

FINAL BILL REPORT

ESHB 1027

PARTIAL VETO

C 200 L 91

Brief Description: Adopting oil and hazardous substance spill prevention and response provisions.

By House Committee on Environmental Affairs (originally sponsored by Representatives Rust, Horn, Phillips, Heavey, Anderson, Basich, Vance, Wineberry, Wilson, R. Johnson, Wang, Sprenkle, Spanel, Miller, Ogden, Jones, Prentice, Leonard, Inslee, Fraser, R. King, Nelson, Pruitt, G. Fisher, Jacobsen, R. Fisher, Valle, Roland, Hine, Winsley, Rasmussen, Appelwick and Brekke; by request of Governor Gardner).

House Committee on Environmental Affairs
House Committee on Revenue
Senate Committee on Environment & Natural Resources
Senate Committee on Ways & Means

Background:

Introduction: In December, 1988, the *Nestucca* barge spilled approximately 231,000 gallons of oil near Grays Harbor. The spill affected the coasts of both Washington State and the Province of British Columbia.

In response to the *Nestucca* spill, Governor Gardner and British Columbia Premier William Vander Zalm created the British Columbia/Washington Task Force on Oil Spills. After the *Exxon Valdez* spill in April 1989, Alaska, Oregon, and California joined Washington and British Columbia to form the States/B.C. Task Force. The mission of the task force was to seek ways to prevent oil spills, to review oil spill response procedures, to look at methods of determining compensation claims, and to develop a coordinated plan for preventing and responding to spills. The task force issued its final report in October 1990. The report makes 46 joint recommendations. They involve issues of vessel traffic, vessel design, personnel, enforcement, regulatory oversight, education, interstate cooperation, and future studies. In addition to the 46 joint recommendations, each of the task force members made other recommendations for adoption by the individual states. Washington made nine recommendations for state action. They call for efforts to reduce navigation conflicts, use of state lease authority to regulate activity

on state lands, and fees and incentives to obtain compliance with state objectives.

Contingency Plans: Under Washington law, operators of tankers and barges carrying oil in bulk, cargo and passenger vessels 300 gross tons or larger, and oil processing and storage facilities located near navigable waters which receive oil from a tank vessel are required to prepare and submit to the Department of Ecology plans for the prevention, containment, and cleanup of oil spills.

By July 1, 1991 the Department of Ecology must adopt rules prescribing standards for the preparation of the plans.

The department will approve plans that have adequate personnel, equipment, notification procedures, and logistical arrangements. In reviewing plans, the department must consider the nature of vessel traffic and the amount of oil and hazardous substances transported in the area covered by a plan, navigational hazards, prior history of spills in the area, and the sensitivity of the environment. Plans must be reviewed and updated at least once every five years. The department will publish an index of approved contingency plans and an inventory of available spill containment and cleanup equipment.

To determine the adequacy of the plans, the department must require practice drills of those providing cleanup services. The department must prepare a report summarizing the results of these drills.

Plans approved by the department are binding on the persons submitting them. The department may obtain court orders to enforce the plans. Approval of a plan by the department does not guarantee the adequacy of the plan and is not a defense against liability for damages caused by a spill.

Pollution Liability: State law makes it illegal for any person to pollute state waters. A person who pollutes state waters may be subject to both criminal and civil penalties. The person is also liable for any damage to the environment, including the cost of restoring damaged natural resources and the lost value of those resources until they are restored.

A person who spills oil in Washington waters and fails to immediately collect the oil is responsible for the expenses in cleaning up the spill. The state imposes strict liability for damages on the person owning the oil or having control over the oil. Strict liability may be avoided if the person can demonstrate that the spill was caused by an act of war

or by negligence on the part of the state or the United States.

A person responding to an oil spill is partially immune from liability for damages caused by that person in responding to an oil spill. The state, local governments, volunteers, and qualified cleanup contractors responding to a spill are liable only for damage caused by actions taken in bad faith or with gross negligence.

Standards for Tow Lines and Bunkering Activities: The Department of Ecology is directed to develop standards for the use of tow lines by barges carrying oil or hazardous substances and to develop a program for voluntary compliance with those standards. The department is also directed to study state authority to impose the standards and report the results of its study to the Legislature by July 1, 1991.

Any person conducting refuelling, bunkering, or lightering operations is required to have containment and recovery equipment available. Persons involved in the transfer operations must be trained in the use of oil spill containment and recovery equipment. The department may adopt rules for bunkering and refuelling operations and the lightering of petroleum products.

Financial Responsibility: Operators of inland barges carrying oil or hazardous substances and of oil tankers must maintain financial responsibility of at least \$1 million.

Pilots: The state Board of Pilotage is responsible for licensing pilots in Washington state waters. The board sets standards for testing and may fine, suspend, or revoke the license of a pilot who violates board rules or causes an accident resulting in damage to or loss of a vessel.

The board has seven members. The board is chaired by the assistant secretary of the marine division of the Department of Transportation. The six additional members are appointed by the governor and represent pilots, the shipping industry, and the public.

Every two years, the board is required to hold pilot examinations and to develop grading sheets for the examinations. The board may require a pilot applicant and a pilot subject to sanctions by the board to take vessel simulator training. The board is required to establish rules for the size and type of vessels new pilots may pilot. The rules are required to apply to the first three years in which a pilot is employed.

Four times a year, pilots are required to submit a report to the board dealing with the fees received for piloting and the vessels to which the pilot has been assigned. The master of a vessel which employs a pilot must certify on a form developed by the board that the vessel complies with federal safety requirements and international safety and equipment requirements.

Maritime Commission: In 1990, the Legislature established the Maritime Commission to develop an emergency response system for vessels which have not made arrangements with clean-up contractors prior to entry into Washington waters. A majority of the commission's members are elected. The commission may assess a fee against vessels which have not made arrangements with a cleanup contractor.

Resource Damage Assessments: Washington statutes provide two separate procedures governing resource damage assessments. One procedure applies to any violation of Washington's clean water laws. This general procedure requires the responsible party to pay for restoration costs or lost value of the resource. The second procedure applies specifically to spills of oil. The departments of Ecology, Fisheries, Wildlife, and Natural Resources are required to develop a compensation table for spills of oil. The table is to provide for compensation of not less than \$5 a gallon and not more than \$50 a gallon spilled. Prior to using the table, the Department of Ecology must convene a committee to determine whether the table should be used or whether another method of assessing damages should be used. Any money recovered under either of these procedures is placed in the Coastal Protection Fund, together with any penalties, fees, or damages. The fund may be used to pay for agency spill response expenses.

Energy Facility Siting: The Energy Facility Site Evaluation Council must recommend to the governor whether to approve the siting of major energy facilities, including oil transmission pipelines.

Summary:

Office of Marine Safety: An Office of Marine Safety is created. The administrator of the office is appointed by the governor. The office has authority for marine safety issues in this state. Duties of the Department of Ecology relating to vessel response plans, barge cable standards, and bunkering operations are transferred to the office. The Department of Ecology retains authority over facilities and spill response.

The office is directed to review the federal vessel inspection program. If it determines the federal program does not adequately protect the state's waters, the office shall develop a state tank vessel inspection program.

The office shall establish at least three regional marine safety committees: one for the North Puget Sound/Strait of Juan de Fuca, one for South Puget Sound, and one for the Pacific Coast. The office is also directed to work with Oregon to establish a committee for the Columbia River. The administrator shall appoint to each committee six members of the public, representing a cross section of interests. Each committee shall prepare a regional marine safety plan governing vessel traffic and shall submit the plan to the office for approval. The office is responsible for implementing those committee recommendations that are within the state's power. Each committee is also directed to review federal standards for barge tow cables and report to the office on whether state standards should be adopted.

By July 1, 1992, the office shall also establish an emergency response system for the Strait of Juan de Fuca based on recommendations from the regional marine safety committees.

Those involved in refuelling, bunkering, or lightering operations must deploy containment and recovery equipment in accordance with standards adopted by the office.

Contingency and Prevention Plans: Contingency plans also are required for facilities which transfer oil to a tank vessel or which transfer oil to or receive oil from a pipeline.

Spill prevention plans are also required for those facilities as well as for tank vessels. A prevention plan must disclose the measures that the vessel or facility operator has taken to reduce the likelihood of a spill. In addition, the operator of a facility must describe measures the facility will take during the five year period covered by the plan to further reduce the likelihood of a spill.

The Office of Marine Safety is required to adopt rules to identify cargo and passenger vessels which pose a risk to the state's navigable waters and to develop methods to reduce the risk of spills from those vessels.

The Department of Ecology is required to develop certification procedures for key facility personnel. The department must require each facility to have an operations manual. The department shall also adopt standards for the

transfer and handling of oil at onshore and offshore facilities.

The director of the Department of Ecology is the head of the state incident command system.

Marine Oversight Board: A five member marine oversight board is established to review the activities of the federal government, industry, and state agencies in marine spill prevention and response. The board is required to make appropriate recommendations for corrective action to the governor, the Legislature, federal agencies, and state agencies. The Puget Sound Water Quality Authority may incorporate the recommendations of the board in the authority's management plan, but may not duplicate the studies of the board.

Penalties: The owner of a facility or vessel must indemnify an employee of a facility or a vessel who is fined by the Department of Ecology for negligently spilling oil into the water.

A person who, with criminal recklessness and while navigating, piloting, or being in physical control of the motion of a tank vessel, causes the vessel to spill oil is guilty of a class C felony. Operation of a cargo or passenger vessel or a tank vessel while intoxicated or under the influence of intoxicating drugs is a class C felony.

Financial Responsibility: The minimum level of financial responsibility for tank vessels carrying oil is increased to \$500 million. The administrator of the Office of Marine Safety may set a lower level of financial responsibility for barges of 300 gross tons or less. Operators of cargo and passenger vessels over 300 gross tons must have financial responsibility for the greater of \$500,000 or \$600 per gross ton. Operators of onshore and offshore facilities must maintain financial responsibility in an amount determined by the Department of Ecology.

Funding: A tax is imposed on oil delivered at marine terminals within the state. The tax is not applicable to oil or other petroleum products which are subsequently exported. The total amount of the tax is five cents a barrel, with three cents deposited into an administration account and two cents deposited into a response account. Both accounts are subject to appropriation. The administrative account may be used for administrative expenses incurred in carrying out the oil spill prevention and response program. The response account may be used to defray state agency costs in responding to spills where the expense is expected to exceed \$50,000.

Resource Damage Assessments: Provisions relating to resource damage assessments are consolidated into one set of procedures. After any spill or incident causing damage to the natural resources of the state, a preassessment screening shall be conducted by the Department of Ecology. In cases involving a spill of oil, the department may use a compensation table to determine the amount of damages.

Pilots: Two new members are added to the Board of Pilotage: the administrator of the Office of Marine Safety and a representative of an environmental organization.

The board may hold examinations for pilots when necessary. The board is not required to develop any specific number of examination sheets. The board must require a pilot against whom sanctions have been imposed to take vessel simulator training. A pilot in his or her first year of active duty and every five years thereafter must take vessel simulator training. The board may require additional simulator training for pilot applicants unable to become active pilots upon licensing.

The board's rules shall establish a five-year period during which new pilots will be allowed to progressively handle larger and different types of vessels.

The pilot's report submitted to the board shall include a statement of any accidents or near miss incidents which occurred while the pilot was on duty. The information shall be forwarded to the Office of Marine Safety. Information in the report may not be used for imposition of any penalties or sanctions.

The certification required of a master of a vessel to the pilot is replaced by a requirement that the master certify to the United States Coast Guard that the vessel complies with federal law, including the federal Oil Pollution Act of 1990.

Maritime Commission: The members of the maritime commission are appointed by the governor. The administrator of the Office of Marine Safety has oversight of the commission and must approve any fees proposed by the commission. The commission is directed to report to the governor, the Office of Marine Safety, and the Legislature annually on its work and on recommendations for improvement in the marine transportation system.

Miscellaneous provisions: The Department of Natural Resources shall include in its leases provisions requiring operators of onshore and offshore facilities to comply with the spill prevention and response provisions. The leases

shall also provide that failure to comply with these provisions is grounds for termination of the lease.

When considering an application for an oil transmission pipeline, the Energy Facility Site Evaluation Council shall give appropriate consideration to local government siting standards for the protection of sole source aquifers.

The Department of Ecology, the Office of Marine Safety, and the Marine Oversight Board are required to study and report on issues relating to the transportation and storage of hazardous substances on or near the state's waters. An interim report is required to be made to the Legislature by December 1, 1991, and a final report by November 1, 1992. The Department of Ecology is required to report on the implementation of the spill prevention and response provisions and its coordination with federal law.

The division of fire protection shall establish and manage an incident response training program.

The members of the Marine Oversight Board, the Maritime Commission, and the Board of Pilotage, and the Administrator of the Office of Marine Safety are subject to the Public Disclosure Act.

The Office of Marine Safety is terminated and its duties are transferred to the Department of Ecology on June 30, 1997. The Legislative Budget Committee shall report to the Legislature not later than November 15, 1996 on the future implementation of the provisions relating to marine transportation.

Except for provisions relating to the oil tax, the act contains an emergency clause and takes effect immediately. The oil tax provisions take effect October 1, 1991. If the bill is not referenced in the biennial budget prior to June 30, 1991 it is null and void.

Votes on Final Passage:

House	86	12	
Senate	40	7	(Senate amended)
House	93	3	(House concurred)

Effective: May 15, 1991
October 1, 1991 (Sections 801 - 804 and 808 - 809)

Partial Veto Summary: The veto strikes a section amending an existing statute providing for a civil penalty for the negligent spill of oil into the water. The amendment would

have required the employer to indemnify an employee for any penalties assessed as a result of the employee's negligence. The veto also strikes a section amending an existing statute which requires a Washington pilot to obtain from the master of a vessel which employs the pilot a certification that the vessel meets federal safety standards. The amendment would have required the master to make this certification to the Coast Guard. Finally, the veto strikes a section making the bill null and void if it is not referenced in the biennial budget.