
HOUSE BILL 1403

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By Representatives Upthegrove, Hudgins, Rolfes, Kenney, Fitzgibbon, Pedersen, Roberts, Dickerson, Appleton, Reykdal, and Frockt

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1 AN ACT Relating to establishing an oil transfer fee to fund oil
2 spill prevention, preparedness, response, and restoration programs;
3 amending RCW 90.56.010; adding new sections to chapter 90.56 RCW;
4 creating a new section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that:

7 (1) Washington's waters, including Puget Sound, the Strait of Juan
8 de Fuca, the state's west coast, the Columbia river, and other diverse
9 water bodies and watercourses are irreplaceable environmental,
10 economic, and cultural assets;

11 (2) Oil spills can severely pollute Washington waters, thereby
12 endangering the environment, impairing the economy, and disrupting
13 local and regional cultures;

14 (3) Washington's oil spill prevention, preparedness, response, and
15 restoration programs must be adequately funded to effectively protect
16 Washington waters from the potentially calamitous consequences of oil
17 spills; and

18 (4) Facilities and vessels that transfer or handle oil in bulk on

1 or near Washington's waters, creating risks of oil spills, should pay
2 a modest oil transfer fee to adequately fund state oil spill
3 prevention, preparedness, response, and restoration programs.

4 **Sec. 2.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Best achievable protection" means the highest level of
9 protection that can be achieved through the use of the best achievable
10 technology and those staffing levels, training procedures, and
11 operational methods that provide the greatest degree of protection
12 achievable. The director's determination of best achievable protection
13 shall be guided by the critical need to protect the state's natural
14 resources and waters, while considering (a) the additional protection
15 provided by the measures; (b) the technological achievability of the
16 measures; and (c) the cost of the measures.

17 (2) "Best achievable technology" means the technology that provides
18 the greatest degree of protection taking into consideration (a)
19 processes that are being developed, or could feasibly be developed,
20 given overall reasonable expenditures on research and development, and
21 (b) processes that are currently in use. In determining what is best
22 achievable technology, the director shall consider the effectiveness,
23 engineering feasibility, and commercial availability of the technology.

24 (3) "Board" means the pollution control hearings board.

25 (4) "Cargo vessel" means a self-propelled ship in commerce, other
26 than a tank vessel or a passenger vessel, three hundred or more gross
27 tons, including but not limited to, commercial fish processing vessels
28 and freighters.

29 (5) "Bulk" means material that is stored or transported in a loose,
30 unpackaged liquid, powder, or granular form capable of being conveyed
31 by a pipe, bucket, chute, or belt system.

32 (6) "Committee" means the preassessment screening committee
33 established under RCW 90.48.368.

34 (7) "Covered vessel" means a tank vessel, cargo vessel, or
35 passenger vessel.

36 (8) "Department" means the department of ecology.

37 (9) "Director" means the director of the department of ecology.

1 (10) "Discharge" means any spilling, leaking, pumping, pouring,
2 emitting, emptying, or dumping.

3 (11)(a) "Facility" means any structure, group of structures,
4 equipment, pipeline, or device, other than a vessel, located on or near
5 the navigable waters of the state that transfers oil in bulk to or from
6 a tank vessel or pipeline, that is used for producing, storing,
7 handling, transferring, processing, or transporting oil in bulk.

8 (b) A facility does not include any: (i) Railroad car, motor
9 vehicle, or other rolling stock while transporting oil over the
10 highways or rail lines of this state; (ii) underground storage tank
11 regulated by the department or a local government under chapter 90.76
12 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is
13 operated as part of an exempt agricultural activity as provided in RCW
14 82.04.330; or (v) marine fuel outlet that does not dispense more than
15 three thousand gallons of fuel to a ship that is not a covered vessel,
16 in a single transaction.

17 (12) "Fund" means the state coastal protection fund as provided in
18 RCW 90.48.390 and 90.48.400.

19 (13) "Having control over oil" shall include but not be limited to
20 any person using, storing, or transporting oil immediately prior to
21 entry of such oil into the waters of the state, and shall specifically
22 include carriers and bailees of such oil.

23 (14) "Marine facility" means any facility used for tank vessel
24 wharfage or anchorage, including any equipment used for the purpose of
25 handling or transferring oil in bulk to or from a tank vessel.

26 (15) "Navigable waters of the state" means those waters of the
27 state, and their adjoining shorelines, that are subject to the ebb and
28 flow of the tide and/or are presently used, have been used in the past,
29 or may be susceptible for use to transport intrastate, interstate, or
30 foreign commerce.

31 (16) "Necessary expenses" means the expenses incurred by the
32 department and assisting state agencies for:

33 (a) Investigating the source of the discharge;

34 (b) Investigating the extent of the environmental damage caused by
35 the discharge;

36 (c) Conducting actions necessary to clean up the discharge;

37 (d) Conducting predamage and damage assessment studies; and

1 (e) Enforcing the provisions of this chapter and collecting for
2 damages caused by a discharge.

3 (17) "Oil" or "oils" means oil of any kind that is liquid at
4 atmospheric temperature and any fractionation thereof, including, but
5 not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil,
6 biological oils and blends, oil sludge, oil refuse, and oil mixed with
7 wastes other than dredged spoil. Oil does not include any substance
8 listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989,
9 under section 101(14) of the federal comprehensive environmental
10 response, compensation, and liability act of 1980, as amended by P.L.
11 99-499.

12 (18) "Offshore facility" means any facility located in, on, or
13 under any of the navigable waters of the state, but does not include a
14 facility any part of which is located in, on, or under any land of the
15 state, other than submerged land.

16 (19) "Onshore facility" means any facility any part of which is
17 located in, on, or under any land of the state, other than submerged
18 land, that because of its location, could reasonably be expected to
19 cause substantial harm to the environment by discharging oil into or on
20 the navigable waters of the state or the adjoining shorelines.

21 (20)(a) "Owner or operator" means (i) in the case of a vessel, any
22 person owning, operating, or chartering by demise, the vessel; (ii) in
23 the case of an onshore or offshore facility, any person owning or
24 operating the facility; and (iii) in the case of an abandoned vessel or
25 onshore or offshore facility, the person who owned or operated the
26 vessel or facility immediately before its abandonment.

27 (b) "Operator" does not include any person who owns the land
28 underlying a facility if the person is not involved in the operations
29 of the facility.

30 (21) "Passenger vessel" means a ship of three hundred or more gross
31 tons with a fuel capacity of at least six thousand gallons carrying
32 passengers for compensation.

33 (22) "Person" means any political subdivision, government agency,
34 municipality, industry, public or private corporation, copartnership,
35 association, firm, individual, or any other entity whatsoever.

36 (23) "Ship" means any boat, ship, vessel, barge, or other floating
37 craft of any kind.

1 (24) "Spill" means an unauthorized discharge of oil or hazardous
2 substances into the waters of the state.

3 (25) "Tank vessel" means a ship that is constructed or adapted to
4 carry, or that carries, oil in bulk as cargo or cargo residue, and
5 that:

6 (a) Operates on the waters of the state; or

7 (b) Transfers oil in a port or place subject to the jurisdiction of
8 this state.

9 (26) "Waters of the state" includes lakes, rivers, ponds, streams,
10 inland waters, underground water, salt waters, estuaries, tidal flats,
11 beaches and lands adjoining the seacoast of the state, sewers, and all
12 other surface waters and watercourses within the jurisdiction of the
13 state of Washington.

14 (27) "Worst case spill" means: (a) In the case of a vessel, a
15 spill of the entire cargo and fuel of the vessel complicated by adverse
16 weather conditions; and (b) in the case of an onshore or offshore
17 facility, the largest foreseeable spill in adverse weather conditions.

18 (28) "Fee payer" means a facility or tank vessel that is subject to
19 the oil transfer fee imposed pursuant to section 3 of this act.

20 (29) "Nonrecreational vessel" means a vessel that is not a
21 recreational vessel as defined in this section.

22 (30) "Oil transfer fee" means the fee imposed upon a facility or
23 tank vessel pursuant to section 3 of this act.

24 (31) "Recreational vessel" means a vessel owned and operated solely
25 for pleasure and not for monetary gain, or a vessel leased, rented, or
26 chartered to another for operation for pleasure and not for monetary
27 gain.

28 NEW SECTION. Sec. 3. A new section is added to chapter 90.56 RCW
29 to read as follows:

30 (1) Effective October 31, 2011, an oil transfer fee is imposed at
31 a rate of 0.0003 dollars per gallon upon transfers of oil in bulk from:

32 (a) Facilities to nonrecreational vessels;

33 (b) Tank vessels to nonrecreational vessels; and

34 (c) Tank vessels to facilities.

35 (2) Fee payers shall submit oil transfer fees to the department as
36 provided in section 4 of this act.

1 (3)(a) Beginning in the 2013-2015 biennium, the department may
2 biennially, by rule, raise the oil transfer fee by a percentage rate
3 that is less than or equal to the fiscal growth factor established
4 pursuant to RCW 43.135.025 for the then current biennium.

5 (b) At least ninety days prior to the effective date of a change to
6 the oil transfer fee, the department shall:

7 (i) Provide the public with notice of the change on its internet
8 site; and

9 (ii) Provide fee payers with notice of the change by first-class
10 mail, which is considered provided when mailed, or, with prior
11 agreement of the recipient, electronic mail, which is considered
12 provided when sent.

13 (4) A single transfer during any twenty-four hour period of less
14 than one hundred gallons of oil in bulk to a facility or
15 nonrecreational vessel is exempt from payment of the oil transfer fee.

16 (5) A facility receiving oil in bulk from a tank vessel may pay the
17 oil transfer fee for the tank vessel.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.56 RCW
19 to read as follows:

20 (1) Beginning January 31, 2012, fee payers must submit oil transfer
21 fees imposed pursuant to section 3 of this act to the department on or
22 before the following due dates of each year:

23 (a) First quarter, October 31st;

24 (b) Second quarter, January 31st;

25 (c) Third quarter, April 30th; and

26 (d) Fourth quarter, July 31st.

27 (2) The department shall develop an oil transfer fee submittal form
28 requiring a fee payer to, at a minimum, provide its business or
29 corporate name, contact information, the quarter for which a fee is
30 being paid, total gallons subject to the fee, and the calculated fee
31 amount. An oil transfer fee submittal form must be signed and dated by
32 a formally authorized representative of the fee payer.

33 (3) Fee payers must retain detailed records for each transfer
34 subject to the oil transfer fee for three years for periodic audit by
35 the department.

36 (4) If the department does not receive an oil transfer fee from a

1 fee payer by a due date, the department must assess a late charge of
2 five hundred dollars and interest at the rate of one percent per
3 calendar month on the unpaid balance until it receives full payment.

4 (5) Failure of a fee payer to pay an oil transfer fee within ninety
5 days of a due date constitutes a violation of:

6 (a) An operations manual required pursuant to RCW 88.46.165 or
7 90.56.230; and

8 (b) An oil spill contingency plan required pursuant to RCW
9 88.46.060 or 90.56.210.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.56 RCW
11 to read as follows:

12 (1) The department shall deposit all fees collected pursuant to
13 section 4 of this act into a segregated subaccount of the oil spill
14 prevention account created in RCW 90.56.510. Moneys from the
15 subaccount may be spent only after appropriation.

16 (2) Oil transfer fee revenue must be used exclusively to fund oil
17 spill prevention, preparedness, response, and restoration activities
18 authorized in this chapter and in chapters 88.46 and 90.48 RCW,
19 including, but not limited to:

20 (a) Reviewing and approving facility and vessel oil spill
21 prevention and contingency plans;

22 (b) Conducting oil spill drills, inspections, investigations,
23 natural resource damage assessments, enforcement, litigation, studies,
24 and related work;

25 (c) Conducting oil spill prevention and oil transfer plan reviews,
26 inspections, and investigations;

27 (d) Developing rules and policies;

28 (e) Administering the oil transfer fee imposed pursuant to section
29 3 of this act;

30 (f) Conducting interagency coordination, public outreach and
31 education, management and staff development, and appropriate travel;
32 and

33 (g) Purchasing goods, services, and equipment.

34 NEW SECTION. **Sec. 6.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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