

HOUSE BILL REPORT

HB 1449

As Reported by House Committee On:
Environment

Title: An act relating to oil transportation safety.

Brief Description: Concerning oil transportation safety.

Sponsors: Representatives Farrell, Carlyle, Fitzgibbon, Ortiz-Self, Peterson, Walkinshaw, Gregerson, Senn, McBride, Robinson, Tarleton, Pollet, Cody, Ormsby, Riccelli, Kagi, Blake, Fey, Hudgins, Lytton, Bergquist, Sells, Takko, Tharinger, Jinkins, Wylie, S. Hunt, Stanford, Reykdal, Sawyer, Appleton, Van De Wege, Clibborn, Ryu, Goodman and Kilduff; by request of Governor Inslee.

Brief History:

Committee Activity:

Environment: 2/3/15, 2/17/15 [DPS].

Brief Summary of Substitute Bill

- Changes regulatory programs covering the overland and over-water transportation of oil, including requiring railroads to do oil spill response planning and provide information to the Department of Ecology about their oil transport activities, authorizing rule-making by the state Board of Pilotage Commissioners to require tug escorts for oil-laden vessels, and authorizing rule-making by the Utilities and Transportation Commission to set safety standards for private railroad crossings.
- Increases the Oil Spill Administration Tax on oil received from vessels to 10 cents per 42-gallon barrel, and expands the tax's scope to include oil received by rail and pipeline.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Farrell, Fey, Goodman and McBride.

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.

Minority Report: Do not pass. Signed by 5 members: Representatives Shea, Ranking Minority Member; Short, Assistant Ranking Minority Member; Harris, Pike and Taylor.

Staff: Jacob Lipson (786-7196).

Background:

The 2014 Supplemental Operating Budget included a proviso directing the Department of Ecology (ECY) to study program gaps and public health and safety risks associated with oil transport over water and by rail. The ECY was directed to work with the Utilities and Transportation Commission (UTC), the Emergency Management Division of the Military Department, and other stakeholders in carrying out the study. In December 2014 the ECY issued a draft study featuring 43 recommended changes to federal, state, and local oil-transportation policies and programs.

Modes of Oil Transportation.

Oil, including crude oil and refined petroleum products, is sometimes transported by vessel, pipeline, or train between the point of extraction, processing facilities, and other destinations. The types of vessels used to transport oil include oil tankers, tank barges towed by tugs, and articulated tug barges that feature a structural connection from the tug providing propulsion for the barge. Oil transported by rail is carried in individual tank cars; oil-carrying tank cars may comprise part or all of the cargo of a train.

Definition of Oil.

For the purposes of state laws regarding oil spill prevention, planning, and financial responsibility, oil is defined in state law as any kind or distillate of oil that is liquid at atmospheric temperature. Specific types of oil are explicitly included within this definition.

Financial Assurance Requirements for Facilities and Vessels.

Facilities such as oil refineries and terminals must demonstrate the financial ability to compensate the state and local governments for damages from a worst-case spill. Likewise, certain vessels including barges and tank vessels that use state waters or ports must also document their financial ability to pay for oil spill removal costs, natural-resource damages, and related expenses. Financial responsibility must be demonstrated to the ECY in one of several ways, including providing evidence of insurance or surety bonding.

Oil Spill Prevention Plans and Oil Spill Contingency Plans.

The ECY administers an oil spill preparedness, prevention, and response program. Among other statutes administered by the ECY's Oil Spills Program, state law directs facilities including oil refineries, terminals, pipelines, and vessel operators involved in the bulk transfer of oil to put in place oil spill contingency plans that outline containment and remediation responses to potential oil spills from the vessel. Contingency plans approved by the ECY must identify personnel, materials, and equipment capable of promptly and properly removing oil with minimal environmental damage. Railroad cars are not considered facilities for purposes of state spill contingency planning, but do conduct certain oil spill response planning under federal law.

In addition to, or as part of, state spill contingency plans, onshore facilities must submit oil spill prevention plans to the ECY. The ECY may only approve these plans if they incorporate measures providing for the best achievable protection of public health and the environment, which means that the plans must provide the highest level of protection through the best achievable technology and the most protective staffing levels, training procedures, and operational methods. Best achievable protection is also the standard established by the ECY rules that address operations of refineries, terminals, and other facilities.

Other Maritime Safety Provisions: Oil Tanker Tug Escorts and the Emergency Response Towing Vessel.

Tug escorts can be a tool to assist vessels in distress that have lost control of their power or steering. State law requires oil tankers of greater than 40,000 deadweight tons entering Puget Sound to have one tug escort with a minimum horsepower equivalent to 5 percent of the deadweight tonnage of the vessel the tug is escorting. The Board of Pilotage Commissioners (Pilotage Commission) has adopted rules regarding the applicability of oil tanker tug escort requirements. Violation of oil tanker escort requirements is a gross misdemeanor and may also trigger civil penalties of up to \$10,000 per day. Civil penalties may be sought by a county prosecutor or the Washington Attorney General upon the request of the Pilotage Commission.

Federal law prohibits oil tankers larger than 125,000 deadweight tons from entering Puget Sound. Federal law also requires that single-hulled oil tankers weighing above 5,000 gross tons entering Puget Sound be escorted by two tugs; however, the federal Oil Pollution Act of 1990 also phases out single-hulled oil tankers in American waters by 2015.

All vessels operating in the Strait of Juan de Fuca must file with the ECY evidence of an emergency-response system that provides for the operation of an emergency-response towing vessel capable of response to vessel oil spill threats stationed at Neah Bay on the Olympic Peninsula.

Vessel operators are also required to provide an advanced notice to the ECY that includes time, location, and volume information prior to certain transfers of oil involving a vessel.

The Puget Sound Partnership, with input from the ECY and other maritime stakeholders, recently completed a vessel traffic risk assessment study of spill risks associated the movement of vessels in Puget Sound under various scenarios.

Emergency Response Planning.

Within the State Military Department, the Governor-appointed Emergency Management Council acts as the State Emergency Response Commission that the federal Emergency Planning and Community Right to Know Act (EPCRA) requires the state to establish. The EPCRA requires states to oversee hazardous-chemical emergency planning and requires the formation of local emergency planning committees to develop and annually review emergency-response plans that identify the transportation routes of extremely hazardous substances.

Barrel Tax and Uses of Oil Spill Prevention Account and Oil Spill Response Accounts.

Crude oil and petroleum products that are transported by vessel on state waters are subject to an oil spill administration tax (administration tax) and an oil spill response tax (response tax) at the time of the product's initial receipt by a marine terminal. A credit is allowed against taxes imposed on oil that is initially received in Washington, but subsequently exported from the state.

The administration tax is 4 cents per 42-gallon barrel and is deposited in the Oil Spill Prevention Account (Prevention Account), while the response tax is 1 cent per barrel and is deposited in the Oil Spill Response Account (Response Account). If the Office of Financial Management determines that there is in excess of \$9 million in the Response Account, then the 1 cent response tax is no longer levied until the Response Account balance falls below \$8 million.

The Response Account is used for the costs associated with the response to oil spills into state waters that the ECY determines are likely to incur in excess of \$50,000 in response costs and for the emergency towing vessel stationed at Neah Bay. The Prevention Account is used for the administration of several ECY Oil Spill Program activities.

Utilities and Transportation Commission Regulation of Railroads.

The UTC administers a railroad safety program (Program). The activities of this Program include:

- the approval of petitions to open, close, or reconfigure railroad crossings of public roads, except within cities of over 10,000 in population; and
- inspections of public road-railroad crossings to ensure state and federal standards are met.

In addition, the UTC inspectors operate under delegated authority from the Federal Railroad Administration (FRA) to support the FRA oversight of railroad compliance with the FRA safety regulations. The UTC inspectors are restricted from conducting inspections at crossings between a private roadway and a railroad. The UTC inspectors are restricted, without accompaniment by a FRA inspector, from accessing private property for hazardous material transport inspections.

The UTC's Railroad regulatory activities are funded by a fee on railroads set at 1.5 percent of a railroad's gross operating revenue from intrastate operations.

Summary of Substitute Bill:

Oil Definition.

Oil is redefined in oil-spill prevention, cleanup, and financial responsibility laws to mean any kind of oil that is liquid at 25 degrees Celsius and 1 atmosphere of pressure, including any distillate of that oil. This definition also explicitly covers the following types of oil:

- bitumen, which is a heavy oil that will not flow until heated or diluted;
- synthetic crude, which results from the processing of bitumen; and
- natural gas well condensate, which is a liquid hydrocarbon mixture recovered at natural gas extraction wellheads.

Disclosure of Information about Oil Transportation.

Railroads that transport oil as bulk cargo, pipelines, and other facilities are required to submit advanced notice to the ECY of transfers of crude oil between rail facilities and vessels or other facilities. The ECY must adopt advanced notice rules.

Pipelines must report to the ECY twice per year on the type and volume of oil they transported through the state. Pipeline reports due July 31 must contain oil transport information from January 1 to June 30, while pipeline reports due January 31 must contain oil transport data from July 1 to December 31.

The ECY must aggregate pipeline and rail transfer data by county quarterly and publish it on its website. The information published by the ECY must include:

- the county of transfer;
- the volume and type of oil transferred;
- the oil's place of origin;
- the mode and route of transport;
- the number of rail cars transferring oil; and
- information about any spills that occurred during transport or transfer.

Financial Assurance Requirements.

Railroads that transport oil as bulk cargo must provide the same financial assurances to the ECY as facilities like oil refineries and terminals. The ECY is directed to adopt a rule setting the amount required for railroads and other facilities to demonstrate financial responsibility; an amount which is to be calculated by multiplying the reasonable anticipated per-barrel cleanup costs by the estimated worst-case spill volume anticipated in the facility's oil spill contingency plan.

Vessels, railroads, and other facilities may employ new means of demonstrating their financial responsibility, including a letter of credit or protection and indemnity club membership. Documentation of financial responsibility must be in the form of an ECY-issued certificate with a term of one year or less. Owners or operators of multiple vessels or facilities may be covered by a single certificate.

The ECY may reevaluate the validity of a certificate after a spill or potential liability that would jeopardize the certificate holder's ability to meet the financial responsibility requirements necessary to originally obtain the certificate. If a vessel or facility spill incurs potential liability exceeding 5 percent of the certificate's requirements, the certificate becomes inapplicable to other previously covered vessels or facilities, and the owner or operator must redemonstrate an ability to pay all damages.

Oil Spill Prevention Plans and Oil Spill Contingency Plans.

Railroads must submit oil spill contingency plans to the ECY in the same manner as terminals, refineries, and other covered facilities. However, railroads are not made subject to the oil spill prevention planning requirements placed on other facilities.

The oil spill prevention planning standard of best achievable protection is applied to oil spill contingency planning, which must include access to in-state equipment to respond to a worst case spill.

Oil Spill Prevention and Response Taxes and Accounts.

Beginning January 1, 2016, the administration tax is increased to 10 cents per 42-gallon barrel. The administration tax and response tax are levied on oil received by facilities from rail tank cars, pipelines, and vessels.

The Response Account may be used to respond to spills or threatened spills of oil and other hazardous substances that the ECY anticipates will cost in excess of \$1,000. The Response Account may also be used to compensate emergency towing by any tug vessel, in addition to the costs of the emergency response towing vessel stationed at Neah Bay.

Until June 30, 2019, the Prevention Account may be used for oil and hazardous material emergency response planning by local emergency response committees, which the Military Department may employ staff to support.

- Local Committees must annually review their plans and submit them to the State Emergency Response Commission every five years or whenever they are updated.
- The Military Department must report to the Governor and Legislature by March 1, 2018, on the progress of local emergency planning towards meeting EPICRA planning requirements.

Before spending money in the Prevention Account, the ECY must make reasonable efforts to obtain response cost funding from responsible persons or other sources, including the federal government.

Oil-Bearing Vessel Tug Escorts.

The Pilotage Commission may adopt rules to require tug escorts and other safety measures in the Puget Sound, the Columbia River, and Grays Harbor that apply to oil tankers of greater than 40,000 deadweight tons, other towed vessels capable of transporting over 10,000 gallons of bulk petroleum, and articulated tug-barges of all sizes.

In addition, the Pilotage Commission must adopt rules designed to achieve a best achievable protection standard by June 30, 2017, for the narrow channels of the San Juan Island Archipelago. These rules may include tug escort requirements or other safety measures for oil tankers, articulated tug-barges, and towed vessels. The Pilotage Commission may also adopt best achievable protection rules pertaining to the capabilities of the tugs used to escort oil-bearing vessels.

The Pilotage Commission rules must be written in consultation with the ECY and must rely on the results of vessel traffic risk assessments. Prior to rule-making, the Pilotage Commission must also consult with maritime professionals and public agencies.

Vessels not bearing bulk oil are not subject to tug escort requirements. Single-hulled oil tankers are subject to federal tug escort requirements in the Puget Sound. The new safety requirement rule-making may not change the pilotage requirements for oil-bearing vessels.

Utilities and Transportation Commission Rail Safety Program.

The regulatory fee paid by railroad companies to the UTC is 0.2 percent of the sum of the company's gross intrastate operating revenue plus the Washington portion of their gross interstate operating revenue.

The UTC inspectors may enter private property to conduct hazardous materials inspections, investigations, and surveillance under the federal partnership that delegates inspection authority to state inspectors.

The UTC must adopt safety standards for private road crossings of railroads used to transport crude oil. These safety standards must include signage requirements, UTC inspection and crossing improvement prioritization criteria, and requirements for railroad companies to pay for and complete improvement projects. The UTC may inspect private crossings and order railroads to improve private crossings.

Cities of over 10,000 people may elect to participate in the UTC public road-railroad crossing safety inspection program. Cities of over 10,000 people must provide a list of existing public crossings to the UTC within 30 days of the act's effective date and must also notify the UTC within 30 days of the opening, closing, or modification of a crossing.

Other.

A severability clause is included.

State-owned railroads are exempted from financial assurance, advanced notice, and contingency spill planning requirements.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- eliminates the requirement that railroads provide the ECY with advanced transfer notices for refined petroleum products;
- defines the crude oil that is subject to requirements that railroads provide advanced notice of transfer to the ECY;
- eliminates the requirement that the ECY immediately implement railroad advanced notice of transfer requirements before it adopts related rules;
- clarifies that pipelines are not required to provide the ECY with advanced notices of transfer;
- authorizes vessels or railroad facilities to enter a port, place, or state waters without first demonstrating financial responsibility if necessary to avoid injury to the vessel or train's crew or passengers;
- specifies that contingency planning, financial responsibility, and advanced notice provisions do not apply to state-owned railroads;
- specifies that in order for the Pilotage Commission to promulgate tug escort or other safety rules, a vessel traffic risk assessment must be completed and provide evidence that rules are necessary to achieve a best achievable protection standard;
- eliminates the Pilotage Commission's rule-making authority for tug escorts and other safety measures in waters other than the Columbia River, Grays Harbor, and the Puget Sound; and

- clarifies that the Pilotage Commission oil vessel rule-making authority may not impose new pilotage requirements on oil vessels, and that rules related to the capabilities of escort tugs must be focused on those vessels' mechanical capabilities.
-

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 17 through 21 relating to the oil spill administration and response taxes, which take effect on January 1, 2016.

Staff Summary of Public Testimony:

(In support) Over the last several years, there have been rapid changes in how oil is transported through the state. Oil-carrying train traffic has increased dramatically. More action is needed to improve rail transportation safety than marine transportation safety, but improvements are needed in both arenas. This bill applies the same safety requirements to oil moving by train as it does to oil moving by ship. The bill fills in the gap where federal safety requirements are not sufficient, such as for oil spill contingency planning. Prevention, preparedness, and response capacity are all important facets of state agency oil spill programs' ability protect public safety and the environment. Prevention is particularly important, and the state must adopt a zero-spill goal. There are large gaps in the state's knowledge about the oil being transported through our state, and the advanced notice of oil transfer parts of the bill are critical for that reason. Federal oil movement disclosure provisions are not sufficient, and only apply to crude from the Baaken region being moved in 1 million gallon increments. Emergency responders need to have detailed information about when, where, and how oil is moving across the state. In addition to the lack of public information there are gaps in state and local capacity to respond to an accident. The risk posed by spills of flammable types of crude oil from trains are real. An exploding oil train would destroy whole towns and damage the environment. Oil train spills could start wildfires in the Columbia River Gorge. There is no safe way to contain an oil spill fire once it starts, and responders must just wait for it to burn out. The safety improvements in the bill do cost money, which is the reason that the per-barrel tax on oil is increased by the bill. It is equitable to tax oil being received from all means of transport, rather than just by vessel. Oil companies should bear the increased costs to the state to ensure public safety and environmental protection. The UTC needs funding for additional inspectors and additional authority ensure rail crossing and shipment safety. The Pilotage Commission's rules will improve safety without harming commerce. Projects that increase the transportation of crude oil are contrary to recent progress in creating a cleaner economy. Increased rail traffic cuts off access to industrial areas in Columbia River Gorge towns bisected by rail lines, and vehicle traffic is unable to get across an occupied train track, even in an emergency. The oil companies simply want to get their product to market, and are willing to say in public what they think they need to in order to continue to do business. However, the job of the Legislature is to keep people safe, so the Legislature should not let oil companies or railroads cut corners and endanger the public.

(With concerns) The bill requires some new marine safety rules by 2017, despite the appearance that the rule-making is all discretionary. Increased coordination with Oregon is necessary for any action on the Columbia River. The Columbia River has a robust maritime safety system in place. The ECY's October study did not include any recommendations for additional tug escorts. The actions in the bill should be in response to the data and analysis of issues in the ECY's report.

(Opposed) Major new federal actions to improve oil transportation safety have been put in place in the past year. Providing advanced notice of when and where oil will be delivered poses antitrust, competitive, and homeland security concerns. Parts of this bill are duplicative of federal requirements or international standards, or are preempted by federal laws. Safety is a concern for railroads, who already spend hundreds of millions of dollars annually on safety improvements. Railroads take safety risks seriously, and work to prevent accidents. Railroads have invested in training local first responders for over a decade, and currently give information about hazardous materials moving through communities to first responders who are willing to sign a confidentiality agreement. Marine transport of oil is already the safest way to move oil in the state, and the industry's safety has continued to improve over the years. Many of the vessels used to move oil are state-of-the art, and contain many safety features.

Persons Testifying: (In support) Representative Farrell, prime sponsor; Rob Duff, Office of the Governor; Maia Bellon, Department of Ecology; Dave Danner, Utilities and Transportation Commission; Peter Antolin, Emergency Management Division; Candace Mumm, City of Spokane; Darcy Nonemacher, Washington Environmental Council; Gina James, Quinault Indian Nation; Geoff Simpson, Washington Council of Fire Fighters; Barnaby Dow, King County Emergency Department; Harry Dudley, Washington Board of Pilotage Commissioners; Cager Clabaugh, International Longshore and Warehouse Union, Local 4; Bart Hansen, City of Vancouver; Julie Mayfield, City of Stevenson; Peter Cornelison, City of Hood River; Daeuthen Dahlgvist, Friends of the Gorge; Eric Strid; Chad Bowechop, Makah Tribe; Laura Skelton, Washington Physicians for Social Responsibility; Jonathan Ward, Puget Sound Pilots; and Dan Jordan and Rick Gill, Columbia River Pilots.

(With concerns) Herb Krohn, Smart Transportation Division/United Transportation Union; Rob Rich, Columbia River Steamships Operations Association; Rick Wickman, Columbia River Steamship Operators' Association; and Gerry O'Keefe, Washington Public Ports Association.

(Opposed) Frank Holmes, Western States Petroleum Association; Johan Hellman, Burlington Northern Santa Fe Railway Company; Brock Nelson, Union Pacific Railroad; Charlie Costanzo, American Waterways Operators; Dan Nutt, Kirby Offshore Marine; and Mark Homeyer, Crowley Maritime.

Persons Signed In To Testify But Not Testifying: Ron Figlan Barnes; Bev Bassett, D.T Coughlin, Dusty Rhodes, and Pat Holm, Olympia Fellowship For Reconciliation; Todd Hass, Puget Sound Partnership; Mary Hath Spokane; Jeffrey Murdoch; Robert Jensen; Tom Glade and Sandra Spargo, Evergreen Islands; Brenda Lavender, Anacortes Conservation Voters; Michael Racine, Washington Scuba Alliance; Harmon Eaton; Tim Norgren, Friends of the

Gorge; Eric de Prace, Sightline Institute; Terry Thompson, Self-solo Business; Bruce Wishart, Sierra Club; Chris Loilke, Puget Sound Leaper Alliance; Mike Elliot; Don Steinke; Don Orange, Clark County Natural Resources Council; Maria Ruth, Black Hills Audobon; Jen Syrowitz, Audobon Washington; Anna Marie Pizzariello; Bruce Hoeft; Jolinda Stephens and W.M. McPherson, Unitarian Universalist Voices for Justice; Brian Gunn, Washington State Progressive Caucus; Chris Stearns, Thurston Public Utility District; Larry Keister; Jim Jesernig, Pacific Coast Shellfish Growers; Megan Duffy, Department of Natural Resources; George Keefe; Jamie Stephens, San Juan County Councilman; Jack Sautz; Cash Voli; Peggy Bruten, League of Women Voters of Washington; Lloyd Fettery, Tahoma Audobon; Jeff Lyles; and Joanna Schoettler.