

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6641

Chapter 226, Laws of 2004

58th Legislature
2004 Regular Session

OIL SPILLS

EFFECTIVE DATE: 6/10/04

Passed by the Senate March 8, 2004
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 3, 2004
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6641** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

Approved March 31, 2004.

FILED

March 31, 2004 - 10:38 a.m.

GARY F. LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6641

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

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; amending RCW 90.56.005,
2 88.46.160, 90.56.060, 90.56.200, and 90.56.210; and creating new
3 sections.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature recognizes the
6 importance of prevention in obtaining the goal of zero oil spills to
7 waters of the state. The legislature also recognizes that the
8 regulation of oil and fuel transfers on or near waters of the state
9 vary depending on many factors including the type of facility or
10 equipment that is used, the type of products being transferred, where
11 the transfer takes place, and the type of vessels involved in the
12 transfer. The legislature therefore finds that the department of
13 ecology shall initiate a review of the current statewide marine fueling
14 practices for covered vessels and ships as those terms are defined in
15 RCW 88.46.010.

16 (2) The department of ecology shall work with stakeholders to
17 develop a report describing:

18 (a) The types of fueling practices being employed by covered
19 vessels and ships;

1 (b) The current spill prevention planning requirements that are
2 applicable under state and federal law for covered vessels and ships;
3 and

4 (c) The current spill response requirements under state and federal
5 law for covered vessels and ships.

6 (3) The department of ecology shall report recommendations for
7 regulatory improvements for covered vessel and ship fueling. These
8 recommendations must include any new authorities that the department of
9 ecology believes are necessary to establish a protective regulatory
10 system for the fueling of covered vessels and ships. The department of
11 ecology shall consider any applicable federal requirements and the
12 state's desire to not duplicate federal vessel fueling laws. The
13 department of ecology shall also provide recommendations for funding to
14 implement recommendations.

15 (4) The department of ecology shall deliver the report with its
16 recommendations and findings to the appropriate committees of the
17 legislature by December 15, 2004.

18 **Sec. 2.** RCW 90.56.005 and 1991 c 200 s 101 are each amended to
19 read as follows:

20 (1) The legislature declares that the increasing reliance on water
21 borne transportation as a source of supply for oil and hazardous
22 substances poses special concern for the state of Washington. Each
23 year billions of gallons of crude oil and refined petroleum products
24 are transported by vessel on the navigable waters of the state. These
25 shipments are expected to increase in the coming years. Vessels
26 transporting oil into Washington travel on some of the most unique and
27 special marine environments in the United States. These marine
28 environments are a source of natural beauty, recreation, and economic
29 livelihood for many residents of this state. As a result, the state
30 has an obligation to (~~assure~~) ensure the citizens of the state that
31 the waters of the state will be protected from oil spills.

32 (2) The legislature finds that prevention is the best method to
33 protect the unique and special marine environments in this state. The
34 technology for containing and cleaning up a spill of oil or hazardous
35 substances is in the early stages of development. Preventing spills is
36 more protective of the environment and more cost-effective when all the
37 costs associated with responding to a spill are considered. Therefore,

1 the legislature finds that the primary objective of the state is to
2 adopt a zero spills strategy to prevent any oil or hazardous substances
3 from entering waters of the state.

4 (3) The legislature also finds that:

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

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

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

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

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

20 (a) To establish state agency expertise in marine safety and to
21 centralize state activities in spill prevention and response
22 activities;

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

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

28 (d) To provide for state spill response and wildlife rescue
29 planning and implementation;

30 (e) To support and complement the federal oil pollution act of 1990
31 and other federal law, especially those provisions relating to the
32 national contingency plan for cleanup of oil spills and discharges,
33 including provisions relating to the responsibilities of state agencies
34 designated as natural resource trustees. The legislature intends this
35 chapter to be interpreted and implemented in a manner consistent with
36 federal law;

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

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

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

5 **Sec. 3.** RCW 88.46.160 and 2000 c 69 s 12 are each amended to read
6 as follows:

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

1 **Sec. 4.** 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. 5.** RCW 90.56.200 and 2000 c 69 s 19 are each amended to read
16 as follows:

17 (1) The owner or operator for each onshore and offshore facility
18 and any state agency conducting ship refueling or bunkering of more
19 than one million gallons of oil on the waters of the state during any
20 calendar year shall prepare and submit to the department an oil spill
21 prevention plan in conformance with the requirements of this chapter.
22 The plans shall be submitted to the department in the time and manner
23 directed by the department. The spill prevention plan may be
24 consolidated with a spill contingency plan submitted pursuant to RCW
25 90.56.210. The department may accept plans prepared to comply with
26 other state or federal law as spill prevention plans to the extent
27 those plans comply with the requirements of this chapter. The
28 department, by rule, shall establish standards for spill prevention
29 plans.

30 (2) The spill prevention plan for an onshore or offshore facility
31 and state agencies identified under subsection (1) of this section
32 shall:

33 (a) Establish compliance with the federal oil pollution act of
34 1990, if applicable, and financial responsibility requirements under
35 federal and state law;

36 (b) Certify that supervisory and other key personnel in charge of

1 transfer, storage, and handling of oil have received certification
2 pursuant to RCW 90.56.220;

3 (c) Certify that the facility has an operations manual required by
4 RCW 90.56.230;

5 (d) Certify the implementation of alcohol and drug use awareness
6 programs;

7 (e) Describe the facility's maintenance and inspection program and
8 contain a current maintenance and inspection record of the storage and
9 transfer facilities and related equipment;

10 (f) Describe the facility's alcohol and drug treatment programs;

11 (g) Describe spill prevention technology that has been installed,
12 including overflow alarms, automatic overflow cut-off switches,
13 secondary containment facilities, and storm water retention, treatment,
14 and discharge systems;

15 (h) Describe any discharges of oil to the land or the water of more
16 than twenty-five barrels in the prior five years and the measures taken
17 to prevent a reoccurrence;

18 (i) Describe the procedures followed by the facility to contain and
19 recover any oil that spills during the transfer of oil to or from the
20 facility;

21 (j) Provide for the incorporation into the facility during the
22 period covered by the plan of those measures that will provide the best
23 achievable protection for the public health and the environment; and

24 (k) Include any other information reasonably necessary to carry out
25 the purposes of this chapter required by rules adopted by the
26 department.

27 (3) The department shall only approve a prevention plan if it
28 provides the best achievable protection from damages caused by the
29 discharge of oil into the waters of the state and if it determines that
30 the plan meets the requirements of this section and rules adopted by
31 the department.

32 (4) Upon approval of a prevention plan, the department shall
33 provide to the person submitting the plan a statement indicating that
34 the plan has been approved, the facilities covered by the plan, and
35 other information the department determines should be included.

36 (5) The approval of a prevention plan shall be valid for five
37 years. An owner or operator of a facility shall notify the department
38 in writing immediately of any significant change of which it is aware

1 affecting its prevention plan, including changes in any factor set
2 forth in this section or in rules adopted by the department. The
3 department may require the owner or operator to update a prevention
4 plan as a result of these changes.

5 (6) The department by rule shall require prevention plans to be
6 reviewed, updated, if necessary, and resubmitted to the department at
7 least once every five years.

8 (7) Approval of a prevention plan by the department does not
9 constitute an express assurance regarding the adequacy of the plan nor
10 constitute a defense to liability imposed under this chapter or other
11 state law.

12 (8) This section does not authorize the department to modify the
13 terms of a collective bargaining agreement.

14 **Sec. 6.** RCW 90.56.210 and 2000 c 69 s 20 are each amended to read
15 as follows:

16 (1) Each onshore and offshore facility and any state agency
17 conducting ship refueling or bunkering of more than one million gallons
18 of oil on the waters of the state during any calendar year shall have
19 a contingency plan for the containment and cleanup of oil spills from
20 the facility into the waters of the state and for the protection of
21 fisheries and wildlife, shellfish beds, natural resources, and public
22 and private property from such spills. The department shall by rule
23 adopt and periodically revise standards for the preparation of
24 contingency plans. The department shall require contingency plans, at
25 a minimum, to meet the following standards:

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

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

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

36 (d) Provide procedures for early detection of oil spills and timely

1 notification of such spills to appropriate federal, state, and local
2 authorities under applicable state and federal law;

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

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

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

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

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

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

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

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

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

1 (n) If the department has adopted rules permitting the use of
2 dispersants, the circumstances, if any, and the manner for the
3 application of the dispersants in conformance with the department's
4 rules.

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

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

11 (ii) Offshore facilities.

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

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

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

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

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

34 (a) The adequacy of containment and cleanup equipment, personnel,
35 communications equipment, notification procedures and call down lists,
36 response time, and logistical arrangements for coordination and
37 implementation of response efforts to remove oil spills promptly and
38 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.

3 NEW SECTION. **Sec. 7.** If specific funding for the purposes of
4 sections 5 and 6 of this act, referencing sections 5 and 6 of this act
5 by bill or chapter or section number, is not provided by June 30, 2004,
6 in the omnibus transportation appropriations act, sections 5 and 6 of
7 this act are null and void.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 31, 2004.

Filed in Office of Secretary of State March 31, 2004.