

HOUSE BILL REPORT

ESSB 5579

As Passed House - Amended:

April 12, 2019

Title: An act relating to the volatility of crude oil received in the state by rail.

Brief Description: Concerning the volatility of crude oil received in the state by rail.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Billig, Carlyle, Pedersen, Palumbo, Hasegawa, Keiser, Rolfes, Saldaña, Van De Wege, Frockt, Conway, Hunt, Liias, Dhingra, Kuderer and Nguyen).

Brief History:

Committee Activity:

Environment & Energy: 3/19/19, 4/1/19 [DPA].

Floor Activity:

Passed House - Amended: 4/12/19, 53-40.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Prohibits a facility constructed or permitted after January 1, 2019, from unloading or loading crude oil into or from a rail tank car unless the oil has a vapor pressure of less than 9 pounds per square inch.
- Prohibits a facility from unloading or loading crude oil into or from a rail tank car unless the oil has a vapor pressure of less than 9 pounds per square inch, beginning two years after the volume of crude oil transported to the facility in a calendar year has increased by more than ten percent above the volume reported for the calendar year 2018.
- Requires facilities to provide advance notice to the Department of Ecology (Ecology) of the type and vapor pressure of crude oil received by rail.
- Requires Ecology to provide to the Utilities and Transportation Commission (UTC) data reported by facilities concerning crude oil transported by rail.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

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.

Majority Report: Do pass as amended. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

Staff: Robert Hatfield (786-7117).

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 cleanup 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.

Definition of "Facility."

"Facility" is defined in the Oil and Hazardous Substance Spill Prevention and Response Act as any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

Oil Spill Prevention Plans and Oil Spill Contingency Plans.

The Department of 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 outlining containment and remediation responses to potential oil spills from the vessel.

Disclosure of Information about Oil Transportation.

Vessel operators and railroads are required to provide an advance 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. The Department of 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, week, and type of oil.

Railroad Safety.

The Federal Railroad Administration is responsible for establishing national railroad safety rules. The rules address concerns such as hazardous materials; track, signal, and train

control; operating practices; and motive of power and equipment. The Surface Transportation Board has jurisdiction over railroad rates, service issues, mergers, sales, construction, and abandonment of rail lines. The Pipeline and Materials Hazardous Safety Administration (PMHSA) within the United States Department of Transportation regulates movement of hazardous materials by all modes of transportation. The PHMSA develops standards to classify, handle, and package shipments of hazardous materials.

Summary of Amended Bill:

A facility constructed or permitted after January 1, 2019, may not load or unload crude oil into or from a rail tank car unless the oil has a vapor pressure of less than 9 pounds per square inch.

A facility may not load or unload crude oil into or from a rail tank car unless the oil has a vapor pressure of less than 9 pounds per square inch beginning two years after the volume of crude oil transported by rail to the facility for a calendar year has increased by more than 10 percent above the volume reported for the 2018 calendar year.

The Director of the Department of Ecology (Ecology) may impose a penalty of up to \$2,500 per day per rail car, or the equivalent volume of oil, for violations of the above prohibition. Any penalties recovered must be credited to the Coastal Protection Fund.

The act does not prohibit a railroad car carrying crude oil from entering Washington, does not require a railroad car carrying crude oil to stop before entering Washington, and does not require a railroad car carrying crude oil to be checked for vapor pressure before entering Washington.

The scope of information that a facility must provide to Ecology when it receives a shipment of oil by rail is expanded to include the type and vapor pressure of the oil.

The Department of Ecology must provide to the Utilities and Transportation Commission (UTC) data reported by facilities on the characteristics, volatility, vapor pressure, and volume of crude oil transported by rail.

The UTC must incorporate data received from Ecology in the development of its annual work plan and inspection activity.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to the prohibition on the loading and unloading of certain crude oil, which takes effect two years after the Department of Ecology provides notification that the volume of crude oil transported by rail in a calendar year as reported under RCW 90.56.565 has increased more than 5 percent above the volume in 2018.

Staff Summary of Public Testimony:

(In support) This is a bill about safety for workers and communities. Crude oil from the Bakken region passes through Spokane via rail many times per day, over elevated tracks, near schools, hospitals, businesses, and homes. Oil trains also go under downtown Seattle. There was a derailment in Ritzville just last week; the train was not carrying oil, but it could have been. An explosion would be catastrophic; it would hurt people and shut down businesses. The Spokane Fire Department strategy to fight an oil train fire is to not fight it because it is so dangerous. One explosion of an oil train in Quebec killed 47 people. In Oregon an oil train derailment caused a fire that took 14 hours to put out. Setting new standards for vapor pressure helps to reduce an active threat. A federal regulatory agency is considering reviving regulations to regulate vapor pressure. This standard is essential for safety. The process to make crude oil safer to be transported by rail, which is called conditioning, already exists. There was an amendment to this bill in the Senate to delay the effective date of the prohibition until 2020 to allow oil companies to build up the necessary infrastructure to be able to do conditioning.

There are safety concerns with crude oil coming through the downtown corridor. A spill or fire would prevent the transport of ambulances to hospitals. One business owner could only afford a space near the railroad tracks, and that business would be impacted by a spill.

In Montana, an oil train derailed but did not catch fire. It had a lower vapor pressure.

Bakken crude oil is uniquely dangerous because of the liquid natural gas mixed in. There is no way to completely prevent oil train derailments. If an oil train were to derail in Spokane from the elevated rail tracks, it would devastate the community. Congress has delegated authority for rail safety to the states.

(Opposed) The North Dakota Attorney General intends to litigate this prohibition under the Interstate Commerce Clause. North Dakota recently spent \$1.6 million over seven years to litigate another matter. North Dakota's standards regarding conditioning took federal preemption into account. The infrastructure does not exist for crude oil stabilization and product transport. The North Dakota standard is based on science.

This bill is based on assumptions, including that North Dakota crude oil is different than other forms of crude, that 9 pounds per square inch (psi) is safer than other pressures, and that the infrastructure exists to condition crude oil down to 9 psi. Under the bill, Washington refineries could choose to purchase crude oil from other states, with no change in safety. Light sweet grades of crude oil command a price premium. Sweet grades of crude oil are safer for workers to extract than sour crude. North Dakota does not have the infrastructure to achieve 9 psi on a regular basis. Treating crude oil to get to 9 psi would require the removal of valuable components, such as propane. Stabilizing crude oil to 9 psi does not make anybody safer; the remaining fuel is still rich in hexanes and butanes. Other equally flammable liquids are transported safely every day. There is no scientific basis for the 9 psi standard; it may have come out of litigation in New York.

There has been no definitive study that can say a lower vapor pressure is safer. Shifting away from rail would shift oil transport toward road and sea, which are less safe. There is a study currently underway to look at the relationship between vapor pressure and safety.

Bakken crude oil is not unique among other crude oils. One facility has invested millions of dollars in its rail facility, specifically with Bakken crude oil in mind. There would be no option but to shut down the rail facility if this bill passes. The only crude of similar quality comes from West Africa, Saudi Arabia, and Russia. The bill would have an immaterial impact on safety, and would significantly impact Washington's refineries.

There have been no incidents at one oil refinery in five years. Jobs at the refinery's rail facility would be lost if the bill is passed.

It is not accurate to say that fires of Bakken crude oil cannot be fought. Responding to a Bakken incident involves the same techniques as for other crude oils.

If enacted, this bill will endanger many family wage jobs in the South Puget Sound region. The bill will not reduce the risk of transporting crude oil in Washington. It is arbitrary, bad for employees, bad for the regional economy, and does not achieve the intended goal.

Forty-two percent of one oil refinery's crude oil has come in by rail since 2012 with no incidents. The bill will disadvantage Washington refiners relative to refiners in other states. Rail safety is about the rail and the container, not vapor pressure. The prohibition would increase ship traffic by 60 additional ships at one refinery. There has been a large drop in vessel traffic with the use of rail, which has provided benefits both for the environment and for safety.

The rail cars used to transport Bakken crude oil are new, safer rail cars, consistent with 2015 federal standards. Nine psi is not really that different from 13 psi when it comes to safety. The gasoline in cars is 13.5 psi, which is transported by tanker trucks over roads every day.

The bill would expand Washington's carbon footprint and place higher energy costs on Washington. Bakken crude oil provides Washington with cleaner energy than North Slope crude oil, because it has a higher energy content and it requires less energy to extract. Bakken crude oil travels less distance than other crude oils, and the shorter distance means increased safety.

There is a lack of science behind the bill. If there were solid facts to support the bill, it would be different, but those facts are not there. Salmon runs are dwindling, as are orca populations, and increased shipping would exacerbate that.

Washington has a petroleum demand. The bill does not stop oil trains from passing through the state. The only thing it does is stop those trains from unloading crude oil in the state, which will make Washington less competitive.

(Other) The bill would improve on past rail safety measures. The bill would provide more information about oil shipments, which would help inform the public. Washington went

from 0 percent of its crude oil being transported by rail in 2011, to 12 percent in 2017. A total of 2.3 billion gallons of oil were transported by rail in Washington in 2017.

There are unique complexities with transporting oil by rail. There are established policies to accelerate the transition to the safest possible rail cars. There are concerns with the statements in section 1 of the bill related to the use of brakes. The issue of cargo volatility is the domain of shippers, not transporters. Having one common national standard is preferable to a patchwork of state regulations.

Persons Testifying: (In support) Senator Billig, prime sponsor; Nancy Isserlis; Darcy Nonemacher, Washington Environmental Council; Raelene Gold, Washington League of Women Voters; and Nick Federici, City of Spokane.

(Opposed) Lynn Helms, Director, North Dakota Industrial Commission; Jeff Hume and Kip Wills, North Dakota Petroleum Council; Jolie Rhinehart and Steven Pepper, Phillips 66; Gabriel Westergreen, United Steel Workers; John Gustafson, United States Oil and Refining Company; Justin Anderson, Ryan Maxwell, and Jack Windley, Savage Services; James Tangaro, Refinery Manager Marathon Petroleum; Jeremy Chastain, Kelly Nelson, Royce Civico, and Brian Sigurdson, Phillips 66 and United Steelworkers; Bryan Meyer, Jon Purdy, Loston Carter, Aaron Eriksen, Shawn Miller, Gerald Robinson, Zachary Edwards, Luke Harper, Jeff Gunderson, Robert Slayer, and Andrew Ross, Watco Companies and United Steelworkers; and Thomas Frey, Watco Companies.

(Other) Dale Jensen, Department of Ecology; and Johan Hellman, BNSF Railway Company.

Persons Signed In To Testify But Not Testifying: None.