

SENATE BILL REPORT

ESHB 1449

As of April 3, 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, 3/31/15 [DPA-WM, w/oRec].

Ways & Means:

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; McCoy, Ranking Minority Member; Braun, Brown, Cleveland and Honeyford.

Minority Report: That it be referred without recommendation.

Signed by Senators Habib and Ranker.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sherry McNamara (786-7402)

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,

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.

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.

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 (USCG) 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.

A Health Impact Review of this legislation was requested and is available at the Washington State Board of Health's website: sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2015-03-HB1449-esum.pdf.

Summary of Bill (Recommended Amendments): Department of Ecology. Ecology must develop a grant program for emergency first responders to meet the needs for oil and hazardous materials spill prevention and response plans. Ecology, in consultation with emergency first responders, oil spill response cooperatives, and representatives from the oil, rail, and businesses receiving liquid bulk crude, must evaluate oil spill and hazardous material response and firefighting equipment and resources currently available throughout the state; review local emergency management coordinating efforts for oil spill and hazardous materials response; determine the need for equipment and resources; and identify areas or regions of the state in greatest need of oil spill and hazardous materials response and firefighting resources. Grants must be prioritized for applicants from areas determined to have the greatest need and coordinated to maximize currently existing equipment and resources.

Ecology must convene a panel to evaluate and assess vessel traffic management and vessel traffic safety within Grays Harbor. Panel members are specified. Ecology must provide recommendations to the appropriate committees of the Legislature by December 15, 2016.

Definition of Oil. 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.

Advanced Notice of Oil Transfer. Facilities receiving crude oil from a railroad car must provide advance notice each week to Ecology for the succeeding seven days, except when crude oil is not expected within a seven-day timeframe. A facility is not responsible for meeting advance notice requirements when the schedule changes during a seven-day period. The advance notice must include the route taken within the state, if known, scheduled time, location, and volume and gravity oil to be received. Ecology may share the information with emergency first responders upon request. Ecology must publish quarterly on its website advance notice information aggregated on a statewide basis. Other information may be included such as place of origin, modes of transport, routes, and number and volume of spills. Information provided in advance notice is exempt from public disclosure.

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. 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.

Oil-Bearing Vessel Tug Escorts. The Pilotage Commission is authorized to adopt rules for tug escort requirements 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 must consult with Ecology, the USCG, Grays Harbor safety committee, area tribes, public ports, and local governments prior to proposing a rule. However, the rules may be adopted only after a state agency or local government issues a final permit to site a facility or to approve a facility to newly receive or process crude oil, which must hold a spill contingency plan.

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. The UTC may adopt rules for inspections and safety requirements at private crossings. UTC-certified inspectors are authorized to enter private property to conduct hazardous material inspections related to rail operations. The UTC must adopt rules to assess a surcharge on railroad companies operating within the state to address the costs necessary to retain no more than eight certified railroad inspectors. The surcharge must proportionately distribute the costs, based on intrastate operating revenue and volume of activity within the state.

Emergency Planning. Local committees must annually review their plans and submit them to the SERC every five years or whenever they are updated.

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

requirements for contingency plans, financial responsibility, and certificates of financial responsibility are removed. The barrel tax is applied to railroads, but not pipelines, and the increase in the Oil Spill Administration tax is removed. The revisions to the UTC fee structure are removed and replaced with authorizing the UTC to adopt rules to assess a surcharge on railroad companies operating in the state to address the costs necessary to retain no more than eight certified inspectors. Railroad companies must submit information in their annual reports to the UTC regarding ability to pay for damages in the event of a spill or accident involving the transport of crude oil. The UTC's authority to adopt rules for inspections and safety standards at private crossings is revised. The advance notice of transfer of oil is revised to require only railroad facilities and not pipelines. The tug escort and safety measures are revised to require the Pilotage Commission to adopt rules for Grays Harbor only. The expanded uses of the Oil Spill Response Account is removed. Local emergency planning organizations must update their hazardous material plans on a five-year cycle. Ecology must provide grants for oil and hazardous materials spill response and firefighting equipment.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Energy, Environment & Telecommunications): PRO: There has been a significant increase in the transport of oil since 2011, especially by rail. This will enhance safe transport and increase readiness for spill response. Information and disclosure are needed to make sure local first responders have the information to appropriately respond to emergencies. To respond appropriately, first responders need the appropriate information. Some information is available through the community right to know law; however, information from rail is exempt from these requirements. We support robust public disclosure that treats all modes of transport equally. Contingency planning and spill response systems should be extended to rail. We need the highest standards of safety to assure the citizens of the safety of trains. The infrastructure is insufficient. We are not currently prepared for derailments. We need a new level of transparency that allows for planning and development. There are fewer federal dollars for planning. The key is to remain prepared. The response plan is in place but it doesn't address ATBs and barges. Financial assurances are needed to adequately respond to not only address a spill event, but also cleanups. Carriers should have to show they have the resources to pay for the costs of a spill. Oil by rail does not fund UTC inspectors because it is interstate and the UTC only charges intrastate transport. The UTC needs authority to access private shipper property, as being allowed only with the FRA creates delays. This funds, through the barrel tax and restructuring UTC fees, shortfalls for the current programs as well as new programs established under the bill. There has been a shift of the Model Toxics Control Act (MTCA) funds to pay for these activities. The bill addresses recommendations made in the study prepared by Ecology and the UTC. This is a sensible measure to protect the environment, specifically the unique waters of Puget Sound. The state first required double hulls, tugs, and keeping super tankers out of Puget Sound. This was

struck down, but then the feds passed a law, agreeing with the state. Perhaps we should be bold and step beyond to challenge the feds to meet state requirements again. Oil spills are the number-one threat to whales in our region. The public needs to be informed, engaged, and empowered using best achievable protection. Whale watching is critical to the state's economy and to all of us. Washington State cannot be an oil transportation sacrifice zone. Oils are best left in the ground. We need to add barges to the marine safety system and direct action in Puget Sound. The marine oil spill prevention system should be expanded to include the Columbia River and Grays Harbor. Puget Sound has seen a number of significant mechanical failures and near-collision or grounding incidents involving ships in the past decade. There have also been many close calls involving loaded oil barges.

CON: The tug and barge industry has a great safety record. Pilots of these vessels are very experienced and knowledgeable. There may be a pre-emption issue with the federal government. There is no need for expanded liability. The process for rulemaking is too much. The majority of vessels on the Columbia River are moving refined product, not crude. The rules should rely on a vessel risk assessment and not require a trigger such as the siting of a facility. Railroads follow and exceed safety rules. The barrel tax is not appropriate use for all spill response activities. MTCA funds are used to clean up a wide variety of spills of oil and hazardous materials unrelated to industry releases of oil. Industry-related spills are cleaned up by the industry. The federal government has requirements for contingency planning, financial responsibility, and advanced notice. The Secretary of USDOT has issued orders for these requirements and we expect them to be codified soon. Certificates of financial responsibility are duplicative of federal requirements for fishing vessels.

OTHER: The rules developed by the Pilotage Commissions should include other experts such as the Columbia River Pilots, who have expertise about the regulation of tugs on the Columbia River. We need to be sure that the state doesn't overstep its state authority when developing rules for the Columbia River. We prefer the scope and approach of 2SSB 5057. We have one of the best marine programs, how much better is best achievable protection. This is for public policy, which needs a robust conversation of the underlying data, with the guidance of the Legislature. Developing oil spill rules is a hefty responsibility, with which Ecology has experience. We are not as sure about other entities developing these rules. There is strong evidence that exposure to oil spills is associated with adverse mental health outcomes; acute toxic symptoms, and acute respiratory systems. There is also strong evidence that decreasing risks from oil spills would likely lead to increased safety for communities of color, low-income communities, and populations with lower levels of educational attainment as these populations are more likely to be adversely affected by oil spills due to living in closer proximity to rail lines transporting oils and more likely to participate in oil spill cleanup.

Persons Testifying (Energy, Environment & Telecommunications): PRO: Wayne Senter, WA Fire Chiefs Assn.; Michael Mitchell, Tacoma Fire Dept.; Barnaby Dow, King County Emergency Management; Michael Harris, Executive Director, Pacific Whale Watch Assn.; Brian Gunn, WA State Progressive Caucus, Chair; Ryan Mello, city of Tacoma, Councilmember; Nancy Backus, Mayor, city of Auburn; Bruce Wishart, Sierra Club; Katherine Kler, Jefferson County Commissioner; Rob Duff, Governor's Policy Office; Maia Bellon, Ecology; Peter Antolin, Emergency Management Division, WA Military Dept.; Dave Danner, UTC, Chairman; G Chad Bowechop, Makah Tribal Council Office of Marine

Affairs; William McPherson, Unitarian Universalist Voices for Justice; Susan Sunshine, Bruce Hoefft, citizens.

CON: Mark Homeyer, Crowley Petroleum Services; Charles Costanzo, The American Waterways Operators; Rick Wickman, Columbia River Steamship Operators Assn.; Maritime Fire and Safety Assn.; Rob Rich, VP, Shaver Transportation Company; Brock Nelson, Union Pacific; Chad See, Freezer Longine Coalition, Executive Director; Greg Hanon, Western States Petroleum Assn.; Johan Hellman, BNSF Railway Co.

OTHER: Steve Woods, Columbia River Pilots; Mike Titone, Columbia River BAR Pilots; Gerry O'Keefe, WA Public Ports Assn.

Persons Signed in to Testify But Not Testifying: PRO: David Grobschmit, Puget Sound Pilots; Megan Duffy, Dept. of Natural Resources; Todd Hass, Puget Sound Partnership; Darcy Nonemacher, WA Environmental Council; Gus Gates, Surfrider; Rhonda Hunter, Nancy Baker-Krofft, citizen.

OTHER: Sierra Rotakhina, WA State Board of Health; Rad Cunningham, WA State Dept. of Health Epidemiologist.