

# HOUSE BILL REPORT

## HB 3020

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### As Reported by House Committee On:

Fisheries, Ecology & Parks  
Appropriations

**Title:** An act relating to oil spill management.

**Brief Description:** Reducing the risk of oil spills and spill damage.

**Sponsors:** Representatives Cooper, Rockefeller, Kagi, Sullivan, Chase, G. Simpson, D. Simpson, Lantz, Dickerson, Lovick and Upthegrove.

### Brief History:

#### Committee Activity:

Fisheries, Ecology & Parks: 2/3/04, 2/6/04 [DPS];  
Appropriations: 2/9/04 [DPS(FEP)].

#### Brief Summary of Substitute Bill

- Requires the Department of Ecology to adopt rules by June 30, 2006 for ship refueling and bunkering, and transfers of oil between facilities and a tank vessel. The rules shall include standards requiring deployment of containment equipment prior to the transfer of oil when determined to be safe and effective.
- Directs the Department of Ecology to establish a process for immediately notifying affected tribes of any oil spill.

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### HOUSE COMMITTEE ON FISHERIES, ECOLOGY & PARKS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cooper, Chair; Upthegrove, Vice Chair; Sump, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Buck, Hatfield, O'Brien, Pearson and D. Simpson.

**Staff:** Jeff Olsen (786-7157).

#### Background:

The Legislature enacted oil spill prevention and response measures in 1991 to promote the safety of marine transportation and to protect state waters from oil spills. The Director of the Department of Ecology (Department) has the primary authority to oversee prevention, abatement, response, containment and cleanup efforts for oil spills in state waters. The oil spill program requires oil spill prevention plans, contingency response plans, and financial

responsibility requirement for vessels and facilities that may discharge oil into navigable waters.

In addition to state law, federal laws prescribe regulations for the operation, equipping, personnel qualification, and manning of tank vessels, 46 U.S.C. Chapter 3703. The state adopted rules for regulating oil tankers that were challenged in court. In March 2000, the United States Supreme Court concluded that the federal savings clause does not authorize state rules regulating vessel operation, design, or manning. *United States v. Locke*, 529 U.S. 89 (2000) [Intertanko].

Owners and operators of onshore and offshore facilities must prepare and submit oil spill contingency and prevention plans. Oil spill prevention plans must establish compliance with federal law and certify compliance 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 and bunkering, or lightering of petroleum products, are required to have containment and recovery equipment readily available according to standards adopted by the Department. In addition, any person or facility transferring oil between an onshore or offshore facility and a tank vessel are also required to have containment and recovery equipment readily available. The Department has rulemaking authority to adopt standards for the circumstances under which containment equipment should be deployed.

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### **Summary of Substitute Bill:**

The Department must adopt rules for ship refueling and bunkering, and transfers of oil between facilities and a tank vessel by June 30, 2006. The rules shall include standards requiring deployment of containment equipment prior to the transfer of oil when determined to be safe and effective. The Department may require alternative measures, including the use of automatic shutoff devices and alarms, extra personnel, or containment equipment that is deployed quickly and effectively.

Legislative intent is established that the primary objective of the state oil spill program is to adopt a zero spills strategy and prevent the release of oil or hazardous substances from entering waters of the state. The Department is directed to establish a process for immediately notifying affected tribes of any oil spill. Shellfish beds are added to the list of natural resources to be considered for facility oil spill contingency planning purposes.

### **Substitute Bill Compared to Original Bill:**

The substitute bill adds the requirement that the Department immediately notify affected tribes of any oil spill, and includes shellfish beds to the list of natural resources to be considered for facility contingency planning purposes. The substitute removes definition changes to the term "facility" for purposes of oil spill regulations and removes the restriction that the owner or

operator of a tank vessel may not contract or agree to transfer oil unless specified staff are present. In addition, the substitute bill removes the requirement that a boom must be deployed prior to the transfer of oil to a vessel with an oil capacity over 250 barrels and the requirement to adapt financial responsibility requirement by January 1, 2007.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** (In Support) The recent oil spill in Point Wells demonstrated that the cleanup response was impressive, but still resulted in significant damage to the environment. The state must do a better job to prevent oil spills, including the use of containment booms and extra personnel, and regulation of mobile fueling transfers. Pre-booming of vessels is already done by the Navy, and in California and Alaska. The Committee should merge the ideas of both HB 3020 and HB 3021 and direct the Department to conduct rulemaking.

Coastal areas rely on tourism, and an oil spill would be very damaging to coastal economies. Oil in the water damages birds, and prevention is critical to protect natural resources. Prevention is important, but spills are inevitable and the state should also focus on containment. Shellfish beds are a significant resource and need to be protected. Tribal notification of oil spills should be included in the bill.

**Testimony Against:** (In opposition) Mobile fuelers provide service throughout the state, and in many places vessels may only receive fuel from a truck. Certain mobile fuelers have been providing service for years and have an excellent record. The issue of how to define a facility and how it should be regulated are important, and should be looked at over the interim. Stakeholders can work with the Department to develop recommendations.

Pre-booming does not work in all circumstances. For example, bad weather, currents, and certain types of products affect the use of oil booms. There is a significant difference between persistent and non-persistent oils, and non-persistent fuels should be exempt from booming requirements.

The state should proceed with caution and wait until the findings from the recent spill have been completed. One-size fits all regulations, such as the manning requirement, don't make sense. Mobile fueling issues should be separate from the rest of the provisions. The level of regulation should match the level of risk. The Department should focus on enforcing existing regulations and conduct more inspections. The Department can use existing authorities and the current oil spill advisory committee stakeholder process to move forward. Some industry representatives support a deliberate process to review current regulations.

State ferries follow Coast Guard regulations for their fueling. Two trained people are present during the fueling process, and booms are used to contain spills. State ferries has not had any spills since 2000.

**Persons Testifying:** (In support) Mike Doherty, Clallum County Board of County Commissioners; Terry Hull, Puget Sound Action Team; Fred Fellman and Chris Jones, Ocean Advocates; Bruce Wishart, People for Puget Sound; Robin Downey, Pacific Coast Shellfish Gowers Association; Nina Carter, Audubon; and Jamie Glasgow, Washington Trout.

(In opposition) Frank E. Holmes, Western States Petroleum Association; Warren Aakervik, Ballard Oil Company; Dave Godel, Sea Coast Towing; Jerry McMahon, American Waterways Operators; Mike Moore, Puget Sound Steamship Operators Association; Charlie Brown, Washington Oil Marketers Association; Tom Swanson, Icicle Seafoods Incorporated; and Rich Berkowitz, Transportation Institute.

(With concerns) Eric Johnson, Washington Public Ports Association.

(Neutral) Jeff Fishel, Department of Ecology; and Mike Thorne, Washington State Ferries.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Fisheries, Ecology & Parks be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Anderson, Boldt, Buck, Chandler, Clements, Cody, Conway, Cox, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Ruderman, Schual-Berke, Sump and Talcott.

**Staff:** Alicia Paatsch (786-7178).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Fisheries, Ecology & Parks:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** (In support) This bill is in response to a fuel spill of 4,800 gallons at Point Wells that was a result of a fuel transfer from on-shore to a vessel. The cost of the bill is insignificant compared to the millions in clean-up and environmental damages. Currently

Ecology's oil spill program works well with both the environmental community and industry and they realize that booming does not work well in all circumstances.

(With concerns) We do not believe a \$250,000 fiscal note is warranted. This effort is already under way and funding should not come from the barrel tax.

**Testimony Against:** None.

**Persons Testifying:** (In support) Randy Ray, Puget Sound Steamship Operators Association; and Bruce Wishart, People for Puget Sound.

(With concerns) Greg Hanon, Western States Petroleum Association.

**Persons Signed In To Testify But Not Testifying:** None.