SENATE BILL REPORT
SB 5462

As of February 9, 2017

Title: An act relating to oil transportation safety.

Brief Description: Concerning oil transportation safety.

Sponsors: Senators Carlyle, Ranker, Rolfes, Darneille, Hunt, Billig, McCoy, Pedersen, Wellman, Keiser, Kuderer, Saldaña and Frockt.

Brief History:
Committee Activity: Energy, Environment & Telecommunications: 2/02/17.

Brief Summary of Bill

- Requires railroads to meet financial responsibility requirements.
- Applies the barrel tax on pipelines.
- Revises financial responsibility requirements for facilities.
- Eliminates the credit on the tax for crude or refined products exported out of the state.
- Requires facilities to update their oil spill and contingency plans as well as their operating manuals and training requirements to reflect handling crude oil for export.

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.

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.

Oil Spill Prevention Plans and Oil Spill Contingency Plans. Ecology administers an oil spill preparedness, prevention, and response program. Among other statutes administered by Ecology's Oil Spills Program, state law directs facilities including railroads, oil refineries, terminals, pipelines, and vessel operators involved in the bulk transfer of oil to put in place oil spill contingency plans that outline containment and remediation responses to potential oil spills from the vessel. Contingency plans approved by Ecology 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 Ecology. Ecology may only approve these plans if they incorporate measures providing for the best achievable protection of public health and the environment, which is the highest level of protection through the best achievable technology and the most protective staffing levels, training procedures, and operational methods.

Damages. A person owning or having control over oil that enters the waters of the state is strictly liable for damages. The responsible party is liable for damages that include loss of income, net revenue, or means of producing revenue. Additionally, a responsible party is liable for damages from the use and deployment of chemical dispersants and burning as a result of a spill.

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 Ecology in one of several ways, including providing evidence of insurance or surety bonding. Railroads transporting 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 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.

Disclosure of Information about Oil Transportation. Vessel operators and railroads are also required to provide an advanced notice to Ecology that includes time, location, and volume information prior to certain transfers of oil. Facilities receiving crude oil from railroads must include in the advance notice the route taken to the facility, the scheduled time, location, volume, gravity of crude oil, and originating region of crude oil received. This advanced notice must be provided once per week to Ecology for the receipts scheduled for the following week. Pipelines must report to Ecology twice per year on the volume of crude oil they transported through the state and the state or province of origination of the crude oil. Ecology may share this information with the Emergency Management Department and with other government emergency response agencies. Ecology must also publish a quarterly report featuring information from the railroad 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. Information in the quarterly report must be aggregated on a statewide basis by route, by week, and by type of oil.

Oil Spill Response Tax and Oil Spill Administration Tax. The oil spill administration tax and an oil spill response tax 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 taxes are also imposed on facilities receiving crude oil by rail. 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. When the Oil Spill Response Account is greater than $9 million and the quarterly balance of the Oil Spill Administration Account exceeds unexpended appropriation for the biennium during the first six months of the biennium, the Oil Spill Administration Tax is suspended the next calendar month until the beginning of the next biennium. Ecology must recommend to the Legislature an adjustment to the Oil Spill Administration Tax rate if the tax is suspended for more than two biennia.

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. A credit is allowed against the oil spill response and oil spill administration taxes for any crude oil or petroleum products received at a marine or bulk oil terminal and then exported or sold for export from the state.

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, Ecology 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 (CBRNE) 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 CBRNE incidents.

Energy Facilities Site Evaluation Council (EFSEC). The Legislature created EFSEC to review siting and permitting applications for large energy projects. EFSEC's responsibilities include siting large natural gas and oil pipelines, crude or refined petroleum or liquid petroleum product pipelines larger than 6 inches in diameter and 15 miles in length; thermal electric power plants that are 350 megawatts or greater and their dedicated transmission lines, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields. The siting review or certification is state licensing process for the siting, construction, and operation of an energy project. EFSEC is responsible for evaluating applications to ensure that all environmental and socioeconomic impacts are considered before a site is approved. After evaluating an application, EFSEC submits a recommendation to the Governor. A certification agreement approved by the Governor preempts any other state or local regulation concerning the location, construction, and operational conditions of an energy facility.

Summary of Bill: Financial Responsibility Requirements. Documentation of financial responsibility must be in the form of an Ecology-issued certificate of financial responsibility. A letter of credit, certificates of deposit, or protection and indemnity club membership may be used to document financial responsibility. The certificate of financial responsibility has a term or one year or less. Owners or operators of multiple vessels or facilities may be covered by a single certificate. Railroads that transport oil as bulk cargo must also demonstrate financial responsibility.

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. 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.

<u>Oil Spill Prevention Plans and Oil Spill Contingency Plans.</u> Onshore and offshore facilities planning to handle crude oil for export must revise its oil spill prevention and contingency plans, training and certification programs, and operations manuals to specifically address all types of crude oil planned or anticipated to be handled. An onshore or offshore facility may not handle crude oil for export without an oil spill prevention or contingency plan approved by Ecology.

Ecology must adopt rules to address handling of crude oil for export and require that the plans demonstrate best achievable protection in the event of a spill, release, explosion, or ignition of the oil. A facility must update its prevention and contingency plans, operations manuals, and training and certification program when it proposes to export crude oil in volumes that exceed 10 percent of the annual average facility production of refined product over the preceding five years. Ecology must provide notice of the proposal to interested parties and make the oil spill prevention and contingency plans updates available for public review and comment.

<u>Damages.</u> Damages for which a responsible party is liable also include lost fishing gear or lost lodging income due to reduced tourism, loss of producing income or revenue directly or indirectly attributable to an oil spill and lost real property value when it is demonstrated to be the direct result of an oil spill.

<u>Oil-Bearing Vessel Tug Escorts.</u> By November 1, 2018, Ecology, in consultation with the Board of Pilotage Commissioners, and relying on the results of vessel traffic risk assessments, must adopt rules for tug escort requirements and other safety measures for the narrow channels of the San Juan Islands, including Rosario Strait, Haro Strait, and Boundary Pass. The rules must 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. By November 1, 2019, Ecology must adopt tug escort requirements and other safety measures for the remaining areas of Puget Sound. Ecology must consult with the US Coast Guard, Puget Sound safety committee, tribes, public ports, and local governments prior to adopting a rule.

<u>Oil Spill Response Tax and Oil Spill Administration Tax.</u> The oil spill response tax and the oil spill administration tax are imposed on pipelines. The provisions to suspend the oil spill

administration tax are eliminated. The credit against the oil spill response and oil spill administration taxes for crude oil or petroleum exported or sold for export is repealed.

Disclosure of Information about Oil Transportation. Ecology may share advance notice information with the legislative bodies of local governments that oversee community first response agencies.

Emergency Response Planning. Ecology must contract with an eligible third party to update the report to SERC on the statewide response to chemical, biological, radiological, nuclear, and explosive material. The report must address the state's hazardous materials response capabilities.

Energy Facilities Site Evaluation Council (EFSEC). Crude oil pipelines larger than six inches in diameter and five miles in length are subject to EFSEC review.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: The update to the statewide hazardous materials plan is needed. This risk has changed significantly. The plan update would address statewide gaps in safety. There are no statewide response resources and communities depend on shared resources. The VTRA looked at maritime risks and mitigation measures for tug escort requirements. VTRA shows other benefits for tug escorts. There are higher risks in the San Juan Islands. This bill addresses those geographic concerns. Puget Sound has an outstanding record but there have been a number of close calls. With Kindermorgan, vessel traffic has increased seven-fold in Vancouver. We have shared waters with them. San Juan Islands form a round-about for all vessel traffic. We accept all the risk, but get none of the benefits. There is a need for a response tug in the passes. If there is a spill, it will hit land and containment cannot be guaranteed.

CON: The certificate of financial responsibility serves as a preclearance from Ecology. A railroad that moves any amount of oil would need permission from Ecology. This gives the Director an astonishing amount of power by having the ability to revoke a certificate for an event that takes place out-of-state. This is preempted by federal statutes. The state cannot superimpose another layer of economic regulation on interstate commerce. Two years ago the Legislature decided that railroads must submit financial reports to the UTC to prove fiscal solvency. All railroads are complying with this requirement. The certificate of financial responsibility is redundant, unnecessary, and preempted by federal law.

Persons Testifying: PRO: Senator Reuven Carlyle, Prime Sponsor; Michael Mitchell, Washington Fire Chiefs; Jamie Stephens, San Juan County Councilmember; Steve Garey, citizen; Peter Cornelison, Hood River City Councilmember; Fred Felleman, Friends of the Earth; Bruce Wishart, Puget Soundkeeper Alliance; Gus Gates, Surfrider; Bill Whealan, Washington Fire Chiefs; Laura Skelton, Washington Physicians for Social Responsibility; Rebecca Ponzio, Washington Environmental Council; Greg Rock, CarbonWA; Rhonda Hunter, citizen.

CON: Johan Hellman, BNSF Railway Co.; Cliff Webster, American Waterways Operators; Jessica Spiegel, Western States Petroleum Association.

OTHER: Todd Hass, Puget Sound Partnership; Dale Jensen, Department of Ecology Spills Program.

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