
ENGROSSED SUBSTITUTE SENATE BILL 5432

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Spanel, Swecker, Poulsen, Doumit, Regala, Rockefeller, Pridemore, Haugen, Kohl-Welles, Fraser, Jacobsen, Shin and Kline)

READ FIRST TIME 02/24/05.

1 AN ACT Relating to the oil spill advisory council; amending RCW
2 90.56.005, 90.56.010, and 90.56.060; and adding new sections to chapter
3 90.56 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 90.56.005 and 2004 c 226 s 2 are each amended to read
6 as follows:

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

1 (2) The legislature finds that prevention is the best method to
2 protect the (~~unique~~) valuable and special marine environments in this
3 state. The technology for containing and cleaning up a spill of oil or
4 hazardous substances is (~~in the early stages of development~~) at best
5 only partially effective. Preventing spills is more protective of the
6 environment and more cost-effective when all the response and damage
7 costs associated with responding to a spill are considered. Therefore,
8 the legislature finds that the primary objective of the state is to
9 (~~adopt~~) achieve a zero spills strategy to prevent any oil or
10 hazardous substances from entering waters of the state.

11 (3) The legislature also finds that:

12 (a) Recent accidents in Washington, Alaska, southern California,
13 Texas, Pennsylvania, and other parts of the nation have shown that the
14 transportation, transfer, and storage of oil have caused significant
15 damage to the marine environment;

16 (b) Even with the best efforts, it is nearly impossible to remove
17 all oil that is spilled into the water, and average removal rates are
18 only fourteen percent;

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

22 (d) The state has a fundamental responsibility, as the trustee of
23 the state's natural resources and the protector of public health and
24 the environment to prevent the spill of oil; and

25 (e) In section 5002 of the federal oil pollution act of 1990, the
26 United States congress found that many people believed that complacency
27 on the part of industry and government was one of the contributing
28 factors to the Exxon Valdez spill and, further, that one method to
29 combat this complacency is to involve local citizens in the monitoring
30 and oversight of oil spill plans. Congress also found that a mechanism
31 should be established that fosters the long-term partnership of
32 industry, government, and local communities in overseeing compliance
33 with environmental concerns in the operation of crude oil terminals.
34 Moreover, congress concluded that, in addition to Alaska, a program of
35 citizen monitoring and oversight should be established in other major
36 crude oil terminals in the United States because recent oil spills
37 indicate that the safe transportation of oil is a national problem.

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

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

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

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

12 (d) To provide for state spill response and wildlife rescue
13 planning and implementation;

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

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

23 (g) To provide for an independent (~~oversight board~~) oil spill
24 advisory council to review on an ongoing basis the adequacy of oil
25 spill prevention, preparedness, and response activities in this state;
26 and

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

29 **Sec. 2.** RCW 90.56.010 and 2000 c 69 s 15 are each amended to read
30 as follows:

31 For purposes of this chapter, the following definitions shall apply
32 unless the context indicates otherwise:

33 (1) "Best achievable protection" means the highest level of
34 protection that can be achieved through the use of the best achievable
35 technology and those staffing levels, training procedures, and
36 operational methods that provide the greatest degree of protection
37 achievable. The director's determination of best achievable protection

1 shall be guided by the critical need to protect the state's natural
2 resources and waters, while considering (a) the additional protection
3 provided by the measures; (b) the technological achievability of the
4 measures; and (c) the cost of the measures.

5 (2) "Best achievable technology" means the technology that provides
6 the greatest degree of protection taking into consideration (a)
7 processes that are being developed, or could feasibly be developed,
8 given overall reasonable expenditures on research and development, and
9 (b) processes that are currently in use. In determining what is best
10 achievable technology, the director shall consider the effectiveness,
11 engineering feasibility, and commercial availability of the technology.

12 (3) "Board" means the pollution control hearings board.

13 (4) "Cargo vessel" means a self-propelled ship in commerce, other
14 than a tank vessel or a passenger vessel, three hundred or more gross
15 tons, including but not limited to, commercial fish processing vessels
16 and freighters.

17 (5) "Bulk" means material that is stored or transported in a loose,
18 unpackaged liquid, powder, or granular form capable of being conveyed
19 by a pipe, bucket, chute, or belt system.

20 (6) "Committee" means the preassessment screening committee
21 established under RCW 90.48.368.

22 (7) "Council" means the oil spill advisory council created in
23 section 3 of this act.

24 (8) "Covered vessel" means a tank vessel, cargo vessel, or
25 passenger vessel.

26 ~~((+8))~~ (9) "Department" means the department of ecology.

27 ~~((+9))~~ (10) "Director" means the director of the department of
28 ecology.

29 ~~((+10))~~ (11) "Discharge" means any spilling, leaking, pumping,
30 pouring, emitting, emptying, or dumping.

31 ~~((+11))~~ (12)(a) "Facility" means any structure, group of
32 structures, equipment, pipeline, or device, other than a vessel,
33 located on or near the navigable waters of the state that transfers oil
34 in bulk to or from a tank vessel or pipeline, that is used for
35 producing, storing, handling, transferring, processing, or transporting
36 oil in bulk.

37 (b) A facility does not include any: (i) Railroad car, motor
38 vehicle, or other rolling stock while transporting oil over the

1 highways or rail lines of this state; (ii) underground storage tank
2 regulated by the department or a local government under chapter 90.76
3 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is
4 operated as part of an exempt agricultural activity as provided in RCW
5 82.04.330; or (v) marine fuel outlet that does not dispense more than
6 three thousand gallons of fuel to a ship that is not a covered vessel,
7 in a single transaction.

8 ~~((12))~~ (13) "Fund" means the state coastal protection fund as
9 provided in RCW 90.48.390 and 90.48.400.

10 ~~((13))~~ (14) "Having control over oil" shall include but not be
11 limited to any person using, storing, or transporting oil immediately
12 prior to entry of such oil into the waters of the state, and shall
13 specifically include carriers and bailees of such oil.

14 ~~((14))~~ (15) "Marine facility" means any facility used for tank
15 vessel wharfage or anchorage, including any equipment used for the
16 purpose of handling or transferring oil in bulk to or from a tank
17 vessel.

18 ~~((15))~~ (16) "Marine waters" means the area within the state
19 boundaries that includes Hood Canal, Puget Sound, the Strait of Juan de
20 Fuca, the Pacific Ocean, and the Columbia river estuary.

21 (17) "Navigable waters of the state" means those waters of the
22 state, and their adjoining shorelines, that are subject to the ebb and
23 flow of the tide and/or are presently used, have been used in the past,
24 or may be susceptible for use to transport intrastate, interstate, or
25 foreign commerce.

26 ~~((16))~~ (18) "Necessary expenses" means the expenses incurred by
27 the department and assisting state agencies for (a) investigating the
28 source of the discharge; (b) investigating the extent of the
29 environmental damage caused by the discharge; (c) conducting actions
30 necessary to clean up the discharge; (d) conducting predamage and
31 damage assessment studies; and (e) enforcing the provisions of this
32 chapter and collecting for damages caused by a discharge.

33 ~~((17))~~ (19) "Oil" or "oils" means naturally occurring liquid
34 hydrocarbons at atmospheric temperature and pressure coming from the
35 earth, including condensate and natural gasoline, and any fractionation
36 thereof, including, but not limited to, crude oil, petroleum, gasoline,
37 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
38 other than dredged spoil. Oil does not include any substance listed in

1 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
2 section 101(14) of the federal comprehensive environmental response,
3 compensation, and liability act of 1980, as amended by P.L. 99-499.

4 ~~((18))~~ (20) "Offshore facility" means any facility located in,
5 on, or under any of the navigable waters of the state, but does not
6 include a facility any part of which is located in, on, or under any
7 land of the state, other than submerged land.

8 ~~((19))~~ (21) "Onshore facility" means any facility any part of
9 which is located in, on, or under any land of the state, other than
10 submerged land, that because of its location, could reasonably be
11 expected to cause substantial harm to the environment by discharging
12 oil into or on the navigable waters of the state or the adjoining
13 shorelines.

14 ~~((20))~~ (22)(a) "Owner or operator" means (i) in the case of a
15 vessel, any person owning, operating, or chartering by demise, the
16 vessel; (ii) in the case of an onshore or offshore facility, any person
17 owning or operating the facility; and (iii) in the case of an abandoned
18 vessel or onshore or offshore facility, the person who owned or
19 operated the vessel or facility immediately before its abandonment.

20 (b) "Operator" does not include any person who owns the land
21 underlying a facility if the person is not involved in the operations
22 of the facility.

23 ~~((21))~~ (23) "Passenger vessel" means a ship of three hundred or
24 more gross tons with a fuel capacity of at least six thousand gallons
25 carrying passengers for compensation.

26 ~~((22))~~ (24) "Person" means any political subdivision, government
27 agency, municipality, industry, public or private corporation,
28 copartnership, association, firm, individual, or any other entity
29 whatsoever.

30 ~~((23))~~ (25) "Ship" means any boat, ship, vessel, barge, or other
31 floating craft of any kind.

32 ~~((24))~~ (26) "Spill" means an unauthorized discharge of oil or
33 hazardous substances into the waters of the state.

34 ~~((25))~~ (27) "Tank vessel" means a ship that is constructed or
35 adapted to carry, or that carries, oil in bulk as cargo or cargo
36 residue, and that:

37 (a) Operates on the waters of the state; or

1 (b) Transfers oil in a port or place subject to the jurisdiction of
2 this state.

3 ((+26+)) (28) "Waters of the state" includes lakes, rivers, ponds,
4 streams, inland waters, underground water, salt waters, estuaries,
5 tidal flats, beaches and lands adjoining the seacoast of the state,
6 sewers, and all other surface waters and watercourses within the
7 jurisdiction of the state of Washington.

8 ((+27+)) (29) "Worst case spill" means: (a) In the case of a
9 vessel, a spill of the entire cargo and fuel of the vessel complicated
10 by adverse weather conditions; and (b) in the case of an onshore or
11 offshore facility, the largest foreseeable spill in adverse weather
12 conditions.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.56 RCW
14 to read as follows:

15 (1)(a) There is established in the office of the governor the oil
16 spill advisory council.

17 (b) The primary purpose of the council is to maintain the state's
18 vigilance in, by ensuring an emphasis on, the prevention of oil spills
19 to marine waters, while recognizing the importance of also improving
20 preparedness and response.

21 (c) The council shall be an advisory body only.

22 (2)(a) The council is composed of fifteen members representing
23 various interests as follows:

24 (i) Three representatives of environmental organizations;

25 (ii) One representative of commercial shellfish interests;

26 (iii) One representative of commercial fisheries that primarily
27 fishes in Washington waters;

28 (iv) One representative of marine recreation;

29 (v) One representative of tourism interests;

30 (vi) Three representatives of county government from counties
31 bordering Puget Sound, the Columbia river/Pacific Ocean, and the Strait
32 of Juan de Fuca/San Juan Islands;

33 (vii) Two representatives of marine trade interests;

34 (viii) One representative of major oil facilities;

35 (ix) One representative of public ports; and

36 (x) An individual who resides on a shoreline who has an interest,
37 experience, and familiarity in the protection of water quality.

1 (b) In addition to the members identified in this subsection, the
2 governor shall invite the participation of tribal governments through
3 the appointment of two representatives to the council.

4 (3) Appointments to the council shall reflect a geographical
5 balance and the diversity of populations within the areas potentially
6 affected by oil spills to state waters.

7 (4) Members shall be appointed by the governor and shall serve
8 four-year terms, except the initial members appointed to the council.
9 Initial members to the council shall be appointed as follows: Six
10 shall serve two-year terms, six shall serve three-year terms, and five
11 shall serve four-year terms. Vacancies shall be filled by appointment
12 in the same manner as the original appointment for the remainder of the
13 unexpired term of the position vacated. Members serve at the pleasure
14 of the governor.

15 (5) The council shall elect a chair from among its members in odd-
16 numbered years to serve for two years as chair. The chair shall
17 convene the council at least four times per year. At least one meeting
18 per year shall be held in a Columbia river community, an ocean coastal
19 community, and a Puget Sound community.

20 (6) Members shall not be compensated, but shall be reimbursed for
21 travel expenses while attending meetings of the council or technical
22 advisory committee as provided in RCW 43.03.050 and 43.03.060.

23 (7) The first meeting of the council shall be convened by the
24 governor or the governor's designee. Other meetings may be convened by
25 a vote of at least a majority of the voting members of the council, or
26 by call of the chair. All meetings are subject to the open public
27 meetings act. The council shall maintain minutes of all meetings.

28 (8) To the extent possible, all decisions of the council shall be
29 by the consensus of the members. If consensus is not possible, nine
30 voting members of the council may call for a vote on a matter. When a
31 vote is called, all decisions shall be determined by a majority vote of
32 the voting members present. Two-thirds of the voting members are
33 required to be present for a quorum for all votes. The subject matter
34 of all votes and the vote tallies shall be recorded in the minutes of
35 the council.

36 (9) The council may form subcommittees and technical advisory
37 committees.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.56 RCW
2 to read as follows:

3 (1) The duties of the council include:

4 (a) Selection and hiring of professional staff and expert
5 consultants to support the work of the council;

6 (b) Early consultation with government decision makers in relation
7 to the state's oil spill prevention, preparedness, and response
8 programs, analyses, rule making, and related oil spill activities;

9 (c) Providing independent advice, expertise, research, monitoring,
10 and assessment for review of and necessary improvements to the state's
11 oil spill prevention, preparedness, and response programs, analyses,
12 rule making, and other decisions, including those of the Northwest area
13 committee, as well as the adequacy of funding for these programs;

14 (d) Monitoring and providing information to the public as well as
15 state and federal agencies regarding state of the art oil spill
16 prevention, preparedness, and response programs;

17 (e) Actively seeking public comments on and proposals for specific
18 measures to improve the state's oil spill prevention, preparedness, and
19 response program, including measures to improve the effectiveness of
20 the Northwest area committee;

21 (f) Evaluating incident response reports and making recommendations
22 to the department regarding improvements;

23 (g) Consulting with the department on lessons learned and agency
24 progress on necessary actions in response to lessons learned;

25 (h) Promoting opportunities for the public to become involved in
26 oil spill response activities and provide assistance to community
27 groups with an interest in oil spill prevention and response, and
28 coordinating with the department on the development and implementation
29 of a citizens' involvement plan;

30 (i) Serving as an advisory body to the department on matters
31 relating to international, national, and regional issues concerning oil
32 spill prevention, preparedness, and response, and providing a mechanism
33 for stakeholder and public consideration of federal actions relating to
34 oil spill preparedness, prevention, and response in or near the waters
35 of the state with recommended changes or improvements in federal
36 policies on these matters;

37 (j) Accepting moneys from appropriations, gifts, grants, or
38 donations for the purposes of this section; and

1 (k) Any other activities necessary to maintain the state's
2 vigilance in preventing oil spills.

3 (2) The council is not intended to address issues related to spills
4 involving hazardous substances.

5 (3) By December 15, 2005, the council shall recommend to the
6 governor and appropriate committees of the legislature, proposals for
7 the long-term funding of the council's activities and for the long-term
8 sustainable funding for oil spill preparedness, prevention, and
9 response activities.

10 (4) By September 1st of each year, the council shall make
11 recommendations for the continuing improvement of the state's oil spill
12 prevention, preparedness, and response activities through a report to
13 the governor and the appropriate committees of the senate and house of
14 representatives.

15 **Sec. 5.** RCW 90.56.060 and 2004 c 226 s 4 are each amended to read
16 as follows:

17 (1) The department shall prepare and annually update a statewide
18 master oil and hazardous substance spill prevention and contingency
19 plan. In preparing the plan, the department shall consult with an
20 advisory committee representing diverse interests concerned with oil
21 and hazardous substance spills, including the United States coast
22 guard, the federal environmental protection agency, state agencies,
23 local governments, port districts, private facilities, environmental
24 organizations, oil companies, shipping companies, containment and
25 cleanup contractors, tow companies, ~~((and))~~ hazardous substance
26 manufacturers, and the oil spill advisory council.

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

29 (a) Take into consideration the elements of oil spill prevention
30 and contingency plans approved or submitted for approval pursuant to
31 this chapter and chapter 88.46 RCW and oil and hazardous substance
32 spill contingency plans prepared pursuant to other state or federal law
33 or prepared by federal agencies and regional entities;

34 (b) State the respective responsibilities as established by
35 relevant statutes and rules of each of the following in the prevention
36 of and the assessment, containment, and cleanup of a worst case spill
37 of oil or hazardous substances into the environment of the state: (i)

1 State agencies; (ii) local governments; (iii) appropriate federal
2 agencies; (iv) facility operators; (v) property owners whose land or
3 other property may be affected by the oil or hazardous substance spill;
4 and (vi) other parties identified by the department as having an
5 interest in or the resources to assist in the containment and cleanup
6 of an oil or hazardous substance spill;

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

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

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

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

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

17 (3) In preparing and updating the state master plan, the department
18 shall:

19 (a) Consult with federal, provincial, municipal, and community
20 officials, other state agencies, the state of Oregon, and with
21 representatives of affected regional organizations;

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

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

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

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.56 RCW
30 to read as follows:

31 The oil spill advisory council account is created in the custody of
32 the state treasurer. All receipts from appropriations or gifts,
33 grants, or donations from public or private sources shall be deposited
34 into the fund. Expenditures from the fund may be used only for the
35 purposes of this act. Only the oil spill advisory council may
36 authorize expenditures from the fund. The fund is subject to allotment

1 procedures under chapter 43.88 RCW, but no appropriation is required
2 for expenditures.

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