

# HOUSE BILL REPORT

## E2SSB 5057

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### As Reported by House Committee On:

Environment  
Appropriations

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

**Brief Description:** Concerning the safe transport of hazardous materials.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senator Ericksen).

### Brief History:

#### Committee Activity:

Environment: 3/16/15, 3/30/15 [DPA];

Appropriations: 4/6/15, 4/7/15 [DPA(APP w/o ENVI)].

### Brief Summary of Engrossed Second Substitute Bill (As Amended by Committee)

- Changes regulatory programs covering the overland and over-water transportation of oil, including requiring railroads to do oil spill response planning, requiring facilities and pipelines to provide information to the Department of Ecology about their transport of crude oil, directing and 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 8 cents per 42-gallon barrel, and expands the tax's scope to include oil received by rail and pipeline.

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## HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Farrell, Fey, Goodman and McBride.

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

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*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.*

**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 (EMD) 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; 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 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, 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 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 do conduct 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 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 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 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 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, 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.

#### Oil Facility Siting Processes.

The Energy Facility Site Evaluation Council (EFSEC) is responsible for making certification recommendations to the Governor for certain new energy facility construction or existing facility expansion proposals. Among the types of projects that the EFSEC has jurisdiction to review are proposals to construct or expand facilities that process or receive oil in an amount above certain defined size thresholds.

Oil facility projects which do not meet the size criteria meriting a review by the EFSEC are instead subject to the permitting processes established by the local jurisdiction in which the project is proposed. Certain state agencies, including the ECY, may also have a role in administering air, water, hazardous waste management, and other permits that oil processing or storage facilities may need to operate.

### Railroad Crew Requirements.

State statutes addressing crew size on freight and passenger trains explicitly state that no law or agency rule may prevent a railroad from staffing its freight or passenger trains in accordance with collective bargaining agreements or any national settlement regarding train crew size. For passenger trains, if there is no collective bargaining agreement or national settlement, a railroad operating with less than two crew members is subject to a safety review by the UTC. A violation of the crew size provision is a misdemeanor with associated fines of between \$100 and \$500 for each offense. Each train run in violation of the crew size provision is a separate offense. The penalty does not apply in the case of disability of a crew member while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each 24 hours.

Federal law provides that laws, regulations, and orders related to railroad safety must be nationally uniform to the extent practicable. A state may enact a law related to safety unless the United States Secretary of Transportation adopts a rule or issues an order covering the subject matter. A state may adopt a more stringent law when it: (1) is necessary to eliminate or reduce an essentially local safety or security hazard; (2) is not incompatible with a federal law; and (3) does not unreasonably burden interstate commerce.

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### **Summary of Amended 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.

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, and type of crude oil received. This advanced notice must be provided once per week to the ECY for the receipts scheduled for the following week. Twice per year, facilities must provide the ECY with a report correcting any inaccuracies in the weekly advanced notices of transfer sent to the ECY, although these corrections do not need to account for insubstantial scheduling adjustments.

Pipelines must report to the ECY twice per year on the volume of crude oil they transported through the state, the vapor pressure and gravity of the oil, and any diluting agents used to transport 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 state 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 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 reasonable worst case spill volume.

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 re-demonstrate 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 best achievable protection standard, which is currently required of oil spill prevention planning, is also applied to oil spill contingency planning and 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 8 cents per 42-gallon barrel. The administration tax and response tax on oil received by vessels are newly levied on oil received by facilities from rail tank cars and pipelines.

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 EPICRA 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 must adopt rules designed to achieve a best achievable protection standard by June 30, 2017, for Puget Sound waters, including 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.

In addition, 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. The Pilotage Commission's authority to adopt tug escort and other maritime safety rules in these areas is contingent on one of the types of events related to oil-handling facilities taking place:

- the Governor approving a recommendation by the EFSEC to site an oil storage or processing facility;
- a state agency or local government issuing a final permit to site a facility required to hold a spill contingency plan, or to approve a facility to newly receive or process crude oil; or
- the state of Oregon issuing a final permit to site an oil handling facility in the Columbia River watershed or to newly receive or process crude oil.

These Pilotage Commission maritime safety and tug escort rules may only address the waters directly affected by the facility siting or approval event.

The Pilotage Commission rules must be written in consultation with the ECY and must rely on the results of vessel traffic risk assessments. Any new vessel traffic risk assessments must include a simulation analysis. Prior to rule-making, the Pilotage Commission must also collaborate 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 UTC regulatory fee for railroads is increased from 1.5 to 2.5 cents of railroads' gross intrastate operating revenues. In addition, the UTC may adopt a rule imposing a reasonable surcharge if interstate operating revenues increase while intrastate operating revenues decline. The amount of this surcharge is limited such that the total amount collected by the UTC from railroads may not exceed their overall fee collections from fiscal year 2017.

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 the responsibility of railroads to oversee payment and completion of private crossing 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.

#### Railroad Crew Requirements.

The following minimum crew size requirements are established:

- Common carriers transporting freight or passengers must operate with no less than two crew members.
- Railroad carriers operating hazardous material trains must have no less than three crew members. One member must be assigned to the rear of the train, within rolling equipment, situated to safely observe and monitor the train's content and movement.
- Railroad carriers operating hazardous material trains consisting of 51 or more cars of any combination of hazardous materials, must have no less than four crew members. Two members must be assigned to the rear of the train, within rolling equipment, situated to safely observe and monitor the train's contents and movements.

In addition, the UTC may order larger railroad carriers to exceed the minimum crew size requirements and comply with other requirements if it determines that an increase in crew size is necessary to protect the public, employees, the environment, and to address local safety and security hazards.

Hazardous materials trains are defined as trains carrying at least one car load of spent nuclear fuel or nuclear waste, or a train designated as a high-hazard flammable train by the United States Department of Transportation (DOT). Certain exemptions to these staffing requirements apply for trains transporting hazardous materials a distance of five miles or less, short-line railroad carriers, and short-line and class II carriers that travel at less than 25 miles



per hour and transport less than 20 hazardous material cars. A violation of the crew size provision results in a civil penalty, rather than a misdemeanor, and the penalty is increased to \$1,000 at a minimum and up to \$100,000 maximum, for each offense. The exception to the penalty is eliminated for rail lines running two or fewer trains per 24 hours.

Other.

The ECY and the UTC must hold a symposium on oil spill prevention and response activities related to international crude oil transportation. The symposium 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.

A severability clause is included. The completion of certain activities under the bill are subject to appropriation of funding, including the marine oil joint symposium, the oil-bearing vessel tug escort panel, and the UTC's development of private rail crossing safety standards.

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

**Amended Bill Compared to Engrossed Second Substitute Bill:**

The striking amendment makes the following changes to the underlying bill:

- authorizes the Pilotage Commission to conduct maritime safety rule making, including to require tug escorts, in Puget Sound, Grays Harbor, and the Columbia river, if a new oil facility is sited or newly permitted to receive crude oil;
- directs the Pilotage Commission to conduct maritime safety rule making in Puget Sound by July, 2017;
- eliminates the requirement that the ECY convene a stakeholder panel to submit recommendations to the Legislature regarding maritime safety for oil-bearing vessels on the Columbia River and Grays Harbor;
- requires railroads to demonstrate an ability to pay for a reasonable worst case oil spill;
- requires railroads, vessels, and facilities to obtain certificates of compliance demonstrating the ability to pay for a reasonable worst case spill, which is subject to revocation in the event that a spill would reduce the entity's financial assurances to below required levels;
- requires railroads to complete spill contingency plans;
- requires railroad and other oil facility spill contingency plans to achieve a best achievable protection standard;
- increases the oil spill administration tax facility receipts by vessel or rail from 4 cents to 8 cents per barrel, and expands the scope of the tax to include receipts by pipeline;
- eliminates the 2023 expiration of the increase on the regulatory fees charged to railroads by the UTC;

- authorizes the UTC to levy a regulatory fee surcharge on railroads, by rule, of an amount needed to equal the total amount of revenues collected by the UTC in fiscal year 2017, but only if overall interstate railroad operating revenues increase while overall intrastate railroad operating revenues decrease;
- delays the effective date of provisions related to the administration tax and response tax from July 1, 2015, until January 1, 2016;
- directs local emergency response plans, rather than hazardous material plans, be developed by local committees, directs those plans to be submitted for state emergency response commission review every five years, and requires the submission of a planning progress report to the Legislature by 2018;
- adds public interest organizations to the list of stakeholders to be included in the joint ECY and UTC symposium on international oil transportation;
- limits train crewing requirements to trains designed as high-hazard flammable trains by the DOT or that carry at least one car load of spent nuclear fuel or nuclear waste;
- directs that oil facilities that submit weekly advanced notices of crude oil receipts from railroads to the ECY must submit twice-yearly corrections of inaccuracies in those notices, not including any insubstantial discrepancies between scheduled and actual train arrival times;
- directs that pipelines must submit twice-yearly information to the ECY about the volume and type of crude oil they transport through the state, as well as the type of diluting agents used in the crude oil;
- exempts from public disclosure under the Public Records Act (PRA) individual or unaggregated financial, proprietary, or commercial advanced notice of transfer information submitted to the ECY;
- exempts pipeline diluting agent information from public disclosure under the PRA;
- directs that the information from advanced notices of crude oil receipt from trains that is submitted to the ECY must be aggregated on a statewide basis by route through the state and by week in a quarterly report on the ECY's website; and
- grants the UTC authority to enforce safety standard requirements that it adopts, to adopt private crossing prioritization criteria, and to order railroads to oversee payment and completion of private crossing improvements.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect on July 1, 2015, except for sections 17 through 20, relating to the Oil Spill Administration Tax and Oil Spill Response Tax, which takes effect January 1, 2016.

**Staff Summary of Public Testimony:**

(In support) This bill prioritizes its focus on crude oil being transported by rail, since oil-by-rail is the largest and most important recent change that the state's oil spills program needs to address and since the state's marine program is already highly-regarded. The advanced notices of oil transport required by this bill strike a balance between public disclosure and

protecting private business information. Establishing a minimum crew size for trains carrying hazardous materials will ensure that critical tasks are not overlooked, and for being in place to assist with the initial response in the event of an accident. Train crew size is primarily an issue of train transport safety rather than a labor issue, and therefore should not be negotiated. The state needs to fund additional UTC inspectors, and the UTC should also be given additional inspection and enforcement authority. On the marine parts of the bill, it is appropriate to require consultation with knowledgeable mariners and the completion of appropriate risk analyses before new marine safety regulations are established. The Columbia River Bar Pilots, in addition to the Columbia River Pilots, should be consulted on any maritime rules related to oil transportation on the Columbia River. The Legislature should have discretion to set tug escort policy, rather than letting the state Board of Pilotage make the decision through rule-making. The bill does not need to increase the barrel tax to pay for oil programs, but it is fair to expand the tax to include oil shipments by rail. Oil is not the only hazardous substance spilled in the state, but the oil industry is being asked to fund the whole spills program. It is important that the Legislature pass a bill on oil transportation this year.

(With concerns) The bill's focus on oil transportation by rail is appropriate given the nature of new oil transportation risks. The crew sizing requirements could slow interstate transportation of materials, which would hurt the competitiveness of state ports. Studies suggest that adding extra crew might not increase safety, and Washington would be the only state requiring this level of railroad staffing. The positive steps in the bill are the application of the barrel tax to rail, the changed definition of crude oil, the authorization for larger cities to participate in the UTC's railroad program, and the authority for UTC inspectors to enter private property. The bill lacks railroad spill contingency plan requirements; does not: place sufficient burden for funding the oil spills program on the oil that is associated with most in-state spills; require railroads to demonstrate financial responsibility; require up-to-date advanced notice of oil transfer information; include pipeline information disclosure; include sufficient maritime safety provisions; provide funding for local emergency response planning activities; and include UTC enforcement authority for safety violations at private crossings. The mechanism for funding increased UTC inspections, and especially the sunset of that funding, is problematic. The increased fee on intrastate railroad operations does not make sense since the short-line railroads do not carry many hazardous materials but would be required to pay for the increased costs of the UTC's program that are driven by the increased transport of crude oil by rail. Cities along rail lines are concerned about the risks of crude oil transportation. Cities need training and equipment to respond to emergencies, and need to be included in emergency response coordination.

(Opposed) Transportation of crude oil by rail creates risks to communities, and accidents will happen. The state should have both strong standards and access to a broad range of policies and resources in order to respond to spill risks and spills. The bill gives the appearance of action, but actually does not substantially change the status quo around oil transportation rules. The oil transportation bill passed by the house had more of the safety provisions that this bill should include. The bill is too narrowly focused on rail, since marine and pipeline transportation systems are also changing and at heightened spill risk. All vessels transporting bulk oil should be regulated similarly to oil tankers. Although the rail crewing requirements are helpful, the rail-focused aspects of the bill are missing key pieces, like the ability for the UTC to regulate safety at private rail crossings, and the requirement that railroads prove that

they have the resources to pay back the public in the event of a catastrophic accident. Citizens should not bear the costs of accidents caused by private companies. Railroads should also be required to do the type of spill response planning that vessels currently undertake. The railroad crewing requirements place Washington at a disadvantage by slowing and increasing the costs of cargo transport. The railroad crewing requirements would threaten collective bargaining agreements that the railroads have struck with employees, and might require railroads to bring back unsafe cabooses which were eliminated decades ago. The public disclosure pieces of the bill are deficient because they prioritize allegedly proprietary business information over what the public has a right to know. Pipelines should be added to the public disclosure parts of the bill. Public interest groups need to be represented in any future evaluations of the need for additional marine safety measures. If the state stands up for itself and passes a strong bill, it will inspire the federal government to enact stronger safety standards as well in areas where the state might be preempted from taking action on its own.

**Persons Testifying:** (In support) Senator Ericksen, prime sponsor; Rick Gill, Columbia River Pilots; Michael Titone, Columbia River Bar Pilots; Rick Wickman, Columbia River Steamship Operators' Association and Maritime Fire & Safety Association; Shahraim Allen and Mike Elliot, Brotherhood of Locomotive Engineers and Trainmen; Herb Krohn, Jay Schollemeyer, and Korey McDaniel, SMART Transportation Division; Greg Hanon, Western States Petroleum Association; and Cliff Webster, American Waterways Operators.

(With concerns) Gerry Okeefe, Ports Association; Rob Duff, Office of the Governor; Kathy Taylor, Department of Ecology; Peter Antolin, Washington Emergency Management Division; Jason Lewis, Utilities and Transportation Commission; Scott Hazlegrove, Pacific Merchant Shipping Association; Pat Boss, Columbia Basin Railroad; and Allison Hellberg, Association of Washington Cities.

(Opposed) Darcy Nonemacher, Washington Environmental Council; Mike Racine, Washington Scuba Alliance; Jon Snyder, City of Spokane; Bruce Wishart, Sierra Club; Chris Wilke, Puget Sound Keeper; Eric Stride, White Salmon; Johan Hellman, Burlington Northern Santa Fe Railway; Brock Nelson, Union Pacific; Eric LaBrand, Fruit Valley Neighborhood Association; Bill McPherson, Unitarian Universalists; Sam Merrill, Black Hills Audubon Society; Jolinda Stephens, Unitarian Universalists; Don Steinke, Vancouver Neighborhoods; Alona Steinke; Bruce Hoeft; and Susan Macomson.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Environment. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Sawyer, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

**Minority Report:** Do not pass. Signed by 14 members: Representatives Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking

Minority Member; Buys, Condotta, Dent, Fagan, Haler, G. Hunt, MacEwen, Magendanz, Stokesbary, Taylor and Van Werven.

**Staff:** Dan Jones (786-7118).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment:**

The Appropriations Committee amendment clarifies that train crewing requirements for trains hauling hazardous materials apply to those trains hauling nuclear waste, spent nuclear fuel, or 20 or more car loads of class 3 flammable materials, as identified in United States Department of Transportation regulations.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on April 9, 2015.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect on July 1, 2015, except for sections 17 through 20, relating to the Oil Spill Administration Tax and Oil Spill Response Tax, which take effect January 1, 2016.

**Staff Summary of Public Testimony:**

(In support) This bill represents a sensible set of measures to safeguard our communities and our environment from a major oil spill by rail car or vessel. The bill addresses the increase in the transport of crude oil in our state, as well as recommendations from a study commissioned by the Legislature. Increasing the oil spill administration tax (tax) provides a sustainable, long-term funding source for the existing Spill Prevention, Preparedness, and Response Program (Spill Program) at the Department of Ecology (ECY) as well as new requirements under the bill. The existing tax has never met projected revenues, largely due to the fact that shipments of oil by rail and pipeline are exempt. The ECY has had to rely heavily on other funding sources to sustain the Spill Program over the years, especially the Model Toxics Control Act (MTCA) accounts, and this bill would correct that imbalance.

(In support with concerns) Short-line railroads that do not handle flammable materials should not be required to subsidize railroads that do.

(With concerns) The crew size requirements in this bill could impact the market and flow of agricultural inputs, increase the cost of delivery for agricultural products, and cause more agricultural products to be delivered by truck, which is less efficient. The bill as it passed the Senate was preferable because it would have required the ECY to convene a panel to conduct risk assessments of vessel traffic safety within the Columbia River and Grays Harbor and report back to the Legislature.

(Opposed) The current Spill Program, which focuses on marine traffic, is regularly noted by the ECY as being the best oil spill program in the country. The bill as it passed the Senate builds on that success by expanding the current tax to railroads to fund an expanded the ECY regulatory program. However, the bill as amended by the House Environment Committee

increases the tax revenue well beyond the increased needs of the ECY regulatory program. The fees paid by railroads to the Utilities and Transportation Commission in this bill are ambiguous and confusing, and the new methodology used is unproven. The mandatory crew size regulations conflict with federal regulations, undermine national labor agreements and state collective bargaining, increase costs, and do little if anything to increase safety. The tug and barge requirements in this bill are unnecessary due to the success of the current Spill Program. The tug and barge requirements also duplicate a successful federal regulatory system and are preempted under federal law. The crew size regulations put Washington at a competitive disadvantage with other states that do not have them.

**Persons Testifying:** (In support) Bruce Wishart, Sierra Club; and Rob Duff, Office of the Governor.

(In support with concerns) Herb Krohn, United Transportation Union, Smart Transportation Division.

(With concerns) Tom McBride, Far West Agribusiness Association; and Halli Johnson, Columbia River Pilots.

(Opposed) Greg Hanon, Western States Petroleum Association; Johan Hellman, Burlington Northern Santa Fe Railway; Cliff Webster, American Waterways Operators; and Tom Parker, Union Pacific Railroad.

**Persons Signed In To Testify But Not Testifying:** None.