

SENATE BILL REPORT

ESHB 1449

As of March 18, 2015

Title: An act relating to oil transportation safety.

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).

Brief History: Passed House: 3/05/15, 60-38.

Committee Activity: Energy, Environment & Telecommunications: 3/18/15.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: Jan Odano (786-7486)

Background: Oil Spill and Response. 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. 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. Vessel operators are also required to provide advanced notice to Ecology of time, location, and volume prior to transfers of oil involving a vessel.

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.

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 U.S. Environmental Protection Agency has jurisdiction over onshore, non-transportation facilities, whereas the U.S. 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.

Definition of Oil. The definition of oil under oil spill prevention and financial responsibility means oil of any kind that is liquid at atmospheric temperature and fractionation, which is the use of heat to separate hydrocarbons to refine the oil. Those oils explicitly listed are, but are not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Oil Spill Response Tax and Oil Spill Administration Tax. Current law provides for an oil spill administration tax and an oil spill response tax. These taxes are imposed when marine terminals in Washington receive crude oil or petroleum products from waterborne vessels or barges operating in the state's waters. The oil spill administration tax is \$0.04 tax on each 42-gallon barrel with the receipts funding oil spill prevention, response, and restoration programs as well as administrative costs and collection costs. The oil spill response tax is \$0.01 per barrel tax which funds the state response to those oil spills involving clean-up costs in excess of \$50,000. The oil spill response tax is deposited into the oil spill prevention account and the tax is suspended when that account's balance reaches \$9 million. The two oil spill taxes do not apply when crude oil is received at an oil terminal from a railroad tank car.

Railroad Safety. The Federal Railroad Administration (FRA) is responsible for establishing national railroad safety rules. The rules address concerns such as hazardous materials, track, signal and train control, operating practices, and motive of power and equipment. The Surface Transportation Board has jurisdiction over railroad rates, service issues, mergers, sales, construction, and abandonment of rail lines. The Utilities and Transportation Commission (UTC) has jurisdiction for crossing safety, railroad employee safety, responding to citizen complaints, and promoting public awareness of railroad safety. The UTC approves new crossings and modification or closures of existing crossings; inspects public crossings for compliance with federal safety standards; employs four inspectors certified by FRA to enforce federal safety rules for hazardous materials, signal and train control, track, and operating practices disciplines; inspects walkways within railroad yards and responds to requests for exemptions to overhead and side clearance rules; and investigates complaints related to crossing conditions, walkways, and train noise. The UTC funds its rail safety program from fees paid by railroads operating in the state. The fees are based on a percentage of railroad revenue from intrastate rail traffic.

Emergency Planning. In 1986 Congress passed the Emergency Planning and Community Right-to-Know Act in response to public concerns about hazardous and toxic materials in their communities. The Governor of each state designates a State Emergency Response Commission (SERC). SERC supervises and coordinates the activities of local emergency planning committees and reviews local emergency response plans. Local emergency planning committees develop emergency response plans and provide information about

chemicals in the community to citizens. Local emergency planning committees are required to annually update their plans but not to resubmit to SERC.

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 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 EFSEC are instead subject to the permitting processes established by the local jurisdiction in which the project is proposed. Certain state agencies, including Ecology, 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.

Summary of Bill: Oil Spill Prevention Plans and Oil Spill Contingency Plans. Railroads must submit oil spill contingency plans to Ecology 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.

Definition of Oil. For the purposes of financial responsibility of the transport of petroleum products, vessel oil spill and response, and oil and hazardous substance spill prevention and response, the definition of oil or oils is revised to mean any oil that is liquid at 25 degrees Celsius and one atmosphere of pressure, and to include bitumen, synthetic crude oil, and natural gas well condensate. For the purposes of oil spill contingency planning, advanced notice of oil transfers, and financial responsibility, the definition of facility is revised to include non-state owned railroads that transport oil as bulk cargo.

Financial Responsibility Requirements. Railroads that transport oil as bulk cargo must demonstrate financial responsibility necessary to compensate the state and affected counties or cities during a reasonable worst case oil spill in the waters of the state. Ecology, by rule, must determine the amount necessary to establish financial responsibility by multiplying the reasonable anticipated per-barrel clean-up costs by the reasonable worst-case spill volume. Additional methods to demonstrate financial responsibility include a letter of credit, certificates of deposit, or protection and indemnity club membership. Documentation of financial responsibility must be in the form of an Ecology-issued certificate of financial responsibility with a term of one year or less. Owners or operators of multiple vessels or facilities may be covered by a single certificate.

Ecology must reevaluate the validity of a certificate after a spill or potential liability that jeopardizes 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 financial resources indicated in the certificate, the certificate becomes inapplicable to other previously covered vessels or facilities. The owner or operator must demonstrate an ability to pay all damages in addition to meeting financial responsibility requirements.

Advanced Notice of Oil Transfer. Ecology must receive advanced notice of transfers of crude oil between rail facilities and vessels or other facilities, which must include information about oil volume, vapor pressure, gravity, and the 24-hour range of time within which the oil transfer is expected to occur. Ecology must adopt advanced notice rules. Pipelines must report to Ecology twice per year on the volume of oil they transported through the state, the vapor pressure and gravity of the oil, and any diluting agents used to transport the oil. Pipelines must provide reports for oil transport information from January 1 to June 30 by July 31 and oil transport data report from July 1 to December 31 by January 31.

Ecology must publish quarterly on its website advanced notice information aggregated on a statewide basis. The information published must include the following:

- 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.

Non-aggregated advanced notices submitted to Ecology by railroads, as well as information about diluting agents submitted by pipelines, are exempt from public disclosure under the Public Records Act. Ecology may share unaggregated information with local emergency planning committees and local government personnel with an official emergency management or emergency response duty.

Oil Spill Response Tax and Oil Spill Administration Tax. The oil spill response tax and the oil spill administration tax for the privilege of receiving crude oil at a bulk oil terminal within this state are imposed on rail tank cars and pipelines. A bulk oil terminal is defined in the bill as any kind of facility, other than a waterborne vessel, that is used to transfer crude oil from a rail tank car. A tank car is defined to mean a rail car with a body consisting of a tank for transporting liquids.

Beginning January 1, 2016, the administration tax is increased to \$0.08 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 that Ecology anticipates will cost in excess of \$1,000 instead of \$50,000. 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.

Oil-Bearing Vessel Tug Escorts. An oil tanker greater than 40,000 deadweight tons may only operated in the waters of Puget Sound under the escort of a tug with an aggregate shaft horsepower equivalent to at least 5 percent of the oil tanker. 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 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 is authorized to adopt rules for best achievable protection pertaining to the capabilities of the tugs used to escort oil-bearing vessels and tug escorts requirements 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. However, the rules may be adopted only after:

- the Governor approves a recommendation by EFSEC to site an oil storage or processing facility;
- a state agency or local government issues 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 issues 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 Ecology and must rely on the results of vessel traffic risk assessments. Any new vessel traffic risk assessments must include a simulation analysis. Prior to rulemaking, the Pilotage Commission must collaborate with maritime professionals and public agencies. The new safety requirement rulemaking may not change the pilotage requirements for oil-bearing vessels.

Railroad Safety. First-class cities may participate in UTC's crossing safety inspection program within the city. Within 30 days of the effective date of this act, first-class cities must provide UTC a list of all existing public crossings. In addition the city must notify UTC within 30 days of modifying, closing, or opening a grade crossing within the city limits. At private crossings, the UTC may conduct inspections, order railroads to make improvements, and enforce orders. UTC-certified inspectors are authorized to enter private property to conduct hazardous material inspections related to rail operations. UTC fees for railroads operating within the state are revised from 1.5 percent of the intrastate gross operating revenue to 0.2 percent of the sum of the company's gross intrastate operating revenue plus the Washington portion of their gross interstate operating revenue.

Emergency Planning. 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 the Legislature by March 1, 2018, on the progress of local emergency planning toward meeting the federal Emergency Planning and Community Right to Know planning requirements.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.