

HOUSE BILL REPORT

2SHB 2593

As Passed House:
February 13, 2006

Title: An act relating to oil spill prevention, preparedness, and response.

Brief Description: Changing provisions relating to oil spill prevention, preparedness, and response.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Appleton, B. Sullivan, Jarrett, Morris, Hankins, Chase, McIntire, Dickerson, McCoy, Conway, Green, Darneille, Schual-Berke, Lovick, Pettigrew, Sommers, Ericks, Lantz, Hasegawa, Morrell, Kenney, Haler, Springer, Roberts, P. Sullivan, Strow, Miloscia, Wallace, Cody, Sells, Moeller, Dunshee, Williams, O'Brien, McDermott, Kessler, Woods, Kilmer, Eickmeyer, Hunt, Flannigan, Takko, Nixon, Rodne, Simpson, Linville and Kagi; by request of Department of Ecology).

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 1/20/06, 1/27/06 [DPS];
Appropriations: 2/3/06, 2/4/06 [DP2S(w/o sub NREP)].

Floor Activity:

Passed House: 2/13/06, 94-4.

Brief Summary of Second Substitute Bill

- Requires the Department of Ecology (Department) to conduct unannounced practice oil spill drills on vessels and to evaluate vessels' contingency plans.
- Clarifies that fuel trucks must comply with ship refueling laws and rules.
- Grants the Department the authority to require prior notice of oil transfers, to inspect oil transfers, and to require additional oil containment safeguards during oil transfers, as appropriate based on risk.
- Grants the Department authority to require marine fuel outlets to give semi-annual reports of the volume of oil they transfer.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Dickerson, Eickmeyer, Hunt and Kagi.

Minority Report: Do not pass. Signed by 5 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, Chandler and Orcutt.

Staff: Amy Van Horn (786-7168).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Natural Resources, Ecology & Parks. Signed by 30 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

Staff: Alicia Paatsch (786-7178).

Background:

The Legislature enacted oil spill prevention and response measures in 1991, and expanded on those laws in 2004. The 2004 legislation adopted a goal of zero oil spills for the state. The Director of the Department of Ecology (Department) has the primary authority to oversee oil spill prevention, abatement, response, containment, and cleanup efforts in state waters. The oil spill program requires vessels and oil transfer facilities to have oil spill prevention plans, contingency response plans in the event of a spill, and financial responsibility for spills.

Department Advisory Committee

In 2004, the Department formed an advisory committee to help devise a regulatory system for the fueling of vessels and ships. As required by the 2004 law, the Department reported to the Legislature on December 15, 2004. The advisory committee reported its plan to continue its work and make a final report to the Legislature in the future.

Contingency and Prevention Plans

Owners and operators of onshore and offshore facilities and all covered vessels must prepare and submit oil spill contingency and prevention plans to the Department. Oil spill prevention plans must establish compliance with federal law, and comply with a number of personnel and equipment requirements. Prevention plans are valid for five years and may be combined with contingency plans. Facilities may opt to submit contingency plans for tank vessels unloading at the facility.

Persons or facilities conducting ship refueling, bunkering, or lightering of petroleum products are required to have containment and recovery equipment readily available according to Department standards.

Department Rulemaking

The Department must adopt rules for ship refueling, bunkering, and transfers of oil to tank vessels by June 30, 2006. The rules must establish standards for the circumstances under which containment equipment should be deployed. The Department has the authority to require alternate oil containment measures, including the use of automatic shutoff devices and alarms, extra personnel, or containment equipment that is deployed quickly and effectively.

The standards for ship refueling and oil transfers must be suitable to the environmental and operational conditions of the regulated facilities. In addition, the Department must consult with the United States Coast Guard to develop state standards that are compatible with federal requirements. The Department must have a process for immediately notifying affected tribes of any oil spill, and shellfish beds must be considered in oil spill contingency plans.

Federal Legislation

The federal government and the Coast Guard, a federal agency, regulate oil tankers. In 2000, the United States Supreme Court found that federal law preempted four of the Department's rules addressing oil tankers [United States v. Locke, 529 U.S. 89 (2000)]. The court held that the federal government alone may regulate the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of oil tankers. The court found that the state may adopt regulations governing oil tankers under some circumstances, particularly if those regulations do not have an extraterritorial effect on the tankers and address the peculiarities of local waters.

Summary of Second Substitute Bill:

Random Practice Drills

The Department must, by rule, adopt procedures to determine the adequacy of oil spill contingency plans held by tank vessels, cargo vessels, and passenger vessels. The Department must conduct random, unannounced practice drills to test the contingency plans, and report on how well a vessel's performance during a drill satisfied the elements of its contingency plan.

Fuel Trucks

All motor vehicles and all seagoing vessels which conduct ship refueling, bunkering or lightering operations must comply with state laws governing oil spill containment and recovery. This includes dockside refueling of commercial ships by fuel trucks.

Inspection and Notice Authority

The Department has the authority to require prior notice of the time, location and volume of any transfer of oil to a ship, and to conduct inspections of oil transfer operations. These measures must be scaled according to the risk posed by an oil transfer, and oil transfers must

be categorized by type of transfer, volume of oil, frequency of transfers, and other risk factors.

The Department shall not require prior notice when marine fuel outlets are transferring: (1) less than 3,000 gallons of oil in a single transaction; (2) to a ship that is not a covered vessel; and (3) the transfer is scheduled less than four hours in advance.

Semi-Annual Reporting by Marine Fuel Outlets

The Department may require marine fuel outlets to give semi-annual reports of the volume of oil they transfer.

Additional Oil Containment Safeguards

The Department's authority is expanded from the ability to require alternative oil containment safeguards to the authority to require additional oil containment safeguards during any transfer of oil, scaled appropriately to the risks posed by the oil transfer.

Force of Administrative Rules

The Department may issue administrative orders if oil transfer operations violate Department rules addressing oil spill prevention and contingency plans.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Natural Resources, Ecology & Parks) (In support) Oil spills in this area have damaged beaches and wildlife all the way across Puget Sound. Major oil transfers take place in Washington waters, and a major spill would be disastrous. It would devastate bird species that winter in Puget Sound. The bill is a compromise. Eighty-six percent of spills are not regulated by the Department of Natural Resources. It is important to test plans before a crisis actually occurs.

(With concerns) The law must be more clear about which types of facilities it will regulate. Marine fuel operators should be in the discussion. Rules should be scaled down for smaller, less risky oil transfers. The agency should be given more time to make its rule so that all the problems can be worked out first.

Testimony For: (Appropriations) (In support) The bill that passed last year had the goal of zero oil spills for the state and required the Department to write rules. This year's bill is simple but important to clarify the Department's rules and is part of the Governor's Puget Sound initiative package. The bill has no fiscal impact. Funding the overall budget is supported as well as what is budgeted in the Governor's 2006 budget that will make this work. The Department is in the rule-making process and this bill will help us implement that rule.

(With concerns) In addition to regulating large transfers this bill regulates small transfers. Section one is open ended as to requirements of fuel outlets and it is unknown if the

Department will scale back requirements under this bill based on the size of the facility to not require pre-notification by small facilities.

Testimony Against: (Natural Resources, Ecology & Parks) None.

Testimony Against: (Appropriations) This bill puts too much pressure on private marinas and fuel docks.

Persons Testifying: (Natural Resources, Ecology & Parks) (In support) Representative Appleton, prime sponsor; Heath Packard, Audubon Society; Dale Jensen, Department of Ecology; Anne Criss, Puget Sound Action Team; Steve Robinson, Northwest Indian Fisheries Commission; Bruce Wishart, People for Puget Sound; Greg Hanon, Western States Petroleum Association; and Brett Bishop, Pacific Coast Shellfish Growers Association.

(With concerns) Eric Johnson, Washington Public Ports Association; Rick Wickman, Columbia River Steamship Operators Association; Randy Ray, Pacific Seafood Processors Association; and Charlie Brown, Washington Oil Marketers Association.

Persons Testifying: (Appropriations) (In support) Representative Appleton, prime sponsor; Dale Jensen, Department of Ecology; Bruce Wishart, People for Puget Sound; and Charlie Brown, Washington Oil Marketers Association.

(With concerns) Eric D. Johnson, Washington Public Ports Association.

(Opposed) Cliff Webster, Northwest Marine Trade Association.

Persons Signed In To Testify But Not Testifying: (Natural Resources, Ecology & Parks) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.