

SENATE BILL REPORT

E2SHB 1186

As Reported by Senate Committee On:
Natural Resources & Marine Waters, March 24, 2011

Title: An act relating to requirements under the state's oil spill program.

Brief Description: Concerning requirements under the state's oil spill program.

Sponsors: House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Rolfes, Hudgins, Upthegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Liias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu and Seaquist).

Brief History: Passed House: 2/28/11, 62-35.

Committee Activity: Natural Resources & Marine Waters: 3/16/11, 3/24/11 [DPA-WM, w/oRec].

Brief Summary of Engrossed Second Substitute Bill (As Amended by Senate)

- Adds additional requirements for tank vessel contingency plans.
- Establishes a volunteer coordination system to supplement oil spill response.
- Increases potential civil liability for oil spills.
- Makes other changes to statutes relating to oil spill prevention, response, and contingency planning.

SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Ranker, Chair; Regala, Vice Chair; Morton, Ranking Minority Member; Fraser and Hargrove.

Minority Report: That it be referred without recommendation.

Signed by Senator Swecker.

Staff: Curt Gavigan (786-7437)

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.

Background: The Legislature has directed the Department of Ecology (DOE) to oversee the state's planning, prevention, and response efforts for oil spills in state waters.

Contingency Planning. A tank vessel, cargo vessel, and passenger vessel must have a contingency plan for the containment and cleanup of spills from the vessel and for the protection of specified natural resources. DOE must adopt rules setting standards for these plans and periodically update the standards. Contingency plans must meet standards such as:

- including details for the method of response to spills of various sizes;
- being designed to include personnel and equipment to remove oil and minimize damage in a worst case spill; and
- providing procedures for early detection and timely notification of spills.

Contingency Plan Response Drills. DOE must adopt rules to determine the adequacy of contingency plans, which must include random practice drills. The rules may also require random, unannounced practice drills.

Spill Notification Requirements. A covered vessel located within 12 miles of the state's coastline is required to notify the United States Coast Guard (USCG) within one hour of becoming disabled, colliding with another vessel, or experiencing a near-miss collision with another vessel. DOE and the Military Department must request that the USCG provide the state notice as soon as possible, and DOE must negotiate an agreement that allows state notification of incidents reported to the USCG.

Liability for Spills. Current law establishes several forms of potential spill related civil liability.

- *Civil Penalties.* A tank vessel, cargo vessel, or passenger vessel may not enter the waters of the state without an approved contingency plan, spill prevention plan, or having met financial responsibility requirements in compliance with state and federal standards. The Director of DOE may assess a civil penalty of up to \$100,000 each day for such violations.
- *Natural Resource Damage Assessments.* DOE, in consultation with other natural resources agencies, is responsible for setting a compensation schedule for oil discharges. The amount of compensation must be at least \$1 per gallon and no more than \$100 per gallon spilled. The compensation schedule must reflect compensation for impacts including those to the environment, recreation, and aesthetics.
- *Damages to Persons or Property.* In general, a person owning or having control over oil spilled into state waters is strictly liable for damages to persons or property.

Summary of Bill (Recommended Amendments): Adds Requirements for Tank Vessel Contingency Plans. A contingency plan for a tank vessel must include:

- *A Vessels of Opportunity System to Supplement Spill Response.* The system must consist of response groups prepared to respond to a spill within a tank vessel's area of operation, generally within 12 hours of activation by incident command. Following a three year phase in period, a response group must consist of enough non-dedicated response vessels to satisfy a planning standard of having at least six vessels available at any time. Response groups must meet specified standards for training, safety, and access to response equipment. In lieu of an individual system, a tank vessel may be covered under an umbrella plan that includes a minimum of six regional response

groups. The decision of when and how to utilize the system during spill response is the responsibility of the incident commander.

- *Equipment and Response Planning Standards.* In addition to other requirements, tank vessel contingency plans must generally provide for rapid access to equipment and continuous operation of spill response activities. Response equipment must provide the best achievable protection for the expected operating environment including to allow oil recovery in currents of at least three knots; provide adequate oil storage and disposal capacity; and provide access to aerial remote sensing technology. DOE may not revise these standards to require equipment upgrades more than once every five years.

DOE may implement and enforce vessels of opportunity planning requirements and associated equipment standards without adopting rules. Rulemaking for other response equipment standards is subject to funding.

DOE must adjust requirements relating to the vessels of opportunity system and best available equipment standards if compliance is not practicable. Additionally, DOE must adjust requirements if necessary to ensure that compliance costs with the new requirements do not exceed specified thresholds of \$10 million annually for the operation of vessels of opportunity systems; and \$30 million every five years for capital and direct operating costs relating to additional required response equipment.

Adds Requirements for Umbrella Plan Holders and Tank Vessel Enrollees. A contingency plan for an umbrella plan holder covering both tank and non-tank vessels must include the maximum worst case discharge volume to be covered by the plan for both vessel types. If a tank vessel has a worse case discharge volume larger than the maximum covered by the umbrella plan, the owner or operator must demonstrate to DOE that they have access to necessary additional response capacity. Umbrella plan holders need not be incorporated in Washington.

Establishes a Timeline for Contingency Plan Review. After contingency plan submittal, DOE must notify the plan holder within 65 days whether the plan is disapproved, approved, or conditionally approved. If the plan is conditionally approved, DOE must clearly describe each condition and specify a schedule for required updates.

Requires Joint Tank Vessel Contingency Plan Response Drills. DOE must order at least one joint large-scale, multiple plan deployment drill for a tank vessel every three years to ensure compliance with contingency plan requirements. A joint drill may be incorporated into other drill requirements, and DOE must coordinate the drills with other specified jurisdictions when practicable.

Amends Spill Notification Requirements. In addition to any notice required to the USCG, a vessel must notify the state within one hour of any vessel emergency that results in the discharge or substantial threat of discharge, or that may affect the state's natural resources.

Increases Potential Liability for Spills. Violations relating to contingency planning and spills are increased in the following manner:

- *Natural Resource Damage Assessments.* For spills of 1000 gallons or more, the amount of damages imposed to compensate for the environmental, recreational, aesthetic, and other effects of spills is increased from between \$1 and \$100 per gallon to between \$3 and \$300 per gallon. Oil recovered from the water within 48 hours of a spill is not counted towards the assessment.
- *Damages to Persons or Property.* In addition to existing law providing strict liability for damages to persons or property from an oil spill, a responsible party is liable for certain economic damages and damages from actions conducted in response to the spill.

Establishes a Volunteer Coordination System to Supplement Spill Response. By July 1, 2014, DOE must establish a system to prepare for the coordination of volunteers to assist in appropriate spill response activities. A volunteer, DOE, and a participating local emergency management organization receive limited protection from civil liability for acts of the volunteer.

Establishes Additional Spills Related Requirements for DOE. DOE must:

- formally request that the federal government contribute to regional spills response equipment caches in the state;
- consult with appropriate stakeholders in implementing the new contingency planning requirements; and
- by January 2015, provide a report to the Legislature including recommendations for changes in the state's oil spill preparation and response policies.

Sets a Compliance Schedule for the New Contingency Planning Requirements. Contingency plan components relating to vessels of opportunity systems and associated equipment must be approved by July 1, 2012. Components relating to other response equipment and remote sensing technology must be approved by July 1, 2013.

An intent section is included. Terms are defined.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & MARINE WATERS COMMITTEE (Recommended Amendments):

- Removes the requirement that umbrella planners be a Washington nonprofit corporation.
- Sets planning standards for vessels of opportunity to be underway within 12 hours of activation.
- Restates that vessels of opportunity are non-dedicated response vessels.
- Phases in numerical planning standards for vessels of opportunity over three years.
- Specifies that response equipment may vary among vessels of opportunity response groups based on the expected operating environment, and that its use may vary among vessels within a group.
- Specifies that DOE may implement the vessels of opportunity requirement without adopting rules.
- Reduces the required capability of oil recovery systems response systems from recovery in current from 4 knots to 3 knots.

- States that equipment requirements associated with the vessels of opportunity system do not require equipment that would necessitate a major vessel refit.
- Removes the requirement that remote sensing technology be multispectrum technology.
- Specifies that DOE may implement the vessels of opportunity equipment and remote sensing technology requirements without adopting rules.
- Makes rulemaking for response equipment standards subject to funding.
- Directs DOE to adjust requirements relating to vessels of opportunity and equipment standards if they are not practicable.
- Specifies a one hour timeframe for required notice to the state in a vessel emergency.
- Credits oil recovered on the water in first 48 hours against Natural Resources Damage Assessments.
- Removes language increasing potential civil penalties.
- Requires DOE to adjust requirements relating to vessels of opportunity and response equipment standards in the bill to avoid compliance costs exceeding specified thresholds.
- Delays the date by which contingency plans must be updated to reflect new remote scanning technology and response equipment standards to July 1, 2013.
- Modifies the intent section, definitions, reorganizes language, and makes technical changes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: PRO: The bill is based on need to fill gaps in oil spill response capacity in the state and is designed to allow quick response to a catastrophic spill. This bill incorporates information from many previous studies, recommendations, and lessons learned from previous spills. Gaps include large spills, rough seas, and in fog and at night. The ability to quickly gauge the size and location of spills at night and in fog will help avoid delays in response. In addition to technology, need to consider amount of equipment available such as booms. Impacts from an oil spill would devastate Washington in many ways including the economy, environment, and recreation. Vessels of opportunity will take advantage of the skill and expertise of commercial fishers who are familiar with the area. Tribal fishing fleets do not fish elsewhere, and will be readily available to respond as vessels of opportunity. All know that there are dangers in shipping oil through the Strait of Juan de Fuca, and it only takes one incident to devastate an ecosystem and the community. Economic impacts of a large spill drastically outweigh the costs of prevention and response capacity. The shellfish industry saw its colleagues in the Gulf impacted by the spill, and want to avoid the same fate. Additional drill coordination is necessary to ensure the vessels of opportunity successfully integrate into the effort.

CON: DOE has the authority to compel most of the contingency planning elements in the bill under existing authority; much of the bill is duplicative. The industry has achieved great success in reducing spills through a great investment in prevention and response equipment and personnel, most recently funding the Neah Bay tug. Industry funds a response system that has dedicated response capacity ready to respond immediately at any time. Industry meets and exceeds requirements, and already operates a vessels of opportunity system. Current law requires response capacity for a worst case spill and current plans receive thorough review by DOE under this requirement. Umbrella contingency plans cover many vessels, and the bill has unintended consequences for participants in these plans. Since both tank and non-tank vessels are covered in this umbrella plan, creating different requirements for member vessels could increase costs and cause some members to leave. Use of vessels of opportunity is maximized with logistics and support, and not oil recovery which is the role of dedicated resources. Spills are unthinkable for those in the industry, which is why they invest so heavily.

OTHER: The bill addresses a number of suggestions from previous studies and workgroup recommendations following up from Gulf spill support many aspects of this bill. Equipment and vessel of opportunity standards would assist with identification, mapping, and collection of spilled oil before it reaches the shore. This would get the best achievable technology in the state prior to a spill, not wait until a spill occurs.

Persons Testifying: PRO: Representative Rolfes, prime sponsor; Naki Stevens, Department of Natural Resources; Bruce Wishart, People for Puget Sound; Neil Beaver, Audubon Washington; Chad Bowchop, Makah Tribe; Bill Dewey, Taylor Shellfish; Phil Johnson, Jefferson County Commission; John McDonald, Puget Sound gillnet fisher.

CON: Dan Nutt, Washington State Maritime Cooperative; Frank Holmes, Western States Petroleum Assn.; Rick Wickman, Maritime Fire and Safety Assn., Columbia River Steamship Operators Assn.; Kip Knudson, Tesoro Refining.

OTHER: Dale Jensen, DOE; Todd Hass, Puget Sound Partnership.