

FINAL BILL REPORT

ESHB 2389

Synopsis as Enacted
C 73 L 92

Brief Description: Changing oil spill prevention and clean-up provisions.

By House Committee on Environmental Affairs (originally sponsored by Representatives Rust, Horn, Valle, Pruitt, Bray, J. Kohl, D. Sommers and Jones).

House Committee on Environmental Affairs
House Committee on Revenue
Senate Committee on Environment & Natural Resources

Background: In both the 1990 and 1991 sessions, the Legislature passed measures that made significant changes to the state laws relating to oil transportation and storage. The 1991 legislation included a major reorganization of the statutes governing oil spill prevention and response. As a result of these changes, some statutes contain incorrect cross-references.

The 1991 legislation recodified a number of statutory provisions relating to oil spill response. As a result of the recodification, the Department of Ecology lost some of its authority to enforce oil spill prevention and response statutes. The Pollution Control Hearings Board has authority to hear appeals of Department of Ecology decisions in a number of areas relating to enforcement actions.

In 1991, the Office of Marine Safety was established to assume responsibility for prevention and contingency planning on marine waters. The administrator of the Office of Marine Safety is appointed by the governor. It is not clear whether the administrator is subject to Senate confirmation.

The administrator is given authority to appoint personnel as he or she deems necessary. Except for the administrator's confidential secretary, the personnel are subject to the civil service laws. Without a specific authorization, the administrator does not have authority to appoint other exempt staff. The State Personnel Board may, however, authorize additional exempt staff positions from a pool of exempt positions available to the governor.

The 1991 Legislature imposed a total tax of five cents on each barrel of oil imported into the state at a marine terminal. This tax pays for administration of the oil spill prevention and response planning activities of state agencies and funds a state response fund to pay state expenses in the event of an oil spill. The tax is imposed on the person who owns the oil immediately prior to its transfer to the marine terminal operation. It is the obligation of the marine terminal operator to collect the tax. There is a potential loophole in the collection method. If the marine terminal operator notifies the owner of the oil that the tax is payable, the marine terminal operator is excused from liability for collecting the tax.

The definition of oil for purposes of the tax on oil differs from the definition that is used in other provisions of the 1991 legislation relating to oil spill prevention and response planning. The definition used for regulatory purposes excludes any fraction of crude oil that is also a hazardous substance under federal law. The definition of oil for tax purposes defines oil to include any petroleum product that is usable as a fuel, whether or not it is actually used as a fuel. There are some compounds that are fractions of oil and are listed on the hazardous substance list but are also usable as a fuel.

All oil tankers and barges that enter Washington waters are required to maintain financial responsibility. If a tank vessel is covered by an international protection and indemnity mutual organization, the owner or operator of the vessel is not required to demonstrate financial responsibility.

The Department of Ecology is directed to notify the secretary of state if a facility required to maintain financial responsibility does not do so. The secretary of state is directed to suspend the facility's privilege of operating in the state until financial responsibility is established. The Office of the Secretary of State has stated that it does not have the authority to suspend a business's privilege of conducting business.

The 1991 legislation excluded from the definition of a passenger vessel those vessels under 300 gross tons or under 500 international tons. There is some ambiguity about the vessels that are excluded, because there is no correlation between gross tons and international tons.

The definition of a vessel for purposes of the Maritime Commission assessment is not consistent with the definition used for prevention and contingency planning purposes. The Maritime Commission has authority to impose an assessment on

all vessels that transit on Washington waters, with some exceptions. There is no explicit exclusion for passenger vessels. The definition of a vessel does not include any vessel of less than 300 gross tons. The Maritime Commission may file a contingency plan for passenger vessels and cargo vessels it covers, but not for tank vessels.

The Maritime Commission may increase assessments if it believes the increase is necessary to meet its obligation to maintain a first response system. After the commission adopts an increase, it must be filed with the administrator of the Office of Marine Safety. The administrator may disapprove the increase. The increase may not take effect earlier than 90 days after it is filed with the administrator.

The Office of Archaeology and Historic Preservation has been established within the Department of Community Development to oversee the state's interest in archaeological sites. Some archaeological sites are located on or near navigable waters and might be affected by an oil spill. Consideration of the impact of an oil spill on environmentally sensitive areas must be included in prevention and response plans of those who transport or store oil on or near the navigable waters of the state.

Summary: Several incorrect statutory cross-references are corrected, duplicative provisions are removed, and grammar is improved in existing statutes relating to oil spill prevention and response.

The Department of Ecology and the Office of Marine Safety may issue orders to enforce oil spill prevention and response activities. Persons who violate the statutes, orders, or rules are subject to a maximum civil penalty of \$10,000. A penalty or other enforcement action may be appealed to the Pollution Control Hearings Board. A willful violation of a statute, rule, or order is a gross misdemeanor.

The administrator of the Office of Marine Safety is appointed by the governor but is not subject to senate confirmation.

The administrator of the Office of Marine Safety may appoint up to four exempt staff.

The barrel tax on oil is imposed on the person who owns the oil after it is received at the marine terminal. A person who uses oil other than as a fuel may obtain a credit for any tax paid on that oil.

The administrator may require a tank vessel owner or operator to establish membership in an international protection and indemnity mutual organization.

The direction to the secretary of state to suspend a facility's privilege of operating in this state for failure to maintain financial responsibility is deleted.

The definition of a passenger vessel is made consistent for all statutes governing oil spill prevention and response. A passenger vessel does not include a vessel that is less than 300 gross tons or a vessel with a fuel capacity of less than 6000 gallons. This definition also applies to the Maritime Commission. For purposes of the Maritime Commission, the change in the definition is retroactive to May 15, 1991.

The Maritime Commission must file a proposed increase in its assessments at least 30 days prior to the date that it will adopt the increase as a final rule. If the administrator determines the increase is not justified, he or she may reject the proposed increase prior to the date scheduled for final adoption of the rule. The Maritime Commission may file a contingency plan for a barge or tanker covered by the commission.

Consideration of archaeological sites is to be included in response plans approved by the Department of Ecology and the Office of Marine Safety and in the rules adopted by those agencies. Rules which have been adopted by these agencies prior to July 1, 1992, do not need to be amended to include these requirements until the rules are reviewed and revised. Plans which are developed under the current rules do not need to be amended to include archaeological information until the plans are updated.

Votes on Final Passage:

House	95	0
Senate	47	0 (Senate amended)
House	96	0 (House concurred)

Effective: March 26, 1992
 October 1, 1992 (Sections 6, 7, 9 and 10)