

FINAL BILL REPORT

ESHB 1449

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Synopsis as Enacted

Brief Description: Concerning oil transportation safety.

Sponsors: House Committee on Environment (originally sponsored by 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).

House Committee on Environment
House Committee on Finance
Senate Committee on Energy, Environment & Telecommunications
Senate Committee on Ways & Means

Background:

The 2014 Supplemental Operating Budget included a proviso directing the Department of Ecology (ECY) to study program gaps and public 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 (EMD) of the State 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; a final report was issued in March 2015.

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 as any kind or distillate of oil that is liquid at atmospheric

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temperature. Specific types of oil are explicitly included within this definition. However, the definition does not explicitly list the following as 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 well heads.

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 arising from a worst-case spill. Likewise, 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. State law directs oil refineries, terminals, pipelines, other facilities, 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. 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 railroads do complete certain oil spill response planning under federal law. Under federal and state spill planning statutes, the ECY also maintains geographic response plans to address potential spills in specific state water bodies. Geographic response plans provide guidance to responders in the event of a spill, and are developed by the ECY in partnership with various state and federal agencies.

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 scope of vessels subject to 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.

Certain oil-bearing 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 towing vessel capable of response to vessel oil spill threats. The emergency-response vessel must be stationed at Neah Bay on the Olympic Peninsula.

Vessel operators are 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, has completed a vessel traffic risk assessment study of spill risks associated with the movement of vessels in Puget Sound under various scenarios.

Emergency Response Planning.

The federal Emergency Planning and Community Right to Know Act (EPCRA) requires the state to establish a State Emergency Response Commission (SERC) to supervise and coordinate the work of local emergency response planning committees. The responsibilities of local committees include the development and maintenance of emergency response plans that identify the transportation routes of extremely hazardous substances. Within the State Military Department, the Governor-appointed Emergency Management Council acts as the SERC.

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. The Response Account is also for the emergency towing vessel stationed at Neah Bay. The Prevention Account is used for the administration and implementation of several ECY Oil Spill Program activities.

Utilities and Transportation Commission Regulation of Railroads.

The UTC administers a railroad safety program. The activities of the 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, 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:

Oil Definition.

"Oil" is redefined for purposes of 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;
- synthetic crude; and
- natural gas well condensate.

The definition of crude oil subject to the administration tax and the response tax is also amended to explicitly include crude oil, bitumen, diluted bitumen, synthetic crude oil, and natural gas well condensate.

Disclosure of Information about Oil Transportation.

Facilities that receive oil from railroad cars must provide advanced notice to the ECY. The notice must include the route taken to the facility, the scheduled time, location, volume, gravity, and originating region of crude oil received. This advanced notice must be provided once per week to the ECY for the receipts scheduled for the following week.

Pipelines must report to the ECY twice per year on the volume of crude oil they transported through the state and the originating state or province of the oil. Pipeline reports due July 31 must contain crude 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 may share this information with the EMD and with other government emergency response agencies. The ECY must also publish a quarterly report featuring information from the railroad receipt notices, including place of origin, mode of transport, number of railroad cars delivering oil, and the number and volume of spills during transport and delivery. Information in the quarterly report must be aggregated on a statewide basis by route, by week, and by type of oil.

Unaggregated individual notices of crude oil transfer submitted to the ECY that are financial, commercial, or proprietary in nature are exempt from public disclosure under the Public Records Act.

Financial Assurance Reports.

Railroads that transport oil as bulk cargo must provide information to the UTC regarding their ability to pay for a reasonable worst-case spill of oil, an amount that is to be calculated by multiplying the reasonable anticipated per-barrel cleanup costs by the reasonable worst case spill volume. This information is to be provided to the UTC as part of railroad's annual report, and the UTC may not use this information to economically regulate or penalize a railroad.

Oil Spill Plans.

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

The best achievable protection standard, which is currently required in oil spill prevention planning and in vessels' contingency plans, is also applied to equipment incorporated into facilities' oil spill contingency plans. The ECY must periodically update the best achievable protection standard for oil spill contingency plan equipment in a manner that minimizes duplication and that is consistent with the updates to best achievable protection standards that apply to vessels.

By December 31, 2015, the ECY must submit to the Legislature a review of geographic response plans that have been completed under federal and state contingency planning requirements. In addition, in 2017, 2019, and 2021, the ECY must also submit a report to the Legislature on the state's progress towards completing geographic response plans. The ECY may hire independent contractors to ensure completion of at least half of needed statewide geographic response plans by December 1, 2017.

Oil Spill Prevention and Response Taxes and Accounts.

The administration tax and response tax on oil received by vessels are levied on oil received by facilities from rail tank cars. A one-time transfer of \$2.25 million is made from the Response Account to the Prevention Account by July 31, 2015.

The Response Account may be used to respond to spills or threatened spills of oil 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. The initial focus of planning must be on communities through which oil-bearing trains travel.

- Local committees must annually review their plans and submit them to the SERC 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 EPCRA planning requirements.

Before spending money in the Prevention Account, but without delaying response activities, the ECY must make reasonable efforts to obtain response cost funding from responsible persons or other sources, including the federal government.

Oil-Bearing Vessel Maritime Safety Rules.

The Pilotage Commission may adopt rules to require tug escorts and other safety measures in 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. The Pilotage Commission's authority to adopt tug escort and other maritime safety rules in Grays Harbor is contingent on a state agency or local government determining or issuing a final permit to site a facility in Grays Harbor that is required to hold a spill contingency plan, or approving or issuing a final permit to a facility to newly receive or process crude oil. Prior to rule-making for Grays Harbor, the Pilotage Commission must also collaborate with maritime professionals, the ECY, and public agencies.

The ECY must evaluate vessel traffic management and safety within and near the mouth of the Columbia River. A draft evaluation and assessment of vessel traffic management and safety, including tug escort requirements, escort tug capabilities, and best achievable protection, must be submitted to the Legislature by December 15, 2017, with a final report to be completed by June 30, 2018.

Utilities and Transportation Commission Rail Safety Program.

The UTC regulatory fee for railroads is increased from 1.5 to up to 2.5 percent of railroads' gross intrastate operating revenues. However, regulatory fees for short-line railroads that do not haul bulk crude oil remain at a rate of 1.5 percent of gross intrastate operating revenues.

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 railroad tracks used to transport crude oil. These safety standards must include signage requirements and UTC inspection and crossing improvement prioritization criteria. 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 July 1, 2015 and must also notify the UTC within 30 days of the opening, closing, or modification of a crossing.

Other.

The House Environment Committee and Senate Energy, Environment and Technology Committee must hold one joint meeting before the start of the 2016 legislative session on oil spill prevention and response activities related to international crude oil transportation. The committees must invite representatives from certain governments and tribes affected by crude oil transportation, and must provide an update on marine transport of liquid bulk crude oil and associated risks, as well as cooperative prevention and response activities.

The ECY must provide grants to emergency responders for oil and hazardous materials spill response and firefighting equipment. To determine grant allocations, the ECY must consult with businesses and emergency responders to evaluate local coordinating efforts and current resources and equipment. Grants must be prioritized in areas with the greatest need for equipment, and to maximize the use of current equipment and resources.

The completion of certain activities under the bill are subject to appropriation, including the oil-bearing vessel evaluations to be completed for the Columbia River, the ECY grants for hazardous materials and oil spill response resources to emergency responders, and the UTC's development of private rail crossing safety standards.

Votes on Final Passage:

House	60	38	
Senate	28	21	(Senate amended)
House			(House refused to concur)
Senate	46	0	(Senate amended)
House	95	1	(House concurred)

Effective: July 1, 2015