

SENATE BILL REPORT

E2SSB 6269

As Passed Senate, March 3, 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, Lias and Saldaña; by request of Department of Ecology).

Brief History:

Committee Activity: Energy, Environment & Technology: 1/25/18, 1/31/18 [DPS-WM, DNP].

Ways & Means: 2/15/18, 2/19/18 [DP2S, DNP, w/oRec].

Floor Activity:

Passed Senate: 3/03/18, 42-7.

Brief Summary of Engrossed Second Substitute Bill

- Applies the barrel tax to crude oil received by pipeline.
- Requires the Department of Ecology (Ecology) to review, assess, and provide a report on vessel traffic safety in northern Puget Sound.
- Requires Ecology to establish the Salish Sea Shared Waters forum.
- Requires Ecology to update contingency plan rules to address situations where oils may sink or submerge in water.
- Authorizes Ecology to require at least one joint large-scale, multiple plan equipment deployment drill of onshore and offshore facilities and covered vessels, every three years.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 6269 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Brown, Hawkins, Hobbs, McCoy, Ranker, Sheldon and Wellman.

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.

Minority Report: Do not pass.
Signed by Senator Ericksen, Ranking Member.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6269 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member; Brown, Schoesler, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Bailey.

Staff: Jeffrey Mitchell (786-7438)

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 Ecology (Ecology) has the primary authority to oversee prevention of and response for oil spills in state waters. Additionally, Ecology is responsible for containment and clean-up efforts of oil spills. 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.

Oil Spill Prevention Plans and Oil Spill Contingency Plans. Ecology administers an oil spill preparedness, prevention, and response program. Facilities including railroads, oil refineries, terminals, pipelines, and vessel operators involved in the bulk transfer of oil are required to have 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. Plans must also describe important features of the environment in which the facility or vessel operates, including fish and wildlife, shellfish beds, and environmentally sensitive areas.

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. Best achievable protection is the highest level of protection using the best achievable technology, which includes the using appropriate equipment, trained staff, and processes to ensure the highest level of protection. The best achievable protection standard is established by Ecology through administrative rules, which also apply to the equipment used by facilities and vessel contingency plans.

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.

The oil spill response tax is \$0.01 per barrel, which funds the state response to 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.

When adopting its rules for crude oil by rail and pipeline, Ecology expressed concerns regarding diluted bitumen because, under some conditions, it may become submerged below the water surface or sink to the bottom when spilled into water. An incident involving these crude oil types may create greater environmental, safety, health, and economic impacts than other types of crude oil.

Geographic Response Plans (GRPs). Washington, Oregon, and Idaho, along with federal agencies coordinate planning for oil and hazardous substance incidents. The Northwest Area Contingency Plan (NWACP), is a comprehensive plan that coordinates federal state, tribal, local, and international responses to oil and hazardous substance incidents. The NWACP contains tools for responding to incidents, including GRPs. GRPs are strategies for early actions in the event of an oil spill. The strategies are developed for specific areas at risk for oil spills and must include plans to minimize impacts to sensitive environmental, cultural, and economic resources. The GRPs are developed in collaboration with states, local and federal agencies, and tribes and are maintained by Ecology and Environmental Protection Agency.

Summary of Engrossed Second Substitute Bill: Oil Spill Response Tax and Oil Spill Administration Tax. The oil spill response tax and the oil spill administration tax are imposed on pipelines.

By December 31, 2019, Ecology must update contingency plan rules to address situations where oils may sink or submerge in water. The plans must include the qualities of the oil, environmental factors, method of discharge, and weathering. Contingency plan equipment deployment drills must address situations where oils may sink or submerge. Ecology must also conduct specialized reviews of operations that transfer oils that may sink or submerge. Ecology must prioritize adding capacity for these inspections.

Ecology's rules for persons contracting to cleanup or contain spills is revised to include spill management, which means managing some or all aspects of a response, containment, and cleanup of a spill, as well as utilizing a specified command structure, or wildlife rehabilitation and recovery services for a spill response.

Every three years, Ecology must require at least one joint large-scale, multiple plan equipment deployment drill, of onshore and offshore facilities and covered vessels to determine adequacy of owners' and operators' compliance with contingency plan requirements. The drills, at a minimum, must focus on the functional ability for multiple contingency plans to deploy equipment and personnel when simultaneously activated, operational readiness during the first six hours of a spill, and over multiple operational periods of response.

Ecology is required to establish the Salish Sea Shared Waters forum (forum), which must meet at least annually. Ecology must coordinate with Canadian agencies when establishing the forum and seek participation from state, provincial, and federal governmental entities, as well as from regulated entities, environmental organizations, tribes, and first nations. The forum must address common issues in the shared waterways of Washington and British Columbia such as reducing oil spill risk, navigational safety, and data sharing. In addition, the forum must consider gaps and conflicts between policies; requiring tug escorts for oil tankers, articulated tug barges, (ATBs) and other vessels; enhancing oil spill prevention, preparedness, and response capacity; and if an emergency response system in northern Puget Sound will decrease oil spill risk. The forum expires July 1, 2021.

Ecology, in consultation with the Puget Sound Partnership and the Pilotage Commission, must report on vessel traffic and safety within the Strait of Juan de Fuca, Puget Sound area including the San Juan archipelago and connected waterways, Haro Strait, Boundary Pass, and the waters south of Admiralty Inlet. Ecology must use existing current vessel traffic risk assessments and other available studies, and consult with tribes, the U.S. Coast Guard, other appropriate maritime experts, and the forum.

The report must include assessment and evaluation of:

- worldwide incident and spill data for ATBs and other towed waterborne vessels;
- transport of bitumen and diluted bitumen;
- tug escorts for oil tankers, ATBs, and other towed waterborne vessels, including California requirements;
- requirements for tug escorts, including manning and pilotage needs;
- an emergency response system for Haro Strait, Boundary Pass, and Rosario Strait; and
- the economic impact of tug escort proposals.

Ecology must include recommendations in its report for:

- vessel traffic management and safety;
- the viability of tug escorts for ATBs and other towed waterborne vessels in reducing oil spill risk;
- specific requirements and capabilities for tug escorts if the use of escorts will reduce oil spill risk; and
- emergency response system for Haro Strait, Boundary Pass, and Rosario Strait.

Ecology must submit a preliminary report to the Legislature by November 1, 2018, and a final report by June 30, 2019.

By July 1, 2020, Ecology must provide a report to the Legislature on:

- oil spill program activities that are and are not expected to continue after fiscal year 2019;
- recommendations on potential sources of funding and allocation of funding to various state agencies; and
- forecast of oil spill program funding needs after fiscal year 2019.

GRPs and contingency plans must include the following in their description of important features of the surrounding environment: habitat, water column species, and subsurface resources. The descriptions must be based on information available in GRPs and area contingency plans. Updates to GRPs must include addressing oils that may sink or submerge.

Every year, the first \$200,000 of receipts from the Oil Spill Administration tax is allocated to the National Guard for oil spill training and cleanup.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill (Energy, Environment & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: This addresses critical gaps in funding for the oil spill response program. Oil spill prevention and response is a top priority. There have been dramatic changes in the method of transport, but the barrel tax has not been updated. This provides an essential opportunity to safeguard Puget Sound. It secures balanced and predictable funding. The tax barely impacts people at the pump. If there is an oil spill in the Salish Sea, the economy and ecosystem will shut down. These are unacceptable risks. Healthy marine and fresh waters are paramount to Washington State.

CON: The program has reduced overall risk. There needs to be an evaluation of the utility and efforts of using Neah Bay Tug as well as a new tug. The highest risk is from fixed facilities and the Pollution Liability Insurance Agency addresses these issues. Rosario Strait is the only location at risk from pipelines and the increase in funds from this bill is not necessary to study this one location.

OTHER: We have worked with Ecology to make sure changes happen in the most effective way. There needs to be development of data including a cost-benefit analysis and cost of implementation. There should also be a review of how non-oil vessels contribute. The information for new types of oil releases should be developed under the GRPs and northwest area committees. The efficiency of the program should be reviewed to eliminate duplicative inspections with the U.S. Coast Guard.

Persons Testifying (Energy, Environment & Technology): PRO: Senator Kevin Ranker, Prime Sponsor; Eric Von Brandenfels, President, Puget Sound Pilots; Jamie Stephens,

Councilmember, San Juan County; Stephanie Buffum, Friends of the San Juans; Todd Hass, Puget Sound Partnership; Cyrilla Cook, Washington Department of Natural Resources; Liz Lovelett, Anacortes City Council; Dale Jensen, Program Manager, Spills Program, Department of Ecology; Michael Lilliquist, President, Bellingham City Council; Jerry Joyce, Seattle Audubon; Bruce Wishart, Puget Soundkeeper Alliance, Sierra Club; Darcy Nonemacher, Washington Environmental Council; Chad Bowechop, Makah Tribe Office of Marine Affairs; Raelene Gold, League of Women Voters of Washington; Arthur West, Washington Retail Association.

CON: Charles Costanzo, The American Waterways Operators; Mary Catherine McAleer, Association of Washington Business.

OTHER: Greg Hanon, Western States Petroleum Association; Johan Hellman, BNSF Railway Company; Amber Carter, Columbia River Steamship Operators Association, Maritime Fire and Safety Association.

Persons Signed In To Testify But Not Testifying (Energy, Environment & Technology):
No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We urge the additional 2 cent tax. Reliable, long-term funding is needed. One-time transfers have been used too many times. The spills program is not fully funded. Approximately, 70 percent of the program is funded through the hazardous substance tax, which is under financial stress. Adjustments to the funding structure are long overdue. Oil is being transported in very different ways than it was at the creation of the tax. Approximately, 40 percent of crude oil flows through pipelines. There is a very good nexus between the barrel tax and oil companies. This bill addresses critical funding gaps. One hundred percent of the oil spill team budget for the Department of Fish and Wildlife is derived from the oil spill prevention account. The appropriation for the department is almost identical to what it was ten years ago. Unfortunately, the current version of the bill is still deficient in funding the oil spill program. Only 20 percent of the 20 billion gallons that move around the state are subject to the tax. The 2 cent increase in the original bill needs to be restored. The Department of Ecology's workload has been increasing substantially with Neah Bay rescue tugboat.

OTHER: The funding should go to the activities that are the most important for the region. The study should be more balanced. The contingency plans should occur in the most effective way. The portion of the bill relating to the efficacy of additional spill reduction elements needs some additional work. The report in section 104 of the bill should be done by JLARC and not Ecology. We support the original version of the bill, which fixed the funding shortfall. A major oil spill would be the death knell of many iconic animal species in Puget Sound. It is much cheaper to prevent an oil spill than to clean it up. We oppose any effort increase the tax rate; however, support the increase in the tax base by including oil transported by pipeline. Section 104 requires a study of potential revenues. The need for the study is in question. The study should be more balanced and open.

Persons Testifying (Ways & Means): PRO: Senator Kevin Ranker, Prime Sponsor; Jamie Stephens, San Juan County Councilmember; Nathaniel Jones, Mayor Pro-Tem, City of

Olympia and SELA member; Darcy Nonemacher, Washington Environmental Council, Washington Conservation Voters; Bruce Wishart, Sierra Club & Puget Soundkeeper Alliance.

OTHER: Mary Catherine McAleer, Association of Washington Business; Amber Carter, Maritime Fire and Safety Association, Port of Vancouver, Columbia River Steamship Operators Association; Greg Hanon, Western States Petroleum Association; Dale Jensen, Department of Ecology; Andy Carlson, Department of Fish and Wildlife; Jeff Parsons, Puget Sound Partnership; Chad Bowe chop, Makah Tribe; Gerry O'Keefe, Washington Public Ports Association; Dave Warren, DNR.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.