1186

As Amended by the Senate

Title: An act relating to requirements under the state's oil spill program.

Brief Description: Concerning requirements under the state's oil spill program.

Sponsors: House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Rolfes, Hudgins, Upthegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Liias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu and Seaquist).

Brief History:

Committee Activity:

Environment: 2/1/11, 2/8/11 [DPS];

General Government Appropriations & Oversight: 2/17/11 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 2/28/11, 62-35.

Senate Amended.

Passed Senate: 4/5/11, 47-2.

Brief Summary of Engrossed Second Substitute Bill

- Requires additional contingency planning requirements for tank vessels, including enhanced standards and the formation of a vessels of opportunity system.
- Requires the Department of Ecology to establish a volunteer coordination system to be used as part of an oil spill response.
- Increases the penalties for vessels violating the state's oil spill laws by discharging 1,000 or more gallons of oil.
- Provides for state notification of vessel emergencies resulting in the discharge of oil or the threat of oil discharge.

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 Upthegrove, Chair; Rolfes, Vice Chair; Fitzgibbon, Jacks, Jinkins, Moscoso, Takko and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse and Taylor.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

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 8 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern and Wilcox.

Staff: Owen Rowe (786-7391).

Background:

Tank Vessel Contingency Plan Requirements.

All covered vessels and facilities are required to have an oil spill contingency plan on file with the Department of Ecology (Department). The contingency plan must meet standards identified by the Department and provide for the containment and cleanup of oil spilled into the waters of the state. The contingency plan is a legally binding agreement on the party submitting the plan.

The contingency plan requirements apply to facilities located on the land and to vessels that dock at the facilities. A facility is, with a few exceptions: a structure, a pipeline, a device, or equipment located on or near state waters that transfers oil to or from a vessel or pipeline. A covered vessel is: a tank vessel that is designed to carry oil in bulk as cargo; a cargo vessel weighing over 30 gross tons; or a passenger vessel weighing over 300 gross tons.

Contingency plans must meet the requirements developed in rules by the Department. These rules, which must be periodically updated, establish the standards that contingency plans must meet. Examples of the standards include: details for the method of response to spills of various sizes; lists of personnel and equipment used to remove oil and/or to minimize damage in a worst case spill; and procedures for early detection and timely notification of spills. Rules adopted by the Department also require the use of random, unannounced drills of contingency plan holders as a means for testing the adequacy of the contingency plans.

Emergency Communication.

A covered vessel located within 12 miles of the state's coastline is required to notify the United States Coast Guard (USCG) within one hour of becoming disabled, colliding with another vessel, or experiencing a near miss collision with another vessel. The Department, the Washington State Military Department, and the USCG are expected to negotiate an agreement that allows state notification of incidents reported to the USCG. From these notifications, the Department must create summaries of reported incidents.

Compensation Schedule.

The owner or operator of a covered vessel that experiences a spill in Washington waters or fails to satisfy the contingency planning requirements can face three different financial liabilities: civil penalties, natural resource damage assessments, and third party tort liability.

Civil penalties are assessed by the Department on covered vessels that enter the waters of the state without an approved contingency plan, or having met financial responsibility requirements in compliance with state and federal standards. In these cases, the Department may assess a civil penalty of up to \$100,000 for each day the vessel is in violation of compliance with the standards.

Natural resource damage assessments are issued by the Department in consultation with other natural resources agencies based on a compensation schedule for unlawful oil discharges. The amount of compensation must be at least \$1 per gallon and no more than \$100 per gallon spilled. The compensation schedule must reflect compensation for impacts including those to the environment, recreation, and aesthetics.

A person whose private property is damaged by an unlawful oil discharge may bring an action against the owner or operator of the vessel. Generally, the vessel owner or operator faces strict liability for damages resulting from a spill.

Summary of Engrossed Second Substitute Bill:

Tank Vessel Contingency Plan Requirements.

All tank vessels must submit updated contingency plans to the Department that provide for the establishment and funding of a vessels of opportunity system, and new standards relating to equipment access and operating abilities. These requirements only apply to tank vessels and not other vessels that are required to submit a contingency plan.

The vessels of opportunity system is an oil spill response system that utilizes at least six commercial fishing vessels, or other commercial vessels, to assist with spill response. These vessels are arranged into regional vessels of opportunity response groups. The response vessels must be under active contract with the tank vessel before a spill occurs and must be adequately equipped and trained for spill response. Tank vessel owners may achieve compliance with the vessels of opportunity system by participating in umbrella coverage provided by a private organization. Any umbrella coverage plan must provide for at least six groups of vessels of opportunity located strategically statewide. The groupings of response vessels must be located to respond to the following areas: the mouth of the Columbia River, the outer coast, the Strait of Juan de Fuca, and the northern, central, and southern Puget

Sound. The decision to activate the vessels of opportunity system during an oil spill belongs to the incident commander or the unified command.

The additional contingency planning requirements for tank vessels also includes heightened standards relating to the ability to provide for rapid access to response equipment that reflects the best available protection, including multi-spectrum scanning technologies, and the ability to conduct a continuous spill response operation. The Department must review tank vessel contingency plans to ensure that these standards are being met. In reviewing, the Department must confirm that the plans allow for response activities that occur in areas that experience strong currents and response activities that are required during the night. The Department must also review the capacity for large volumes of recovered oil to be stored and properly disposed.

The Department is authorized to order tank vessel contingency plan drills to determine the ability of the multiple vessels being able to meet the necessary standards. At a minimum, one such drill must be ordered every three years. These extra drills must be focused on the operational readiness of the spill response both during the first six hours of a spill and in the following operational periods. When practicable, the Department must coordinate the drills with Oregon and British Columbia.

Volunteer Coordination System.

The Department is required to establish a volunteer coordination system as part of the state's overall spill response strategy. In doing, the Department may organize the system with local emergency management centers and coordinate with analogous federal efforts. Civil immunity is created for volunteers and the state for any acts or omissions by volunteers participating in the volunteer coordination system.

Emergency Communication.

The owner or operator of a vessel experiencing an emergency at sea must notify the Department if there has been a discharge, or a substantial threat of discharge, caused by the emergency. This notification is in addition to similar notification that is required to be given to the USCG.

Contingency Plan Approval.

The Department is required to notify a person who submits a contingency plan within 65 days as to whether or not the plan is approved, disapproved, or conditionally approved. For conditional approvals, the Department must describe the conditions and specify a timeline for the submittal of an amended plan.

Umbrella Plans.

For contingency plans providing umbrella coverage to both tank vessels and non-tank vessels, the plan holder must specify the maximum worst case discharge from both types of vessels to be covered by the plan. The tank vessels covered by the plan must account, to the

satisfaction of the Department, for access to additional oil spill response ability beyond that provided in the umbrella contingency plan.

Federal Assistance.

The Director of the Department is required to formally request, from the federal government, a contribution to the establishment of regional oil equipment caches to ensure adequate response capabilities.

Compensation Schedule.

The range of compensation to be assessed by the Department for the unlawful discharge of oil is raised from between \$1 and \$100 per gallon of oil discharged to between \$3 and \$300 for any vessels discharging 1,000 or more gallons of oil. In addition, the civil damages a vessel that spills oil may be found strictly liable for are specified to include the loss of income and revenue to the damaged party. Actions from which liability attaches includes those conducted in response to a spill.

Compliance Schedule.

The new contingency plan requirements are to be phased in according to the following schedule:

- emergency notification requirements on October 1, 2011;
- vessels of opportunity and multi-spectrum scanning technology requirements on July 1, 2012;
- enhanced requirements for tank vessel contingency plans on January 1, 2013; and
- the volunteer coordination system on July 1, 2014.

The Department must consult with stakeholders interested in tank vessel oil spill preparedness and response when implementing the volunteer coordination system, the vessels of opportunity system, the enhanced equipment standards, the additional drills, and the emergency communication requirements.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment: (1) removes the intent section; (2) removes the requirement that contingency plan holders establish and fund a vessels of opportunity system; (3) removes the specific enhanced equipment requirements for tank vessels; (4) requires the Department of Ecology to evaluate and update oil spill response equipment planning standards to assure the best achievable protection and continuous response activities in 2012 and every five years thereafter; (5) requires the Department of Ecology to complete rulemaking to improve the effectiveness of the vessels of opportunity system; (6) extends the liability waiver provisions of the volunteer coordination system to all state agencies (and not just to the Department of Ecology); (7) directs the Department of Ecology to try to avoid creating the need for additional equipment deployment drills; (8) provides conditions under which the Department of Ecology must approve umbrella plans that include vessels that potentially exceed the worst case spill volume; (9) requires umbrella plan holders to describe how additional coverage will be implemented; (10) requires state notification of vessel emergencies to occur

within one hour of the emergency; (11) removes the provisions that tripled the civil penalties for unlawful oil discharge; (12) requires the volume of spilled oil recovered from the water's surface during the 48-hour period after a spill to be deducted from the total volume spilled for the purposes of calculating the natural resources damage assessment; (13) limits the list of potential activities that an oil spiller is potentially liable for reimbursing to the use and deployment of chemical dispersants and in situ burning; (14) removes the report required to be submitted by the Department of Ecology; and (15) removes the delayed implementation schedule.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Environment):

(In support) Oil spills threaten the state's environment, the economy, property values, and quality of life. The Department has a good oil spill program, but we have learned lessons that will allow the state's program to be elevated to the next level. The 2010 spill in the Gulf of Mexico should be a wake-up call. The systems and technology promised to prevent spills all failed. A large spill can happen here and it cannot be assumed that one will never occur. Washington is not prepared for a large spill.

The Puget Sound is unique due to the fact that it is an enclosed waterbody with strong currents. The ability to respond quickly is important in the Puget Sound. The existing standards do not reflect the reality of response needs for Puget Sound.

The existing contingency plans have shortcomings. The state must be assured there is capacity and ability available to remove and contain large volumes of oil. It is also important to know that those responding are trained for the unique nature of Washington's waters.

The existing vessels of opportunity system is insufficient. Participants, if trained at all, were called once and never contacted again. Training is a safety issue for the participants. To be successful, a vessels of opportunity system needs to have plenty of boats ready to respond anywhere in the state. There are coastal communities in the state with plenty of skilled mariners ready to participate.

An oil spill can devastate the commercial fishing and shellfish industry. Oil can close fishing grounds and have a devastating effect on public perception. The state has an interest in fishing and shellfishing, both as a state and as a co-manager of the resource with Indian tribes. The current damage schedule does not reflect the true costs of damage that can be done by oil spills.

(Neutral) This proposal is not in the Governor's budget, but it is always important to learn lessons from previous incidents and operate an oil spill program efficiently and with the best

technology available. The bill is consistent with recommendations from groups that have studied the state's needs.

(With concerns) Ports are not directly affected, but they are competitive organizations. Any negative impacts on the shipping industry can be a threat to the competitiveness of Washington's ports.

There have been many recent improvements in oil spill programs both in Washington and nationwide that meet or exceed the standards in this bill. There are new federal requirements taking effect this year that will provide even greater protections. The existing plans already account for a worst case spill of a magnitude that will never occur. Washington contingency plans are the most aggressively drilled plans in the nation and adequate equipment caches are already present. The changes to the contingency planning process could have negative effects on organizations that offer plans for both cargo and oil vessels. Any changes need to be done in concert with Oregon. There is already a vessels of opportunity system and volunteer coordination system in place in the state that works effectively. There are federal guidelines already in place for the use of volunteers, and it is more appropriate for the state to manage volunteers to avoid industry liability. The emergency notice provisions are redundant with current law and any shortcomings should be negotiated with the USCG. As for the enhanced penalties, there have been no incidents justifying an increase or showing that the current levels are insufficient.

Staff Summary of Public Testimony (General Government Appropriations & Oversight):

(In support) The narrowness of the Puget Sound makes the threat of spills on beaches even more serious. The Dalco Passage Oil Spill a few years ago of 1,000 gallons impacted over 25 miles of shoreline. Studies have shown that the state is not prepared for a large spill. A major oil spill would be damaging environmentally and economically, and everything from property values to tourism would be affected. The state has industry worth \$10 billion and 165,000 jobs that are reliant on a healthy Puget Sound and outer coast. This bill greatly improves the state's spill response capability. Costs are born by the Oil Spill Prevention Account, and there will be no added cost to the state. The proposed substitute bill reduces the rule-making costs to the Department. Given the volume of oil transported across the state's waters, it is almost inevitable that the state will face a serious spill. Alaska and Norway both have stronger protections than the state. A "vessels of opportunity system" is modeled after the Alaskan system and is a proven technique that will work. This bill is the top priority of San Juan County, second only to ferries. The state is home to five refineries that import 225 million barrels per year. Three million gallons of spilled oil have impacted the Makah tribe.

(With concerns) The prime sponsor has held several meetings with stakeholders; however, this bill is still a work in progress. The cost related to regulation in this bill may cause tank vessels to pull out of the Columbia River and could potentially shift the costs in this bill to the cargo fleet. The vessel of opportunity system is the most expensive part of this legislation. The original bill has private industry fund a system of volunteers; the state would be better to coordinate these volunteers. The training does not meet federal or state standards, and that creates an uneven playing field for the six existing corporations that provide response capabilities on the Columbia River. The civil penalties for an unfiled

contingency plan could be assessed on clerical errors. Civil penalties should be assessed only in instances of willful or intentional violation. There is some concern about the costs in this bill and the impact on the state's ferry system.

(Opposed) Washington has the safest shipping record in the country. Federal, state, and local agencies have worked closely with the maritime industry to make Puget Sound and the Columbia River very safe from the threat of oil spills. The petroleum industry has already invested in \$200 million worth of equipment, and spends \$25 million annually to prevent and respond to spills. This bill will add over \$60 million in additional requirements. There needs to be a total system analysis before a policy like this is implemented. A stakeholder work group could come up with a more workable and cost-effective policy.

(Commented) This bill gives the state the opportunity to make process improvements that enhance capability at the local level and improve the state's readiness to clean spills under lessons learned from the state's oil spill program.

(Information only) The Puget Sound Partnership supports the intent of this bill as it is consistent with the recommendations of the Puget Sound Action Agenda. This bill helps to improve the state's response to oil spills. Legislation previously passed by the General Government Appropriations Committee could help to fund the requirements under this bill.

Persons Testifying (Environment): (In support) Representative Rolfes, prime sponsor; Kathy Fletcher, People for Puget Sound; Jerry Joyce, Seattle Audubon; Chad Bowe chop, Makah Tribal Council; John McDonald; Commissioner Mike Doherty, Board of Clallam County Commissioners; Fred Force man, Friends of the Earth; Steve Robin son, Center for Environmental Law and Policy; and Naki Stevens, Department of Natural Resources.

(Neutral) Todd Hass, Puget Sound Partnership.

(With concerns) Frank Holmes, Western States Petroleum Association; Dan Nutt, Washington State Maritime Cooperative; Jim Townley, Columbia River Steamship Operators Association; Scott Hazlegrove, Pacific Merchant Shipping Association; Johan Hellman, Washington Public Ports Association; and Dale Jensen, Department of Ecology.

(Opposed) None.

Persons Testifying (General Government Appropriations & Oversight): (In support) Naki Stevens, Department of Natural Resources; Neil Beaver, Washington Audubon; Bruce Wishart, People for Puget Sound; Lovel Pratt, San Juan County Council; and Fred Felleman, Makah Office of Maritime Affairs.

(With concerns) Rick Wickman, Columbia River Steamship Operators Association and Washington Maritime Fire and Safety Association; and Scott Hazelgrove, Pacific Merchant Shipping Association.

(Opposed) Frank Holmes, Western States Petroleum Association.

(Commented) Dale Jensen, Department of Ecology.

(Information only) Todd Hass, Puget Sound Partnership.

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

Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight): None.