

HOUSE BILL REPORT

ESHB 2389

As Passed Legislature

Title: An act relating to revisions in existing oil spill prevention and clean-up statutes.

Brief Description: Changing oil spill prevention and clean-up provisions.

Sponsor(s): By House Committee on Environmental Affairs (originally sponsored by Representatives Rust, Horn, Valle, Pruitt, Bray, J. Kohl, D. Sommers and Jones).

Brief History:

Reported by House Committee on:
Environmental Affairs, January 21, 1992, DPS;
Revenue, February 8, 1992, DPS(ENA-A REV);
Passed House, February 14, 1992, 95-0;
Amended by Senate;
Passed Legislature.

**HOUSE COMMITTEE ON
ENVIRONMENTAL AFFAIRS**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 8 members: Representatives Rust, Chair; Valle, Vice Chair; Horn, Ranking Minority Member; Bray; Brekke; G. Fisher; J. Kohl; and Pruitt.

Minority Report: *Do not pass.* Signed by 4 members: Representatives Edmondson, Assistant Ranking Minority Member; Neher; D. Sommers; and Van Luven.

Staff: Harry Reinert (786-7110).

**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 14 members: Representatives Wang, Chair; Fraser, Vice Chair; Brumsickle, Ranking Minority Member; Wynne, Assistant Ranking Minority Member; Appelwick; Belcher;

Carlson; Day; J. Kohl; Leonard; Morris; Morton; Rust; and Silver.

Staff: Robin Appleford (786-7093).

Background: In both the 1990 and 1991 sessions, the Legislature passed measures which made significant changes to the laws relating to oil transportation and storage in this state. The 1991 legislation included a major reorganization of the statutes governing oil spill prevention and response. As a result of these changes, there are some statutes that contain incorrect cross-references.

The 1991 legislation recodified a number of existing statutory provisions relating to oil spill response. As a result of the recodification, the Department of Ecology lost some of its authority to enforce oil spill prevention and response statutes. The Pollution Control Hearings Board has authority to hear appeals of Department of Ecology decisions in a number of areas relating to enforcement actions.

In 1991, the Office of Marine Safety was established to assume responsibility for prevention and contingency planning on marine waters. The administrator of the Office of Marine Safety is appointed by the governor. There is some uncertainty as to whether the administrator is subject to Senate confirmation.

The administrator is given authority to appoint personnel as he or she deems necessary. The personnel are subject to the civil service laws. Without a specific authorization, the administrator does not have authority to appoint and set the salaries for exempt staff. The civil service statutes do provide that the administrator's confidential secretary is an exempt position. In addition, the State Personnel Board may authorize additional exempt staff positions from the pool of exempt positions available to the governor.

The 1991 Legislature imposed a total tax of five cents on each barrel of oil imported into the state at a marine terminal. This tax is used to pay for administration of the oil spill prevention and response planning activities of state agencies and to establish a state response fund to pay state expenses in the event of an oil spill. The tax is imposed on the person who owns the oil immediately prior to its transfer to the marine terminal operation. It is the obligation of the marine terminal operator to collect the tax. There is a potential loophole in the collection method. If the marine terminal operator notifies the owner of the oil that the tax is payable, the marine terminal operator is excused from liability for collecting the tax.

The definition of oil for purposes of the tax on oil differs from the definition that is used in other provisions of the 1991 legislation relating to oil spill prevention and response planning. The definition used for regulatory purposes excludes any fraction of crude oil that is also a hazardous substance under federal law. The definition of oil for purposes of tax liability does not include this exclusion.

All oil tankers and barges which enter Washington waters are required to maintain financial responsibility. If a tank vessel is covered by an international protection and indemnity mutual organization, the owner or operator of the vessel is not required to demonstrate financial responsibility.

The Department of Ecology is directed to notify the secretary of state if a facility required to maintain financial responsibility does not do so. The secretary of state is directed to suspend the facility's privilege of operating in the state until financial responsibility is established. The Office of the Secretary of State has stated that it does not have the authority to suspend a business's privilege of conducting business.

The 1991 legislation excluded from the definition of a passenger vessel those vessels under 300 gross tons or under 500 international tons. There is some ambiguity about the vessels that are excluded, because there is no correlation between gross tons and international tons.

The definition of a vessel for purposes of the Maritime Commission assessment is not consistent with the definition used for prevention and contingency planning purposes. The Maritime Commission has authority to impose an assessment on all vessels that transit on Washington waters, with some exceptions. There is no explicit exclusion for passenger vessels. The definition of a vessel does not include any vessel of less than 300 gross tons. The Maritime Commission may file a contingency plan for passenger vessels and cargo vessels it covers, but not for tank vessels.

The Maritime Commission may increase assessments if it believes this is necessary to meet its obligation to maintain a first response system. After the commission adopts an increase it must be filed with the administrator of the Office of Marine Safety. The administrator may disapprove the increase. The increase may not take effect earlier than 90 days after it is filed with the administrator.

The Office of Archaeology and Historic Preservation has been established within the Department of Community Development to oversee the state's interest in archaeological sites. Some archaeological sites are located on or near navigable waters and might be affected by an oil spill. Consideration of the impact of an oil spill on environmentally sensitive areas must be included in prevention and response plans of those who transport or store oil on or near the navigable waters of the state.

Summary of Bill: Several incorrect statutory cross-references are corrected, duplicative provisions are removed, and grammar is improved in existing statutes relating to oil spill prevention and response.

The Department of Ecology and the Office of Marine Safety may issue orders to enforce oil spill prevention and response activities. Violations of the statutes, orders, or rules may be subject to a maximum civil penalty of \$10,000. Any penalty and enforcement action may be appealed to the Pollution Control Hearings Board. A willful violation of a statute, rule, or order is a gross misdemeanor.

The administrator of the Office of Marine Safety is appointed by the governor but is not subject to senate confirmation.

The administrator of the Office of Marine Safety may appoint up to four exempt staff.

The barrel tax is imposed on the person who owns the oil after it is received at the marine terminal. A person who uses petroleum subject to the tax for purposes other than a fuel may obtain a credit for any tax paid.

The administrator may require a tank vessel owner or operator to establish membership in an international protection and indemnity mutual organization.

The direction to the secretary of state to suspend a facility's privilege of operating in this state due to failure to maintain financial responsibility is deleted.

The definition of a passenger vessel is made consistent for all statutes governing oil spill prevention and response. A passenger vessel does not include a vessel that is less than 300 gross tons or a vessel with a fuel capacity of less than 6000 gallons. This definition also applies to the Maritime Commission. For purposes of the Maritime Commission, the change in the definition is retroactive to May 15, 1991.

The Maritime Commission must file a proposed increase in its assessments at least 30 days prior to the date that it will adopt the increase as a final rule. If the administrator determines the increase is not justified, he or she may reject the proposed increase prior to the date scheduled for final adoption of the rule. The Maritime Commission may file a contingency plan for a barge or tanker covered by the commission.

Consideration of archaeological sites is to be included in response plans approved by the Department of Ecology and the Office of Marine Safety and in the rules adopted by those agencies. Rules which have been adopted by these agencies prior to July 1, 1992 do not need to be amended to include these requirements until the rules are reviewed and revised. Plans which are developed under the current rules do not need to be amended to include archaeological information until the plans are updated.

Fiscal Note: Requested February 10, 1992.

Effective Date: The substitute bill contains an emergency clause and takes effect immediately, except sections 6, 7, 9, and 10, which take effect October 1, 1992. The section 15 change in the definition of vessel is retroactive to May 15, 1991.

Testimony For: (Environmental Affairs): The bill makes several corrections to oil spill prevention and response statutes the Legislature has passed in the last two years. These will assure that the legislation works as it was intended.

(Revenue): Kalama Chemical located in Kalama, Washington is willing to work with the Department of Revenue and the petroleum industry to find language acceptable to all parties.

Testimony Against: (Environmental Affairs): None.

(Revenue): None.

Witnesses: (Environmental Affairs): Bruce Fuller, NW Marine Trades Association (pro); Randy Ray, Puget Sound Steamship Operators and NW Tow Boat Association (pro, with concerns); Greg Sorlie, Department of Ecology (pro); Jeff Parsons, Nation Audubon Society (pro, with concerns); Jim Boldt, Clipper Navigation (pro).

(Revenue): Wayne Ostermiller and Bill Garvin, Kalama Chemical; and Joel Green, Office of Marine Safety (all in favor).