

# HOUSE BILL REPORT

## ESHB 1027

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*As Amended by the Senate*

**Title:** An act relating to oil and hazardous substances.

**Brief Description:** Adopting oil and hazardous substance spill prevention and response provisions.

**Sponsor(s):** By House Committee on Environmental Affairs (originally sponsored by Representatives Rust, Horn, Phillips, Heavey, Anderson, Basich, Vance, Wineberry, Wilson, R. Johnson, Wang, Sprenkle, Spanel, Miller, Ogden, Jones, Prentice, Leonard, Inslee, Fraser, R. King, Nelson, Pruitt, G. Fisher, Jacobsen, R. Fisher, Valle, Roland, Hine, Winsley, Rasmussen, Appelwick and Brekke; by request of Governor Gardner).

**Brief History:**

Reported by House Committee on:  
Environmental Affairs, March 5, 1991, DPS;  
Revenue, March 10, 1991, DPS(ENA)-A;  
Passed House, March 15, 1991, 86-12;  
Amended by Senate.

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**HOUSE COMMITTEE ON  
ENVIRONMENTAL AFFAIRS**

**Majority Report:** *That Substitute House Bill No. 1027 be substituted therefor, and the substitute bill do pass.*  
Signed by 8 members: Representatives Rust, Chair; Valle, Vice Chair; Bray; Brekke; G. Fisher; Phillips; Pruitt; and Sprenkle.

**Minority Report:** *Without recommendation.* Signed by 5 members: Representatives Horn, Ranking Minority Member; Edmondson, Assistant Ranking Minority Member; Neher; D. Sommers; and Van Luven.

**Staff:** Harry Reinert (786-7110).

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**HOUSE COMMITTEE ON  
REVENUE**

**Majority Report:** *The substitute bill by Committee on Environmental Affairs be substituted therefor and the substitute bill as amended by Committee on Revenue do pass.*

Signed by 13 members: Representatives Wang, Chair; Fraser, Vice Chair; Holland, Ranking Minority Member; Wynne, Assistant Ranking Minority Member; Appelwick; Belcher; Brumsickle; Day; Leonard; Morris; Phillips; Rust; and Van Luven.

**Minority Report:** *Do not pass.* Signed by 2 members: Representatives Morton; and Silver.

**Staff:** Robin Appleford (786-7093).

**Background:**

Introduction.

In December, 1988, the *Nestucca* barge spilled approximately 231,000 gallons of oil near Grays Harbor. The spill affected the coasts of both Washington State and the Province of British Columbia. The owners of the *Nestucca* have recently entered a settlement with the state to pay \$3.35 million for damage caused to the state's natural resources. This is in addition to the costs already paid for cleanup of the oil.

In response to the *Nestucca* spill, Governor Gardner and British Columbia Premier William Vander Zalm created the British Columbia/Washington Task Force on Oil Spills. After the *Exxon Valdez* spill in April 1989, Alaska, Oregon, and California joined Washington and British Columbia to form the States/B.C. Task Force. The mission of the task force was to seek ways to prevent oil spills, to review oil spill response procedures, to look at methods of determining compensation claims, and to develop a coordinated plan for preventing and responding to spills. The task force issued its final report in October 1990. The report makes 46 joint recommendations. These involve issues of vessel traffic, vessel design, personnel, enforcement, regulatory oversight, education, interstate cooperation, and future studies. In addition to the 46 joint recommendations, each of the task force members made other recommendations for adoption by the individual states. Washington made nine recommendations for state action. These included efforts to reduce navigation conflicts, use of state lease authority to regulate activity on state lands, and fees and incentives to obtain compliance with state objectives.

Congress has recently passed legislation relating to oil spill issues. Several elements of the federal Oil Pollution Act of 1990 (OPA) are similar to provisions adopted by the Legislature in 1990.

Under federal law, the Coast Guard has responsibility for marine safety and for responding to spills on the navigable waters of the United States. The Department of Ecology is the Washington State agency responsible for taking actions necessary to contain and clean up any spilled oil.

#### Contingency Plans.

Under Washington law, operators of tankers and barges carrying oil in bulk, cargo and passenger vessels 300 gross tons or larger, and oil processing and storage facilities located near navigable waters which receive oil from a tank vessel are required to prepare and submit to the Department of Ecology plans for the prevention, containment, and cleanup of oil spills. OPA also requires contingency plans for vessels and for an onshore or offshore facility, regardless of the size of the facility or the source of its oil.

The Department of Ecology must adopt rules for the plans by July 1, 1991.

The department will approve plans that have adequate personnel, equipment, notification procedures, and logistical arrangements. In reviewing plans, the department must consider the nature of vessel traffic and the amount of oil and hazardous substances transported in the area covered by a plan, navigational hazards, prior history of spills in the area, and the sensitivity of the environment. Plans must be reviewed and updated at least once every five years. The department will publish an index of approved contingency plans and an inventory of available spill containment and cleanup equipment.

To determine the adequacy of the plans, the department must require practice drills of those providing cleanup services. The department must prepare a report summarizing the results of these drills.

Plans approved by the department are binding on the persons submitting them. The department may obtain court orders to enforce the plans. Approval of a plan by the department does not guarantee the adequacy of the plan and is not a defense against liability for damages caused by a spill.

#### Pollution Liability.

State law makes it illegal for any person to pollute state waters. A person who pollutes state waters may be subject to both criminal and civil penalties. The person is also liable for any damage to the environment, including the cost

of restoring damaged natural resources and the lost value of those resources until they are restored.

A person who spills oil in Washington waters and fails to immediately collect the oil is responsible for the state's expenses in cleaning up the spill. The state imposes strict liability for damages on the person owning the oil or having control over the oil. Strict liability may be avoided if the person can demonstrate that the spill was caused by an act of war or by negligence on the part of the state or the United States.

A person responding to an oil spill is partially immune from liability for necessary expenses and property damage caused by that person in responding to an oil spill. The state, local governments, volunteers, and qualified cleanup contractors responding to a spill are liable only for damage caused by actions taken in bad faith or with gross negligence.

#### Standards for Tow Lines and Bunkering Activities.

The Department of Ecology is directed to develop standards for the use of tow lines by barges carrying oil or hazardous substances and to develop a program for voluntary compliance with those standards. The department is also directed to study state authority to impose the standards and report the results of its study to the Legislature by July 1, 1991.

Any person conducting refuelling, bunkering, or lightering operations is required to have containment and recovery equipment available. Persons involved in the transfer operations must be trained in the use of oil spill containment and recovery equipment. The department may adopt rules for bunkering and refuelling operations and the lightering of petroleum products.

#### Financial Responsibility.

Washington currently requires inland barges carrying oil or hazardous substances and oil tankers to maintain financial responsibility of at least \$1. OPA requires all tank vessels to maintain financial responsibility of \$1,200 per gross ton. Other vessels are required to have \$600 per gross ton.

#### Pilots.

The state Board of Pilotage Commissioners is responsible for licensing pilots in Washington state waters. The board sets standards for testing and may fine, suspend, or revoke the license of a pilot who violates board rules or causes an

accident resulting in damage to or loss of a vessel. The board is chaired by the assistant secretary of the marine division of the Department of Transportation. There are six additional members appointed by the governor, representing the pilots, the shipping industry, and the public with experience in maritime industry.

The board is required to hold pilot examinations every two years and to have a statutorily established number of grading sheets for the two pilotage districts. The board may require a pilot applicant and a pilot subject to sanctions by the board to take vessel simulator training. The board is required to establish rules for the size and type of vessels new pilots may pilot. The rules are required to apply to the first three years in which a pilot is employed.

Pilots are required to report to the board four times a year on the fees received for piloting and information about the vessels to which the pilot has been assigned. The master of a vessel which employs a pilot must certify on a form developed by the board that the vessel complies with federal safety requirements and international safety and equipment requirements.

#### Maritime Commission.

In 1990, the Legislature established the Maritime Commission to develop an emergency response system for vessels which have not made arrangements with clean-up contractors prior to entry into Washington waters. Six members of the commission are elected by the shipping industry and its chairperson is selected by the members of the commission. Two members are appointed by the governor. The commission may assess a fee against vessels which have not made arrangements with a cleanup contractor.

#### Resource Damage Assessments.

There are two separate provisions governing resource damage assessments. One provision applies to any violation of Washington's clean water laws. This general provision requires the responsible party to pay for restoration costs or lost value of the resource. The second provision applies specifically to spills of oil. The departments of Ecology, Fisheries, Wildlife, and Natural Resources are required to develop a compensation table for spills of oil. The table shall provide for compensation of not less than \$5 a gallon and not more than \$50 a gallon spilled. Prior to using the table, the Department of Ecology must convene a committee to determine whether the table should be used or whether another method of assessing damages should be used. Any

money recovered under either of these provisions is placed in the Coastal Protection Fund, together with any penalties, fees, or damages. The fund may be used to pay for agency expenses under the spill response provisions, except for permanent employees for routine operational support.

***Summary of Bill:***

Office of Marine Safety.

An Office of Marine Safety is created. The administrator of the office is appointed by the governor. The office has authority for marine safety issues in this state. Duties of the Department of Ecology relating to vessel response plans, barge cable standards, and bunkering operations are transferred to the office. The Department of Ecology retains authority over facilities and the response to spills.

The office is directed to review the federal vessel inspection program. If it determines the federal program does not adequately protect the state's waters, the office shall develop a state tank vessel inspection program.

The office shall establish at least two regional marine safety committees: one for the Puget Sound/Strait of Juan de Fuca and one for the Pacific Coast. The office is also directed to work with Oregon to establish a committee for the Columbia River. Six members of the public representing a cross section of interests shall be appointed by the administrator to the committees. The committees shall prepare regional plans governing vessel traffic, including consideration of when tug escorts should be required, speed limits, navigation aids, vessel conflicts, environmentally sensitive areas, and the Coast Guard's Vessel Traffic System. The plans shall be submitted to the Office for approval. The office is responsible for implementing those recommendations over which the state has authority. The committees are also directed to review federal standards for barge tow cables and report to the office on whether state standards should be adopted.

The office shall also establish an emergency response system for the Strait of Juan de Fuca by July 1, 1992, based on recommendations from the regional marine safety committees.

Those involved in refuelling, bunkering, or lightering operations must deploy containment and recovery equipment in accordance with standards adopted by the office.

Prevention and Contingency Plans.

All facilities located on or near the navigable waters of the state which store, handle, or transport oil are required to prepare and submit contingency plans.

Vessels and facilities are required to prepare prevention plans in addition to contingency plans. The Department of Ecology is responsible for reviewing and approving facility plans, the Office of Marine Safety has this responsibility for vessel plans. A prevention plan must disclose the measures that the vessel and facility operators have taken to reduce the likelihood of a spill. In addition, a facility must describe measures the facility will take during the period covered by the plan to further reduce the likelihood of a spill.

The Department of Ecology shall develop certification procedures for key facility personnel and shall require facilities to have an operations manual. The department shall also adopt standards for the transfer and handling of oil at onshore and offshore facilities.

The director of the Department of Ecology is the head of the state incident command system.

#### Marine Oversight Board.

A five member marine oversight board is established to review the activities of the federal government, industry, and state agencies in spill prevention and response. The board will make appropriate recommendations for corrective action to the governor, the Legislature, federal agencies, and state agencies.

#### Criminal Penalties.

A person who, with criminal negligence and while operating, navigating, or piloting a tank vessel causes the vessel to spill oil is guilty of a gross misdemeanor. The same offense committed with criminal recklessness is a class B felony. Operation of a cargo or passenger vessel or a tank vessel while intoxicated or under the influence of intoxicating drugs is a class C felony.

#### Financial Responsibility.

The minimum level of financial responsibility for tank vessels carrying oil is increased to \$500 million. The administrator of the Office of Marine Safety may set a lower level of financial responsibility for barges of under 3,000 gross tons. All other vessels over 300 gross tons must have financial responsibility of at least \$500,000 or \$600 per gross ton. Onshore and offshore facilities must maintain

financial responsibility in an amount determined by the Department of Ecology.

#### Funding.

A tax is imposed on oil delivered at marine terminals within the state. The tax is not applicable to oil or other petroleum products which are subsequently exported. The total amount of the tax is five cents a barrel, with three cents deposited into an administration account and two cents deposited into a response account. The administration account is subject to appropriation and may be used for administrative expenses incurred in carrying out the oil spill prevention and response program. The response account may be used to defray state agency costs in responding to spills where the expense is expected to exceed \$50,000.

#### Resource Damage Assessments.

The departments of Ecology, Fisheries, Wildlife, and Natural Resources are directed to develop a compensation table for spills of hazardous substances. All spills which damage resources shall be reviewed to determine whether the compensation table should be used, or whether another method of determining damages should be used.

#### Pilots.

The administrator of the Office of Marine Safety is added as a member of the Board of Pilotage Commissioners. One member of the board must be a representative of an environmental organization.

The board may hold examinations for pilots when necessary. The board is not required to develop any specific number of examination sheets. The board shall require a pilot against whom sanctions have been imposed to take vessel simulator training. A pilot in his or her first year of active duty and every five years thereafter must take vessel simulator training. The board may require additional training for pilots applicants unable to become active pilots upon licensing.

The board's rules shall establish a five-year period during which new pilots will be allowed to progressively handle larger and different types of vessels.

The pilot's report submitted to the board shall include a statement of any accidents or near miss incidents which occurred while the pilot was on duty. The information shall be forwarded to the Office of Marine Safety. Information in



the report may not be used for imposition of any penalties or sanctions.

The certification required of a master of a vessel shall include a statement that the vessel complies with the federal Oil Pollution Act of 1990.

#### Maritime Commission.

The Maritime Commission is renamed the Marine Spill Response Commission. The members of the commission are appointed by the governor. The administrator of the Office of Marine Safety has oversight of the commission and must approve any fees proposed by the commission. The commission is directed to report to the governor, the Office of Marine Safety, and the Legislature annually on its work and on recommendations for improvement in the marine transportation system.

#### Miscellaneous provisions.

The Department of Natural Resources shall include in its leases provisions requiring onshore and offshore facilities to comply with the spill prevention and response provisions. The leases shall also provide that failure to comply with these provisions is grounds for termination of the lease.

The Department of Ecology, the Office of Marine Safety, and the Marine Oversight Board shall study issues relating to the transportation and storage of hazardous substances on and near the state's waters. An interim report shall be made to the Legislature by December 1, 1991, and a final report by November 1, 1992. The Department of Ecology shall report on the implementation of the spill prevention and response provisions and its coordination with federal law.

**EFFECT OF SENATE AMENDMENT(S):** The Senate amendment deletes references to hazardous substances in the intent section, in the sections establishing the Office of Marine Safety, and in the section establishing the Marine Oversight Board.

The Senate amendment modifies the types of facilities that will be required to prepare prevention and response plans. The Engrossed Substitute House Bill required all oil storage and handling facilities located on or near navigable waters, with a few specific exceptions, to prepare the plans. The Senate amendment limits the planning requirement to facilities located near navigable waters that transfer oil to or from a tank vessel or a pipeline. Added to the exceptions are marine fuel outlets that dispense no more than 3,000 gallons of fuel to recreational boats.

The Senate amendment directs the division of fire protection, rather than the division of emergency management, to establish and manage an incident response training program.

The Senate amendment modifies the standard for immunity for persons who respond to spills. The Engrossed House Bill retained the existing statute's standard that persons responding to a spill are immune from damages unless they act with gross negligence or in bad faith. The Senate amendment provides immunity unless a person acts with gross negligence or with willful misconduct. The Senate amendment also includes several definitions specific to the immunity provisions.

The Senate amendment adds a provision amending existing law to require the owner of a facility or vessel to indemnify an employee who is fined by the Department of Ecology for negligently spilling oil into the water.

The Senate amendment requires the Department of Ecology and the Office of Marine Safety to assure that facilities used to transfer oil from tank vessels to onshore storage facilities are required to prepare only one set of plans.

The Senate amendment removes a provision in the Engrossed Substitute House Bill requiring cargo and passenger vessels to prepare prevention plans or that the master of the vessel certify that the vessel meets specified safety and equipment standards. In place of these provisions, the Senate amendment requires the Office of Marine Safety to adopt rules to determine which cargo and passenger vessels pose a risk to the navigable waters of the state.

The Senate amendment provides for two regional marine safety committees in Puget Sound and the Strait of Juan de Fuca. The Engrossed Substitute House Bill provided for only one committee.

The Senate amendment removes restrictions on who may serve on the Marine Oversight Board and directs that the Puget Sound Water Quality Authority not duplicate the studies conducted by the board. The Senate amendment also allows the authority to include findings and recommendations of the board into the authority's management plan.

The Senate amendment deletes a provision establishing a crime of negligent operation of a tank vessel. It also modifies the provisions relating to the crime of reckless operation of a tank vessel to make it clearly applicable only to persons navigating, piloting, or in control of the vessel's movement.

The Senate Amendment modifies the requirements for documenting financial responsibility. A vessel is not required to provide documentation to the state if the vessel has filed documentation of financial responsibility with the federal government in an amount at least equal to that required by the state. The Engrossed Substitute House Bill required all vessels to file documentation of financial responsibility with the state at least 24 hours prior to entering state waters.

The Senate amendment modifies provisions providing for a transfer of funds between the administration account and the response account. It adds a provision providing that both the administration tax and response tax will stop being collected under specified circumstances and requires a report to the Legislature if both taxes are turned off in two successive biennia. The Senate amendment makes the oil spill response account an appropriated account. The Engrossed Substitute House Bill made the response account a non-appropriated account that could only be expended upon approval of the director of the Department of Ecology.

Provisions for establishing a compensation table for spills of hazardous substances are removed by the Senate amendment.

The Senate amendment adds a requirement that the Maritime Commission develop a data base of accidents, groundings, near misses, and oil discharges from cargo and passenger vessels entering state waters. The Maritime Commission is directed to report this information to the Office of Marine Safety. The Senate amendment deletes provisions changing the name of the Maritime Commission to the Marine Spill Response Commission.

The Senate amendment makes members of the Marine Oversight Board, the Maritime Commission, and the Board of Pilotage, as well as the Administrator of the Office of Marine Safety, subject to the Public Disclosure Act.

The Senate amendment provides for a nine-member Board of Pilotage Commissioners. The Engrossed Substitute House Bill provided for an eight-member board.

The Senate Amendment deletes an existing statutory requirement that the master of a vessel which employs a Washington licensed pilot certify on a card provided by the pilot that the vessel meets certain safety requirements. In place of this procedure, the Senate amendment requires that the master of the vessel certify to the Coast Guard that the vessel complies with Coast Guard regulations and with the federal oil pollution act of 1990. The Engrossed Substitute House Bill adds the certification with respect to the

federal oil pollution act of 1990 in addition to the existing certification requirements.

The Senate amendment provides for the termination of the Office of Marine Safety on June 31, 1997 and the transfer of its duties to the Department of Ecology. The Legislative Budget Committee is directed to report to the Legislature not later than November 15, 1996 on the future implementation of the provisions relating to marine transportation safety.

The Senate amendment deletes the appropriations contained in the Engrossed Substitute House Bill and includes a "null and void" provision requiring a reference in the biennial budget to the bill.

**Fiscal Note:** Available.

**Appropriation:** Yes.

**Effective Date:** The bill contains an emergency clause and takes effect immediately, except for sections 801 through 804 and 809 and 810, which take effect October 1, 1991.

**Testimony For:** (Environmental Affairs): The States/B.C. Task Force concluded that prevention of oil spills is the only way to really protect the state's natural resources. The bill gives the state the authority it needs to assure that those involved in the transfer, handling, and storing of oil on the state's waters will take actions necessary to protect the state's waters. Because of inadequate federal resources devoted to prevention measures, the state needs to take action to protect its own resources.

(Revenue): Same as committee on Environmental Affairs. In addition, concerns were expressed about: 1) the Department of Ecology and the Office of Marine Safety being able to hire staff with the appropriate expertise; 2) appropriate controls over expenditures for contingency response purposes; 3) being able to prevent small spills; and 4) compensation for local as well as state government for oil spill damages.

**Testimony Against:** (Environmental Affairs): The bill could affect maritime trade, making it too expensive for shippers in the state.

(Revenue): None.

**Witnesses:** (Environmental Affairs): Chris Gregoire, Director of Ecology (pro); Curt Smitch, Director of Wildlife (pro); Joe Blum, Director of Fisheries (pro); Bob Nichols,

Office of Financial Management (pro); Capt. Rene Roussel, United States Coast Guard (with concerns); Darlene Madenwald, Washington Environmental Council and Maritime Commission (pro, with concerns); Llewelyn Mathews, Northwest Pulp and Paper Association (with concerns on original bill); Joan Crooks, on behalf of Pat Coburn (pro); Eric Johnson and Ken O'Halloren, Washington Public Ports Association (with concerns on original bill); Bruce Wishart, Sierra Club (pro); Homer Frazier, Olympic Peninsula Audubon (pro); David Waldschmidt and Tom Kilbane, Pacific Northern Oil (with concerns); Fred Felleman, American Oceans Campaign (pro); Joe Macri, Washington State Pilotage Commission (no position); Randy Ray, PSSOA/WWTBA (with concerns); Charlie Noleen, Crowley Maritime (with concerns); Bob Bohlman, Norton Lilly; Scott Jones, Gen Steamship (with concerns); Stan Biles, Department of Natural Resources (pro, with amendments); Tom Mullen, BP America; Jerry Asplund, ARCO (with concerns); Ron Wagner, Puget Sound Pilots, Columbia River Pilots, Black Ball Transport (pro with amendments); Terry McCarthy, WSDOT (concerns); Jeff Parsons, National Audubon Society (pro); Dick Sande, Pacific County Commissioner (pro); T.K. Bentler, Puget Sound District Council Longshore/Ferry Worker (concerns); Otto Jensen, Washington State Fire Chiefs (pro); Norma Turner, No Oilport!; J.C. Scoworo, Schwobe, Williamson, Wyatt (con); and Bill Walker, Maritime Commission; and Hal Schlomann, N.W. Marine Trades Association (with concerns).

(Revenue): Edward Wenk (pro); Jeff Parsons, National Audubon Society (pro); Hal Schlomann, Northwest Marine Trade Association (pro); Ralph Mackey, Washington Environmental Council (pro); Wayne Ostermiller, Kalama Chemical Inc. (neutral); Ron Wagner, Columbia River Pilots (pro with amendments); Chris Platt, Sierra Club (pro); Dave Williams, Interclub (pro); Vern Lindskog, WSPA (pro with concerns); Randy Ray, PSSOA (pro with concerns); Bob Nichols (pro with concerns); Steve Hunter (pro with concerns); and Paul Parker, Washington State Association of Counties (pro with concerns).

***VOTE ON FINAL PASSAGE:***

Yeas 86; Nays 12

Nays: Representatives Ballard, Bowman, Chandler, Edmondson, Fuhrman, Hochstatter, Lisk, McLean, Mielke, Nealey, Neher, Prince