Agriculture & Ecology Committee

SJM 8005

Brief Description: Petitioning Congress to strengthen vessel safety standards.

Sponsors: Senators Fraser, Swecker, Spanel, Patterson, Thibaudeau, Hargrove, Gardner, Costa, Prentice, Eide, Franklin, Regala, Jacobsen, Kline and Kohl-Welles.

Brief Summary of Bill

·   Requests that Congress amend federal oil pollution law to specify that states have authority to adopt state oil safety laws consistent with federal law.

·   Requests that the U.S. Coast Guard immediately strengthen its oil tanker safety standards.

Hearing Date: 2/26/02

Staff: Caroleen Dineen (786-7156).

Background:

Federal law regulates vessel traffic and includes provisions for oil pollution liability, prevention, and reporting. *See* Ports and Waterways Safety Act of 1972 (*see* 33 U.S.C. Sec. 1223 and 46 U.S.C. Sec. 3703), amended by the Oil Pollution Act of 1990, 33 U.S.C. Secs. 2701 et seq., and 46 U.S.C. Sec. 6101). Among other provisions, the federal Ports and Waterways Safety Act directs the United States Coast Guard to adopt regulations regarding the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualifications, and vessel manning necessary for increased protection against life or property hazards, vessel safety, and environmental protection. Within the federal regulatory scheme, the federal Oil Pollution Act includes a "savings clause" preserving the authority of states to impose additional requirements or liabilities with respect to oil discharge.

In 1991 the Legislature created the Office of Marine Safety and directed it to establish standards for oil tanker spill prevention plans to provide the "best achievable protection" (BAP) from oil discharge damages. The Office of Marine Safety adopted tanker design, equipment, reporting, and operating requirements for oil spill prevention focused on large

cargo and passenger vessels. Sanctions for violation of state standards were statutory penalties, restriction of operations in state waters, and denial of entry to state waters. In 1997 the Office of Marine Safety was abolished, and its responsibilities and functions were transferred to the Department of Ecology (DOE).

Washington's state program was challenged by a trade association of oil tanker operators, which sought declaratory and injunctive relief against enforcement of the state's BAP regulations and alleged the state standards were preempted by federal law. In March 2000 the United States Supreme Court concluded that only the federal government has authority to regulate the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of tanker vessels. United States v. Locke (Intertanko), 529 U.S. 89 (2000). The court in Intertanko ultimately determined federal law preempted state regulations regarding general navigation watch procedures, English language skills, training, and casualty reporting. The court in Intertanko also concluded the Oil Pollution Act's saving clause for state regulation is limited to regulations governing liability and compensation for oil pollution and does not authorize state rules regulating vessel operation, design, or manning. After the Intertanko decision, the Department of Ecology repealed the state regulations.

Summary of Bill:

The Legislature requests that Congress amend the Oil Pollution Act of 1990 to make clear that states have authority to adopt additional oil tanker, barge, and cargo vessel operating requirements that are supplemental to and not inconsistent with regulations adopted by the United States Coast Guard.

The Legislature also requests that the United States Coast Guard act immediately to strengthen tanker vessel safety standards by adopting measures similar to Washington's repealed state standards. Standards identified include tanker crew training, accident reporting, navigation watch practices, and deck officer English-language proficiency.

Appropriation: None.

Fiscal Note: Not Requested.