

SENATE BILL REPORT

ESHB 1027

AS REPORTED BY COMMITTEE ON WAYS & MEANS, APRIL 17, 1991

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

SPONSORS: 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).

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

HOUSE COMMITTEE ON REVENUE

SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Majority Report: Do pass as amended.

Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Amondson, Conner, Patterson, Snyder, and Sutherland.

Staff: Gary Wilburn (786-7453); Gabrielle Horner (786-7717)

Hearing Dates: March 28, 1991; April 4, 1991

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Bluechel, Cantu, Hayner, Johnson, Metcalf, Murray, Newhouse, Niemi, Saling, West, and Williams.

Staff: Terry Wilson (786-7715)

Hearing Dates: April 17, 1991

BACKGROUND:

There have been several major oil spills in United States waters in recent years, including spills in Alaska, Washington, New York, Texas and California. Washington State has recently experienced spills from both onshore facilities and vessels. In the last year, onshore oil facility accidents include: 210,000 gallons of spilled oil near Padilla Bay from a damaged refinery pipe; a 600,000 gallon oil spill from a ruptured pipeline in Tacoma; and 172,000 gallons of spilled asphalt from a ruptured tank near Edmonds.

In December of 1988, the barge Nestucca spilled about 231,000 gallons of oil off the Washington coast. Shortly thereafter, the Governor of Washington and the Premier of British Columbia formed a task force to address spill issues. In 1989, after the Exxon Valdez spill occurred in Prince William Sound, the membership of the task force was expanded to include the states of Alaska, Oregon and California.

The British Columbia/United States Task Force issued its final report in October, 1990, making 46 joint recommendations and additional recommendations by individual states. The joint recommendations address issues such as vessel design and traffic, personnel, enforcement, and interstate cooperation.

In 1989, state legislation was enacted that changed the manner in which damage assessments are conducted for oil spills, and established minimum financial responsibility requirements for oil tankers. In 1990, the Legislature enacted measures requiring certain vessels and onshore oil facilities to prepare oil spill response plans, and established a maritime commission to fund and implement a response system for vessels not belonging to an oil spill cleanup cooperative.

In August of 1990, Congress enacted comprehensive oil spill prevention and response legislation addressing subjects such as oil tanker hull construction, financial responsibility, vessel traffic systems, vessel manning and work shifts, navigation safety standards, and penalties.

Under the federal oil spill legislation, 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 was designated as the state agency for oil spill response.

SUMMARY:

Office of Marine Safety

An Office of Marine Safety is created as a state agency, with a focus in marine transportation. The administrator of the office is appointed by the Governor. Current Department of Ecology duties related to vessel contingency plans, barge cable standards, and bunkering operations are transferred to the office.

The Department of Ecology retains authority over facilities and spill response. The director of the Department of Ecology is the head of the state incident command system.

The office is directed to review the federal vessel inspection program. If the office 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 adopt standards for a person or facility to deploy containment and recovery equipment when refuelling, bunkering, or lightering oil.

Regional Marine Safety Committees. 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 directed to work with Oregon to establish a committee for the Columbia River. Each committee shall be composed of six members representing maritime and environmental interests. Members are appointed by the administrator.

Each regional marine safety committee is responsible for planning the navigation and operation of vessels within its region. 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 directed to review federal standards for barge tow cables and report to the office on whether state standards should be adopted.

The office shall 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 and the Marine Oversight Board.

Spill Prevention and Contingency Plans

Owners or operators of covered vessels must prepare and submit spill prevention and contingency plans to the Office of Marine Safety. Facilities that are located on or near the navigable waters of the state which store, handle, or transport oil are required to prepare and submit spill prevention and contingency plans to the Department of Ecology. If approved, prevention and contingency plans are valid for five years.

Prevention Plans. Vessel and facility prevention plans must disclose the measures that the owners or operators of vessels and facilities have taken to reduce the likelihood of a spill. A prevention plan shall establish compliance with state and federal law, provide for drug and alcohol programs, and describe spill prevention equipment and procedures.

Contingency Plans. Vessel and facility contingency plans establish measures for the containment and clean up of oil spills from facilities and covered vessels. At a minimum, a contingency plan must include response methods and equipment, training programs, coordination with other vessel and facility contingency plans, and the means to mitigate any effects to the surrounding environment. The office shall assure that vessel contingency plans are consistent with requirements for contingency plans under federal law.

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

Marine Oversight Board

A five-member citizen board is established to review spill prevention and response actions of the federal government, industry, and state agencies. No member of the board may be employed by an environmental organization or affiliated with a business that handles oil or hazardous substances. The board is directed to evaluate oil and hazardous substance spill prevention and response, and report any recommendations to the Governor, the Legislature, federal agencies, and state agencies.

Marine Spill Response Commission

The Maritime Commission is renamed the Marine Spill Response Commission. Members of the commission are appointed by the Governor. The administrator of the Office of Marine Safety oversees the commission and must approve any vessel fees proposed by the commission to fund its activities. 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.

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. A pilot in his or her first year of active duty must take vessel simulator training for five years. The board may require additional training for some pilots.

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.

A pilot's report to the board must 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 master of a vessel must certify that the vessel complies with the federal Oil Pollution Act of 1990.

Enforcement

The Administrator of the Office of Marine Safety may deny a vessel entry into the state's waters, or assess a civil penalty of up to \$100,000 a day, for operating without proven financial responsibility, or an approved spill prevention and contingency plan. Facilities are subject to the same requirements, and the Department of Ecology may have the

Secretary of State suspend a facility's business license, or assess a civil penalty of up to \$100,000 a day.

Criminal Penalties. A person causing an oil spill as a result of operating, navigating, or piloting a tank vessel with "criminal negligence" is guilty of a gross misdemeanor. The same offense committed with "criminal recklessness" is a class C 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. All other vessels over 300 gross tons must have financial responsibility of at least \$500,000 or \$600 per gross ton.

The Department of Ecology will determine financial responsibility requirements for onshore and offshore facilities.

Funding

A tax is levied 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.

Department of Natural Resources

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

Studies

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.

Appropriation: \$8,160,000

Revenue: yes

Fiscal Note: available

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.

SUMMARY OF PROPOSED SENATE ENVIRONMENT & NATURAL RESOURCES AMENDMENT:

Criminal Sanctions: Criminal sanctions for reckless or negligent operation of a tank vessel are removed.

Office of Marine Safety: The authority to regulate marine facilities used for vessel moorage, passenger transport, the loading or storage of cargo, or vessel servicing is transferred from the Department of Ecology to the Office of Marine Safety. The office and department shall adopt an interagency agreement to ensure that no duplication of any regulatory responsibilities may occur.

Office standards adopted for spill response equipment must be consistent with Coast Guard standards.

Hazardous Substances: References to hazardous substances, other than those in existing statute, are deleted. The hazardous substance incident response training and education program established within the Department of Community Development is removed.

Prevention Plans: The preparation and submittal of vessel prevention plans is limited to tank vessels. A vessel screening program is established by the office to determine if any cargo or passenger vessels entering the navigable waters of the state pose a substantial environmental risk. The vessel screening program may include an examination of vessel casualty reports and maritime insurance ratings, a vessel inspection in port, and a request to the Coast Guard to deny the vessel entry into the state's waters.

Facility owners and operators are not required to describe spill technology that has not been installed, but is commercially available.

Facilities: The definition of facility is limited to those facilities on or near the navigable waters of the state that receive oil in bulk from a tank vessel. Liability for accepting cargo from vessels without proof of financial responsibility, or approved contingency or prevention plans is limited to the owner or operator.

Facilities are given 18 months, rather than one year, to submit operations manuals after the Department of Ecology adopts rules governing manual content.

The Energy Facility Site Evaluation Council (EFSEC) must give appropriate weight to local government laws adopted to protect sole source aquifers when making recommendations to the Governor on an application to site a petroleum product transmission facility.

Regional Marine Safety Committees: An additional marine safety committee is established for Southern Puget Sound, and the jurisdiction of the committee for the Strait of Juan de Fuca/Puget Sound is changed to the Strait of Juan de Fuca/Northern Puget Sound.

Employee Penalties: Employees who negligently discharge oil into the environment, and who are not in a supervisory position, are not subject to penalties for negligent discharge under state law.

Small Marinas and Recreational Boaters: Small marine fuel outlets dispensing less than 3,000 gallons of fuel per transaction, are not included in the definition of a "facility" and therefore, are not subject to state requirements for proof of financial responsibility, or for preparing spill prevention and contingency plans.

Recreational boaters are not required to maintain, be trained in the deployment of, or deploy oil spill recovery and containment equipment.

Limited Liability for Oil Spill Response: State law providing limited liability for individuals responding to clean up an oil spill is repealed and replaced with liability protection provisions similar to the federal law.

Financial Responsibility: A higher level of financial responsibility applies to barges greater than 300 gross tons, instead of barges greater than 3000 gross tons. Covered vessels are not required to prove financial responsibility to the state, if the owner or operator has filed proof of financial responsibility with the federal government.

Evidence of financial responsibility is clarified to mean documentation that demonstrates the ability of the document holder to meet state and federal requirements for oil spill removal costs, natural resource damages, and the state's necessary expenses.

Taxes: The tax of 5 cents/barrel is imposed on the person who owns the oil or petroleum product immediately before off-loading begins, rather than when such off-loading occurs.

The State Treasurer may transfer funds from the oil spill response account to the oil spill administration account to support appropriations during the 1991-93 biennium. When proceeds to the oil spill response account exceed \$25 million, and amounts in the oil spill administration account exceed the amount appropriated, the oil spill administration tax shall be suspended. If the administration tax is suspended for two consecutive biennia, the Department of Revenue shall recommend an adjustment in the tax rate.

Reimbursed state costs for oil spill response shall be deposited into the oil spill response account.

The Office of Marine Safety, the Department of Revenue, and the Department of Trade and Economic Development shall study tax incentives for individuals employing vessels with the best achievable protection to reduce the risk of oil spills.

Maritime Commission: The Washington State Maritime Commission retains its current name. The commission is authorized to prepare and submit spill vessel contingency plans, and may develop a database of vessel accidents.

Pilots: A requirement that a Washington State licensed pilot check vessel certification before piloting the vessel is removed from state law.

Coastal Protection Fund: The coastal protection fund may be used to develop and implement an aquatic lands geographic information system.

Appropriations: Direct appropriations are removed from the bill. If specific funding for the purposes of the act is not provided by June 30, 1991 in the omnibus appropriations act, the act is null and void.

SUMMARY OF PROPOSED SENATE WAYS & MEANS AMENDMENT:

The oil spill response account is made an appropriated account. The Department of Revenue is allowed 30 days to notify taxpayers of the suspension of the administration account tax. It is clarified that the administration account will be funded to the level of the appropriation during the biennium. The general administrative provisions on excise taxes are applied to the taxes imposed in the bill.

TESTIMONY FOR:

The bill is a carefully crafted, comprehensive effort to provide for oil spill prevention and contingency planning.

However, some expressed concerns include: (1) the requirement that cargo vessels prepare and submit prevention plans is not practical, and could limit the state's maritime trade; (2)

the state is duplicating federal law by requiring vessels to show proof of financial responsibility 24 hours before entering the state's waters; (3) maritime employees should not be subject to civil and criminal penalties; (4) the definition of "ship" and "person" is so broad that it may apply to recreational boaters; (5) the regulation for marine facilities and other facilities should not be in the same agency; and (6) the barrel tax is not high enough to establish tax-based incentives to reduce the risk of oil spill.

TESTIMONY AGAINST: None

TESTIFIED: Sharon Reiser, SAFE (pro); Hal Schuyler, Washington State Maritime Commission (con); Scott Jones, General Steamship (con); Bob Bohlman, Puget Sound Steamship Operators (con); Jerry Aspland, APCO (pro); Dave Williams, Interclub (pro); Steve Ross, Marine Engineers and Masters, Mates and Pilots; T.K. Bentler, Inland Boatmen's Union of Longshore; Ron Judo, Puget Sound Metal Trades Council; Chris Gregoire, Director, Department of Ecology (pro); Bob Nichols, Governor's Office (pro); Steve Hunter, Department of Ecology (pro); Tres Gallant, SAFE (pro); Eric Johnson, Ports Association (pro); Homer Frazier, Olympic Peninsula Audubon Society (pro); Stan Biles, Department of Natural Resources (pro); Ralph Mackey, WEC (pro); Jack Davis, Black Hills Audubon Society (pro); John Woodring, Northwest Marine Trading Association; Stuart Maier, Tacoma/Pierce County Marina Program Association; Mike Zittel, Zittel's Marina; Ron Wagner, Puget Sound Pilots (pro); R.K. (Skip) Hart, Tidewater Barge Lines; Gerald P. McMahon, American Waterway Operators; Vernon Lindskog, WSPA (pro); Norma Turner (pro); Tom Kilbane, attorney; Chris Platt, Sierra Club (pro); Jeff Parsons, National Audubon Society (pro); Gery Nunnelle (pro)