

HOUSE BILL REPORT

HB 2593

As Reported by House Committee On:
Natural Resources, Ecology & Parks
Appropriations

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

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

Sponsors: 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)].

Brief Summary of Second Substitute Bill

- Requires the Department of Ecology (Department) to adopt procedures for evaluating oil spill contingency plans held by vessels, and to conduct random practice drills on vessels without prior notice.
- Clarifies that 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.
- Grants the Department the authority to require additional oil containment safeguards.
- The Department of Ecology's authority to require prior notice of oil transfers is limited and the Department must scale any additional containment measure it requires to the risk posed by the oil transfer.
- The Department is allowed to semi-annually require marine fuel outlets to report the volume of oil they transfer to ships.

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).

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 Substitute Bill:

Scaled Rules According to Risk

The Department must categorize oil transfers by volume and other risk factors, and scale refueling rules based on the relative risk posed by a particular oil transfer.

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

The Department shall adopt rules to enhance the safety of oil transfers from 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 that the department defines as posing a higher risk. The Department may conduct inspections of oil transfer operations.

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.

Force of Administrative Rules

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

Substitute Bill Compared to Original Bill:

The Department is directed to categorize oil transfers by volume and other risk factors, and to scale refueling rules based on the relative risk posed by a particular transfer of oil. The Department may only require prior notice of the time, location, and volume of oil transfers it deems "higher risk" transfers.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (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 Against: None.

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

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).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Natural Resources, Ecology & Parks:

The Department of Ecology's (Department) authority to require prior notice of oil transfers is limited. Except for transfers scheduled four hours in advance or more, notice shall not be required from marine fuel outlets transferring less than 3,000 gallons of oil in a single transaction to a ship that is not a tank vessel, cargo vessel, or passenger vessel. The Department is allowed to semi-annually require marine fuel outlets to report the volume of oil they transfer to ships. The Department must scale any additional containment measure it requires to the risk posed by the oil transfer.

Appropriation: None.

Fiscal Note: Available.

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

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

Persons Testifying: (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: None.