

HOUSE BILL REPORT

E2SSB 6269

As Passed House:
March 7, 2018

Title: An act relating to strengthening oil transportation safety.

Brief Description: Strengthening oil transportation safety.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Ranker, Rolfes, Carlyle, Darneille, Hasegawa, Pedersen, Conway, Keiser, Hunt, Frockt, Kuderer, Chase, Liias and Saldaña; by request of Department of Ecology).

Brief History:

Committee Activity:

Appropriations: 3/6/18 [DP].

Floor Activity:

Passed House: 3/7/18, 62-35.

Brief Summary of Engrossed Second Substitute Bill

- Expands the scope of the Oil Spill Administration Tax (Administration Tax), and Oil Spill Response Tax to include oil received by pipeline, and annually distributes \$200,000 of the Administration Tax to the Military Department beginning in fiscal year 2019.
- Requires the Department of Ecology (ECY) to complete reports on vessel traffic in Puget Sound and the funding of activities carried out by the ECY's oil spills program, and to establish a forum to examine certain maritime safety measures in cross-boundary waters shared with British Columbia.
- Amends the requirements of the oil spill contingency plans that facilities and vessels must develop and of the oil spill response drills that must be conducted to test those contingency plans.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Graves, Hansen, Harris, Hudgins,

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.

Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan, Tharinger and Wilcox.

Minority Report: Do not pass. Signed by 10 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Buys, Condotta, Haler, Manweller, Schmick, Taylor, Vick and Volz.

Minority Report: Without recommendation. Signed by 1 member: Representative Stokesbary, Assistant Ranking Minority Member.

Staff: Jacob Lipson (786-7196) and Dan Jones (786-7118).

Background:

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 Spill Prevention Plans and Oil Spill Contingency Plans.

The Department of Ecology (ECY) administers an oil spill preparedness, prevention, and response program. Among other laws implemented by the ECY's oil spills program, operators of vessels 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. The ECY must, by rule, adopt and periodically revise the standards applicable to vessel and facility contingency plans. Vessels required to develop contingency plans include tank vessels, cargo vessels of at least 300 gross tons, and passenger vessels of at least 300 gross tons. Contingency plans approved by the ECY must identify personnel, materials, and equipment capable of promptly and properly removing oil with minimal environmental damage. Plans must also describe important features of the environment in which the facility or vessel operates, including fish and wildlife habitat, shellfish beds, and environmentally sensitive areas. The adequacy of contingency plans of covered vessels are tested through a variety of different types of periodic drills, including wildlife drills, tabletop drills, and deployment drills. The drill requirements for tank vessels include joint large-scale drills that test multiple contingency plans, which the ECY must order at least once every three years. The ECY sets standards for the persons that provide oil spill cleanup and containment services for facility and vessel contingency plans.

In addition to, or as part of, state spill contingency plans, onshore facilities and vessels 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 for the equipment relied upon in facility and vessel contingency plans and for the

operations of refineries, terminals, and other facilities.

Oil Vessel Maritime Safety Regulations.

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 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.

Certain oil-bearing vessels operating in the Strait of Juan de Fuca must file with the ECY evidence of an emergency response system that provides for the operation of an emergency-response towing vessel. This vessel must be capable of response to vessel oil spill threats, and be stationed at Neah Bay on the Olympic Peninsula.

Oil tankers of greater than 5,000 gross tons operating in Puget Sound are subject to compulsory pilotage, which means they must hire a licensed pilot to assist with vessel navigation.

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

Disclosure of Information about Oil Transportation.

Vessel operators are required to provide an advanced notice to the ECY prior to certain transfers of oil involving a vessel. The ECY may conduct inspections of oil transfer operations.

The Barrel Tax and Oil Spill Prevention Account, 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 Prevention Account is used for the administration of the ECY's oil spills program activities. 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.

Separately, the Military Department Active State Service Account is used to fund the activities of organized militia in state service for planning, training, exercises, and other duties that are not of an emergency nature.

Geographic Response Plans.

Under federal and state spill planning statutes, the ECY 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.

Summary of Bill:

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

The 1 cent per barrel Response Tax and the 4 cent per barrel Administration Tax are imposed on the receipt of crude oil and refined petroleum products that arrive at a facility via an oil pipeline. Each fiscal year beginning in 2019, the first \$200,000 of revenues from the Administration Tax are deposited into the Military Department Active State Service Account.

By July 1, 2020, the ECY must submit a report to the Legislature that addresses the ECY's oil spills program funding needs and ongoing program activities after fiscal year 2019, potential sources of program funding, and recommendations regarding the allocation of Oil Spill Administration and Response Tax revenues among state agencies.

Maritime Safety Measures in Puget Sound.

The ECY, in consultation with the Puget Sound Partnership and the Board of Pilotage Commissioners, must complete a report of vessel traffic and traffic safety in the Strait of Juan de Fuca and specified parts of northern Puget Sound. The report must only rely on existing vessel traffic risk assessments and other studies, as well as consultations with enumerated stakeholders. The assessments and evaluations in the report must address incident and spill data, vessel traffic trends, bitumen transport, tug escorts of certain vessels, tug escort capability, and an emergency response system in northern Puget Sound waters. The report must include recommendations on risk reduction measures, including costs and benefits, regarding tug escorts for certain vessels and an emergency response system in northern Puget Sound that is similar to the rescue vessel that is stationed at Neah Bay. An initial report must be submitted to the Legislature by December 1, 2018, and a final report is due by June 30, 2019.

The ECY must establish a Salish Sea shared waters forum (forum) that addresses data sharing, oil spill risk reduction, navigational safety, and other common issues in the cross-boundary waterways shared with British Columbia, Canada. The ECY must coordinate with Canadian federal and provincial agencies in establishing the forum, and seek stakeholder participation. The forum must meet at least once per year to consider:

- policy gaps and conflicts;
- oil spill risk reduction opportunities;
- oil spill prevention, preparedness, and response capacity; and
- the risk reduction potential and funding options for an emergency response system in shared waters that is similar to the rescue vessel that is stationed at Neah Bay.

The requirement that the ECY establish the forum expires on July 1, 2021.

Oil Spill Contingency Planning Requirements for Vessels and Facilities.

Vessel and facility oil spill contingency plans must describe water column species and subsurface resources, in addition to fish habitat, wildlife habitat, shellfish beds, and other features of the surrounding environment. The descriptions of these features of the surrounding environment must be based on information in geographic response plans or area contingency plans, where such plans have been developed. Where such plans have not been developed, the descriptions may be based on existing practices used in similar areas that protect those resources.

By December 31, 2019, the ECY must update rules for contingency plans to require covered vessels and facilities to address situations where oils may submerge or sink in water, and standards for best achievable protection in such situations. Updates to the ECY geographic response plans must also address situations where oils may submerge or sink in water.

The joint, large-scale drills ordered by the ECY involving multiple contingency plans must now include facilities and passenger and cargo vessels, in addition to tank vessels. These drills must address situations where oils may submerge or sink due to qualities, weathering, or environmental factors.

The ECY must conduct specialized review and prioritize adding capacity for inspections of vessel oil transfer operations where oils may sink or submerge in water.

The ECY must establish standards for persons who contract to provide facility spill management services under contingency plans, including wildlife spill response services.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 102, 103, and 206, relating to addressing the application of the Oil Spill Administration and Response Taxes to oil received by pipeline and the vessel traffic report for Puget Sound, which are subject to an emergency clause and take effect on April 1, 2018.

Staff Summary of Public Testimony:

(In support) Oil arriving by pipeline comprises 40 percent of the oil received in the state, and is not currently subject to the barrel tax that helps pay for the ECY's oil spills program. Oil arriving by pipeline poses a risk of oil spills, as with other modes of transportation. The ECY's oil spills program has a long history of unstable, unsustainable one-time funding, and the barrel tax has never fully paid for the oil spills program. The oil spills program should not be reliant on funding from the Model Toxic Control Act accounts, since this diverts funds from brownfield cleanup activities. The review of the oil spills program's administrative efficiency and resource allocation is overdue and will be helpful. This bill does not address all of the oil spills program's long-term funding needs, and is intended as a complement to a budget transfer from the Response Account to the Prevention Account. An oil spill would have devastating impacts on fish and wildlife, and it is less costly to prepare to prevent an oil spill than to clean up after one occurs. Oils that sink into the water column pose special risks

to fish and wildlife. Existing regulations need to emphasize heavy Canadian tar sands and other new types of oil that are increasingly moving through Washington and which infrastructure and regulations weren't initially designed to address.

(Opposed) None.

(Other) Washington has one of the best oil spills programs in the country, and it is not problematic to extend the tax to address oil received by pipeline in order to fund the ECY's activities. Oil spill contingency plan updates should be able to rely on geographic response plans and other existing documents. The timing of the geographic response plans and contingency plan updates to address sinking oils should be adjusted. Some of the language in the intent section regarding the adequacy of program funding poses a litigation risk, and doesn't appropriately recognize the record of safety achievements from activities and regulations that are already being implemented.

Persons Testifying: (In support) Dale Jensen, Department of Ecology; Jeff Parsons, Puget Sound Partnership; Andy Carlson, Washington Department of Fish and Wildlife; Gerry O'Keefe, Washington Public Ports Association; Bruce Wishart, Puget Soundkeeper and Sierra Club; Nathaniel Jones, Safe Energy Leadership Alliance; and Darcy Nonemacher, Washington Environmental Council.

(Other) Greg Hanon, Western States Petroleum Association; and Amber Carter, Maritime Fire and Safety Association and Columbia River Steamship Operators' Association.

Persons Signed In To Testify But Not Testifying: None.