

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5432

59th Legislature
2005 Regular Session

Passed by the Senate April 21, 2005
YEAS 45 NAYS 1

President of the Senate

Passed by the House April 20, 2005
YEAS 61 NAYS 37

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5432** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5432

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Spanel, Swecker, Poulsen, Doumit, Regala, Rockefeller, Pridemore, Haugen, Kohl-Welles, Fraser, Jacobsen, Shin and Kline)

READ FIRST TIME 02/24/05.

1 AN ACT Relating to the oil spill advisory council; amending RCW
2 90.56.005 and 90.56.060; and adding new sections to chapter 90.56 RCW.

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

4 **Sec. 1.** RCW 90.56.005 and 2004 c 226 s 2 are each amended to read
5 as follows:

6 (1) The legislature declares that (~~the increasing reliance on~~)
7 water borne transportation as a source of supply for oil and hazardous
8 substances poses special concern for the state of Washington. Each
9 year billions of gallons of crude oil and refined petroleum products
10 are transported as cargo and fuel by vessels on the navigable waters of
11 the state. These shipments are expected to increase in the coming
12 years. Vessels transporting oil into Washington travel on some of the
13 most unique and special marine environments in the United States.
14 These marine environments are a source of natural beauty, recreation,
15 and economic livelihood for many residents of this state. As a result,
16 the state has an obligation to ensure the citizens of the state that
17 the waters of the state will be protected from oil spills.

18 (2) The legislature finds that prevention is the best method to
19 protect the unique and special marine environments in this state. The

1 technology for containing and cleaning up a spill of oil or hazardous
2 substances is (~~in the early stages of development~~) at best only
3 partially effective. Preventing spills is more protective of the
4 environment and more cost-effective when all the response and damage
5 costs associated with responding to a spill are considered. Therefore,
6 the legislature finds that the primary objective of the state is to
7 (~~adopt~~) achieve a zero spills strategy to prevent any oil or
8 hazardous substances from entering waters of the state.

9 (3) The legislature also finds that:

10 (a) Recent accidents in Washington, Alaska, southern California,
11 Texas, Pennsylvania, and other parts of the nation have shown that the
12 transportation, transfer, and storage of oil have caused significant
13 damage to the marine environment;

14 (b) Even with the best efforts, it is nearly impossible to remove
15 all oil that is spilled into the water, and average removal rates are
16 only fourteen percent;

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

20 (d) The state has a fundamental responsibility, as the trustee of
21 the state's natural resources and the protector of public health and
22 the environment to prevent the spill of oil; and

23 (e) In section 5002 of the federal oil pollution act of 1990, the
24 United States congress found that many people believed that complacency
25 on the part of industry and government was one of the contributing
26 factors to the Exxon Valdez spill and, further, that one method to
27 combat this complacency is to involve local citizens in the monitoring
28 and oversight of oil spill plans. Congress also found that a mechanism
29 should be established that fosters the long-term partnership of
30 industry, government, and local communities in overseeing compliance
31 with environmental concerns in the operation of crude oil terminals.
32 Moreover, congress concluded that, in addition to Alaska, a program of
33 citizen monitoring and oversight should be established in other major
34 crude oil terminals in the United States because recent oil spills
35 indicate that the safe transportation of oil is a national problem.

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

1 (a) To establish state agency expertise in marine safety and to
2 centralize state activities in spill prevention and response
3 activities;

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

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

9 (d) To provide for state spill response and wildlife rescue
10 planning and implementation;

11 (e) To support and complement the federal oil pollution act of 1990
12 and other federal law, especially those provisions relating to the
13 national contingency plan for cleanup of oil spills and discharges,
14 including provisions relating to the responsibilities of state agencies
15 designated as natural resource trustees. The legislature intends this
16 chapter to be interpreted and implemented in a manner consistent with
17 federal law;

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

20 (g) To provide for an independent (~~oversight board~~) oil spill
21 advisory council to review on an ongoing basis the adequacy of oil
22 spill prevention, preparedness, and response activities in this state;
23 and

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

26 NEW SECTION. Sec. 2. A new section is added to chapter 90.56 RCW
27 to read as follows:

28 (1)(a) There is established in the office of the governor the oil
29 spill advisory council.

30 (b) The primary purpose of the council is to maintain the state's
31 vigilance in, by ensuring an emphasis on, the prevention of oil spills
32 to marine waters, while recognizing the importance of also improving
33 preparedness and response.

34 (c) The council shall be an advisory body only.

35 (2)(a) In addition to members appointed under (b) of this
36 subsection, the council is composed of the chair-facilitator and
37 sixteen members representing various interests as follows:

1 (i) Three representatives of environmental organizations;
2 (ii) One representative of commercial shellfish interests;
3 (iii) One representative of commercial fisheries that primarily
4 fishes in Washington waters;
5 (iv) One representative of marine recreation;
6 (v) One representative of tourism interests;
7 (vi) Three representatives of county government from counties
8 bordering Puget Sound, the Columbia river/Pacific Ocean, and the Strait
9 of Juan de Fuca/San Juan Islands;
10 (vii) One representative of marine labor;
11 (viii) Two representatives of marine trade interests;
12 (ix) One representative of major oil facilities;
13 (x) One representative of public ports; and
14 (xi) An individual who resides on a shoreline who has an interest,
15 experience, and familiarity in the protection of water quality.
16 (b) In addition to the members identified in this subsection, the
17 governor shall invite the participation of tribal governments through
18 the appointment of two representatives to the council.
19 (3) Appointments to the council shall reflect a geographical
20 balance and the diversity of populations within the areas potentially
21 affected by oil spills to state waters.
22 (4) Members shall be appointed by the governor and shall serve
23 four-year terms, except the initial members appointed to the council.
24 Initial members to the council shall be appointed as follows: Six
25 shall serve two-year terms, six shall serve three-year terms, and seven
26 shall serve four-year terms. Vacancies shall be filled by appointment
27 in the same manner as the original appointment for the remainder of the
28 unexpired term of the position vacated. Members serve at the pleasure
29 of the governor.
30 (5) The governor shall appoint a chair-facilitator who shall serve
31 as a nonvoting member of the council. The chair shall not be an
32 employee of a state agency, nor shall the chair have a financial
33 interest in matters relating to oil spill prevention, preparedness, and
34 response. The chair shall convene the council at least four times per
35 year. At least one meeting per year shall be held in a Columbia river
36 community, an ocean coastal community, and a Puget Sound community.
37 The chair shall consult with councilmembers in setting agendas and
38 determining meeting times and locations.

1 (6) All members shall be reimbursed for travel expenses while
2 attending meetings of the council or technical advisory committees as
3 provided in RCW 43.03.050 and 43.03.060. Members of the council
4 identified in subsection (2)(a)(i), (ii), (iii), (iv), (v), (vi),
5 (vii), and (xi) of this section shall be compensated on a per diem
6 basis as a class two group according to RCW 43.03.230.

7 (7) The first meeting of the council shall be convened by the
8 governor or the governor's designee. Other meetings may be convened by
9 a vote of at least a majority of the voting members of the council, or
10 by call of the chair. All meetings are subject to the open public
11 meetings act. The council shall maintain minutes of all meetings.

12 (8) To the extent possible, all decisions of the council shall be
13 by the consensus of the members. If consensus is not possible, nine
14 voting members of the council may call for a vote on a matter. When a
15 vote is called, all decisions shall be determined by a majority vote of
16 the voting members present. Two-thirds of the voting members are
17 required to be present for a quorum for all votes. The subject matter
18 of all votes and the vote tallies shall be recorded in the minutes of
19 the council.

20 (9) The council may form subcommittees and technical advisory
21 committees.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.56 RCW
23 to read as follows:

24 (1) The duties of the council include:

25 (a) Selection and hiring of professional staff and expert
26 consultants to support the work of the council;

27 (b) Early consultation with government decision makers in relation
28 to the state's oil spill prevention, preparedness, and response
29 programs, analyses, rule making, and related oil spill activities;

30 (c) Providing independent advice, expertise, research, monitoring,
31 and assessment for review of and necessary improvements to the state's
32 oil spill prevention, preparedness, and response programs, analyses,
33 rule making, and other decisions, including those of the Northwest area
34 committee, as well as the adequacy of funding for these programs;

35 (d) Monitoring and providing information to the public as well as
36 state and federal agencies regarding state of the art oil spill
37 prevention, preparedness, and response programs;

1 (e) Actively seeking public comments on and proposals for specific
2 measures to improve the state's oil spill prevention, preparedness, and
3 response program, including measures to improve the effectiveness of
4 the Northwest area committee;

5 (f) Evaluating incident response reports and making recommendations
6 to the department regarding improvements;

7 (g) Consulting with the department on lessons learned and agency
8 progress on necessary actions in response to lessons learned;

9 (h) Promoting opportunities for the public to become involved in
10 oil spill response activities and provide assistance to community
11 groups with an interest in oil spill prevention and response, and
12 coordinating with the department on the development and implementation
13 of a citizens' involvement plan;

14 (i) Serving as an advisory body to the department on matters
15 relating to international, national, and regional issues concerning oil
16 spill prevention, preparedness, and response, and providing a mechanism
17 for stakeholder and public consideration of federal actions relating to
18 oil spill preparedness, prevention, and response in or near the waters
19 of the state with recommended changes or improvements in federal
20 policies on these matters;

21 (j) Accepting moneys from appropriations, gifts, grants, or
22 donations for the purposes of this section; and

23 (k) Any other activities necessary to maintain the state's
24 vigilance in preventing oil spills.

25 (2) The council shall establish a work plan for accomplishing the
26 duties identified in subsection (1) of this section.

27 (3) The council is not intended to address issues related to spills
28 involving hazardous substances.

29 (4) By September 15, 2006, the council shall recommend to the
30 governor and appropriate committees of the legislature, proposals for
31 the long-term funding of the council's activities and for the long-term
32 sustainable funding for oil spill preparedness, prevention, and
33 response activities.

34 (5) By September 1st of each year, the council shall make
35 recommendations for the continuing improvement of the state's oil spill
36 prevention, preparedness, and response activities through a report to
37 the governor, the director, and the appropriate committees of the
38 senate and house of representatives.

1 **Sec. 4.** RCW 90.56.060 and 2004 c 226 s 4 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, and with the oil spill advisory council.

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;

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 1st 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 (4) The department shall evaluate the functions of advisory
16 committees created by the department regarding oil spill prevention,
17 preparedness, and response programs, and shall revise or eliminate
18 those functions which are no longer necessary.

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