

SENATE BILL REPORT

E2SHB 1186

As Reported by Senate Committee On:
Natural Resources & Marine Waters, March 24, 2011
Ways & Means, April 1, 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].

Ways & Means: 3/30/11, 4/01/11 [DPA, DNP, w/oRec].

Brief Summary

- 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.

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.

Staff: Curt Gavigan (786-7437)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Baumgartner, Brown, Conway, Fraser, Kastama, Keiser, Kohl-Welles, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Baxter and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Holmquist Newbry and Pflug.

Staff: Chris Godwin (786-7441)

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): Provides for Updated Planning Standards for Oil Spill Response Equipment. DOE must evaluate and update planning standards for oil spill response equipment, including aerial surveillance, required for contingency plans in order to ensure access to equipment that:

- represents the best achievable protection to respond to a worst case spill; and
- generally provides for continuous operation of oil spill response activities.

DOE must update these planning standards by rule at five year intervals, and must evaluate and update planning standards for tank vessels by December 31, 2012.

Provides for Rulemaking Regarding Vessels of Opportunity. By December 31, 2012, DOE must complete rulemaking for purposes of improving the effectiveness of the vessels of opportunity system to participate in spill response.

Establishes a Volunteer Coordination System to Supplement Spill Response. 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.

Requires Joint Tank Vessel Contingency Plan Response Drills. DOE must require 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.

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.

Adds Requirements for Umbrella Plan Holders and 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. A vessel owner or operator whose vessel's worst case discharge volume exceeds the maximum volume covered by the umbrella plan may use that plan if the owner or operator maintains an agreement with another entity for supplemental equipment.

DOE may approve an umbrella plan that covers vessels with a worst case discharge volume in excess of the maximum plan volume if specific criteria are met, including the vessel owner or operator demonstrating that they have access to supplemental equipment.

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. Persistent 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 the use of dispersants and in situ burning in response to the spill.

Requests for the Federal Government to Provide Response Equipment. DOE must formally request that the federal government contribute to regional spills response equipment caches in the state.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments):

- Replaces specific response equipment requirements for tank vessels contingency plans with direction that DOE evaluate and update contingency planning standards for response equipment, including aerial surveillance. DOE must update planning standards at five year intervals. Planning standards for tank vessels must be updated by December 31, 2012.
- Replaces specific vessels of opportunity requirements for tank vessels with direction that DOE adopt rules to improve the effectiveness of the vessels of opportunity system. The rules must be completed by December 31, 2012.
- Specifies that a covered vessel with a worst case discharge volume exceeding the maximum volume covered by an umbrella plan may utilize the umbrella plan if the vessel maintains an agreement with another entity to provide supplemental equipment.
- Specifies that only persistent oil recovered in the first 48 hours of a spill is deducted from the natural resources damage assessment calculation.
- Provides that economic damages for which a responsible party is strictly liable includes lost net revenue instead of lost revenue.
- Narrows the scope of damages for which a response party is strictly liable from damages resulting from "any action conducted in response to a violation" to damages resulting from "the use and deployment of chemical dispersants or from in situ burning".
- Removes a DOE reporting requirement to include recommendations for changes in the state's oil spill preparation and response policies.
- Removes caps on implementation costs for the vessels of opportunity and response equipment requirements.

- Removes the intent section.
- Makes technical changes.

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 (Natural Resources & Marine Waters): 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 (Natural Resources & Marine Waters): 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.

Staff Summary of Public Testimony (Ways & Means): No public hearing was held.

Persons Testifying (Ways & Means): N/A.