
SUBSTITUTE SENATE BILL 6641

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Natural Resources, Energy & Water (originally sponsored by 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)

READ FIRST TIME 02/09/04.

1 AN ACT Relating to oil spill management; and amending RCW
2 90.56.005, 88.46.160, 90.56.060, and 90.56.210.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 90.56.005 and 1991 c 200 s 101 are each amended to
5 read as follows:

6 (1) The legislature declares that the increasing reliance on water
7 borne transportation as a source of supply for oil and hazardous
8 substances poses special concern for the state of Washington. Each
9 year billions of gallons of crude oil and refined petroleum products
10 are transported by vessel on the navigable waters of the state. These
11 shipments are expected to increase in the coming years. Vessels
12 transporting oil into Washington travel on some of the most unique and
13 special marine environments in the United States. These marine
14 environments are a source of natural beauty, recreation, and economic
15 livelihood for many residents of this state. As a result, the state
16 has an obligation to ((~~assure~~)) ensure the citizens of the state that
17 the waters of the state will be protected from oil spills.

18 (2) The legislature finds that prevention is the best method to
19 protect the unique and special marine environments in this state. The

1 technology for containing and cleaning up a spill of oil or hazardous
2 substances is in the early stages of development. Preventing spills is
3 more protective of the environment and more cost-effective when all the
4 costs associated with responding to a spill are considered. Therefore,
5 the legislature finds that the primary objective of the state is to
6 adopt a zero spills strategy to prevent any oil or hazardous substances
7 from entering waters of the state.

8 (3) The legislature also finds that:

9 (a) Recent accidents in Washington, Alaska, southern California,
10 Texas, and other parts of the nation have shown that the
11 transportation, transfer, and storage of oil have caused significant
12 damage to the marine environment;

13 (b) Even with the best efforts, it is nearly impossible to remove
14 all oil that is spilled into the water;

15 (c) Washington's navigable waters are treasured environmental and
16 economic resources that the state cannot afford to place at undue risk
17 from an oil spill; and

18 (d) The state has a fundamental responsibility, as the trustee of
19 the state's natural resources and the protector of public health and
20 the environment to prevent the spill of oil.

21 (4) In order to establish a comprehensive prevention and response
22 program to protect Washington's waters and natural resources from
23 spills of oil, it is the purpose of this chapter:

24 (a) To establish state agency expertise in marine safety and to
25 centralize state activities in spill prevention and response
26 activities;

27 (b) To prevent spills of oil and to promote programs that reduce
28 the risk of both catastrophic and small chronic spills;

29 (c) To ensure that responsible parties are liable, and have the
30 resources and ability, to respond to spills and provide compensation
31 for all costs and damages;

32 (d) To provide for state spill response and wildlife rescue
33 planning and implementation;

34 (e) To support and complement the federal oil pollution act of 1990
35 and other federal law, especially those provisions relating to the
36 national contingency plan for cleanup of oil spills and discharges,
37 including provisions relating to the responsibilities of state agencies

1 designated as natural resource trustees. The legislature intends this
2 chapter to be interpreted and implemented in a manner consistent with
3 federal law;

4 (f) To provide broad powers of regulation to the department of
5 ecology relating to spill prevention and response;

6 (g) To provide for an independent oversight board to review the
7 adequacy of spill prevention and response activities in this state; and

8 (h) To provide an adequate funding source for state response and
9 prevention programs.

10 **Sec. 2.** RCW 88.46.160 and 2000 c 69 s 12 are each amended to read
11 as follows:

12 Any person or facility conducting ship refueling and bunkering
13 operations, or the lightering of petroleum products, and any person or
14 facility transferring oil between an onshore or offshore facility and
15 a tank vessel shall have containment and recovery equipment readily
16 available for deployment in the event of the discharge of oil into the
17 waters of the state and shall deploy the containment and recovery
18 equipment in accordance with standards adopted by the department. All
19 persons conducting refueling, bunkering, or lightering operations, or
20 oil transfer operations shall be trained in the use and deployment of
21 oil spill containment and recovery equipment. The department shall
22 adopt rules as necessary to carry out the provisions of this section by
23 June 30, 2006. The rules shall include standards for the circumstances
24 under which containment equipment should be deployed including
25 standards requiring deployment of containment equipment prior to the
26 transfer of oil when determined to be safe and effective by the
27 department. The department may require a person or facility to employ
28 alternative measures including but not limited to automatic shutoff
29 devices and alarms, extra personnel to monitor the transfer, or
30 containment equipment that is deployed quickly and effectively. An
31 onshore or offshore facility shall include the procedures used to
32 contain and recover discharges in the facility's contingency plan. It
33 is the responsibility of the person providing bunkering, refueling, or
34 lightering services to provide any containment or recovery equipment
35 required under this section. This section does not apply to a person
36 operating a ship for personal pleasure or for recreational purposes.

1 **Sec. 3.** RCW 90.56.060 and 2000 c 69 s 16 are each amended to read
2 as follows:

3 (1) The department shall prepare and annually update a statewide
4 master oil and hazardous substance spill prevention and contingency
5 plan. In preparing the plan, the department shall consult with an
6 advisory committee representing diverse interests concerned with oil
7 and hazardous substance spills, including the United States coast
8 guard, the federal environmental protection agency, state agencies,
9 local governments, port districts, private facilities, environmental
10 organizations, oil companies, shipping companies, containment and
11 cleanup contractors, tow companies, and hazardous substance
12 manufacturers.

13 (2) The state master plan prepared under this section shall at a
14 minimum:

15 (a) Take into consideration the elements of oil spill prevention
16 and contingency plans approved or submitted for approval pursuant to
17 this chapter and chapter 88.46 RCW and oil and hazardous substance
18 spill contingency plans prepared pursuant to other state or federal law
19 or prepared by federal agencies and regional entities;

20 (b) State the respective responsibilities as established by
21 relevant statutes and rules of each of the following in the prevention
22 of and the assessment, containment, and cleanup of a worst case spill
23 of oil or hazardous substances into the environment of the state: (i)
24 State agencies; (ii) local governments; (iii) appropriate federal
25 agencies; (iv) facility operators; (v) property owners whose land or
26 other property may be affected by the oil or hazardous substance spill;
27 and (vi) other parties identified by the department as having an
28 interest in or the resources to assist in the containment and cleanup
29 of an oil or hazardous substance spill;

30 (c) State the respective responsibilities of the parties identified
31 in (b) of this subsection in an emergency response;

32 (d) Identify actions necessary to reduce the likelihood of spills
33 of oil and hazardous substances;

34 (e) Identify and obtain mapping of environmentally sensitive areas
35 at particular risk to oil and hazardous substance spills; ~~((and))~~

36 (f) Establish an incident command system for responding to oil and
37 hazardous substances spills; and

1 (g) Establish a process for immediately notifying affected tribes
2 of any oil spill.

3 (3) In preparing and updating the state master plan, the department
4 shall:

5 (a) Consult with federal, provincial, municipal, and community
6 officials, other state agencies, the state of Oregon, and with
7 representatives of affected regional organizations;

8 (b) Submit the draft plan to the public for review and comment;

9 (c) Submit to the appropriate standing committees of the
10 legislature for review, not later than November 1st of each year, the
11 plan and any annual revision of the plan; and

12 (d) Require or schedule unannounced oil spill drills as required by
13 RCW 90.56.260 to test the sufficiency of oil spill contingency plans
14 approved under RCW 90.56.210.

15 **Sec. 4.** RCW 90.56.210 and 2000 c 69 s 20 are each amended to read
16 as follows:

17 (1) Each onshore and offshore facility shall have a contingency
18 plan for the containment and cleanup of oil spills from the facility
19 into the waters of the state and for the protection of fisheries and
20 wildlife, shellfish beds, natural resources, and public and private
21 property from such spills. The department shall by rule adopt and
22 periodically revise standards for the preparation of contingency plans.
23 The department shall require contingency plans, at a minimum, to meet
24 the following standards:

25 (a) Include full details of the method of response to spills of
26 various sizes from any facility which is covered by the plan;

27 (b) Be designed to be capable in terms of personnel, materials, and
28 equipment, of promptly and properly, to the maximum extent practicable,
29 as defined by the department removing oil and minimizing any damage to
30 the environment resulting from a worst case spill;

31 (c) Provide a clear, precise, and detailed description of how the
32 plan relates to and is integrated into relevant contingency plans which
33 have been prepared by cooperatives, ports, regional entities, the
34 state, and the federal government;

35 (d) Provide procedures for early detection of oil spills and timely
36 notification of such spills to appropriate federal, state, and local
37 authorities under applicable state and federal law;

1 (e) State the number, training preparedness, and fitness of all
2 dedicated, prepositioned personnel assigned to direct and implement the
3 plan;

4 (f) Incorporate periodic training and drill programs to evaluate
5 whether personnel and equipment provided under the plan are in a state
6 of operational readiness at all times;

7 (g) Describe important features of the surrounding environment,
8 including fish and wildlife habitat, shellfish beds, environmentally
9 and archaeologically sensitive areas, and public facilities. The
10 departments of ecology, fish and wildlife, and natural resources, and
11 the office of archaeology and historic preservation, upon request,
12 shall provide information that they have available to assist in
13 preparing this description. The description of archaeologically
14 sensitive areas shall not be required to be included in a contingency
15 plan until it is reviewed and updated pursuant to subsection (9) of
16 this section;

17 (h) State the means of protecting and mitigating effects on the
18 environment, including fish, shellfish, marine mammals, and other
19 wildlife, and ensure that implementation of the plan does not pose
20 unacceptable risks to the public or the environment;

21 (i) Provide arrangements for the prepositioning of oil spill
22 containment and cleanup equipment and trained personnel at strategic
23 locations from which they can be deployed to the spill site to promptly
24 and properly remove the spilled oil;

25 (j) Provide arrangements for enlisting the use of qualified and
26 trained cleanup personnel to implement the plan;

27 (k) Provide for disposal of recovered spilled oil in accordance
28 with local, state, and federal laws;

29 (l) Until a spill prevention plan has been submitted pursuant to
30 RCW 90.56.200, state the measures that have been taken to reduce the
31 likelihood that a spill will occur, including but not limited to,
32 design and operation of a facility, training of personnel, number of
33 personnel, and backup systems designed to prevent a spill;

34 (m) State the amount and type of equipment available to respond to
35 a spill, where the equipment is located, and the extent to which other
36 contingency plans rely on the same equipment; and

37 (n) If the department has adopted rules permitting the use of

1 dispersants, the circumstances, if any, and the manner for the
2 application of the dispersants in conformance with the department's
3 rules.

4 (2)(a) The following shall submit contingency plans to the
5 department within six months after the department adopts rules
6 establishing standards for contingency plans under subsection (1) of
7 this section:

8 (i) Onshore facilities capable of storing one million gallons or
9 more of oil; and

10 (ii) Offshore facilities.

11 (b) Contingency plans for all other onshore and offshore facilities
12 shall be submitted to the department within eighteen months after the
13 department has adopted rules under subsection (1) of this section. The
14 department may adopt a schedule for submission of plans within the
15 eighteen-month period.

16 (3)(a) The owner or operator of a facility shall submit the
17 contingency plan for the facility.

18 (b) A person who has contracted with a facility to provide
19 containment and cleanup services and who meets the standards
20 established pursuant to RCW 90.56.240, may submit the plan for any
21 facility for which the person is contractually obligated to provide
22 services. Subject to conditions imposed by the department, the person
23 may submit a single plan for more than one facility.

24 (4) A contingency plan prepared for an agency of the federal
25 government or another state that satisfies the requirements of this
26 section and rules adopted by the department may be accepted by the
27 department as a contingency plan under this section. The department
28 shall ((~~assure~~)) ensure that to the greatest extent possible,
29 requirements for contingency plans under this section are consistent
30 with the requirements for contingency plans under federal law.

31 (5) In reviewing the contingency plans required by this section,
32 the department shall consider at least the following factors:

33 (a) The adequacy of containment and cleanup equipment, personnel,
34 communications equipment, notification procedures and call down lists,
35 response time, and logistical arrangements for coordination and
36 implementation of response efforts to remove oil spills promptly and
37 properly and to protect the environment;

1 (b) The nature and amount of vessel traffic within the area covered
2 by the plan;

3 (c) The volume and type of oil being transported within the area
4 covered by the plan;

5 (d) The existence of navigational hazards within the area covered
6 by the plan;

7 (e) The history and circumstances surrounding prior spills of oil
8 within the area covered by the plan;

9 (f) The sensitivity of fisheries, shellfish beds, and wildlife and
10 other natural resources within the area covered by the plan;

11 (g) Relevant information on previous spills contained in on-scene
12 coordinator reports prepared by the department; and

13 (h) The extent to which reasonable, cost-effective measures to
14 prevent a likelihood that a spill will occur have been incorporated
15 into the plan.

16 (6) The department shall approve a contingency plan only if it
17 determines that the plan meets the requirements of this section and
18 that, if implemented, the plan is capable, in terms of personnel,
19 materials, and equipment, of removing oil promptly and properly and
20 minimizing any damage to the environment.

21 (7) The approval of the contingency plan shall be valid for five
22 years. Upon approval of a contingency plan, the department shall
23 provide to the person submitting the plan a statement indicating that
24 the plan has been approved, the facilities or vessels covered by the
25 plan, and other information the department determines should be
26 included.

27 (8) An owner or operator of a facility shall notify the department
28 in writing immediately of any significant change of which it is aware
29 affecting its contingency plan, including changes in any factor set
30 forth in this section or in rules adopted by the department. The
31 department may require the owner or operator to update a contingency
32 plan as a result of these changes.

33 (9) The department by rule shall require contingency plans to be
34 reviewed, updated, if necessary, and resubmitted to the department at
35 least once every five years.

36 (10) Approval of a contingency plan by the department does not
37 constitute an express assurance regarding the adequacy of the plan nor

1 constitute a defense to liability imposed under this chapter or other
2 state law.

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