SENATE BILL REPORT
SB 6524

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 6, 2014

Title: An act relating to the safety of the transport of hazardous materials.

Brief Description: Concerning the safety of the transport of hazardous materials.

Sponsors: Senators Ericksen, Sheldon, Benton, Baumgartner, Holmquist Newbry, Braun, Parlette and Dammeier.

Brief History:
Committee Activity: Energy, Environment & Telecommunications: 2/04/14, 2/06/14 [DPS-WM, DNP, w/oRec].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6524 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Brown, Honeyford and Litzow.

Minority Report: Do not pass.
Signed by Senators McCoy, Ranking Member; Billig and Chase.

Minority Report: That it be referred without recommendation.
Signed by Senator Ranker.

Staff: Jan Odano (786-7486)

Background: The Legislature enacted oil spill prevention and response measures in 1990 to promote the safety of marine transportation and protect state waters from oil spills. The Director of the Department of Ecology (Ecology) has the primary authority to oversee prevention, abatement, response, containment, and clean-up efforts for oil spills in state waters. The oil spill program requires oil spill prevention plans, contingency response plans, and documentation of financial responsibility for vessels and facilities that may discharge oil into navigable waters.

Owners and operators of onshore and offshore facilities must prepare and submit oil spill contingency and prevention plans. The contingency plan must meet standards identified by Ecology and provide for the containment and cleanup of oil spills into the waters of the state.

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.

The plans are valid for five years and may be combined into a single document. A facility is, with a few exceptions, a structure, a pipeline, a device, or equipment located on or near state waters that transfers oil to or from a vessel or pipeline. All covered vessels and facilities must have an oil spill contingency plan on file with Ecology. The contingency plan is a legally binding agreement on the party submitting the plan. A covered vessel is a tank vessel, cargo vessel weighing over 30 gross tons, or passenger vessel weighing over 300 gross tons. A tank vessel is a ship that is constructed to carry bulk oil as cargo.

As part of certain contingency plans, geographic response plans (GRPs) must be developed. GRPs are site-specific strategies to respond to a spill of oil or oil product on water. GRPs address the risk of spills from ships, refineries and facilities, pipelines, rail, dams, highways, and other transportation-related sources. The purpose of a GRP is to provide guidance to a responder in the event of a spill, to ensure the response is fast and effective, and to protect sensitive resources. GRPs are developed in partnership with Ecology, the Oregon Department of Environmental Quality, the U.S. Coast Guard, and the U.S. Environmental Protection Agency (EPA). Currently there are 34 GRPs that cover all coastal and some inland water areas.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) contains the federal government's framework and operative requirements for responding to an oil spill and releases of hazardous substances. The NCP regulations are enforceable through the Clean Water Act; the Comprehensive Environmental Response, Compensation, and Liability Act; and the Oil Pollution Act.

Federal jurisdiction for oil spill prevention and preparedness is determined by the potential sources of oil spills, e.g., vessels, facilities, and pipelines. For example, the EPA has jurisdiction over onshore, non-transportation facilities, whereas the United States Coast Guard and Department of Transportation (USDOT) have jurisdiction over onshore transportation facilities and deepwater ports. For offshore pipelines, transmission lines, and inland pipelines, the Pipeline and Materials Hazardous Safety Administration within USDOT has jurisdiction.

Summary of Bill (Recommended Substitute): Ecology, in consultation with the Utilities and Transportation Commission, the Federal Railroad Administration, and industry experts, must conduct a study of the safety of transporting oil and hazardous materials in bulk by rail. The study must include a review of the following:

- federal, state, and local emergency response and spill prevention programs with a focus on high hazard areas where emergency response equipment can be strategically placed for use by these agencies;
- local jurisdiction capacity for preventing and responding to oil and hazardous materials spills;
- weaknesses or gaps in federal, state, and local government oil and hazardous materials spill prevention and response activities; and
- federal regulations governing oil and hazardous materials spill prevention and response for terrestrial transporters of oil and hazardous materials.

The study must include a survey of local government funding, sources of funding, and regional or countywide cooperative agreements implementing oil and hazardous materials

spill prevention and response programs. In addition, the study must have recommendations for legislative consideration that include levels of funding, appropriate use of funds, methods to increase cooperation and coordination among organizations responding to spills, and sharing resources or mutual aide. Ecology must provide a preliminary evaluation of the status of the safety of transporting hazardous materials by railcars and include recommendations for near-term legislative actions by December 31, 2014. Ecology must deliver the final report and recommendations to the Legislature by December 31, 2015.

Ecology must conduct an evaluation and deliver a final report on the safety of transporting oil and hazardous materials through waters of the state. The evaluation must include a review of the following:

- the status of water-borne oil spill and hazardous materials spill prevention and preparedness;
- the capacity of Ecology to address increased water-borne traffic;
- weaknesses and gaps in hazardous spill prevention and response programs;
- barge and tug operations related to the movement of oil and petroleum or hazardous materials;
- a description of areas of concern where increased prevention and response activities are needed; and
- a report on areas of the state where oil and hazardous materials spill prevention and response plans and programs are not complete or robust.

An initial evaluation is due to the Legislature by December 31, 2014 and a final report is due December 31, 2015.

Ecology must make available on its website descriptions of spill prevention and contingency programs, responses to public concerns regarding spills, and information and updates on efforts to clean up a spill. Ecology may not put specific plan elements or confidential information on its website.

Ecology must provide to the Legislature by December 1, 2016, a review of all state and federal GRPs as needed in required contingency spill prevention and response plans, and annual updates on the progress made toward completing the GRPs. Ecology must contract with eligible third parties when practicable, to ensure at least 50 percent of the GRPs are completed by December 1, 2016.

Ecology and the UTC must hold a symposium on emergency spill prevention and response activities for oil and hazardous materials transported in the Pacific Northwest region. The symposium must address cooperative emergency spill prevention and response activities between shared borders, expected risks posed by increased transport within the next three to five years of Canadian crude oil or hazardous materials, changes in transportation methods, and consideration of new or emerging technologies to make transport safer.

Ecology must develop a grant program for emergency first responders to meet the needs for oil and hazardous materials spill prevention and response plans. The grants must be reviewed in consultation with emergency first responders, and representatives from the oil, rail, and bulk hazardous materials industry. Grants must be prioritized for applicants from areas where oil or other hazardous materials are transferred from one mode of transportation

to another. In addition, grants must be coordinated to maximize currently existing equipment and resources.

Oil refineries and other facilities must submit to Ecology data and information on the volume and type of crude oil that arrived at the facility, including the place of origin of the crude oil, and the mode of arrival and departure, but not limited to arrival by vessel, rail, or pipeline.

Ecology must hold this information as confidential or aggregated to ensure confidentiality if disclosure would result in unfair competitive disadvantage to facility owners or operators. A person submitting information to Ecology may not claim that information as confidential if the information has been made public. Ecology must notify the person submitting the information when there is a request to publicly disclose unaggregated information. The person being notified has ten working days to respond to justify the reason for confidentiality. Ecology must issue a written decision of its reasons for making a determination regarding confidentiality. Ecology may publicly disclose the information ten days after issuing the written decision.

The sum of $10 million from General-Fund State is appropriated to Ecology to implement the act.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Substitute):

- Clarifies that the study is on transporting oil and hazardous materials in bulk by rail.
- Defines hazardous materials as having the meaning as hazardous substance defined under Transport of Petroleum products – financial responsibility.
- Requires preliminary reports on studies due 2014 and changes to final reporting dates to December 2015.
- Establishes that Ecology may not put specific contingency plan elements or confidential information on its website.
- Clarifies GRPs as needed for required contingency plans.
- Removes language authorizing cities, towns, and counties along a major rail line to develop emergency spill prevention and response plans.
- Removes joint Senate and House work session to prepare for the spill prevention and response symposium.
- Facilities must submit to Ecology certain information about the monthly volumes of oil arriving at and departing the facility.
- Establishes a process for facilities submitting information to require that proprietary information be held in confidence by Ecology.
- Changes the fund from which the appropriation is taken to General-Fund State.

Appropriation: $10 million from General-Fund State.

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 Original Bill: PRO: This provides strong and good measures to improve a spill prevention and response program for rail transport, which is not as comprehensive as the program in place for marine waters. There are planning and cost challenges to make the bill successful. This provides answers to questions and concerns from increased transport of hazardous materials through the state. It is the basis for future discussions.

CON: There has been a dramatic change in the methods, types, and amounts of hazardous materials transported through the state. We need to act quickly to expand the use of tug escorts in Grays Harbor and the Columbia River. There needs to be more transparency in the movement of oil trains and effort to address the community's right to know. People should have access to information about the amount and types of hazardous materials going through their communities by rail. There needs to be a definition of hazardous materials. There are concerns for using Model Toxics Control Act funds for this purpose. The studies do not provide action, we need to.

OTHER: Emergency first responders need access to this information in order to be prepared for the risks associated with train movements, to determine the threats, and to have adequate equipment in case of a spill. The symposium should be aligned with the work of the Puget Sound Partnership. Other studies have been completed on these issues and should be used to avoid duplication of efforts. The bill should focus on preparedness and response since the federal government addresses prevention issues.

Persons Testifying: PRO: Rick Wickman, Columbia River Steamship Operators Assn., Columbia River Maritime Fire & Safety Assn.; Frank Holmes, Western States Petroleum Assn.; Chris Rose, Utilities and Transportation Commission.

CON: Cliff Traisman, WA Conservation Voters; Bruce Wishart, Puget Soundkeeper Alliance; Amber Waldref, Spokane City Council; Frank Gordon, Grays Harbor County Commissioner; Mary Moore, League of Woman Voters; Darcy Nonemacher, WA Environmental Council; Naki Stevens, Sound Action; Frank Gordon, Grays Harbor commissioner; Gerry O'Keefe, WA Public Ports Assn.; Bill Stauffacher, BNSF Railway.

OTHER: Dale Jensen, Program Manager, Spill Prevention, Preparedness & Response, Ecology; Geoff Simpson, WA State Council of Fire Fighters; Scott Hazlegrove, Pacific Merchant Shipping Assn.; Dale Jensen, Ecology; Todd Hass, Puget Sound Partnership, Oil Spill Work Group; Heather Hansen, WA Friends of Farms & Forests.