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## Environment Committee

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### HB 1449

**Brief Description:** Concerning oil transportation safety.

**Sponsors:** Representatives Farrell, Carlyle, Fitzgibbon, Ortiz-Self, Peterson, Walkinshaw, Gregerson, Senn, McBride, Robinson, Tarleton, Pollet, Cody, Ormsby, Riccelli, Kagi, Blake, Fey, Hudgins, Lytton, Bergquist, Sells, Takko, Tharinger, Jinkins, Wylie, S. Hunt, Stanford, Reykdal, Sawyer, Appleton, Van De Wege, Clibborn, Ryu, Goodman and Kilduff.

#### Brief Summary of Bill

- Changes regulatory programs covering the over-land and over-water transportation of oil, including requiring railroads to do oil spill response planning and provide information to the Department of Ecology about their oil transport activities, authorizing rulemaking by the Pilotage Commission to require tug escorts for oil-laden vessels, and authorizing rulemaking by the Utilities and Transportation Commission to set safety standards for private railroad crossings.
- Increases the Oil Spill Administration Tax on oil received from vessels to 10 cents per 42-gallon barrel, and expands the tax's scope to include oil received by rail and pipeline.

**Hearing Date:** 2/3/15

**Staff:** Jacob Lipson (786-7196).

#### Background:

The 2014 Supplementary Operating Budget included a proviso directing the Department of Ecology (ECY) to study program gaps and public health and safety risks associated with oil transport over water and by rail. The ECY was directed to work with the Utilities and Transportation Commission (UTC), the Emergency Management Division of the Military Department, and other stakeholders in carrying out the study. In December 2014 the ECY issued a draft study featuring 43 recommended changes to federal, state, and local oil transportation policies and programs.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Modes of Oil Transportation.

Oil, including crude oil and refined petroleum products, is sometimes transported by vessel, pipeline, or train between the point of extraction, processing facilities, and other destinations. The types of vessels used to transport oil include oil tankers, tank barges towed by tugs, and articulated tug barges that feature a structural connection from the tug providing propulsion for the barge. Oil transported by rail is carried in individual tank cars; oil-carrying tank cars may comprise part or all of the cargo of a train.

### Definition of Oil.

For the purposes of state laws regarding oil spill prevention, planning, and financial responsibility, oil is defined in state law as any kind or distillate of oil that is liquid at atmospheric temperature. Specific types of oil are explicitly included within this definition.

### Financial Assurance Requirements for Facilities and Vessels.

Facilities such as oil refineries and terminals must demonstrate the financial ability to compensate the state and local governments for damages from a worst-case spill. Likewise, certain vessels including barges and tank vessels that use state waters or ports must also document their financial ability to pay for oil spill removal costs, natural resource damages, and related expenses. Financial responsibility must be demonstrated to ECY in one of several ways, including providing evidence of insurance or surety bonding.

### Oil Spill Prevention Plans and Oil Spill Contingency Plans.

The ECY administers an oil spill preparedness, prevention and response program. Among other statutes administered by the ECY's oil spills program, state law directs facilities including oil refineries, terminals, pipelines, and vessel operators involved in the bulk transfer of oil to put in place oil spill contingency plans that outline containment and remediation responses to potential oil spills from the vessel. Contingency plans approved by the ECY must identify personnel, materials and equipment capable of promptly and properly removing oil with minimal environmental damage. Railroad cars are not considered facilities for purposes of state spill contingency planning, but do conduct certain oil spill response planning under federal law.

In addition to, or as part of, state spill contingency plans, onshore facilities must submit oil spill prevention plans to the ECY. The ECY may only approve these plans if they incorporate measures providing for the best achievable protection of public health and the environment, which means that the plans must provide the highest level of protection through the best achievable technology and the most protective staffing levels, training procedures, and operational methods. Best achievable protection is also the standard established by the ECY rules that address operations of refineries, terminals, and other facilities.

### Other Maritime Safety Provisions: Oil Tanker Tug Escorts and the Emergency Response Towing Vessel.

Tug escorts can be a tool to assist vessels in distress that have lost control of their power or steering. State law requires oil tankers of greater than 40,000 deadweight tons entering Puget Sound to have one tug escort with a minimum horsepower equivalent to 5 percent of the deadweight tonnage of the vessel the tug is escorting. The State Pilotage Commission has adopted rules regarding the applicability of oil tanker tug escort requirements. Violation of oil tanker escort requirements is a gross misdemeanor and may also trigger civil penalties of up to

\$10,000 per day. Civil penalties may be sought by a county prosecutor or the Washington Attorney General upon the request of the Pilotage Commission.

Federal law prohibits oil tankers larger than 125,000 deadweight tons from entering Puget Sound. Federal law also requires that single-hulled oil tankers weighing above 5,000 gross tons entering Puget Sound be escorted by two tugs; however, the federal Oil Pollution Act of 1990 also phases out single-hulled oil tankers in American waters by 2015.

All vessels operating in the Strait of Juan de Fuca must file with the ECY evidence of an emergency response system that provides for the operation of an emergency response towing vessel capable of response to vessel oil spill threats stationed at Neah Bay on the Olympic Peninsula.

Vessel operators are also required to provide an advanced notice to the ECY that includes time, location, and volume information prior to certain transfers of oil involving a vessel.

The Puget Sound Partnership, with input from the ECY and other maritime stakeholders, recently completed a vessel traffic risk assessment study of spill risks associated the movement of vessels in Puget Sound under various scenarios.

#### Emergency Response Planning.

Within the State Military Department, the Governor-appointed Emergency Management Council acts as the State Emergency Response Commission that the federal Emergency Planning and Community Right to Know Act (EPCRA) requires the state to establish. The EPCRA requires states to oversee hazardous chemical emergency planning and requires the formation of local emergency planning committees to develop and annually review emergency response plans that identify the transportation routes of extremely hazardous substances.

#### Barrel Tax & Uses of Oil Spill Prevention Account and Oil Spill Response Accounts.

Crude oil and petroleum products that are transported by vessel on state waters are subject to an oil spill administration tax (administration tax) and an oil spill response tax (response tax) at the time of the product's initial receipt by a marine terminal. A credit is allowed against taxes imposed on oil that is initially received in Washington, but subsequently exported from the state.

The administration tax is 4 cents per 42-gallon barrel and is deposited in the Oil Spill Prevention Account (Prevention Account), while the response tax is 1 cent per barrel and is deposited in the Oil Spill Response Account (Response Account). If the Office of Financial Management determines that there is in excess of \$9 million in the Response Account, then the 1 cent response tax is no longer levied until the Response Account balance falls below \$8 million.

The Response Account is used for the costs associated with the response to oil spills into state waters that the ECY determines are likely to incur in excess of \$50,000 in response costs and for the emergency towing vessel stationed at Neah Bay. The Prevention Account is used for the administration of several ECY oil spill program activities.

#### Utilities and Transportation Commission Regulation of Railroads.

The UTC administers a railroad safety program. The activities of this program include:

- the approval of petitions to open, close, or reconfigure railroad crossings of public roads, except within cities of over 10,000 in population; and
- inspections of public road-railroad crossings to ensure state and federal standards are met.

In addition, UTC inspectors operate under delegated authority from the Federal Railroad Administration (FRA) to support FRA oversight of railroad compliance with FRA safety regulations. UTC inspectors are restricted from conducting inspections at crossings between a private roadway and a railroad. UTC inspectors are restricted, without accompaniment by a FRA inspector, from accessing private property for hazardous material transport inspections.

The UTC's railroad safety program is funded by a fee on railroads set at 1.5 percent of a railroad's gross operating revenue from intrastate operations.

### **Summary of Bill:**

#### Oil Definition.

Oil is redefined in oil spill prevention, cleanup, and financial responsibility laws to mean any kind of oil that is liquid at 25 degrees Celsius and one atmosphere of pressure, including any distillate of that oil. This definition also explicitly covers the following types of oil:

- bitumen, which is a heavy oil that will not flow until heated or diluted;
- synthetic crude, which results from the processing of Bitumen; and
- natural gas well condensate, which is a liquid hydrocarbon mixture recovered at natural gas extraction wellheads.

#### Disclosure of Information about Oil Transportation.

Railroads that transport oil as bulk cargo, pipelines, and other facilities are required to submit advanced notice to the ECY of transfers between rail facilities, vessels, and other facilities. The ECY must adopt advanced notice rules, but interim advanced notice requirements must be implemented until the rules are finalized.

Pipelines must report to the ECY twice per year on the type and volume of oil they transported through the state. Pipeline reports due July 31 must contain oil transport information from January 1 to June 30, while pipeline reports due January 31 must contain oil transport data from July 1 to December 31.

The ECY must aggregate pipeline and rail transfer data by county quarterly and publish it on its website. The information published by ECY must include:

- the county of transfer;
- the volume and type of oil transferred;
- the oil's place of origin;
- the mode and route of transport;
- the number of rail cars transferring oil; and
- information about any spills that occurred during transport or transfer.

#### Financial Assurance Requirements.

Railroads that transport oil as bulk cargo must provide the same financial assurances to the ECY as facilities like oil refineries and terminals. The ECY is directed to adopt a rule setting the amount required for railroads and other facilities to demonstrate financial responsibility; an

amount which is to be calculated by multiplying the reasonable anticipated per-barrel cleanup costs by the estimated worst-case spill volume anticipated in the facility's oil spill contingency plan.

Vessels, railroads, and other facilities may employ new means of demonstrating their financial responsibility, including a letter of credit or protection and indemnity club membership. Documentation of financial responsibility must be in the form of an ECY-issued certificate with a term of one year or less. Owners or operators of multiple vessels or facilities may be covered by a single certificate.

- The ECY may reevaluate the validity of a certificate after a spill or potential liability that would jeopardize the certificate holder's ability to meet the financial responsibility requirements necessary to originally obtain the certificate.
- If a vessel or facility spill incurs potential liability exceeding 5 percent of the certificate's requirements, the certificate becomes inapplicable to other previously covered vessels or facilities, and the owner or operator must redemonstrate an ability to pay all damages.

#### Oil Spill Prevention Plans and Oil Spill Contingency Plans.

Railroads must submit oil spill contingency plans to the ECY in the same manner as terminals, refineries, and other covered facilities. However, railroads are not made subject to the oil spill prevention planning requirements placed on other facilities.

The oil spill prevention planning standard of best achievable protection is applied to oil spill contingency planning, which must include access to in-state equipment to respond to a worst case spill.

#### Oil Spill Prevention and Response Taxes and Accounts.

Beginning January 1, 2016, the administration tax is increased to 10 cents per 42-gallon barrel. The administration tax and response tax are levied on oil received by facilities from rail tank cars, pipelines, and vessels.

The Response Account may be used to respond to spills or threatened spills of oil and other hazardous substances that the ECY anticipates will cost in excess of \$1,000. The Response Account may also be used to compensate emergency towing by any tug vessel, in addition to the costs of the emergency response towing vessel stationed at Neah Bay.

Until June 30, 2019, the Prevention Account may be used for oil and hazardous material emergency response planning by local emergency response committees, which the Military Department may employ staff to support.

- Local Committees must annually review their plans and submit them to the State Emergency Response Commission every five years or whenever they are updated.
- The Military Department must report to the Governor and Legislature by March 1, 2018 on the progress of local emergency planning towards meeting EPCRA planning requirements.

Before spending money in the Prevention Account, the ECY must make reasonable efforts to obtain response cost funding from responsible persons or other sources, including the federal government.

### Oil-Bearing Vessel Tug Escorts.

The Pilotage Commission may adopt rules to require tug escorts in state waters for oil tankers of greater than 40,000 deadweight tons, other towed vessels capable of transporting over 10,000 gallons of bulk petroleum, and articulated tug-barges of all sizes.

In addition, the Pilotage Commission must adopt rules designed to achieve a best achievable protection standard by June 30, 2017 for the narrow channels of the San Juan Island Archipelago. These rules may include tug escort requirements or other safety measures for oil tankers, articulated tug-barges, and towed vessels. The Pilotage Commission may also adopt best achievable protection rules pertaining to the capabilities of the tugs used to escort oil-bearing vessels.

The Pilotage Commission rules must be written in consultation with the ECY and must rely on the results of vessel traffic risk assessments. Prior to rulemaking, the Pilotage Commission must also consult with maritime professionals and public agencies.

Vessels not bearing bulk oil are not subject to tug escort requirements. Single-hulled oil tankers are subject to federal tug escort requirements in Puget Sound.

### Utilities and Transportation Commission Railroad Safety Program.

The regulatory fee paid by railroad companies to the UTC is 0.2 percent of the sum of the company's gross intrastate operating revenue plus the Washington portion of their gross interstate operating revenue.

UTC inspectors may enter private property to conduct hazardous materials inspections, investigations, and surveillance under the federal partnership that delegates inspection authority to state inspectors.

The UTC must adopt safety standards for private road crossings of railroads used to transport crude oil. These safety standards must include signage requirements, UTC inspection and crossing improvement prioritization criteria, and requirements for railroad companies to pay for and complete improvement projects. The UTC may inspect private crossings and order railroads to improve private crossings.

Cities of over 10,000 people may elect to participate in the UTC public road-railroad crossing safety inspection program. Cities of over 10,000 people must provide a list of existing public crossings to the UTC within 30 days of the act's effective date and must also notify the UTC within 30 days of the opening, closing, or modification of a crossing.

### Other.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 18 through 21 pertaining to the oil spill administration and response taxes, which take effect on January 1, 2016.