
Environment Committee

HB 1611

Brief Description: Concerning oil transportation safety.

Sponsors: Representatives Farrell, Fitzgibbon, Fey, Peterson, Slatter, Tharinger, Pollet, Stonier, Senn, Appleton, Chapman, Goodman, Robinson, Pettigrew, Bergquist, Hudgins, McBride, Cody, Macri, Doglio, Stanford, Jinkins, Tarleton and Kagi.

Brief Summary of Bill

- Changes regulatory programs covering the overland and overwater transportation of oil, including requiring railroads and vessels to obtain certificates demonstrating the financial ability to pay for a worst-case oil spill, authorizing rule-making by the Department of Ecology to require tug escorts for oil-laden vessels in Puget Sound, and requiring updates to oil refinery spill prevention and contingency plans to address the handling of crude oil for export.
- Expands the scope of the oil spill Administration and Response Taxes to include oil received by pipeline, and makes certain other changes to the imposition of those taxes.

Hearing Date: 2/6/17

Staff: Jacob Lipson (786-7196).

Background:

Modes and Restrictions 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.

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.

In December 2015 the United States Congress eliminated many restrictions on the export of crude oil from the United States that had been in place since 1975. Prior to December 2015 the export of crude oil from the United States required a license and was allowed under certain limited circumstances, such as exports to Canada for consumption in Canada and exports of crude oil of foreign origin that was not commingled with American-produced oil. Certain restrictions on the export of crude oil remain in place under the new 2015 federal law, including the authority for the President to impose licensing requirements if there is a national emergency, or upon a finding that the export of crude oil leads to supply shortages that cause adverse employment effects in the United States.

Financial Assurance Requirements for Facilities and Vessels.

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

Railroads that transport oil as bulk cargo must provide information to the Utilities and Transportation Commission (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 Prevention Plans and Oil Spill Contingency Plans.

The ECY administers an oil spill preparedness, prevention, and response program. Among other laws implemented by the ECY's Oil Spills Program, vessel operators and facilities, including oil refineries, terminals, pipelines, and railroads that are involved in the bulk transfer of oil must 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.

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.

In addition to planning requirements, the ECY, by rule, establishes standards for a variety of aspects of oil facility operations. The ECY's rules for facility operations require: personnel at oil handling facilities to be specially certified and trained; oil facilities to prepare an operations

manual based on facility-specific equipment and procedures; and the standards for the use of contractors that provide oil spill cleanup and containment services for contingency plans.

Oil Vessel Maritime Safety Rules.

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. In addition to state oil tanker tug escort requirements for Puget Sound, 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.

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

Disclosure of Information about Oil Transportation.

Oil Arriving in Washington by pipeline vessel, and railroad is all subject to various requirements to notify the ECY:

- 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.
- Beginning in 2017, 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
- on the volume of crude oil they transported through the state and the originating state or province of the oil.
- The ECY may share railroad and pipeline oil movement information with other government emergency response agencies, including local government emergency response agencies, the ECY must also publish a quarterly report featuring aggregated information from the oil 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. Non-aggregated information is exempt from public disclosure.

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 or by railroad 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 facility. 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). 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 \$1,000 in response costs and for the emergency towing vessel stationed at Neah Bay. The Prevention Account is used for the administration of several ECY Oil Spill Program activities.

- 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.
- If the balance in the Response Account exceeds \$9 million and the balance of the Prevention Account exceeds the unexpended appropriation for the biennium, then the 4 cent per barrel Administration Tax is suspended until the beginning of the next biennium. If the Administration Tax is suspended for two consecutive biennia, the ECY is directed to recommend an adjustment to the Legislature in the Administration Tax rate.

Penalties for Oil Spills and Operational Requirement Violations.

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.

Oil spills in state waters are subject to civil penalties of up to \$10,000 per day per violation, plus additional criminal penalties for willful violations. State law also requires parties responsible for oil spills to pay natural resource damages associated with the spill according to either a prescribed schedule or based on an assessment of the damages to natural resources. Beyond environmental penalties and natural resource damages, strict liability is established for damages to public or private property due to oil spills, including loss of income, the means of producing revenue, or economic benefits resulting from an injury due to loss of real property or natural resources. In addition to damages accruing directly from the spill of oil into the water, strict liability also covers damages resulting from the use of chemical dispersants or burning the oil at the location where it was spilled.

Energy Facility Site Permitting.

The Energy Facility Site Evaluation Council (EFSEC) is responsible for making certification recommendations to the Governor for certain new energy facility construction or existing energy facility expansion proposals. The EFSEC is comprised of a chair appointed by the Governor and representatives from the following state agencies: the Departments of Commerce, Ecology, Fish and Wildlife, Natural Resources, and the Utilities and Transportation Commission. When an application to site a facility is submitted to the EFSEC, representatives from particular cities, counties, or port districts affected by the project are appointed to the EFSEC for proceedings related to the project.

Among the types of projects that the EFSEC has jurisdiction to review are proposals to newly construct crude oil, refined petroleum product, or natural gas pipelines of at least 6 inches in diameter and 15 miles in length, and proposals that expand existing crude oil, petroleum product, and natural gas pipelines by at least 6 inches in diameter and 15 miles in length.

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.

Emergency Response Planning.

The federal Emergency Planning and Community Right to Know Act requires the state to establish a State Emergency Response Commission (SERC) to supervise and coordinate the work of local emergency response planning committees. In 2006 the ECY contracted for a report prepared for the SERC that assessed federal, state, and local capacities to respond to dangerous incidents in Washington involving chemical, biological, radioactive, nuclear, or explosive agents and other hazardous materials. The report recommended and outlined how the state could establish a program under the Office of the State Fire Marshall to train emergency responders to prepare for chemical, biological, radioactive, nuclear, or explosive incidents.

Summary of Bill:

Financial Assurance Requirements.

Railroads that transport oil as bulk cargo must provide the same financial assurances to the Department of Ecology (ECY) as facilities like oil refineries and terminals. Documentation of financial responsibility must be in the form of a certificate issued by the ECY, with a term of one year or less.

Vessels, railroads, and other facilities may employ new means of demonstrating their financial responsibility, including a letter of credit or a protection and indemnity club membership.

The ECY is directed to adopt a rule setting the amount required for railroads, refineries and other oil storage facilities to demonstrate financial responsibility; an amount which is to be calculated by multiplying the reasonable anticipated per-barrel cleanup costs by the estimated worst-case spill volume anticipated in the facility's oil spill contingency plan. 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 immediately inapplicable to other previously covered vessels or facilities, and the owner or operator must re-demonstrate an ability to pay all damages.

Oil-Bearing Vessel Tug Escorts.

The ECY, in consultation with the Board of Pilotage Commissioners, must adopt rules by November 1, 2018 that apply only to the narrow channels of the San Juan Islands. The rules may require tug escorts and other safety measures in the Puget Sound that apply to oil tankers of greater than 40,000 deadweight tons, other towed vessels capable of transporting 10,000 gallons or more of crude oil or petroleum products, and articulated tug-barges of all sizes. By November 1, 2019, the ECY must adopt tug escort requirements and other safety measures for the remainder of Puget Sound.

The ECY's rules must be based on a determination that vessel traffic risk assessments provide evidence that the rules are necessary in order to meet a best achievable protection standard. Prior to rule-making, the ECY must consult with a specified list of maritime professionals and public agencies.

Any escort tugs used by oil tankers or other vessels to comply with tug escort requirements must have an aggregate shaft horsepower of at least 5 percent of the deadweight tonnage of the escorted vessel. The ECY may adopt additional rules to ensure that escort tugs have sufficient mechanical capability to provide safe escort.

Vessels not bearing bulk oil are not subject to tug escort requirements. Single-hulled oil tankers are subject to the tug escort requirements established under federal law for the Puget Sound.

Oil Facility Operational Requirements.

Oil refinery facilities proposing to handle crude oil for export must update their contingency plans, prevention plans, training and certification program, and operations manual to address all types of crude oil anticipated to be handled at the facility, including diluted bitumen from Canada or Baaken crude oil. By December 1, 2018, the ECY must adopt required components of plans addressing crude oil for export, and must include a requirement that plans meet a best achievable protection standard against damages from a spill or other release.

Whenever a refinery proposes to export crude oil in volumes that exceed 10 percent its the average production volumes of refined products over the past five years, the following facility operations must be updated:

- oil spill prevention plans;
- oil spill contingency plans;
- personnel training and certification programs; and
- oil spill operations manuals.

The ECY must provide notice of the export plan proposals to interested parties when prevention plans and contingency plans are proposed to be updated, and make them available for public review and comment.

The ECY must adopt rules for contingency plan personnel that provide spill management services, in addition to spill response and containment services.

Energy Facility Site Evaluation Council Jurisdiction.

The threshold for the size of crude oil transmission pipelines subject to Energy Facility Site Evaluation Council (EFSEC) jurisdiction is lowered. The construction or enlargement of crude oil pipelines that would have a resultant size of at least five miles in length or a 6 inch minimum diameter is made subject to EFSEC review.

Information on Oil Movement Disclosure.

The ECY is authorized to share un-aggregated oil movement information received from railroads and pipelines with the legislative bodies of local governments that oversee community first response agencies.

Liability for Oil Spill Damages.

Lost fishing and lodging income and lost real property value are listed as examples of the types of lost income or revenues associated with an oil spill for which damages can be sought from a strictly liable party. Revenues lost because of an oil spill for which damages may be sought include revenue losses that are either directly or indirectly attributable to a spill. Damages attributable to any action taken in response to a spill are recoverable from a liable party.

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

The 1 cent per barrel oil spill Response Tax and the 4 cent per barrel oil spill Administration Tax are imposed on the receipt of crude oil and refined petroleum products that arrive at a facility via an oil pipeline.

The credit against barrel taxes owed for crude or refined petroleum products that are exported out of state is repealed. The barrel tax is not applied to oil that the state is prohibited from taxing under the United States Constitution.

The cap on the 4 cent Administration Tax that pauses the assessment of the tax if the account's balance exceeds the amount appropriated in the previous biennia is eliminated, as is the requirement that the ECY recommend an adjustment to the Legislature if the tax is not imposed for two consecutive biennia.

Emergency Response Planning.

By June 30, 2018, the ECY must hire an independent contractor to update the 2006 chemical, biological, radioactive, nuclear, or explosive incidents report to the State Emergency Response Commission (SERC). The report must include an updated analysis of the state's hazardous materials response capabilities and comparable response structures in other states. The report must give special emphasis to recent changes in transport patterns for crude oil and other hazardous materials and available response resources.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2017.