

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6641**

58th Legislature  
2004 Regular Session

Passed by the Senate March 8, 2004  
YEAS 49 NAYS 0

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**President of the Senate**

Passed by the House March 3, 2004  
YEAS 96 NAYS 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Milton H. Doumit, Jr.,  
Secretary of the Senate of the  
State of Washington, do hereby  
certify that the attached is  
**SUBSTITUTE SENATE BILL 6641** as  
passed by the Senate and the House  
of Representatives on the dates  
hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6641**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

**State of Washington                      58th Legislature                      2004 Regular Session**

**By** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators B. Sheldon, Oke, Spanel, Carlson, Fraser, Shin, Regala, Winsley, Kohl-Welles, Poulsen, Kline, Fairley, Jacobsen, Prentice, Haugen, Berkey, Brown, McAuliffe, Franklin, Rasmussen and Keiser)

READ FIRST TIME 02/09/04.

1            AN ACT Relating to oil spill management; amending RCW 90.56.005,  
2 88.46.160, 90.56.060, 90.56.200, and 90.56.210; and creating new  
3 sections.

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

5            NEW SECTION.    **Sec. 1.** (1) The legislature recognizes the  
6 importance of prevention in obtaining the goal of zero oil spills to  
7 waters of the state. The legislature also recognizes that the  
8 regulation of oil and fuel transfers on or near waters of the state  
9 vary depending on many factors including the type of facility or  
10 equipment that is used, the type of products being transferred, where  
11 the transfer takes place, and the type of vessels involved in the  
12 transfer. The legislature therefore finds that the department of  
13 ecology shall initiate a review of the current statewide marine fueling  
14 practices for covered vessels and ships as those terms are defined in  
15 RCW 88.46.010.

16            (2) The department of ecology shall work with stakeholders to  
17 develop a report describing:

18            (a) The types of fueling practices being employed by covered  
19 vessels and ships;

1 (b) The current spill prevention planning requirements that are  
2 applicable under state and federal law for covered vessels and ships;  
3 and

4 (c) The current spill response requirements under state and federal  
5 law for covered vessels and ships.

6 (3) The department of ecology shall report recommendations for  
7 regulatory improvements for covered vessel and ship fueling. These  
8 recommendations must include any new authorities that the department of  
9 ecology believes are necessary to establish a protective regulatory  
10 system for the fueling of covered vessels and ships. The department of  
11 ecology shall consider any applicable federal requirements and the  
12 state's desire to not duplicate federal vessel fueling laws. The  
13 department of ecology shall also provide recommendations for funding to  
14 implement recommendations.

15 (4) The department of ecology shall deliver the report with its  
16 recommendations and findings to the appropriate committees of the  
17 legislature by December 15, 2004.

18 **Sec. 2.** RCW 90.56.005 and 1991 c 200 s 101 are each amended to  
19 read as follows:

20 (1) The legislature declares that the increasing reliance on water  
21 borne transportation as a source of supply for oil and hazardous  
22 substances poses special concern for the state of Washington. Each  
23 year billions of gallons of crude oil and refined petroleum products  
24 are transported by vessel on the navigable waters of the state. These  
25 shipments are expected to increase in the coming years. Vessels  
26 transporting oil into Washington travel on some of the most unique and  
27 special marine environments in the United States. These marine  
28 environments are a source of natural beauty, recreation, and economic  
29 livelihood for many residents of this state. As a result, the state  
30 has an obligation to (~~assure~~) ensure the citizens of the state that  
31 the waters of the state will be protected from oil spills.

32 (2) The legislature finds that prevention is the best method to  
33 protect the unique and special marine environments in this state. The  
34 technology for containing and cleaning up a spill of oil or hazardous  
35 substances is in the early stages of development. Preventing spills is  
36 more protective of the environment and more cost-effective when all the  
37 costs associated with responding to a spill are considered. Therefore,

1 the legislature finds that the primary objective of the state is to  
2 adopt a zero spills strategy to prevent any oil or hazardous substances  
3 from entering waters of the state.

4 (3) The legislature also finds that:

5 (a) Recent accidents in Washington, Alaska, southern California,  
6 Texas, and other parts of the nation have shown that the  
7 transportation, transfer, and storage of oil have caused significant  
8 damage to the marine environment;

9 (b) Even with the best efforts, it is nearly impossible to remove  
10 all oil that is spilled into the water;

11 (c) Washington's navigable waters are treasured environmental and  
12 economic resources that the state cannot afford to place at undue risk  
13 from an oil spill; and

14 (d) The state has a fundamental responsibility, as the trustee of  
15 the state's natural resources and the protector of public health and  
16 the environment to prevent the spill of oil.

17 (4) In order to establish a comprehensive prevention and response  
18 program to protect Washington's waters and natural resources from  
19 spills of oil, it is the purpose of this chapter:

20 (a) To establish state agency expertise in marine safety and to  
21 centralize state activities in spill prevention and response  
22 activities;

23 (b) To prevent spills of oil and to promote programs that reduce  
24 the risk of both catastrophic and small chronic spills;

25 (c) To ensure that responsible parties are liable, and have the  
26 resources and ability, to respond to spills and provide compensation  
27 for all costs and damages;

28 (d) To provide for state spill response and wildlife rescue  
29 planning and implementation;

30 (e) To support and complement the federal oil pollution act of 1990  
31 and other federal law, especially those provisions relating to the  
32 national contingency plan for cleanup of oil spills and discharges,  
33 including provisions relating to the responsibilities of state agencies  
34 designated as natural resource trustees. The legislature intends this  
35 chapter to be interpreted and implemented in a manner consistent with  
36 federal law;

37 (f) To provide broad powers of regulation to the department of  
38 ecology relating to spill prevention and response;

1 (g) To provide for an independent oversight board to review the  
2 adequacy of spill prevention and response activities in this state; and

3 (h) To provide an adequate funding source for state response and  
4 prevention programs.

5 **Sec. 3.** RCW 88.46.160 and 2000 c 69 s 12 are each amended to read  
6 as follows:

7 Any person or facility conducting ship refueling and bunkering  
8 operations, or the lightering of petroleum products, and any person or  
9 facility transferring oil between an onshore or offshore facility and  
10 a tank vessel shall have containment and recovery equipment readily  
11 available for deployment in the event of the discharge of oil into the  
12 waters of the state and shall deploy the containment and recovery  
13 equipment in accordance with standards adopted by the department. All  
14 persons conducting refueling, bunkering, or lightering operations, or  
15 oil transfer operations shall be trained in the use and deployment of  
16 oil spill containment and recovery equipment. The department shall  
17 adopt rules as necessary to carry out the provisions of this section by  
18 June 30, 2006. The rules shall include standards for the circumstances  
19 under which containment equipment should be deployed including  
20 standards requiring deployment of containment equipment prior to the  
21 transfer of oil when determined to be safe and effective by the  
22 department. The department may require a person or facility to employ  
23 alternative measures including but not limited to automatic shutoff  
24 devices and alarms, extra personnel to monitor the transfer, or  
25 containment equipment that is deployed quickly and effectively. The  
26 standards adopted by rule must be suitable to the specific  
27 environmental and operational conditions and characteristics of the  
28 facilities that are subject to the standards, and the department must  
29 consult with the United States coast guard with the objective of  
30 developing state standards that are compatible with federal  
31 requirements applicable to the activities covered by this section. An  
32 onshore or offshore facility shall include the procedures used to  
33 contain and recover discharges in the facility's contingency plan. It  
34 is the responsibility of the person providing bunkering, refueling, or  
35 lightering services to provide any containment or recovery equipment  
36 required under this section. This section does not apply to a person  
37 operating a ship for personal pleasure or for recreational purposes.

1       **Sec. 4.** RCW 90.56.060 and 2000 c 69 s 16 are each amended to read  
2 as follows:

3       (1) The department shall prepare and annually update a statewide  
4 master oil and hazardous substance spill prevention and contingency  
5 plan. In preparing the plan, the department shall consult with an  
6 advisory committee representing diverse interests concerned with oil  
7 and hazardous substance spills, including the United States coast  
8 guard, the federal environmental protection agency, state agencies,  
9 local governments, port districts, private facilities, environmental  
10 organizations, oil companies, shipping companies, containment and  
11 cleanup contractors, tow companies, and hazardous substance  
12 manufacturers.

13       (2) The state master plan prepared under this section shall at a  
14 minimum:

15       (a) Take into consideration the elements of oil spill prevention  
16 and contingency plans approved or submitted for approval pursuant to  
17 this chapter and chapter 88.46 RCW and oil and hazardous substance  
18 spill contingency plans prepared pursuant to other state or federal law  
19 or prepared by federal agencies and regional entities;

20       (b) State the respective responsibilities as established by  
21 relevant statutes and rules of each of the following in the prevention  
22 of and the assessment, containment, and cleanup of a worst case spill  
23 of oil or hazardous substances into the environment of the state: (i)  
24 State agencies; (ii) local governments; (iii) appropriate federal  
25 agencies; (iv) facility operators; (v) property owners whose land or  
26 other property may be affected by the oil or hazardous substance spill;  
27 and (vi) other parties identified by the department as having an  
28 interest in or the resources to assist in the containment and cleanup  
29 of an oil or hazardous substance spill;

30       (c) State the respective responsibilities of the parties identified  
31 in (b) of this subsection in an emergency response;

32       (d) Identify actions necessary to reduce the likelihood of spills  
33 of oil and hazardous substances;

34       (e) Identify and obtain mapping of environmentally sensitive areas  
35 at particular risk to oil and hazardous substance spills; ~~((and))~~

36       (f) Establish an incident command system for responding to oil and  
37 hazardous substances spills; and

1       (g) Establish a process for immediately notifying affected tribes  
2 of any oil spill.

3       (3) In preparing and updating the state master plan, the department  
4 shall:

5       (a) Consult with federal, provincial, municipal, and community  
6 officials, other state agencies, the state of Oregon, and with  
7 representatives of affected regional organizations;

8       (b) Submit the draft plan to the public for review and comment;

9       (c) Submit to the appropriate standing committees of the  
10 legislature for review, not later than November 1<sup>st</sup> of each year, the  
11 plan and any annual revision of the plan; and

12       (d) Require or schedule unannounced oil spill drills as required by  
13 RCW 90.56.260 to test the sufficiency of oil spill contingency plans  
14 approved under RCW 90.56.210.

15       **Sec. 5.** RCW 90.56.200 and 2000 c 69 s 19 are each amended to read  
16 as follows:

17       (1) The owner or operator for each onshore and offshore facility  
18 and any state agency conducting ship refueling or bunkering of more  
19 than one million gallons of oil on the waters of the state during any  
20 calendar year shall prepare and submit to the department an oil spill  
21 prevention plan in conformance with the requirements of this chapter.  
22 The plans shall be submitted to the department in the time and manner  
23 directed by the department. The spill prevention plan may be  
24 consolidated with a spill contingency plan submitted pursuant to RCW  
25 90.56.210. The department may accept plans prepared to comply with  
26 other state or federal law as spill prevention plans to the extent  
27 those plans comply with the requirements of this chapter. The  
28 department, by rule, shall establish standards for spill prevention  
29 plans.

30       (2) The spill prevention plan for an onshore or offshore facility  
31 and state agencies identified under subsection (1) of this section  
32 shall:

33       (a) Establish compliance with the federal oil pollution act of  
34 1990, if applicable, and financial responsibility requirements under  
35 federal and state law;

36       (b) Certify that supervisory and other key personnel in charge of

1 transfer, storage, and handling of oil have received certification  
2 pursuant to RCW 90.56.220;

3 (c) Certify that the facility has an operations manual required by  
4 RCW 90.56.230;

5 (d) Certify the implementation of alcohol and drug use awareness  
6 programs;

7 (e) Describe the facility's maintenance and inspection program and  
8 contain a current maintenance and inspection record of the storage and  
9 transfer facilities and related equipment;

10 (f) Describe the facility's alcohol and drug treatment programs;

11 (g) Describe spill prevention technology that has been installed,  
12 including overflow alarms, automatic overflow cut-off switches,  
13 secondary containment facilities, and storm water retention, treatment,  
14 and discharge systems;

15 (h) Describe any discharges of oil to the land or the water of more  
16 than twenty-five barrels in the prior five years and the measures taken  
17 to prevent a reoccurrence;

18 (i) Describe the procedures followed by the facility to contain and  
19 recover any oil that spills during the transfer of oil to or from the  
20 facility;

21 (j) Provide for the incorporation into the facility during the  
22 period covered by the plan of those measures that will provide the best  
23 achievable protection for the public health and the environment; and

24 (k) Include any other information reasonably necessary to carry out  
25 the purposes of this chapter required by rules adopted by the  
26 department.

27 (3) The department shall only approve a prevention plan if it  
28 provides the best achievable protection from damages caused by the  
29 discharge of oil into the waters of the state and if it determines that  
30 the plan meets the requirements of this section and rules adopted by  
31 the department.

32 (4) Upon approval of a prevention plan, the department shall  
33 provide to the person submitting the plan a statement indicating that  
34 the plan has been approved, the facilities covered by the plan, and  
35 other information the department determines should be included.

36 (5) The approval of a prevention plan shall be valid for five  
37 years. An owner or operator of a facility shall notify the department  
38 in writing immediately of any significant change of which it is aware

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

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

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

12 (8) This section does not authorize the department to modify the  
13 terms of a collective bargaining agreement.

14 **Sec. 6.** RCW 90.56.210 and 2000 c 69 s 20 are each amended to read  
15 as follows:

16 (1) Each onshore and offshore facility and any state agency  
17 conducting ship refueling or bunkering of more than one million gallons  
18 of oil on the waters of the state during any calendar year shall have  
19 a contingency plan for the containment and cleanup of oil spills from  
20 the facility into the waters of the state and for the protection of  
21 fisheries and wildlife, shellfish beds, natural resources, and public  
22 and private property from such spills. The department shall by rule  
23 adopt and periodically revise standards for the preparation of  
24 contingency plans. The department shall require contingency plans, at  
25 a minimum, to meet the following standards:

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

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

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

36 (d) Provide procedures for early detection of oil spills and timely

1 notification of such spills to appropriate federal, state, and local  
2 authorities under applicable state and federal law;

3 (e) State the number, training preparedness, and fitness of all  
4 dedicated, prepositioned personnel assigned to direct and implement the  
5 plan;

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

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

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

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

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

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

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

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

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

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

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

11 (ii) Offshore facilities.

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

17 (3)(a) The owner or operator of a facility shall submit the  
18 contingency plan for the facility.

19 (b) A person who has contracted with a facility to provide  
20 containment and cleanup services and who meets the standards  
21 established pursuant to RCW 90.56.240, may submit the plan for any  
22 facility for which the person is contractually obligated to provide  
23 services. Subject to conditions imposed by the department, the person  
24 may submit a single plan for more than one facility.

25 (4) A contingency plan prepared for an agency of the federal  
26 government or another state that satisfies the requirements of this  
27 section and rules adopted by the department may be accepted by the  
28 department as a contingency plan under this section. The department  
29 shall (~~assure~~) ensure that to the greatest extent possible,  
30 requirements for contingency plans under this section are consistent  
31 with the requirements for contingency plans under federal law.

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

34 (a) The adequacy of containment and cleanup equipment, personnel,  
35 communications equipment, notification procedures and call down lists,  
36 response time, and logistical arrangements for coordination and  
37 implementation of response efforts to remove oil spills promptly and  
38 properly and to protect the environment;

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

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

5 (d) The existence of navigational hazards within the area covered  
6 by the plan;

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

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

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

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

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

21 (7) The approval of the contingency plan shall be valid for five  
22 years. Upon approval of a contingency plan, the department shall  
23 provide to the person submitting the plan a statement indicating that  
24 the plan has been approved, the facilities or vessels covered by the  
25 plan, and other information the department determines should be  
26 included.

27 (8) An owner or operator of a facility shall notify the department  
28 in writing immediately of any significant change of which it is aware  
29 affecting its contingency plan, including changes in any factor set  
30 forth in this section or in rules adopted by the department. The  
31 department may require the owner or operator to update a contingency  
32 plan as a result of these changes.

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

36 (10) Approval of a contingency plan by the department does not  
37 constitute an express assurance regarding the adequacy of the plan nor

1 constitute a defense to liability imposed under this chapter or other  
2 state law.

3 NEW SECTION. **Sec. 7.** If specific funding for the purposes of  
4 sections 5 and 6 of this act, referencing sections 5 and 6 of this act  
5 by bill or chapter or section number, is not provided by June 30, 2004,  
6 in the omnibus transportation appropriations act, sections 5 and 6 of  
7 this act are null and void.

--- END ---