
SECOND SUBSTITUTE HOUSE BILL 1488

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Finance (originally sponsored by 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)

READ FIRST TIME 03/13/07.

1 AN ACT Relating to protecting all of Washington's waters by
2 enhancing the state's oil spill program; amending RCW 82.23B.020,
3 90.56.335, 90.56.510, and 79.100.100; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the oil spill
6 advisory council was created by an act of the legislature in 2005.

7 (2) The legislature further finds that the oil spill advisory
8 council has successfully fulfilled its initial charge to deliver to the
9 governor and the legislature recommendations for the long-term funding
10 of the council's activities and for sustainable funding for oil spill
11 prevention, preparedness, and response activities.

12 (3) The intent of this act is to enact those recommendations of the
13 oil spill advisory council that require legislative action so that
14 Washington is in the best possible position to prevent and respond to
15 oil spills in all of Washington's waters, including the Columbia river,
16 the Pacific Ocean, the Strait of Juan de Fuca, and the Puget Sound.
17 Fully enacting the recommendations of the oil spill advisory council
18 requires the identification of revenue to support the state's oil spill
19 programs, which includes consistent and continued funding for a

1 contingency tug program, a permanent rescue tug at Neah Bay, the
2 activities of the permanent oil spill advisory council, and
3 contributions to the ongoing efforts to remove leaking derelict vessels
4 from Washington's treasured and valued waterways.

5 **Sec. 2.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to read
6 as follows:

7 (1) An oil spill response tax is imposed on the privilege of
8 receiving crude oil or petroleum products at a marine terminal within
9 this state from a waterborne vessel or barge operating on the navigable
10 waters of this state. The tax imposed in this section is levied upon
11 the owner of the crude oil or petroleum products immediately after
12 receipt of the same into the storage tanks of a marine terminal from a
13 waterborne vessel or barge at the rate of one cent per barrel of crude
14 oil or petroleum product received.

15 (2) In addition to the tax imposed in subsection (1) of this
16 section, an oil spill administration tax is imposed on the privilege of
17 receiving crude oil or petroleum products at a marine terminal within
18 this state from a waterborne vessel or barge operating on the navigable
19 waters of this state. The tax imposed in this section is levied upon
20 the owner of the crude oil or petroleum products immediately after
21 receipt of the same into the storage tanks of a marine terminal from a
22 waterborne vessel or barge at the rate of four cents per barrel of
23 crude oil or petroleum product.

24 (3) The taxes imposed by this chapter shall be collected by the
25 marine terminal operator from the taxpayer. If any person charged with
26 collecting the taxes fails to bill the taxpayer for the taxes, or in
27 the alternative has not notified the taxpayer in writing of the
28 imposition of the taxes, or having collected the taxes, fails to pay
29 them to the department in the manner prescribed by this chapter,
30 whether such failure is the result of the person's own acts or the
31 result of acts or conditions beyond the person's control, he or she
32 shall, nevertheless, be personally liable to the state for the amount
33 of the taxes. Payment of the taxes by the owner to a marine terminal
34 operator shall relieve the owner from further liability for the taxes.

35 (4) Taxes collected under this chapter shall be held in trust until
36 paid to the department. Any person collecting the taxes who
37 appropriates or converts the taxes collected shall be guilty of a gross

1 misdemeanor if the money required to be collected is not available for
2 payment on the date payment is due. The taxes required by this chapter
3 to be collected shall be stated separately from other charges made by
4 the marine terminal operator in any invoice or other statement of
5 account provided to the taxpayer.

6 (5) If a taxpayer fails to pay the taxes imposed by this chapter to
7 the person charged with collection of the taxes and the person charged
8 with collection fails to pay the taxes to the department, the
9 department may, in its discretion, proceed directly against the
10 taxpayer for collection of the taxes.

11 (6) The taxes shall be due from the marine terminal operator, along
12 with reports and returns on forms prescribed by the department, within
13 twenty-five days after the end of the month in which the taxable
14 activity occurs.

15 (7) The amount of taxes, until paid by the taxpayer to the marine
16 terminal operator or to the department, shall constitute a debt from
17 the taxpayer to the marine terminal operator. Any person required to
18 collect the taxes under this chapter who, with intent to violate the
19 provisions of this chapter, fails or refuses to do so as required and
20 any taxpayer who refuses to pay any taxes due under this chapter, shall
21 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

22 (8) Upon prior approval of the department, the taxpayer may pay the
23 taxes imposed by this chapter directly to the department. The
24 department shall give its approval for direct payment under this
25 section whenever it appears, in the department's judgment, that direct
26 payment will enhance the administration of the taxes imposed under this
27 chapter. The department shall provide by rule for the issuance of a
28 direct payment certificate to any taxpayer qualifying for direct
29 payment of the taxes. Good faith acceptance of a direct payment
30 certificate by a terminal operator shall relieve the marine terminal
31 operator from any liability for the collection or payment of the taxes
32 imposed under this chapter.

33 (9)(a) All receipts from the tax imposed in subsection (1) of this
34 section shall be deposited into the state oil spill response account
35 created in RCW 90.56.500.

36 (b) All receipts from the tax imposed in subsection (2) of this
37 section shall be deposited into the oil spill prevention account.

1 (10) Within forty-five days after the end of each calendar quarter,
2 the office of financial management shall determine the balance of the
3 oil spill response account as of the last day of that calendar quarter.
4 Balance determinations by the office of financial management under this
5 section are final and shall not be used to challenge the validity of
6 any tax imposed under this chapter. The office of financial management
7 shall promptly notify the departments of revenue and ecology of the
8 account balance once a determination is made. For each subsequent
9 calendar quarter, the tax imposed by subsection (1) of this section
10 shall be imposed during the entire calendar quarter unless:

11 (a) Tax was imposed under subsection (1) of this section during the
12 immediately preceding calendar quarter, and the most recent quarterly
13 balance is more than nine million dollars; or

14 (b) Tax was not imposed under subsection (1) of this section during
15 the immediately preceding calendar quarter, and the most recent
16 quarterly balance is more than eight million dollars.

17 **Sec. 3.** RCW 90.56.335 and 2003 c 264 s 3 are each amended to read
18 as follows:

19 (1) The vessel response account is created in the state treasury.
20 Grants, gifts, and federal funds may be deposited into the account.
21 Oil spill penalties assessed against ships under RCW 90.56.330 and
22 90.48.144 shall also be deposited into the account as well as the money
23 distributed under RCW 46.68.020(2). Moneys in the account may be spent
24 only after appropriation and must be used for the purposes specified in
25 (a) and (b) of this subsection, subject to the availability of funds
26 appropriated for these purposes.

27 (a) The department of ecology is authorized to utilize moneys in
28 the vessel response account to preposition a dedicated year-round
29 rescue tug at the entrance to the Strait of Juan de Fuca to reduce the
30 risk of major maritime accidents and oil spills on the outer coast and
31 western strait. Prior to authorizing the rescue tug to respond to a
32 distressed vessel, the department shall work with the United States
33 coast guard and industry to determine if another capable, unencumbered
34 commercial tug is available in the area that can respond. If such a
35 tug can respond without increasing the risk of a casualty, it should be
36 deployed as the tug of choice and the state-contracted rescue tug
37 should not be taken off standby duty.

1 **(b)** The department is also authorized to use moneys in the vessel
2 response account to spot ((charter)) contingency tugs as needed during
3 major storms and other high risk periods to protect maritime commerce
4 and the environment anywhere in state waters.

5 **(2)** The department shall not proceed with rule making related to
6 emergency towing pursuant to chapter 88.46 RCW, so long as the deposit
7 of the fee into the vessel response account under RCW 46.68.020(2) is
8 continued and is appropriated for the purpose of the dedicated rescue
9 tug.

10 **Sec. 4.** RCW 90.56.510 and 2000 c 69 s 22 are each amended to read
11 as follows:

12 (1) The oil spill prevention account is created in the state
13 treasury. All receipts from RCW 82.23B.020(2) shall be deposited in
14 the account. Moneys from the account may be spent only after
15 appropriation. The account is subject to allotment procedures under
16 chapter 43.88 RCW. If, on the first day of any calendar month, the
17 balance of the oil spill response account is greater than nine million
18 dollars and the balance of the oil spill prevention account exceeds the
19 unexpended appropriation for the current biennium, then the tax under
20 RCW 82.23B.020(2) shall be suspended on the first day of the next
21 calendar month until the beginning of the following biennium, provided
22 that the tax shall not be suspended during the last six months of the
23 biennium. If the tax imposed under RCW 82.23B.020(2) is suspended
24 during two consecutive biennia, the department shall by November 1st
25 after the end of the second biennium, recommend to the appropriate
26 standing committees an adjustment in the tax rate. ~~((For the biennium
27 ending June 30, 1999, and the biennium ending June 30, 2001, the state
28 treasurer may transfer a total of up to one million dollars from the
29 oil spill response account to the oil spill prevention account to
30 support appropriations made from the oil spill prevention account in
31 the omnibus appropriations act adopted not later than June 30, 1999.))~~

32 (2) Expenditures from the oil spill prevention account shall be
33 used exclusively for the administrative costs related to the purposes
34 of this chapter, ~~((and))~~ chapters 90.48, 88.40, and 88.46 RCW, and the
35 administration and operations of the oil spill advisory council created
36 in RCW 90.56.120. Money in the account may also be appropriated to the
37 derelict vessel removal account created in RCW 79.100.100. Starting

1 with the 1995-1997 biennium, the legislature shall give activities of
2 state agencies related to prevention of oil spills priority in funding
3 from the oil spill prevention account. Costs of prevention include the
4 costs of:

5 (a) Routine responses not covered under RCW 90.56.500;

6 (b) Management and staff development activities;

7 (c) Development of rules and policies and the statewide plan
8 provided for in RCW 90.56.060;

9 (d) Facility and vessel plan review and approval, drills,
10 inspections, investigations, enforcement, and litigation;

11 (e) Interagency coordination and public outreach and education;

12 (f) Collection and administration of the tax provided for in
13 chapter 82.23B RCW; and

14 (g) Appropriate travel, goods and services, contracts, and
15 equipment.

16 **Sec. 5.** RCW 79.100.100 and 2006 c 153 s 6 are each amended to read
17 as follows:

18 (1)(a) The derelict vessel removal account is created in the state
19 treasury. All receipts from RCW 79.100.050 and 79.100.060 and those
20 moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into
21 the account. The account is authorized to receive funds from the
22 general fund or the oil spill prevention account created in RCW
23 90.56.510, as well as gifts, grants, and endowments from public or
24 private sources as may be made from time to time, in trust or
25 otherwise, for the use and benefit of the purposes of this chapter and
26 expend the same or any income according to the terms of the gifts,
27 grants, or endowments provided those terms do not conflict with any
28 provisions of this section or any guidelines developed to prioritize
29 reimbursement of removal projects associated with this chapter.

30 (b) Moneys in the account may only be spent after appropriation.
31 Expenditures from the account shall be used by the department to
32 reimburse authorized public entities for up to ninety percent of the
33 total reasonable and auditable administrative, removal, disposal, and
34 environmental damage costs of abandoned or derelict vessels when the
35 previous owner is either unknown after a reasonable search effort or
36 insolvent. Costs associated with removal and disposal of an abandoned

1 or derelict vessel under the authority granted in RCW 53.08.320 also
2 qualify for reimbursement from the derelict vessel removal account.

3 (c) In each biennium, up to twenty percent of the expenditures from
4 the account may be used for administrative expenses of the department
5 of licensing and department of natural resources in implementing this
6 chapter.

7 (2) If the balance of the account reaches one million dollars as of
8 March 1st of any year, exclusive of any fund transfers from the general
9 fund or the oil spill prevention account, the department must notify
10 the department of licensing and the collection of any fees associated
11 with this account must be suspended for the following fiscal year.

12 (3) Priority for use of this account is for the removal of derelict
13 and abandoned vessels that are in danger of sinking, breaking up, or
14 blocking navigation channels, or that present environmental risks such
15 as leaking fuel or other hazardous substances. The department must
16 develop criteria, in the form of informal guidelines, to prioritize
17 removal projects associated with this chapter, but may not consider
18 whether the applicant is a state or local entity when prioritizing.
19 The guidelines must also include guidance to the authorized public
20 entities as to what removal activities and associated costs are
21 reasonable and eligible for reimbursement.

22 (4) The department must keep all authorized public entities
23 apprized of the balance of the derelict vessel removal account and the
24 funds available for reimbursement. The guidelines developed by the
25 department must also be made available to the other authorized public
26 entities. This subsection (4) must be satisfied by utilizing the least
27 costly method, including maintaining the information on the
28 department's internet web site, or any other cost-effective method.

29 (5) An authorized public entity may contribute its ten percent of
30 costs that are not eligible for reimbursement by using in-kind
31 services, including the use of existing staff, equipment, and
32 volunteers.

33 (6) This chapter does not guarantee reimbursement for an authorized
34 public entity. Authorized public entities seeking certainty in
35 reimbursement prior to taking action under this chapter may first
36 notify the department of their proposed action and the estimated total
37 costs. Upon notification by an authorized public entity, the
38 department must make the authorized public entity aware of the status

1 of the fund and the likelihood of reimbursement being available. The
2 department may offer technical assistance and assure reimbursement for
3 up to two years following the removal action if an assurance is
4 appropriate given the balance of the fund and the details of the
5 proposed action.

6 NEW SECTION. **Sec. 6.** (1) If specific funding for the purposes of
7 section 3 of this act, referencing section 3 of this act by bill or
8 chapter number and section number, is not provided by June 30, 2007, in
9 the omnibus appropriations act, section 3 of this act is null and void.

10 (2) If specific funding for the purposes of section 4 of this act,
11 referencing section 4 of this act by bill or chapter number and section
12 number, is not provided by June 30, 2007, in the omnibus appropriations
13 act, section 4 of this act is null and void.

14 (3) If specific funding for the purposes of section 5 of this act,
15 referencing section 5 of this act by bill or chapter number and section
16 number, is not provided by June 30, 2007, in the omnibus appropriations
17 act, section 5 of this act is null and void.

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