

HOUSE BILL REPORT

HB 3112

As Reported by House Committee On:

Fisheries, Ecology & Parks
Transportation

Title: An act relating to marine fuel facilities.

Brief Description: Concerning marine fuel facilities.

Sponsors: Representatives Cooper and D. Simpson.

Brief History:

Committee Activity:

Fisheries, Ecology & Parks: 2/3/04, 2/6/04 [DPS];
Transportation: 2/9/04 [DP2S].

Brief Summary of Second Substitute Bill

- Directs the Department of Ecology to work with stakeholders to develop a report describing fueling practices and regulations for covered vessels and ships, and report recommendations and findings by December 15, 2004.
- Adds the requirement for any state agency conducting ship refueling or bunkering of more than 1 million gallons of oil during a calendar year on the waters of the state to develop facility oil spill prevention and contingency plans.

HOUSE COMMITTEE ON FISHERIES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cooper, Chair; Upthegrove, Vice Chair; Sump, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Buck, Hatfield, O'Brien, Pearson and D. Simpson.

Staff: Jeff Olsen (786-7157).

Background:

The Legislature enacted oil spill prevention and response measures in 1991 to promote the safety of marine transportation and to protect state waters from oil spills. The Director of the Department of Ecology (Department) has the primary authority to oversee prevention, abatement, response, containment and cleanup efforts for oil spills in state waters. The oil spill program requires oil spill prevention plans, contingency response plans, and financial

responsibility requirements for vessels and facilities that may discharge oil into navigable waters.

For the purposes of oil spill laws, "facility" is defined to include any structure, pipeline, equipment, or device that transfers oil in bulk to or from a tank vessel or pipeline. The facility must be near the navigable waters of the state and be used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

Owners and operators of onshore and offshore facilities must prepare and submit oil spill contingency and prevention plans. Oil spill prevention plans must establish compliance with federal law and certify compliance with a number of personnel and equipment requirements. Prevention plans are valid for five years and may be combined with contingency plans. Facilities may opt to submit contingency plans for tank vessels unloading at the facility.

Each onshore and offshore facility must have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state. The contingency plans must meet a number of standards including the methods of response to various size spills and repositioning of oil spill containment and cleanup equipment.

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.

Facilities may not operate without an approved contingency plan, oil spill prevention plan, or financial responsibility requirements in compliance with state or federal law. Facilities also may not transfer cargo or passengers to or from a covered vessel that does not have an approved contingency and prevention plan, or financial responsibility in compliance with state and federal law. The unlawful operation of a facility is a gross misdemeanor, and second and subsequent offenses are a class C felony. There are also civil penalties for the unlawful operation of a facility. The Director of the Department may assess a civil penalty of up to \$100,000 each day that the owner or operator of a covered vessel is in violation.

Summary of Substitute Bill:

The Department of Ecology is directed to work with stakeholders to develop a report describing fueling practices and regulations for covered vessels and ships, and report recommendations and findings to the Legislature by December 15, 2004. The report must describe the current federal and state spill prevention and response requirements and recommendations for any new authorities necessary to establish a protective regulatory system for fueling ships.

Any state agency conducting ship refueling or bunkering of more than 1 million gallons of oil during a calendar year on the waters of the state must develop facility oil spill prevention and contingency plans.

Substitute Bill Compared to Original Bill:

The substitute bill removes definition changes to the term "facility" for purposes of oil spill regulations. The substitute bill directs the Department to work with stakeholders to develop a report describing fueling practices, and adds the requirement for any state agency conducting ship refueling of more than 1 million gallons of oil to develop facility oil spill prevention and contingency plans.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Puget Sound is a significant resource that needs protection. Oil is a foreign substance that can cause extensive damage. Prevention is important, but spills are inevitable and the state should also focus on containment

Mobile fueling has been growing rapidly and it is not regulated to the extent fixed facilities and vessels are regulated. Regulations should be reviewed for trucks that operate on or near the water. There is a significant cost difference for trucks, which may encourage even more traffic in an already congested area.

Testimony Against: Mobile fuelers provide service throughout the state, and in many places vessels may only receive fuel from a truck. Certain mobile fuelers have been providing service for years and have an excellent record. The issue of how to define a facility and how it should be regulated are important, and should be looked at over the interim. Stakeholders can work with the Department to develop recommendations.

The state should proceed with caution and wait until the findings from the recent spill have been completed. Mobile fueling issues should be separate from the rest of the provisions. The level of regulation should match the level of risk. The Department should focus on enforcing existing regulations and conduct more inspections. The Department can use existing authorities and the current oil spill advisory committee stakeholder process to move forward. Some industry representatives support a deliberate process to review current regulations.

(Neutral) The Department inspects facilities, vessels, and conducts oil spill training drills. The original bill would increase the number of regulated facilities from 35 - 80, adding mainly mobile fuelers.

State ferries follow Coast Guard regulations for their fueling. Two trained people are present during the fueling process, and booms are used to contain spills. State ferries have not had any spills since 2000.

Persons Testifying: (In support) Terry Hull, Puget Sound Action Team; Gordon Baxter, Inland Boatmen's Union; Fred Felleman and Chris Jones, Ocean Advocates; Cholly Mercer, Rainier Petroleum; and Bruce Wishart, People of Puget Sound.

(In opposition) Warren Aakervick, Ballard Oil Company; Eric Johnson, Washington Public Ports Association; and Charlie Brown, Washington Oil Marketers Association.

(Neutral) Jeff Fishel, Department of Ecology; and Mike Thorne, Washington State Ferries.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 27 members: Representatives Murray, Chair; Rockefeller, Vice Chair; G. Simpson, Vice Chair; Ericksen, Ranking Minority Member; Jarrett, Assistant Ranking Minority Member; Armstrong, Bailey, Campbell, Clibborn, Cooper, Dickerson, Flannigan, Hankins, Hatfield, Hudgins, Kristiansen, Lovick, Mielke, Morris, Nixon, Rodne, Romero, Shabro, Sullivan, Wallace, Wood and Woods.

Staff: Jill Satran (786-7315).

Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On Fisheries, Ecology & Parks:

The second substitute adds that if the second and third sections of the bill are not funded through the 2003-05 Transportation budget, those two sections are null and void.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Currently fixed and vessel-to-vessel fueling practices are closely regulated. Mobile fueling, however, is becoming more popular and we are currently lacking sound regulation for truck-to-vessel fueling practices.

(Information only) Sections two and three of this bill relate to fueling practices. To date, the Washington State Ferries (WSF) has had no documented spills. The WSF fuel transfers are currently regulated under federal and state law. Currently, the Maritime Cooperative has developed a contingency plan for the WSF and it is unclear how this bill would affect that relationship.

Testimony Against: The report contained in the substitute bill will be expensive (although no fiscal note has been provided, early estimates place it at about \$250,000) and this does not include rule-making.

Persons Testifying: Representative Cooper, prime sponsor; Brad Boswell, Rainier Petroleum; Bruce Wishart, People for Puget Sound; and Charlie Brown, Washington Oil Marketers Association.

(With concerns) Greg Hanon, Western State Petroleum Association.

(Information only) Bill Greene, Washington State Ferries.

Persons Signed In To Testify But Not Testifying: None.