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SENATE BILL 5123

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State of Washington

65th Legislature

2017 Regular Session

By Senators Warnick and Chase

Read first time 01/13/17. Referred to Committee on Energy,  
Environment & Telecommunications.

1 AN ACT Relating to exempting short-line railroads that haul  
2 nonfuel oils from oil spill contingency planning requirements; and  
3 amending RCW 90.56.210.

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

5 **Sec. 1.** RCW 90.56.210 and 2015 c 274 s 5 are each amended to  
6 read as follows:

7 (1) Each onshore and offshore facility shall have a contingency  
8 plan for the containment and cleanup of oil spills from the facility  
9 into the waters of the state and for the protection of fisheries and  
10 wildlife, shellfish beds, natural resources, and public and private  
11 property from such spills. The department shall by rule adopt and  
12 periodically revise standards for the preparation of contingency  
13 plans. The department shall require contingency plans, at a minimum,  
14 to meet the following standards:

15 (a) Include full details of the method of response to spills of  
16 various sizes from any facility which is covered by the plan;

17 (b) Be designed to be capable in terms of personnel, materials,  
18 and equipment, of promptly and properly, to the maximum extent  
19 practicable, as defined by the department removing oil and minimizing  
20 any damage to the environment resulting from a worst case spill;

1 (c) Provide a clear, precise, and detailed description of how the  
2 plan relates to and is integrated into relevant contingency plans  
3 which have been prepared by cooperatives, ports, regional entities,  
4 the state, and the federal government;

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

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

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

14 (g) Describe important features of the surrounding environment,  
15 including fish and wildlife habitat, shellfish beds, environmentally  
16 and archaeologically sensitive areas, and public facilities. The  
17 departments of ecology, fish and wildlife, and natural resources, and  
18 the department of archaeology and historic preservation, upon  
19 request, shall provide information that they have available to assist  
20 in preparing this description. The description of archaeologically  
21 sensitive areas shall not be required to be included in a contingency  
22 plan until it is reviewed and updated pursuant to subsection (9) of  
23 this section;

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

28 (i) Provide arrangements for the prepositioning of oil spill  
29 containment and cleanup equipment and trained personnel at strategic  
30 locations from which they can be deployed to the spill site to  
31 promptly and properly remove the spilled oil;

32 (j) Provide arrangements for enlisting the use of qualified and  
33 trained cleanup personnel to implement the plan;

34 (k) Provide for disposal of recovered spilled oil in accordance  
35 with local, state, and federal laws;

36 (l) Until a spill prevention plan has been submitted pursuant to  
37 RCW 90.56.200, state the measures that have been taken to reduce the  
38 likelihood that a spill will occur, including but not limited to,  
39 design and operation of a facility, training of personnel, number of  
40 personnel, and backup systems designed to prevent a spill;

1 (m) State the amount and type of equipment available to respond  
2 to a spill, where the equipment is located, and the extent to which  
3 other contingency plans rely on the same equipment; and

4 (n) If the department has adopted rules permitting the use of  
5 dispersants, the circumstances, if any, and the manner for the  
6 application of the dispersants in conformance with the department's  
7 rules.

8 (2)(a) The following shall submit contingency plans to the  
9 department within six months after the department adopts rules  
10 establishing standards for contingency plans under subsection (1) of  
11 this section:

12 (i) Onshore facilities capable of storing one million gallons or  
13 more of oil; and

14 (ii) Offshore facilities.

15 (b) Contingency plans for all other onshore and offshore  
16 facilities shall be submitted to the department within eighteen  
17 months after the department has adopted rules under subsection (1) of  
18 this section. The department may adopt a schedule for submission of  
19 plans within the eighteen-month period.

20 (3) The department by rule shall determine the contingency plan  
21 requirements for railroads transporting oil in bulk. A contingency  
22 plan under this subsection is not required for transport by a class  
23 III railroad, as defined by the United States surface transportation  
24 board as of the effective date of this section, of oil in bulk that  
25 is not crude oil or a refined petroleum product used for fuel. A  
26 contingency plan is required for the bulk transport by a class III  
27 railroad of crude oil or a refined petroleum product used for fuel.  
28 Federal oil spill response plans created pursuant to 33 U.S.C. Sec.  
29 1321 may be submitted in lieu of contingency plans until state rules  
30 are adopted.

31 (4)(a) The owner or operator of a facility shall submit the  
32 contingency plan for the facility.

33 (b) A person who has contracted with a facility to provide  
34 containment and cleanup services and who meets the standards  
35 established pursuant to RCW 90.56.240, may submit the plan for any  
36 facility for which the person is contractually obligated to provide  
37 services. Subject to conditions imposed by the department, the person  
38 may submit a single plan for more than one facility.

39 (5) A contingency plan prepared for an agency of the federal  
40 government or another state that satisfies the requirements of this

1 section and rules adopted by the department may be accepted by the  
2 department as a contingency plan under this section. The department  
3 shall ensure that to the greatest extent possible, requirements for  
4 contingency plans under this section are consistent with the  
5 requirements for contingency plans under federal law.

6 (6) In reviewing the contingency plans required by this section,  
7 the department shall consider at least the following factors:

8 (a) The adequacy of containment and cleanup equipment, personnel,  
9 communications equipment, notification procedures and call down  
10 lists, response time, and logistical arrangements for coordination  
11 and implementation of response efforts to remove oil spills promptly  
12 and properly and to protect the environment;

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

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

17 (d) The existence of navigational hazards within the area covered  
18 by the plan;

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

21 (f) The sensitivity of fisheries, shellfish beds, and wildlife  
22 and other natural resources within the area covered by the plan;

23 (g) Relevant information on previous spills contained in on-scene  
24 coordinator reports prepared by the department; and

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

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

33 (8) The approval of the contingency plan shall be valid for five  
34 years. Upon approval of a contingency plan, the department shall  
35 provide to the person submitting the plan a statement indicating that  
36 the plan has been approved, the facilities or vessels covered by the  
37 plan, and other information the department determines should be  
38 included.

39 (9) An owner or operator of a facility shall notify the  
40 department in writing immediately of any significant change of which

1 it is aware affecting its contingency plan, including changes in any  
2 factor set forth in this section or in rules adopted by the  
3 department. The department may require the owner or operator to  
4 update a contingency plan as a result of these changes.

5 (10) The department by rule shall require contingency plans to be  
6 reviewed, updated, if necessary, and resubmitted to the department at  
7 least once every five years.

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

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