HOUSE BILL REPORT
HB 1488

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to protecting all of Washington's waters by enhancing the state's oil spill program.

Brief Description: Enhancing the state's oil spill response program.

Sponsors: Representatives B. Sullivan, Upthegrove, Appleton, Dunshee, Hunt, Dickerson, VanDeWege, Campbell, Kessler, Eickmeyer, McCoy, Chase, Green, Sells, Kenney, Ericks, Roberts, Lantz, Goodman, Wood, Kagi, Moeller and Rolfes.

Brief History:
Committee Activity:
Agriculture & Natural Resources: 1/29/07, 2/8/07 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Ecology to enter into contracts for a contingency tug program and a year-round tug in the Strait of Juan de Fuca.
- Conditions the availability of the export credit for the Oil Spill Administration Tax and the Oil Spill Response Tax in the federal government mandating the presence of a rescue tug at the Straight of Juan de Fuca.
- Eliminates the requirement that suspends collection of the Oil Spill Response Tax if the Oil Spill Response Account has a balance greater than $9 million.
- Creates a new Oil Spill Prevention and Response Service Transfer Tax on the transfer of refined oil products from or to a vessel.
- Repeals the Vessel Response Account and expands the allowable uses for money in the Oil Spill Prevention Account.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Dickerson, Eickmeyer, Grant, Lantz, McCoy, Strow and VanDeWege.

Minority Report: Do not pass. Signed by 5 members: Representatives Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Hailey, Newhouse and Orcutt.

Staff: Jason Callahan (786-7117).

Background:

<u>Oil Spill Advisory Council</u>

In 2005, the Legislature created the Oil Spill Advisory Council (Council) to provide advice as to how the state can maintain its vigilance in the prevention of oil spills. The Council is composed of 16 members representing various perspectives and a non-voting chair. The Council submitted a required report to the Legislature in 2006 that outlined proposals for long-term, sustainable funding for oil spill prevention, preparedness, and response.

<u>Current Oil Spill Funding Structure</u>

Many of the oil spill-related duties of the Department of Ecology (Department) are funded through two taxes on the receipt of crude oil at a marine terminal. The Oil Spill *Response* Tax (Response Tax) is levied at the rate of 1 cent per barrel, and the Oil Spill *Administration* Tax (Administration Tax) is levied at the rate of 4 cents per barrel. There is a credit available against these taxes for petroleum products that are subsequently exported from the state once they are received.

The Response Tax and the Administration Tax are deposited in separate accounts, which both fund various activities by the Department. The 4 cent Administration Tax is deposited into the Oil Spill *Prevention* Account (Prevention Account). Money in the Prevention Account may be used by the Department for activities related to the prevention of oil spills, including vessel plan reviews and public outreach.

The 1 cent Response Tax is deposited into the Oil Spill *Response* Account (Response Account). Money in the Response Account is used to pay for the costs associated with responding to spills of crude oil. If at any time the Response Account has a balance greater than $9 million, the Department of Revenue suspends the collection of the Response Tax.

<u>Rescue Tug</u>

Until the end of Fiscal Year 2007, 16.60 percent of certain motor vehicle certification fees is dedicated to a Vessel Response Account. Money in the Vessel Response Account is used by the Department to fund the placement of a rescue tug near the mouth of the Strait of Juan de Fuca. After the end of Fiscal Year 2007, the portion of the vehicle certification fees reserved to fund a rescue tug lapses into an account managed by the Department of Transportation for road construction.

Summary of Substitute Bill:

Tug Programs

The Department is required to conduct two different tug programs. The first program is a contingency tug program. This program requires the Department to enter into contracts that allow it to, as needed, strategically place rescue or response tugs in strategic locations at critical times.

The second tug program requires the Department to enter into a contract that provides for a permanently stationed, year-round, rescue tug located in the western Strait of Juan de Fuca. In entering into contracts for a rescue tug, the Department must give contracting preference to vessels capable of operating in extreme weather and capable of providing spill response, firefighting, and early salvage activities.

Changes in Oil Spill Funding

Changes are made in the collection of both the Administration Tax and the Response Tax. The provision that mandates the Department of Revenue to stop collection of the Response Tax if the Response Account has a balance greater than $9 million is repealed, and the functionality of the export credit available for the Administration Tax and the Response Tax is made conditional on the federal government enacting provisions that require the placement of a rescue tug at the mouth of the Strait of Juan de Fuca. In addition, both the Administration Tax and the Response Tax are scheduled to increase by the fiscal growth factor at the end of each fiscal biennium.

A new tax, the Oil Spill Prevention and Response Service Transfer Tax (Transfer Tax), is levied against the transfer of *refined* oil products from or to a vessel that is located on or over the waters of the state. The Transfer Tax is collected by the Department of Revenue, and is levied at a rate of 5 cents per barrel. Like the taxes on crude oil, the Transfer Tax is also scheduled to increase by the fiscal growth factor at the end of each fiscal biennium. Revenue from the Transfer Tax is dedicated to the Prevention Account.

Changes in Account Structures

The Vessel Response Account is repealed and the structure of the Response Account is altered. When the balance of the Response Account reaches $9 million, instead of suspending the collection of the 1 cent Response Tax, the additional revenue above $9 million is transferred to the Prevention Account.

The Prevention Account is changed both in terms of revenue and expenditures. In terms of revenue, the Prevention Account is designated to receive the proceeds of the Transfer Tax. It is also the designated recipient of all legislative appropriations dealing with oil spill management, the transfer of funds over $9 million in the Response Account, civil penalties incurred due to oil spills, and the portion of vehicle license transfer fees that previously were dedicated to the Vessel Response Account.

The permitted expenditures of the Prevention Account are expanded to include funding for the contingency tug program, the rescue tug, the activities of the Council, and transfers to the account that funds the Department of Natural Resources' derelict vessel removal program. The first $1 million used from the Prevention Account each biennium must be used to fund the contingency tug program.

This act takes effect on October 1, 2007.

Substitute Bill Compared to Original Bill:

The substitute bill establishes the October effective date; repeals the Vessel Response Account and transfers revenue previously dedicated to it to the Prevention Account; conditions the availability of the export credit; and excludes transfers of oil near state waters from the Transfer Tax.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on October 1, 2007.

Staff Summary of Public Testimony:

(In support) The Legislature and the Department have pursued tough oil spill standards, but there is still a question of whether the state can do more to protect itself from a catastrophic oil spill. This bill responds directly to the request the Legislature gave to the Council.

The new revenue in the bill is equitable, as it requires those who create risk to pay for spill prevention in proportion to the risk being created. This will provide a long term, sustainable funding mechanism that is a small investment in protecting the waters of the Puget Sound. The existing export credit rewards making multiple fuel transfers over state waters, while not allowing those who create the risk to pay for prevention or response.

Equipment fails, workloads encourage risk taking, vessel traffic is growing, and people make mistakes. Even the most modern tankers can have spills. Not having a permanent, year-round rescue tug at Neah Bay is taking an unnecessary risk. The state tug program should complement, not compete with federal efforts, and should enjoy permanent funding that is not pieced together from other programs. A catastrophic oil spill is the single greatest risk to the health of Puget Sound's orca whales. The Exxon Valdez incident in Alaska has left a legacy of beaches that are still spoiled today. All of the hard work that has been done to protect the Puget Sound could be undone with just one oil spill. The rescue tug provides career training opportunities for tribal members.

The operation and marketing of the state's shellfish industry relies on clean water, and the perception of clean water. An oil spill would threaten an industry that offers business opportunities in rural areas.

The Council was composed of volunteers, but it learned from the experts. It was able to see through inter-agency politics and communication issues between the state and federal governments. It could also ask the hard questions that no other body was in the position to ask. No voices were ignored, and all those who wanted to address the Council were given the opportunity to do so. The balance struck in the Council recommendations is the proper balance. The state should not just re-study issues when that work has already been done.

The funding for derelict vessel removal is insufficient to deal with removing the problems on the waters. Large dry docks and vessels are sinking, but they are expensive to remove and create environmental hazards. The current derelict vessel program is funded through fees paid by recreational boaters, but many derelict vessels are not recreational in nature.

(Opposed) The Council was not designed to be balanced or have expertise. The Council's process raised significant concerns, but not a proposal that deserves to be turned into law. Doing so would make the statement that the Governor and state have failed in their oil spill prevention efforts. The Council never reviewed the existing programs and methods.

A permanent tug at Neah Bay is unnecessary as there is no rational reason to station a tug in the summertime. If taxes are to increase, then those dollars should be used on the most effective prevention measures. There are better ways to spend the state's investment in spill protection than on a year-round tug and other tug programs that are already in place in the state.

Repealing the export credit is unconstitutional, as Oregon users of exported fuel can not be made to pay a Washington tax. All exported goods receive a tax credit in Washington.

It is perhaps unprecedented to apply the fiscal growth factor to taxes. Repealing the shut off mechanism to the Response Tax upsets the balance between the Response Program and the Administration Program. The Transfer Tax is an idea worth exploring, but not an idea to put in place just yet. It is a faux gas tax that violates the State Constitution.

Derelict vessels may be a problem, but most of these vessels are not the sort of ship that will bear most of the cost of these new taxes.

(With concerns) The new Transfer Tax is unlikely to be successfully administered. The Department of Revenue usually taxes businesses, but the bill taxes all physical transfers. This includes transfers outside of a business relationship. The bill has no minimum thresholds and no clear reporting system. Collection of the Transfer Tax would require the development of a whole new reporting system.

Persons Testifying: (In support) Mike Cooper, Oil Spill Advisory Council; Kathy Fletcher, People for Puget Sound; Sue Joerger, Puget Soundkeeper Alliance; Gerald Joyce, Audubon Washington; Doug Levy, City of Renton; Rich Doenges, Department of Natural Resources; Mike Doherty, Clallam County Board of County Commissioners; Steve Robinson, Northwest Indian Fisheries Commission; Brett Bishop, Pacific Coast Shellfish Growers Association; Gordon Baxter, Inland Boatmen's Union and International Longshore & Warehouse Union; Mike Racine, Washington Scuba Alliance; and Fred Felleman.

(Opposed) Randy Ray, Pacific Merchant Shipping Association and Pacific Seafood Processors Association; Rick Wickman, Columbia River Steamship Association; and Greg Hanon, Western States Petroleum Association.

(With concerns) Gil Brewer, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.