

SSB 6641 - H AMD 1107

By Representative Cooper

ADOPTED 03/03/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes the
4 importance of prevention in obtaining the goal of zero oil spills to
5 waters of the state. The legislature also recognizes that the
6 regulation of oil and fuel transfers on or near waters of the state
7 vary depending on many factors including the type of facility or
8 equipment that is used, the type of products being transferred, where
9 the transfer takes place, and the type of vessels involved in the
10 transfer. The legislature therefore finds that the department of
11 ecology shall initiate a review of the current statewide marine fueling
12 practices for covered vessels and ships as those terms are defined in
13 RCW 88.46.010.

14 (2) The department of ecology shall work with stakeholders to
15 develop a report describing:

16 (a) The types of fueling practices being employed by covered
17 vessels and ships;

18 (b) The current spill prevention planning requirements that are
19 applicable under state and federal law for covered vessels and ships;
20 and

21 (c) The current spill response requirements under state and federal
22 law for covered vessels and ships.

23 (3) The department of ecology shall report recommendations for
24 regulatory improvements for covered vessel and ship fueling. These
25 recommendations must include any new authorities that the department of
26 ecology believes are necessary to establish a protective regulatory
27 system for the fueling of covered vessels and ships. The department of
28 ecology shall consider any applicable federal requirements and the
29 state's desire to not duplicate federal vessel fueling laws. The
30 department of ecology shall also provide recommendations for funding to
31 implement recommendations.

1 (4) The department of ecology shall deliver the report with its
2 recommendations and findings to the appropriate committees of the
3 legislature by December 15, 2004.

4 **Sec. 2.** RCW 90.56.005 and 1991 c 200 s 101 are each amended to
5 read as follows:

6 (1) The legislature declares that the increasing reliance on water
7 borne transportation as a source of supply for oil and hazardous
8 substances poses special concern for the state of Washington. Each
9 year billions of gallons of crude oil and refined petroleum products
10 are transported by vessel on the navigable waters of the state. These
11 shipments are expected to increase in the coming years. Vessels
12 transporting oil into Washington travel on some of the most unique and
13 special marine environments in the United States. These marine
14 environments are a source of natural beauty, recreation, and economic
15 livelihood for many residents of this state. As a result, the state
16 has an obligation to (~~assure~~) ensure the citizens of the state that
17 the waters of the state will be protected from oil spills.

18 (2) The legislature finds that prevention is the best method to
19 protect the unique and special marine environments in this state. The
20 technology for containing and cleaning up a spill of oil or hazardous
21 substances is in the early stages of development. Preventing spills is
22 more protective of the environment and more cost-effective when all the
23 costs associated with responding to a spill are considered. Therefore,
24 the legislature finds that the primary objective of the state is to
25 adopt a zero spills strategy to prevent any oil or hazardous substances
26 from entering waters of the state.

27 (3) The legislature also finds that:

28 (a) Recent accidents in Washington, Alaska, southern California,
29 Texas, and other parts of the nation have shown that the
30 transportation, transfer, and storage of oil have caused significant
31 damage to the marine environment;

32 (b) Even with the best efforts, it is nearly impossible to remove
33 all oil that is spilled into the water;

34 (c) Washington's navigable waters are treasured environmental and
35 economic resources that the state cannot afford to place at undue risk
36 from an oil spill; and

37 (d) The state has a fundamental responsibility, as the trustee of

1 the state's natural resources and the protector of public health and
2 the environment to prevent the spill of oil.

3 (4) In order to establish a comprehensive prevention and response
4 program to protect Washington's waters and natural resources from
5 spills of oil, it is the purpose of this chapter:

6 (a) To establish state agency expertise in marine safety and to
7 centralize state activities in spill prevention and response
8 activities;

9 (b) To prevent spills of oil and to promote programs that reduce
10 the risk of both catastrophic and small chronic spills;

11 (c) To ensure that responsible parties are liable, and have the
12 resources and ability, to respond to spills and provide compensation
13 for all costs and damages;

14 (d) To provide for state spill response and wildlife rescue
15 planning and implementation;

16 (e) To support and complement the federal oil pollution act of 1990
17 and other federal law, especially those provisions relating to the
18 national contingency plan for cleanup of oil spills and discharges,
19 including provisions relating to the responsibilities of state agencies
20 designated as natural resource trustees. The legislature intends this
21 chapter to be interpreted and implemented in a manner consistent with
22 federal law;

23 (f) To provide broad powers of regulation to the department of
24 ecology relating to spill prevention and response;

25 (g) To provide for an independent oversight board to review the
26 adequacy of spill prevention and response activities in this state; and

27 (h) To provide an adequate funding source for state response and
28 prevention programs.

29 **Sec. 3.** RCW 88.46.160 and 2000 c 69 s 12 are each amended to read
30 as follows:

31 Any person or facility conducting ship refueling and bunkering
32 operations, or the lightering of petroleum products, and any person or
33 facility transferring oil between an onshore or offshore facility and
34 a tank vessel shall have containment and recovery equipment readily
35 available for deployment in the event of the discharge of oil into the
36 waters of the state and shall deploy the containment and recovery
37 equipment in accordance with standards adopted by the department. All
38 persons conducting refueling, bunkering, or lightering operations, or

1 oil transfer operations shall be trained in the use and deployment of
2 oil spill containment and recovery equipment. The department shall
3 adopt rules as necessary to carry out the provisions of this section by
4 June 30, 2006. The rules shall include standards for the circumstances
5 under which containment equipment should be deployed including
6 standards requiring deployment of containment equipment prior to the
7 transfer of oil when determined to be safe and effective by the
8 department. The department may require a person or facility to employ
9 alternative measures including but not limited to automatic shutoff
10 devices and alarms, extra personnel to monitor the transfer, or
11 containment equipment that is deployed quickly and effectively. The
12 standards adopted by rule must be suitable to the specific
13 environmental and operational conditions and characteristics of the
14 facilities that are subject to the standards, and the department must
15 consult with the United States coast guard with the objective of
16 developing state standards that are compatible with federal
17 requirements applicable to the activities covered by this section. An
18 onshore or offshore facility shall include the procedures used to
19 contain and recover discharges in the facility's contingency plan. It
20 is the responsibility of the person providing bunkering, refueling, or
21 lightering services to provide any containment or recovery equipment
22 required under this section. This section does not apply to a person
23 operating a ship for personal pleasure or for recreational purposes.

24 **Sec. 4.** RCW 90.56.060 and 2000 c 69 s 16 are each amended to read
25 as follows:

26 (1) The department shall prepare and annually update a statewide
27 master oil and hazardous substance spill prevention and contingency
28 plan. In preparing the plan, the department shall consult with an
29 advisory committee representing diverse interests concerned with oil
30 and hazardous substance spills, including the United States coast
31 guard, the federal environmental protection agency, state agencies,
32 local governments, port districts, private facilities, environmental
33 organizations, oil companies, shipping companies, containment and
34 cleanup contractors, tow companies, and hazardous substance
35 manufacturers.

36 (2) The state master plan prepared under this section shall at a
37 minimum:

1 (a) Take into consideration the elements of oil spill prevention
2 and contingency plans approved or submitted for approval pursuant to
3 this chapter and chapter 88.46 RCW and oil and hazardous substance
4 spill contingency plans prepared pursuant to other state or federal law
5 or prepared by federal agencies and regional entities;

6 (b) State the respective responsibilities as established by
7 relevant statutes and rules of each of the following in the prevention
8 of and the assessment, containment, and cleanup of a worst case spill
9 of oil or hazardous substances into the environment of the state: (i)
10 State agencies; (ii) local governments; (iii) appropriate federal
11 agencies; (iv) facility operators; (v) property owners whose land or
12 other property may be affected by the oil or hazardous substance spill;
13 and (vi) other parties identified by the department as having an
14 interest in or the resources to assist in the containment and cleanup
15 of an oil or hazardous substance spill;

16 (c) State the respective responsibilities of the parties identified
17 in (b) of this subsection in an emergency response;

18 (d) Identify actions necessary to reduce the likelihood of spills
19 of oil and hazardous substances;

20 (e) Identify and obtain mapping of environmentally sensitive areas
21 at particular risk to oil and hazardous substance spills; ~~((and))~~

22 (f) Establish an incident command system for responding to oil and
23 hazardous substances spills; and

24 (g) Establish a process for immediately notifying affected tribes
25 of any oil spill.

26 (3) In preparing and updating the state master plan, the department
27 shall:

28 (a) Consult with federal, provincial, municipal, and community
29 officials, other state agencies, the state of Oregon, and with
30 representatives of affected regional organizations;

31 (b) Submit the draft plan to the public for review and comment;

32 (c) Submit to the appropriate standing committees of the
33 legislature for review, not later than November 1st of each year, the
34 plan and any annual revision of the plan; and

35 (d) Require or schedule unannounced oil spill drills as required by
36 RCW 90.56.260 to test the sufficiency of oil spill contingency plans
37 approved under RCW 90.56.210.

1 **Sec. 5.** RCW 90.56.200 and 2000 c 69 s 19 are each amended to read
2 as follows:

3 (1) The owner or operator for each onshore and offshore facility
4 and any state agency conducting ship refueling or bunkering of more
5 than one million gallons of oil on the waters of the state during any
6 calendar year shall prepare and submit to the department an oil spill
7 prevention plan in conformance with the requirements of this chapter.
8 The plans shall be submitted to the department in the time and manner
9 directed by the department. The spill prevention plan may be
10 consolidated with a spill contingency plan submitted pursuant to RCW
11 90.56.210. The department may accept plans prepared to comply with
12 other state or federal law as spill prevention plans to the extent
13 those plans comply with the requirements of this chapter. The
14 department, by rule, shall establish standards for spill prevention
15 plans.

16 (2) The spill prevention plan for an onshore or offshore facility
17 and state agencies identified under subsection (1) of this section
18 shall:

19 (a) Establish compliance with the federal oil pollution act of
20 1990, if applicable, and financial responsibility requirements under
21 federal and state law;

22 (b) Certify that supervisory and other key personnel in charge of
23 transfer, storage, and handling of oil have received certification
24 pursuant to RCW 90.56.220;

25 (c) Certify that the facility has an operations manual required by
26 RCW 90.56.230;

27 (d) Certify the implementation of alcohol and drug use awareness
28 programs;

29 (e) Describe the facility's maintenance and inspection program and
30 contain a current maintenance and inspection record of the storage and
31 transfer facilities and related equipment;

32 (f) Describe the facility's alcohol and drug treatment programs;

33 (g) Describe spill prevention technology that has been installed,
34 including overflow alarms, automatic overflow cut-off switches,
35 secondary containment facilities, and storm water retention, treatment,
36 and discharge systems;

37 (h) Describe any discharges of oil to the land or the water of more
38 than twenty-five barrels in the prior five years and the measures taken
39 to prevent a reoccurrence;

1 (i) Describe the procedures followed by the facility to contain and
2 recover any oil that spills during the transfer of oil to or from the
3 facility;

4 (j) Provide for the incorporation into the facility during the
5 period covered by the plan of those measures that will provide the best
6 achievable protection for the public health and the environment; and

7 (k) Include any other information reasonably necessary to carry out
8 the purposes of this chapter required by rules adopted by the
9 department.

10 (3) The department shall only approve a prevention plan if it
11 provides the best achievable protection from damages caused by the
12 discharge of oil into the waters of the state and if it determines that
13 the plan meets the requirements of this section and rules adopted by
14 the department.

15 (4) Upon approval of a prevention plan, the department shall
16 provide to the person submitting the plan a statement indicating that
17 the plan has been approved, the facilities covered by the plan, and
18 other information the department determines should be included.

19 (5) The approval of a prevention plan shall be valid for five
20 years. An owner or operator of a facility shall notify the department
21 in writing immediately of any significant change of which it is aware
22 affecting its prevention plan, including changes in any factor set
23 forth in this section or in rules adopted by the department. The
24 department may require the owner or operator to update a prevention
25 plan as a result of these changes.

26 (6) The department by rule shall require prevention plans to be
27 reviewed, updated, if necessary, and resubmitted to the department at
28 least once every five years.

29 (7) Approval of a prevention plan by the department does not
30 constitute an express assurance regarding the adequacy of the plan nor
31 constitute a defense to liability imposed under this chapter or other
32 state law.

33 (8) This section does not authorize the department to modify the
34 terms of a collective bargaining agreement.

35 **Sec. 6.** RCW 90.56.210 and 2000 c 69 s 20 are each amended to read
36 as follows:

37 (1) Each onshore and offshore facility and any state agency
38 conducting ship refueling or bunkering of more than one million gallons

1 of oil on the waters of the state during any calendar year shall have
2 a contingency plan for the containment and cleanup of oil spills from
3 the facility into the waters of the state and for the protection of
4 fisheries and wildlife, shellfish beds, natural resources, and public
5 and private property from such spills. The department shall by rule
6 adopt and periodically revise standards for the preparation of
7 contingency plans. The department shall require contingency plans, at
8 a minimum, to meet the following standards:

9 (a) Include full details of the method of response to spills of
10 various sizes from any facility which is covered by the plan;

11 (b) Be designed to be capable in terms of personnel, materials, and
12 equipment, of promptly and properly, to the maximum extent practicable,
13 as defined by the department removing oil and minimizing any damage to
14 the environment resulting from a worst case spill;

15 (c) Provide a clear, precise, and detailed description of how the
16 plan relates to and is integrated into relevant contingency plans which
17 have been prepared by cooperatives, ports, regional entities, the
18 state, and the federal government;

19 (d) Provide procedures for early detection of oil spills and timely
20 notification of such spills to appropriate federal, state, and local
21 authorities under applicable state and federal law;

22 (e) State the number, training preparedness, and fitness of all
23 dedicated, prepositioned personnel assigned to direct and implement the
24 plan;

25 (f) Incorporate periodic training and drill programs to evaluate
26 whether personnel and equipment provided under the plan are in a state
27 of operational readiness at all times;

28 (g) Describe important features of the surrounding environment,
29 including fish and wildlife habitat, shellfish beds, environmentally
30 and archaeologically sensitive areas, and public facilities. The
31 departments of ecology, fish and wildlife, and natural resources, and
32 the office of archaeology and historic preservation, upon request,
33 shall provide information that they have available to assist in
34 preparing this description. The description of archaeologically
35 sensitive areas shall not be required to be included in a contingency
36 plan until it is reviewed and updated pursuant to subsection (9) of
37 this section;

38 (h) State the means of protecting and mitigating effects on the

1 environment, including fish, shellfish, marine mammals, and other
2 wildlife, and ensure that implementation of the plan does not pose
3 unacceptable risks to the public or the environment;

4 (i) Provide arrangements for the repositioning of oil spill
5 containment and cleanup equipment and trained personnel at strategic
6 locations from which they can be deployed to the spill site to promptly
7 and properly remove the spilled oil;

8 (j) Provide arrangements for enlisting the use of qualified and
9 trained cleanup personnel to implement the plan;

10 (k) Provide for disposal of recovered spilled oil in accordance
11 with local, state, and federal laws;

12 (l) Until a spill prevention plan has been submitted pursuant to
13 RCW 90.56.200, state the measures that have been taken to reduce the
14 likelihood that a spill will occur, including but not limited to,
15 design and operation of a facility, training of personnel, number of
16 personnel, and backup systems designed to prevent a spill;

17 (m) State the amount and type of equipment available to respond to
18 a spill, where the equipment is located, and the extent to which other
19 contingency plans rely on the same equipment; and

20 (n) If the department has adopted rules permitting the use of
21 dispersants, the circumstances, if any, and the manner for the
22 application of the dispersants in conformance with the department's
23 rules.

24 (2)(a) The following shall submit contingency plans to the
25 department within six months after the department adopts rules
26 establishing standards for contingency plans under subsection (1) of
27 this section:

28 (i) Onshore facilities capable of storing one million gallons or
29 more of oil; and

30 (ii) Offshore facilities.

31 (b) Contingency plans for all other onshore and offshore facilities
32 shall be submitted to the department within eighteen months after the
33 department has adopted rules under subsection (1) of this section. The
34 department may adopt a schedule for submission of plans within the
35 eighteen-month period.

36 (3)(a) The owner or operator of a facility shall submit the
37 contingency plan for the facility.

38 (b) A person who has contracted with a facility to provide
39 containment and cleanup services and who meets the standards

1 established pursuant to RCW 90.56.240, may submit the plan for any
2 facility for which the person is contractually obligated to provide
3 services. Subject to conditions imposed by the department, the person
4 may submit a single plan for more than one facility.

5 (4) A contingency plan prepared for an agency of the federal
6 government or another state that satisfies the requirements of this
7 section and rules adopted by the department may be accepted by the
8 department as a contingency plan under this section. The department
9 shall (~~assure~~) ensure that to the greatest extent possible,
10 requirements for contingency plans under this section are consistent
11 with the requirements for contingency plans under federal law.

12 (5) In reviewing the contingency plans required by this section,
13 the department shall consider at least the following factors:

14 (a) The adequacy of containment and cleanup equipment, personnel,
15 communications equipment, notification procedures and call down lists,
16 response time, and logistical arrangements for coordination and
17 implementation of response efforts to remove oil spills promptly and
18 properly and to protect the environment;

19 (b) The nature and amount of vessel traffic within the area covered
20 by the plan;

21 (c) The volume and type of oil being transported within the area
22 covered by the plan;

23 (d) The existence of navigational hazards within the area covered
24 by the plan;

25 (e) The history and circumstances surrounding prior spills of oil
26 within the area covered by the plan;

27 (f) The sensitivity of fisheries, shellfish beds, and wildlife and
28 other natural resources within the area covered by the plan;

29 (g) Relevant information on previous spills contained in on-scene
30 coordinator reports prepared by the department; and

31 (h) The extent to which reasonable, cost-effective measures to
32 prevent a likelihood that a spill will occur have been incorporated
33 into the plan.

34 (6) The department shall approve a contingency plan only if it
35 determines that the plan meets the requirements of this section and
36 that, if implemented, the plan is capable, in terms of personnel,
37 materials, and equipment, of removing oil promptly and properly and
38 minimizing any damage to the environment.

1 (7) The approval of the contingency plan shall be valid for five
2 years. Upon approval of a contingency plan, the department shall
3 provide to the person submitting the plan a statement indicating that
4 the plan has been approved, the facilities or vessels covered by the
5 plan, and other information the department determines should be
6 included.

7 (8) An owner or operator of a facility shall notify the department
8 in writing immediately of any significant change of which it is aware
9 affecting its contingency plan, including changes in any factor set
10 forth in this section or in rules adopted by the department. The
11 department may require the owner or operator to update a contingency
12 plan as a result of these changes.

13 (9) The department by rule shall require contingency plans to be
14 reviewed, updated, if necessary, and resubmitted to the department at
15 least once every five years.

16 (10) Approval of a contingency plan by the department does not
17 constitute an express assurance regarding the adequacy of the plan nor
18 constitute a defense to liability imposed under this chapter or other
19 state law.

20 NEW SECTION. **Sec. 7.** If specific funding for the purposes of
21 sections 5 and 6 of this act, referencing sections 5 and 6 of this act
22 by bill or chapter or section number, is not provided by June 30, 2004,
23 in the omnibus transportation appropriations act, sections 5 and 6 of
24 this act are null and void."

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ADOPTED 03/03/2004

25 On page 1, beginning on line 1 of the title, after "management;"
26 strike the remainder of the title and insert "amending RCW 90.56.005,
27 88.46.160, 90.56.060, 90.56.200, and 90.56.210; and creating new
28 sections."

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