

# SENATE BILL REPORT

## SB 5439

---

---

As of February 10, 2011

**Title:** An act relating to oil spills.

**Brief Description:** Concerning oil spills.

**Sponsors:** Senators Ranker, Rockefeller, Nelson, Regala, Hargrove, Hobbs, Fraser, White, Conway and Kline.

**Brief History:**

**Committee Activity:** Natural Resources & Marine Waters: 1/26/11.

---

### SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

**Staff:** Curt Gavigan (786-7437)

**Background:** The Legislature has directed the Department of Ecology (DOE) to oversee the state's prevention, abatement, response, containment, and cleanup 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 must 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

---

*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.*

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. 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:** Provisions for Tank Vessel Contingency Plans. By July 1, 2012, a contingency plan for a tank vessel must include:

- A vessels of opportunity system to supplement spill response. The system must organize and contract with at least six non-dedicated commercial vessels, and meet specified equipment, planning, and readiness standards.
- A volunteer coordination system to supplement spill response. The system must prepare to utilize local emergency management resources in advance of a spill to ensure the use of volunteers in spill response. Generally, those participating in such a system are immune from liability for their response and training activities.
- Other spill 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. In reviewing these provisions of a tank vessel contingency plan, DOE must ensure that plans are designed to maximize oil recovery in rough seas, in low visibility and at night, and provide adequate oil storage and disposal capacity.

Tank Vessel Contingency Plan Response Drills. In addition to its existing authority to order response drills, DOE must order at least one additional large-scale, multiple plan deployment drill for a tank vessel per year to ensure compliance with contingency plan requirements.

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

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

*Civil Penalties.* Civil penalties for specified violations, including operating without an approved contingency plan, are increased from a maximum of \$100,000 to a maximum of \$300,000 per day.

*Natural Resource Damage Assessments.* 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 a range of \$3 to \$300 per gallon.

*Damages to Persons or Property.* Damages to persons or property for which strict liability is imposed are specified to include damages from a spill including damages to real property; loss of subsistence use of natural resources; loss of taxes, royalties, and specified loss of profits; and the above mentioned damages that result from spill response actions, including oil collection, treatment, and dispersant.

An intent section is included. DOE must adopt any rules necessary to implement the act by January 1, 2012.

**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:** PRO: The state can never assume that a large scale oil spill will not happen here. There are significant gaps in the system, and we are not currently prepared. This is an environmental, fish, and wildlife issue but also a significant economic and jobs issue. Tourism and shellfish, for example, depend on the Puget Sound. The requirements of this bill help to improve the state's oil spill preparedness, but by no means mandate gold plated planning. Taking the time and effort to prepare is the only way to successfully respond to a major spill.

CON: Washington already has one of the strongest spills programs in the nation. The industry is already going above and beyond state requirements. The bill calls for a vessels of opportunity system, which industry is already implementing. According to federal recommendations, the coordination of volunteers should be handled by incident command and not industry. Industry has concerns about the potential tripling of civil penalties and additional liability for damages in the bill.

OTHER: The bill could have impacts on entities besides tank vessels, and the Legislature should consider potential impacts to ports and cargo vessels. DOE and the Puget Sound Partnership (PSP) support the policy protections in the bill, but cannot support the associated fiscal impacts.

**Persons Testifying:** PRO: Gerald Joyce, Seattle Audubon; Kathy Fletcher, People for Puget Sound; Lisa Bishop, Pacific Coast Shellfish Growers Assn.; Bridget Moran, Department of Natural Resources; Bill Wright, Pacific Whale Watch Assn.; Fred Felleman, Wave Consulting; Mike Cooper, Mayor of Edmonds; Mike Doherty, Clallum County Commissioner.

CON: Dan Nutt, Washington State Maritime Cooperative; Rick Wickman, Columbia River Steamship Operators Assn.; Frank Holmes, Western States Petroleum Assn.

OTHER: Scott Hazelgrove, Pacific Merchant Shipping Assn.; Johan Hellman, WA Public Ports Assn.; Dale Jensen, DOE; Todd Hass, PSP.