
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 citizens' oil spill advisory council;
2 amending RCW 90.56.005, 90.56.010, and 90.56.060; and adding new
3 sections to chapter 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 vessel 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. Moreover, congress concluded that,
31 in addition to Alaska, a program of citizen monitoring and oversight
32 should be established in other major crude oil terminals in the United
33 States because recent oil spills indicate that the safe transportation
34 of oil is a national problem.

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

1 (a) To establish state agency expertise in marine safety and to
2 centralize state activities in spill prevention and response
3 activities;

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

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

9 (d) To provide for state spill response and wildlife rescue
10 planning and implementation;

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

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

20 (g) To provide for an independent (~~oversight board~~) citizens'
21 advisory council, consistent with federal law, to review on an ongoing
22 basis the adequacy of oil spill prevention and response activities in
23 this state; and

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

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

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

30 (1) "Best achievable protection" means the highest level of
31 protection that can be achieved through the use of the best achievable
32 technology and those staffing levels, training procedures, and
33 operational methods that provide the greatest degree of protection
34 achievable. The director's determination of best achievable protection
35 shall be guided by the critical need to protect the state's natural
36 resources and waters, while considering (a) the additional protection

1 provided by the measures; (b) the technological achievability of the
2 measures; and (c) the cost of the measures.

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

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

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

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

18 (6) "Committee" means the preassessment screening committee
19 established under RCW 90.48.368.

20 (7) "Council" means the citizens' oil spill advisory council
21 created in section 3 of this act.

22 (8) "Covered vessel" means a tank vessel, cargo vessel, or
23 passenger vessel.

24 ~~((+8))~~ (9) "Department" means the department of ecology.

25 ~~((+9))~~ (10) "Director" means the director of the department of
26 ecology.

27 ~~((+10))~~ (11) "Discharge" means any spilling, leaking, pumping,
28 pouring, emitting, emptying, or dumping.

29 ~~((+11))~~ (12)(a) "Facility" means any structure, group of
30 structures, equipment, pipeline, or device, other than a vessel,
31 located on or near the navigable waters of the state that transfers oil
32 in bulk to or from a tank vessel or pipeline, that is used for
33 producing, storing, handling, transferring, processing, or transporting
34 oil in bulk.

35 (b) A facility does not include any: (i) Railroad car, motor
36 vehicle, or other rolling stock while transporting oil over the
37 highways or rail lines of this state; (ii) underground storage tank
38 regulated by the department or a local government under chapter 90.76

1 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is
2 operated as part of an exempt agricultural activity as provided in RCW
3 82.04.330; or (v) marine fuel outlet that does not dispense more than
4 three thousand gallons of fuel to a ship that is not a covered vessel,
5 in a single transaction.

6 ~~((+12+))~~ (13) "Fund" means the state coastal protection fund as
7 provided in RCW 90.48.390 and 90.48.400.

8 ~~((+13+))~~ (14) "Having control over oil" shall include but not be
9 limited to any person using, storing, or transporting oil immediately
10 prior to entry of such oil into the waters of the state, and shall
11 specifically include carriers and bailees of such oil.

12 ~~((+14+))~~ (15) "Marine facility" means any facility used for tank
13 vessel wharfage or anchorage, including any equipment used for the
14 purpose of handling or transferring oil in bulk to or from a tank
15 vessel.

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

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

24 ~~((+16+))~~ (18) "Necessary expenses" means the expenses incurred by
25 the department and assisting state agencies for (a) investigating the
26 source of the discharge; (b) investigating the extent of the
27 environmental damage caused by the discharge; (c) conducting actions
28 necessary to clean up the discharge; (d) conducting predamage and
29 damage assessment studies; and (e) enforcing the provisions of this
30 chapter and collecting for damages caused by a discharge.

31 ~~((+17+))~~ (19) "Oil" or "oils" means naturally occurring liquid
32 hydrocarbons at atmospheric temperature and pressure coming from the
33 earth, including condensate and natural gasoline, and any fractionation
34 thereof, including, but not limited to, crude oil, petroleum, gasoline,
35 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
36 other than dredged spoil. Oil does not include any substance listed in
37 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under

1 section 101(14) of the federal comprehensive environmental response,
2 compensation, and liability act of 1980, as amended by P.L. 99-499.

3 ~~((18))~~ (20) "Offshore facility" means any facility located in,
4 on, or under any of the navigable waters of the state, but does not
5 include a facility any part of which is located in, on, or under any
6 land of the state, other than submerged land.

7 ~~((19))~~ (21) "Onshore facility" means any facility any part of
8 which is located in, on, or under any land of the state, other than
9 submerged land, that because of its location, could reasonably be
10 expected to cause substantial harm to the environment by discharging
11 oil into or on the navigable waters of the state or the adjoining
12 shorelines.

13 ~~((20))~~ (22)(a) "Owner or operator" means (i) in the case of a
14 vessel, any person owning, operating, or chartering by demise, the
15 vessel; (ii) in the case of an onshore or offshore facility, any person
16 owning or operating the facility; and (iii) in the case of an abandoned
17 vessel or onshore or offshore facility, the person who owned or
18 operated the vessel or facility immediately before its abandonment.

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

22 ~~((21))~~ (23) "Passenger vessel" means a ship of three hundred or
23 more gross tons with a fuel capacity of at least six thousand gallons
24 carrying passengers for compensation.

25 ~~((22))~~ (24) "Person" means any political subdivision, government
26 agency, municipality, industry, public or private corporation,
27 copartnership, association, firm, individual, or any other entity
28 whatsoever.

29 ~~((23))~~ (25) "Ship" means any boat, ship, vessel, barge, or other
30 floating craft of any kind.

31 ~~((24))~~ (26) "Spill" means an unauthorized discharge of oil or
32 hazardous substances into the waters of the state.

33 ~~((25))~~ (27) "Tank vessel" means a ship that is constructed or
34 adapted to carry, or that carries, oil in bulk as cargo or cargo
35 residue, and that:

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

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

1 (4) Members shall serve four-year terms, except that of the initial
2 members appointed to the council, three shall serve two-year terms,
3 three shall serve three-year terms, and five members shall serve four-
4 year terms. Vacancies shall be filled by appointment in the same
5 manner as the original appointment for the remainder of the unexpired
6 term of the position vacated.

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

12 (6) Members shall not be compensated, but shall be reimbursed for
13 travel expenses as provided in RCW 43.03.050 and 43.03.060.

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

16 (1) The duties of the council include:

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

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

22 (c) Providing independent advice, expertise, research, monitoring,
23 assessment, and oversight for review of and necessary improvements to
24 the state's oil spill prevention, preparedness, and response programs,
25 analyses, rule making, and other decisions, including those of the
26 Northwest area committee, as well as the adequacy of funding for these
27 programs;

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

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

35 (f) Creating additional committees of the council as necessary to
36 carry out the functions in this subsection (1), including scientific
37 and technical committees;

1 (g) Promoting opportunities for the public to become involved in
2 oil spill response activities and provide assistance to community
3 groups with an interest in oil spill prevention and response;

4 (h) Promoting dialog with the oil spill prevention and response
5 agencies in the state of Oregon and the Province of British Columbia to
6 achieve consistent protection from oil spills to adjoining marine
7 waters;

8 (i) Accepting moneys from appropriations, gifts, grants, or
9 donations for the purposes of this section;

10 (j) Preparing reports to embody the council's analyses and
11 recommendations; and

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

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

16 (3) By September 1st of each year, the council shall make
17 recommendations for the continuing improvement of the state's oil spill
18 prevention, preparedness, and response through a report to the governor
19 and the appropriate committees of the senate and house of
20 representatives.

21 (4) The director shall prepare a response to the annual report
22 within ninety days of its submittal to the governor and the
23 legislature, including a description of recommended improvements the
24 department will adopt and the reasons established for rejecting the
25 adoption of or for significantly modifying any recommended improvement.

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

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

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

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

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

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

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

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

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

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

28 (3) In preparing and updating the state master plan, the department
29 shall:

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

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

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

37 (d) Require or schedule unannounced oil spill drills as required by

1 RCW 90.56.260 to test the sufficiency of oil spill contingency plans
2 approved under RCW 90.56.210.

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

5 The citizens' oil spill advisory council account is created in the
6 custody of the state treasurer. All receipts from appropriations or
7 gifts, grants, or donations from public or private sources shall be
8 deposited into the fund. Expenditures from the fund may be used only
9 for the purposes of section 4 of this act. Only the citizens' oil
10 spill advisory council may authorize expenditures from the fund. The
11 fund is subject to allotment procedures under chapter 43.88 RCW, but no
12 appropriation is required for expenditures.

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