

# SENATE BILL REPORT

## SB 5123

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As of February 8, 2017

**Title:** An act relating to exempting short-line railroads that haul nonfuel oils from oil spill contingency planning requirements.

**Brief Description:** Exempting short-line railroads that haul nonfuel oils from oil spill contingency planning requirements.

**Sponsors:** Senators Warnick and Chase.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 2/08/17.

**Brief Summary of Bill**

- Exempts Class III railroads transporting oil that is not crude oil or a refined petroleum product used for fuel from oil spill contingency planning.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** Jan Odano (786-7486)

**Background:** The Department of Ecology (Ecology) administers an oil spill preparedness, prevention, and response program. Oil refineries, terminals, pipelines, railroads, other facilities, and vessel operators involved in the bulk transfer of oil are required to develop oil spill contingency plans that outline containment and remediation responses to potential oil spills. Contingency plans approved by Ecology must identify personnel, materials, and equipment capable of promptly and properly removing oil with minimal environmental damage.

In 2015, the Legislature directed Ecology to develop rules requiring railroads transporting bulk crude oil to have contingency plans. State-owned railroads are not subject to this requirement. Ecology adopted rules in August 2016. Railroads must develop and maintain oil spill contingency plans that include response action, product type and potential spill volume, environmental conditions that includes air and groundwater monitoring, wildlife response, equipment planning standards, training, and equipment maintenance. For

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companies that must comply with the rule, Ecology developed a boilerplate for use. In addition, a company may request an alternative to the contingency plan. Companies that must submit a federal plan may use that plan with required Washington State-specific information added as an appendix.

The term oil for purposes of oil spill prevention, cleanup, and financial responsibility laws means any kind of oil that is liquid at 25 degrees Celsius and 1 atmosphere of pressure, including any distillate of that oil.

The Surface Transportation Board classifies railroads by their annual operation revenue. Operating revenues for: Class I railroads are more than \$433.2 million; Class II are between \$34.7 million and \$433.2 million; and Class III railroads have less than \$34.7 million. There are seven Class I freight railroads operating in the U.S. within Washington. The Class I railroads are Burlington Northern Santa Fe Railway (BNSF) and the Union Pacific Railroad (UP). Together BNSF and UP own 60 percent of the rail infrastructure. These two railroads transport the majority of rail freight through the state.

There is only one Class II railroad operating in the state, Montana Rail Link. Class III railroads, or short-line railroads, are the smallest systems in terms of mileage and revenue.

There are 25 Class III railroads in Washington, 18 local railroads, and 7 switching and terminal railroads. According to the 2014 Washington State Rail Plan, these short-line railroads usually serve local industry such as agriculture and forestry. The switching and terminal railroads serve ports by moving goods from carloads and containers from ocean terminals. The mileage for individual short-lines varies from 1-100 miles and combine to a total of 1400 miles of track statewide.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** A contingency plan is not required for Class III railroads hauling bulk oil that is not crude oil or refined petroleum product used for fuel.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute:** PRO: Ecology has come a long way on this issue, but there are concerns for short-line railroads that have one or two cars of non-crude oil. These 1-2 cars shouldn't be subjected to the same financial requirements as the big railroads. Class III railroads are determined by revenue size. Our railroads do less than \$7 million and \$3 million per railroad. The cost for a contractor is \$20,000 a year to develop and maintain the plan to Ecology's requirements. This is well in excess on products for which there is no history of spills. We don't want to channel funds to drills and exercises that won't be needed. There is an economic burden without a reason.

The 2015 bill was not intended to regulate canola oil. Most of the small railroads haul very little crude but are being managed as if they do. Most of the short-line railroads are in rural areas, not near water. The big issue is the cost of contingency planning for a railroad that hauls 1-2 cars of oil per month. The rule is not scalable or flexible. It is burdensome and costly.

CON: The concern is that biological oil can be as persistent as petroleum. Impacts to wildlife and environment have been great costing several thousand dollars. We've worked with short-line railroads to make plans scalable and to help them develop the plans.

OTHER: Vegetable oils aren't as toxic as non-vegetable oil. However, vegetable oil will mat a bird's feather, causing them to lose the insulation and be subject to exposure and death. In shallow water, oil can inhibit oxygenation of the water. Spills can impact fish and birds.

**Persons Testifying:** PRO: Senator Judy Warnick, Prime Sponsor; Tim Kelly, Columbia Basin/Central Washington Railroads, Chief Operating Officer; Patrick Boss, Columbia Basin Railroad/Central Washington Railroad; Lloyd Flem, All Aboard Washington; Amber Carter, Client: Portland Vancouver Junction Railroad.

CON: Dale Jensen, Department of Ecology.

OTHER: Andy Carlson, Department of Fish and Wildlife.

**Persons Signed In To Testify But Not Testifying:** No one.