
SENATE BILL 5788

State of Washington

55th Legislature

1997 Regular Session

By Senators Strannigan, Finkbeiner, Franklin, Spanel, Jacobsen and Fraser

Read first time 02/12/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to the office of marine safety; amending RCW
2 88.46.030, 88.46.060, 88.46.080, and 88.46.090; adding a new section to
3 chapter 88.46 RCW; adding a new section to chapter 43.21I RCW; creating
4 new sections; repealing RCW 43.21I.020, 88.46.920, 88.46.921,
5 88.46.922, 88.46.923, 88.46.924, 88.46.925, 88.46.926, and 88.46.927;
6 repealing 1995 2nd sp.s. c 14 s 521 and 1991 c 200 s 1120 (uncodified);
7 repealing 1995 2nd sp.s. c 14 s 522 and 1993 c 281 s 73 (uncodified);
8 repealing 1995 2nd sp.s. c 14 s 524 (uncodified); providing an
9 effective date; and declaring an emergency.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 **Sec. 1.** RCW 88.46.030 and 1991 c 200 s 416 are each amended to
12 read as follows:

13 (1) All tank vessels entering the navigable waters of the state
14 shall be subject to inspection to assure that they comply with all
15 applicable federal and state standards.

16 (2) The office shall periodically review the tank vessel inspection
17 programs conducted by the United States coast guard and other federal
18 agencies to determine if the programs as actually operated by those
19 agencies provide the best achievable protection to the waters of the

1 state. If the office determines that the tank vessel inspection
2 programs conducted by these agencies are not adequate to protect the
3 state's waters, it shall adopt rules for a state tank vessel inspection
4 program. (~~The office shall adopt rules providing for a random review~~
5 ~~of individual tank vessel inspections conducted by federal agencies.~~)
6 The office may accept a tank vessel inspection report issued by another
7 state if that state's tank vessel inspection program is determined by
8 the office to be at least as protective of the public health and the
9 environment as the program adopted by the office.

10 (3) The state tank vessel inspection program shall ensure that all
11 tank vessels entering state waters are inspected at least annually.
12 (~~To the maximum extent feasible, the state program shall consist of~~
13 ~~the monitoring of existing tank vessel inspection programs conducted by~~
14 ~~the federal government.~~) The office shall consult with the coast
15 guard regarding the tank vessel inspection program. Any tank vessel
16 inspection conducted pursuant to this section shall be performed during
17 the vessel's scheduled stay in port.

18 (4) Any violation of coast guard or other federal regulations
19 uncovered during a state tank vessel inspection shall be immediately
20 reported to the appropriate agency.

21 **Sec. 2.** RCW 88.46.060 and 1995 c 148 s 3 are each amended to read
22 as follows:

23 (1) Each covered vessel shall have a contingency plan for the
24 containment and cleanup of oil spills from the covered vessel into the
25 waters of the state and for the protection of fisheries and wildlife,
26 natural resources, and public and private property from such spills.
27 The (~~office~~) department shall by rule adopt and periodically revise
28 standards for the preparation of contingency plans. The (~~office~~)
29 department shall require contingency plans, at a minimum, to meet the
30 following standards:

31 (a) Include full details of the method of response to spills of
32 various sizes from any vessel which is covered by the plan;

33 (b) Be designed to be capable in terms of personnel, materials, and
34 equipment, of promptly and properly, to the maximum extent practicable,
35 as defined by the office, removing oil and minimizing any damage to the
36 environment resulting from a worst case spill;

37 (c) Provide a clear, precise, and detailed description of how the
38 plan relates to and is integrated into relevant contingency plans which

1 have been prepared by cooperatives, ports, regional entities, the
2 state, and the federal government;

3 (d) Provide procedures for early detection of spills and timely
4 notification of such spills to appropriate federal, state, and local
5 authorities under applicable state and federal law;

6 (e) State the number, training preparedness, and fitness of all
7 dedicated, prepositioned personnel assigned to direct and implement the
8 plan;

9 (f) Incorporate periodic training and drill programs to evaluate
10 whether personnel and equipment provided under the plan are in a state
11 of operational readiness at all times;

12 (g) Describe important features of the surrounding environment,
13 including fish and wildlife habitat, environmentally and
14 archaeologically sensitive areas, and public facilities. The
15 departments of ~~((ecology,))~~ fish and wildlife~~((,))~~ and natural
16 resources, the office of marine safety, and the office of archaeology
17 and historic preservation, upon request, shall provide information that
18 they have available to assist in preparing this description. If the
19 office has adopted rules for contingency plans prior to July 1, 1992,
20 the description of archaeologically sensitive areas shall only be
21 required when the ~~((office))~~ department revises the rules for
22 contingency plans after July 1, ~~((1992))~~ 1997. The description of
23 archaeologically sensitive areas shall not be required to be included
24 in a contingency plan until it is reviewed and updated pursuant to
25 subsection (9) of this section;

26 (h) State the means of protecting and mitigating effects on the
27 environment, including fish, marine mammals, and other wildlife, and
28 ensure that implementation of the plan does not pose unacceptable risks
29 to the public or the environment;

30 (i) Establish guidelines for the use of equipment by the crew of a
31 vessel to minimize vessel damage, stop or reduce any spilling from the
32 vessel, and, only when appropriate and only when vessel safety is
33 assured, contain and clean up the spilled oil;

34 (j) Provide arrangements for the prepositioning of spill
35 containment and cleanup equipment and trained personnel at strategic
36 locations from which they can be deployed to the spill site to promptly
37 and properly remove the spilled oil;

38 (k) Provide arrangements for enlisting the use of qualified and
39 trained cleanup personnel to implement the plan;

1 (1) Provide for disposal of recovered spilled oil in accordance
2 with local, state, and federal laws;

3 (m) Until a spill prevention plan has been submitted pursuant to
4 RCW 88.46.040, state the measures that have been taken to reduce the
5 likelihood that a spill will occur, including but not limited to,
6 design and operation of a vessel, training of personnel, number of
7 personnel, and backup systems designed to prevent a spill;

8 (n) State the amount and type of equipment available to respond to
9 a spill, where the equipment is located, and the extent to which other
10 contingency plans rely on the same equipment; and

11 (o) If the department of ecology has adopted rules permitting the
12 use of dispersants, the circumstances, if any, and the manner for the
13 application of the dispersants in conformance with the department's
14 rules.

15 (2)(a) The owner or operator of a tank vessel of three thousand
16 gross tons or more shall submit a contingency plan to the ((office))
17 department within six months after the ((office)) department adopts
18 rules establishing standards for contingency plans under subsection (1)
19 of this section.

20 (b) Contingency plans for all other covered vessels shall be
21 submitted to the ((office)) department within eighteen months after the
22 ((office)) department has adopted rules under subsection (1) of this
23 section. The ((office)) department may adopt a schedule for submission
24 of plans within the eighteen-month period.

25 (3)(a) The owner or operator of a tank vessel or of the facilities
26 at which the vessel will be unloading its cargo, or a Washington state
27 nonprofit corporation established for the purpose of oil spill response
28 and contingency plan coverage and of which the owner or operator is a
29 member, shall submit the contingency plan for the tank vessel. Subject
30 to conditions imposed by the ((office)) department, the owner or
31 operator of a facility may submit a single contingency plan for tank
32 vessels of a particular class that will be unloading cargo at the
33 facility.

34 (b) The contingency plan for a cargo vessel or passenger vessel may
35 be submitted by the owner or operator of the cargo vessel or passenger
36 vessel, by the agent for the vessel resident in this state, or by a
37 Washington state nonprofit corporation established for the purpose of
38 oil spill response and contingency plan coverage and of which the owner
39 or operator is a member. Subject to conditions imposed by the

1 ((office)) department, the owner, operator, or agent may submit a
2 single contingency plan for cargo vessels or passenger vessels of a
3 particular class.

4 (c) A person who has contracted with a covered vessel to provide
5 containment and cleanup services and who meets the standards
6 established pursuant to RCW 90.56.240, may submit the plan for any
7 covered vessel for which the person is contractually obligated to
8 provide services. Subject to conditions imposed by the ((office))
9 department, the person may submit a single plan for more than one
10 covered vessel.

11 (4) A contingency plan prepared for an agency of the federal
12 government or another state that satisfies the requirements of this
13 section and rules adopted by the ((office)) department may be accepted
14 by the ((office)) department as a contingency plan under this section.
15 The ((office)) department shall assure that to the greatest extent
16 possible, requirements for contingency plans under this section are
17 consistent with the requirements for contingency plans under federal
18 law.

19 (5) In reviewing the contingency plans required by this section,
20 the ((office)) department shall consider at least the following
21 factors:

22 (a) The adequacy of containment and cleanup equipment, personnel,
23 communications equipment, notification procedures and call down lists,
24 response time, and logistical arrangements for coordination and
25 implementation of response efforts to remove oil spills promptly and
26 properly and to protect the environment;

27 (b) The nature and amount of vessel traffic within the area covered
28 by the plan;

29 (c) The volume and type of oil being transported within the area
30 covered by the plan;

31 (d) The existence of navigational hazards within the area covered
32 by the plan;

33 (e) The history and circumstances surrounding prior spills of oil
34 within the area covered by the plan;

35 (f) The sensitivity of fisheries and wildlife and other natural
36 resources within the area covered by the plan;

37 (g) Relevant information on previous spills contained in on-scene
38 coordinator reports prepared by the director; and

1 (h) The extent to which reasonable, cost-effective measures to
2 prevent a likelihood that a spill will occur have been incorporated
3 into the plan.

4 (6) The ((office)) department shall approve a contingency plan only
5 if it determines that the plan meets the requirements of this section
6 and that, if implemented, the plan is capable, in terms of personnel,
7 materials, and equipment, of removing oil promptly and properly and
8 minimizing any damage to the environment.

9 (7) The approval of the contingency plan shall be valid for five
10 years. Upon approval of a contingency plan, the ((office)) department
11 shall provide to the person submitting the plan a statement indicating
12 that the plan has been approved, the vessels covered by the plan, and
13 other information the ((office)) department determines should be
14 included.

15 (8) An owner or operator of a covered vessel shall notify the
16 ((office)) department in writing immediately of any significant change
17 of which it is aware affecting its contingency plan, including changes
18 in any factor set forth in this section or in rules adopted by the
19 ((office)) department. The ((office)) department may require the owner
20 or operator to update a contingency plan as a result of these changes.

21 (9) The ((office)) department by rule shall require contingency
22 plans to be reviewed, updated, if necessary, and resubmitted to the
23 ((office)) department at least once every five years.

24 (10) Approval of a contingency plan by the ((office)) department
25 does not constitute an express assurance regarding the adequacy of the
26 plan nor constitute a defense to liability imposed under this chapter
27 or other state law.

28 **Sec. 3.** RCW 88.46.080 and 1992 c 73 s 22 are each amended to read
29 as follows:

30 (1) Except as provided in subsection (2) of this section, it shall
31 be unlawful for the owner or operator to knowingly and intentionally
32 operate in this state or on the waters of this state a covered vessel
33 without an approved contingency plan or an approved prevention plan as
34 required by this chapter, or financial responsibility in compliance
35 with chapter 88.40 RCW and the federal oil pollution act of 1990. The
36 first conviction under this section shall be a gross misdemeanor under
37 chapter 9A.20 RCW. A second or subsequent conviction shall be a class
38 C felony under chapter 9A.20 RCW.

1 (2) It shall not be unlawful for the owner or operator to operate
2 a covered vessel if:

3 (a) The covered vessel is not required to have a contingency plan,
4 spill prevention plan, or financial responsibility;

5 (b) All required plans have been submitted (~~to the office~~) as
6 required by this chapter and by adopted rules (~~adopted by the~~
7 ~~office~~), and the department or the office is reviewing the plan and
8 has not denied approval; or

9 (c) The covered vessel has entered state waters after the United
10 States coast guard has determined that the vessel is in distress.

11 (3) A person may rely on a copy of the statement issued by the
12 department or the office pursuant to RCW 88.46.060 as evidence that a
13 vessel has an approved contingency plan and the statement issued
14 pursuant to RCW 88.46.040 that a vessel has an approved prevention
15 plan.

16 (4) Any person found guilty of willfully violating any of the
17 provisions of this chapter, or any final written orders or directive of
18 the administrator or a court in pursuance thereof shall be deemed
19 guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and
20 upon conviction thereof shall be punished by a fine of up to ten
21 thousand dollars and costs of prosecution, or by imprisonment in the
22 county jail for not more than one year, or by both such fine and
23 imprisonment in the discretion of the court. Each day upon which a
24 willful violation of the provisions of this chapter occurs may be
25 deemed a separate and additional violation.

26 **Sec. 4.** RCW 88.46.090 and 1992 c 73 s 23 are each amended to read
27 as follows:

28 (1) Except as provided in subsection (4) of this section, it shall
29 be unlawful for a covered vessel to enter the waters of the state
30 without an approved contingency plan required by RCW 88.46.060, a spill
31 prevention plan required by RCW 88.46.040, or financial responsibility
32 in compliance with chapter 88.40 RCW and the federal oil pollution act
33 of 1990. The office may deny entry onto the waters of the state to any
34 covered vessel that does not have a required contingency or spill
35 prevention plan or financial responsibility.

36 (2) Except as provided in subsection (4) of this section, it shall
37 be unlawful for a covered vessel to transfer oil to or from an onshore
38 or offshore facility that does not have an approved contingency plan

1 required under RCW 90.56.210, a spill prevention plan required by RCW
2 90.56.200, or financial responsibility in compliance with chapter 88.40
3 RCW and the federal oil pollution act of 1990.

4 (3) The administrator may assess a civil penalty of up to one
5 hundred thousand dollars against the owner or operator of a vessel who
6 is in violation of subsection (1) or (2) of this section. Each day
7 that the owner or operator of a covered vessel is in violation of this
8 section shall be considered a separate violation.

9 (4) It shall not be unlawful for a covered vessel to operate on the
10 waters of the state if:

11 (a) A contingency plan, a prevention plan, or financial
12 responsibility is not required for the covered vessel;

13 (b) A contingency plan and prevention plan has been submitted (~~to~~
14 ~~the office~~) as required by this chapter and by adopted rules (~~adopted~~
15 ~~by the office~~), and the department or the office is reviewing the plan
16 and has not denied approval; or

17 (c) The covered vessel has entered state waters after the United
18 States coast guard has determined that the vessel is in distress.

19 (5) Any person may rely on a copy of the statement issued by the
20 (~~office~~) department to RCW 88.46.060 as evidence that the vessel has
21 an approved contingency plan and the statement issued by the office
22 pursuant to RCW 88.46.040 as evidence that the vessel has an approved
23 spill prevention plan.

24 (6) Except for violations of subsection (1) or (2) of this section,
25 any person who violates the provisions of this chapter or rules or
26 orders adopted or issued pursuant thereto, shall incur, in addition to
27 any other penalty as provided by law, a penalty in an amount of up to
28 ten thousand dollars a day for each violation. Each violation is a
29 separate offense, and in case of a continuing violation, every day's
30 continuance is a separate violation. Every act of commission or
31 omission which procures, aids, or abets in the violation shall be
32 considered a violation under the provisions of this subsection and
33 subject to penalty. The penalty amount shall be set in consideration
34 of the previous history of the violator and the severity of the
35 violation's impact on public health and the environment in addition to
36 other relevant factors. The penalty shall be imposed pursuant to the
37 procedures set forth in RCW 43.21B.300.

1 NEW SECTION. **Sec. 5.** It is the intent of the legislature that the
2 office of marine safety protect Washington waters from oil spills
3 resulting from the transportation of oil on state waters. The state's
4 oil spill prevention program is intended to complement and is not to
5 duplicate the federal coast guard program unnecessarily. In carrying
6 out its responsibilities, the office of marine safety shall establish
7 a cooperative and productive relationship with the shipping industry
8 and federal maritime regulators.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46 RCW
10 to read as follows:

11 A regulatory advisory committee is created to review proposed rules
12 and for consultation on program initiatives. Membership shall be
13 appointed by the administrator and comprised of representatives of the
14 shipping, towing, oil, and fishing industries and representatives from
15 pilots, environmental organizations, tribes, the department, and the
16 United States coast guard.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.21I RCW
18 to read as follows:

19 The executive head and appointing authority of the office shall be
20 the administrator of marine safety. The administrator shall be
21 appointed by the governor with the consent of the senate. The
22 administrator shall be paid a salary to be fixed by the governor in
23 accordance with RCW 43.03.040.

24 NEW SECTION. **Sec. 8.** (1) All powers, duties, and functions of the
25 office of marine safety pertaining to vessel contingency plan
26 requirements and approval are transferred to the department of ecology.

27 (2)(a) All reports, documents, surveys, books, records, files,
28 papers, or written material in the possession of the office of marine
29 safety pertaining to the powers, functions, and duties transferred
30 shall be delivered to the custody of the department of ecology. All
31 cabinets, furniture, office equipment, motor vehicles, and other
32 tangible property employed by the office of marine safety in carrying
33 out the powers, functions, and duties transferred shall be made
34 available to the department of ecology. All funds, credits, or other
35 assets held in connection with the powers, functions, and duties
36 transferred shall be assigned to the department of ecology.

1 (b) Any appropriations made to the office of marine safety for
2 carrying out the powers, functions, and duties transferred shall, on
3 the effective date of this section, be transferred and credited to the
4 department of ecology.

5 (c) Whenever any question arises as to the transfer of any
6 personnel, funds, books, documents, records, papers, files, equipment,
7 or other tangible property used or held in the exercise of the powers
8 and the performance of the duties and functions transferred, the
9 director of financial management shall make a determination as to the
10 proper allocation and certify the same to the state agencies concerned.

11 (3) All employees of the office of marine safety engaged in
12 performing the powers, functions, and duties transferred are
13 transferred to the jurisdiction of the department of ecology. All
14 employees classified under chapter 41.06 RCW, the state civil service
15 law, are assigned to the department of ecology to perform their usual
16 duties upon the same terms as formerly, without any loss of rights,
17 subject to any action that may be appropriate thereafter in accordance
18 with the laws and rules governing state civil service.

19 (4) All rules and all pending business before the office of marine
20 safety pertaining to the powers, functions, and duties transferred
21 shall be continued and acted upon by the department of ecology. All
22 existing contracts and obligations shall remain in full force and shall
23 be performed by the department of ecology.

24 (5) The transfer of the powers, duties, functions, and personnel of
25 the office of marine safety shall not affect the validity of any act
26 performed before the effective date of this section.

27 (6) If apportionments of budgeted funds are required because of the
28 transfers directed by this section, the director of financial
29 management shall certify the apportionments to the agencies affected,
30 the state auditor, and the state treasurer. Each of these shall make
31 the appropriate transfer and adjustments in funds and appropriation
32 accounts and equipment records in accordance with the certification.

33 (7) Nothing contained in this section may be construed to alter any
34 existing collective bargaining unit or the provisions of any existing
35 collective bargaining agreement until the agreement has expired or
36 until the bargaining unit has been modified by action of the personnel
37 board as provided by law.

1 NEW SECTION. **Sec. 9.** (1) The 1995 legislature enacted the biennial
2 transportation budget for the 1995-1997 biennium with provisions
3 transferring the functions of the office of marine safety to the
4 department of ecology effective January 1, 1996. Although the budget
5 bill was effective July 1, 1995, a subsequent decision by the Thurston
6 county superior court (People for Puget Sound v. Department of Ecology,
7 No. 95-2-02622-0) found the transfer provisions in violation of Article
8 II, section 19 of the state Constitution and therefore invalid. The
9 decision was not appealed.

10 (2) Section 10 of this act repeals the provisions of the 1995
11 transportation budget that were declared unconstitutional by the
12 Thurston county superior court. It also repeals the sections of
13 chapter 200, Laws of 1991 that transfer the functions of the office of
14 marine safety to the department of ecology.

15 NEW SECTION. **Sec. 10.** The following acts or parts of acts are
16 each repealed:

- 17 (1) 1995 2nd sp.s. c 14 s 521 & 1991 c 200 s 1120 (uncodified);
18 (2) 1995 2nd sp.s. c 14 s 522 & 1993 c 281 s 73 (uncodified);
19 (3) 1995 2nd sp.s. c 14 s 524 (uncodified);
20 (4) RCW 43.21I.020 and 1992 c 73 s 5 & 1991 c 200 s 403;
21 (5) RCW 88.46.920 and 1991 c 200 s 429;
22 (6) RCW 88.46.921 and 1991 c 200 s 430;
23 (7) RCW 88.46.922 and 1995 2nd sp.s. c 14 s 518 & 1991 c 200 s 431;
24 (8) RCW 88.46.923 and 1991 c 200 s 432;
25 (9) RCW 88.46.924 and 1991 c 200 s 433;
26 (10) RCW 88.46.925 and 1995 2nd sp.s. c 14 s 519 & 1991 c 200 s
27 434;
28 (11) RCW 88.46.926 and 1991 c 200 s 435; and
29 (12) RCW 88.46.927 and 1993 c 281 s 67 & 1991 c 200 s 436.

30 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 July 1, 1997.

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