

HOUSE BILL REPORT

ESSB 6244

As Reported by House Committee On:

Natural Resources, Ecology & Parks
Appropriations

Title: An act relating to oil spill prevention, preparedness, and response.

Brief Description: Changing provisions relating to oil spill prevention, preparedness, and response.

Sponsors: Senate Committee on Water, Energy & Environment (originally sponsored by Senators Rockefeller, Morton, Poulsen, Fairley, Kline, Shin, Kohl-Welles and Spanel; by request of Department of Ecology).

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/21/06 [DPA];

Appropriations: 2/23/06 [DPA(NREP)].

Brief Summary of Engrossed Substitute Bill (As Amended by House Committee)

- Requires the Department of Ecology (Department) to adopt procedures for evaluating the adequacy of oil spill contingency plans held by tank, cargo, and passenger vessels, and to conduct random, unannounced oil spill practice drills on those vessels.
- Clarifies that all motor vehicles and all seagoing vessels which conduct ship refueling, bunkering, or lightering operations must comply with state laws governing oil spill containment and recovery.
- Grants the Department the authority to require prior notice of oil transfers, to inspect oil transfers, and to require additional oil containment safeguards during oil transfers.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: Do pass as amended. Signed by 10 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, Chandler, Dickerson, Hunt, Kagi and Orcutt.

Staff: Amy Van Horn (786-7168).

Background:

The Legislature enacted oil spill prevention and response measures in 1991, and expanded on those laws in 2004. The 2004 legislation adopted a goal of zero oil spills for the state. The Director of the Department of Ecology (Department) has the primary authority to oversee oil spill prevention, abatement, response, containment, and cleanup efforts in state waters. The oil spill program requires vessels and oil transfer facilities to have oil spill prevention plans, contingency response plans in the event of a spill, and financial responsibility for spills.

Department Advisory Committee

In 2004, the Department formed an advisory committee to help devise a regulatory system for the fueling of vessels and ships. As required by the 2004 law, the Department reported to the Legislature on December 15, 2004. The advisory committee reported its plan to continue its work and make a final report to the Legislature in the future.

Contingency and Prevention Plans

Owners and operators of onshore and offshore facilities and all covered vessels must prepare and submit oil spill contingency and prevention plans to the Department. Oil spill prevention plans must establish compliance with federal law and comply 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.

Persons or facilities conducting ship refueling, bunkering, or lightering of petroleum products are required to have containment and recovery equipment readily available, according to Department standards.

Department Rulemaking

The Department must adopt rules for ship refueling, bunkering, and transfers of oil to tank vessels by June 30, 2006. The rules must establish standards for the circumstances under which containment equipment should be deployed. The Department has the authority to require alternate oil containment measures, including the use of automatic shutoff devices and alarms, extra personnel, or containment equipment that is deployed quickly and effectively.

The standards for ship refueling and oil transfers must be suitable to the environmental and operational conditions of the regulated facilities. In addition, the Department must consult with the United States Coast Guard to develop state standards that are compatible with federal requirements. The Department must have a process for immediately notifying affected tribes of any oil spill, and shellfish beds must be considered in oil spill contingency plans.

Federal Legislation

The federal government and the Coast Guard, a federal agency, regulate oil tankers. In 2000, the United States Supreme Court found that federal law preempted four of the Department's

rules addressing oil tankers [United States v. Locke, 529 U.S. 89 (2000)]. The court held that the federal government alone may regulate the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of oil tankers. The court found that the state may adopt regulations governing oil tankers under some circumstances, particularly if those regulations do not have an extraterritorial effect on the tankers and address the peculiarities of local waters.

Summary of Amended Bill:

Random Practice Drills

The Department must, by rule, adopt procedures to determine the adequacy of oil spill contingency plans held by tank vessels, cargo vessels, and passenger vessels. The Department must conduct random, unannounced practice drills to test the contingency plans, and report on how well a vessel's performance during a drill satisfied the elements of its contingency plan.

Fuel Trucks

All motor vehicles and all seagoing vessels which conduct ship refueling, bunkering, or lightering operations must comply with state laws governing oil spill containment and recovery. This includes dockside refueling of commercial ships by fuel trucks.

Inspection and Notice Authority

The Department has the authority to require prior notice of the time, location, and volume of any transfer of oil to a ship, and to conduct inspections of oil transfer operations. These measures must be scaled according to the risk posed by an oil transfer, and oil transfers must be categorized by type of transfer, volume of oil, frequency of transfers, and other risk factors.

The Department shall not require prior notice when marine fuel outlets are transferring less than 3,000 gallons of oil in a single transaction to a ship that is not a covered vessel, and the transfer is scheduled less than four hours in advance.

Semi-Annual Reporting by Marine Fuel Outlets

The Department may require marine fuel outlets to give semi-annual reports of the volume of oil they transfer.

Additional Oil Containment Safeguards

The Department's authority is expanded from the ability to require *alternative* oil containment safeguards to the authority to require *additional* oil containment safeguards during any transfer of oil, scaled appropriately to the risks posed by the oil transfer.

Force of Administrative Rules

The Department may issue administrative orders if oil transfer operations violate Department rules addressing oil spill prevention and contingency plans.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill provides that the Department, without exception, shall not require prior notice of oil transfers when marine fuel outlets are transferring less than 3,000 gallons of oil in a single transaction to a ship that is not a covered vessel, and the transfer is scheduled less than four hours in advance.

Appropriation: None.

Fiscal Note: Requested on February 21, 2006.

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

Testimony For: (In support of engrossed substitute) Under the bill, notice will only be required of marine fuel outlets when the Department has documented elevated risks in a particular case. This authority will help the Department deal with any small operators that are repeat spillers. The environmental community supports the bill.

(With concerns on engrossed substitute) Requiring prior notice from repeat spillers is not the best way to prevent oil spills. The Department already has the authority to do what is needed, which is to provide more training, equipment, unannounced inspections, and spill supervision. Permitting a notice requirement for oil transfers that the bill exempts in the prior sentence creates confusion.

Testimony Against: (Opposed to engrossed substitute) The law should only regulate the facilities that transfer fuel to vessels, not the vessels that receive the fuel.

Persons Testifying: (In support of engrossed substitute) Senator Rockefeller, prime sponsor; Dale Jensen, Department of Ecology; and Miguel Perez-Gibson, Puget Sound Keeper Alliance.

(With concerns on engrossed substitute) Eric D. Johnson, Washington Public Ports Association; and Cliff Webster, Northwest Marine Trade Association.

(Opposed to engrossed substitute) Randy Ray, Pacific Seafood Processors Longliners.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Natural Resources, Ecology & Parks. Signed by 26 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member;

McDonald, Assistant Ranking Minority Member; Buri, Clements, Cody, Conway, Darneille, Dunshee, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

Staff: Alicia Paatsch (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Natural Resources, Ecology & Parks:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available on original bill.

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

Testimony For: There was concern from marinas on the bill that you previously heard in committee. The senate bill before you is amended and addresses the impacts to small marinas, and we support this bill.

Testimony Against: None.

Persons Testifying: Eric Johnson, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying: None.