

SENATE BILL REPORT

SB 6641

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 6, 2004

Title: An act relating to oil spill management.

Brief Description: Reducing the risk of oil spills and spill damage.

Sponsors: Senators B. Sheldon, Oke, Spanel, Carlson, Fraser, Shin, Regala, Winsley, Kohl-Welles, Poulsen, Kline, Fairley, Jacobsen, Prentice, Haugen, Berkey, Brown, McAuliffe, Franklin, Rasmussen and Keiser.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 2/6/04 [DPS].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 6641 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Fraser, Hale, Hargrove, Honeyford, Oke and Regala.

Staff: Richard Rodger (786-7461)

Background: The Legislature enacted oil spill prevention and response measures in 1991 to promote the safety of marine transportation and protect state waters from oil spills. The director of the Department of Ecology (DOE) 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 documentation of financial responsibility for vessels and facilities that may discharge oil into navigable waters.

The Puget Sound Action Team (PSAT) was created in 1996 and consists of federal and state agencies, tribes, and local governments. PSAT prepares a Puget Sound work plan and budget for inclusion in the Governor's biennial budget.

Oil Spill Program. DOE 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 requirement for vessels and facilities that may discharge oil into navigable waters.

Federal laws prescribe regulations for the operation, equipping, personnel qualification, and manning of tank vessels. The state does not have authority to adopt rules regulating vessel operation, design, or manning. *United States v. Locke*, 529 U.S. 89 (2000) [Intertanko].

Financial Responsibility. Washington law includes financial responsibility requirements for vessels transporting petroleum products and for facilities storing, handling, or transferring oil

or hazardous substances in bulk on or near navigable waters. To date, DOE has not adopted financial responsibility rules for facilities.

Definition of Facility. 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.

Prevention and Contingency Planning. Owners and operators of onshore and offshore facilities must prepare and submit oil spill contingency and prevention plans. The plans are valid for five years and may be combined into a single document. Facilities may opt to submit contingency plans for tank vessels unloading at the facility.

DOE will approve plans that have adequate personnel, equipment, notification procedures, and logistical arrangements. In reviewing plans, DOE 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.

Facility Operation Standards and Manuals. DOE must adopt standards for onshore and offshore facilities regarding the equipment and operation of the facilities for the transfer, storage, and handling of oil. Owners and operators of facilities must prepare operations manuals describing the equipment and procedures used for transfer, storage, and handling of oil. DOE must also adopt standards for facility personnel training and certification.

Refueling, Bunkering, or Lightering. Persons or facilities conducting ship refueling and bunkering, or lightering of petroleum products, are required to have containment and recovery equipment readily available according to standards adopted by DOE. In addition, any person or facility transferring oil between an onshore or offshore facility and a tank vessel are also required to have containment and recovery equipment readily available. DOE has rule-making authority to adopt standards for the circumstances under which containment equipment should be deployed.

Penalties. Covered vessels may not transfer oil to or from an onshore or offshore facility unless the facility has an approved contingency plan, an approved oil spill prevention plan, and financial responsibility requirements in compliance with state and federal standards. The director of DOE may assess a civil penalty of up to \$100,000 each day that the owner or operator of a covered vessel is in violation.

Facilities may not operate without an approved contingency plan, oil spill prevention plan, and financial responsibility requirements in compliance with state and federal law. Facilities also may not transfer cargo or passengers to or from a covered vessel that does not have an approved contingency prevention plan, and 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 DOE 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 primary objective of the state oil spill program is to adopt a zero spills strategy and prevent the release of oil or hazardous substances from entering marine waters.

The department's statewide plan must include a process for notifying tribes of any oil spill.

Facility contingency plans must include measures for the protection of shellfish beds.

The department must, by June 30, 2006, adopt rules for directing when a boom should be deployed. The rules apply to any person or facility conducting ship refueling and bunkering, or the lightering of petroleum products.

Substitute Bill Compared to Original Bill: The substitute deletes mobile fueling units from "facilities" being added to oil spill prevention and response requirements. Specifies "alternative measures" measures which fuel transfer standards may address. State master oil spill response plan is to include a process for immediately notifying affected tribes of spills. Adds shellfish beds to specified resources for which cleanup plans should address. Deletes comprehensive oil spill risk study.

Appropriation: None.

Fiscal Note: Requested on January 29, 2004.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The recent spill in Puget Sound caused great damage to beaches and shellfish. We need more than a zero spill strategy, but this measure is needed as an interim measure until additional research can be completed and further recommendations implemented. Booming can be an effective measure and DOE is the best agency to determine the circumstances under which they should be used.

Testimony Against: These are very technical issues, especially booming requirements, for example you should never boom gasoline. The bill should not mandate the circumstances under which booming should be used. DOE should develop those rules.

Testified: Betty Sheldon, prime sponsor; Chris Endresen, Kitsap Co. Commissioner (pro); Leonard Forsman, Suquamish Tribe spokesman (pro); Dale Jensen, DOE; Bruce Wishart, People for Puget Sound (pro); Frank Holmes, WSPA (pro on sub); Randy Ray, POSSA (pro on sub); Ed Owens, Walsh Distributing; Warren Aakervik, Ballard Oil.