

SSB 5432 - S AMD 362

By Senators Spanel, Swecker

ADOPTED 03/15/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 90.56.005 and 2004 c 226 s 2 are each amended to read
4 as follows:

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

17 (2) The legislature finds that prevention is the best method to
18 protect the (~~unique~~) valuable and special marine environments in this
19 state. The technology for containing and cleaning up a spill of oil or
20 hazardous substances is (~~in the early stages of development~~) at best
21 only partially effective. Preventing spills is more protective of the
22 environment and more cost-effective when all the response and damage
23 costs associated with responding to a spill are considered. Therefore,
24 the legislature finds that the primary objective of the state is to
25 (~~adopt~~) achieve a zero spills strategy to prevent any oil or
26 hazardous substances from entering waters of the state.

27 (3) The legislature also finds that:

28 (a) Recent accidents in Washington, Alaska, southern California,
29 Texas, Pennsylvania, and other parts of the nation have shown that the

1 transportation, transfer, and storage of oil have caused significant
2 damage to the marine environment;

3 (b) Even with the best efforts, it is nearly impossible to remove
4 all oil that is spilled into the water, and average removal rates are
5 only fourteen percent;

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

9 (d) The state has a fundamental responsibility, as the trustee of
10 the state's natural resources and the protector of public health and
11 the environment to prevent the spill of oil; and

12 (e) In section 5002 of the federal oil pollution act of 1990, the
13 United States congress found that many people believed that complacency
14 on the part of industry and government was one of the contributing
15 factors to the Exxon Valdez spill and, further, that one method to
16 combat this complacency is to involve local citizens in the monitoring
17 and oversight of oil spill plans. Congress also found that a mechanism
18 should be established that fosters the long-term partnership of
19 industry, government, and local communities in overseeing compliance
20 with environmental concerns in the operation of crude oil terminals.
21 Moreover, congress concluded that, in addition to Alaska, a program of
22 citizen monitoring and oversight should be established in other major
23 crude oil terminals in the United States because recent oil spills
24 indicate that the safe transportation of oil is a national problem.

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

28 (a) To establish state agency expertise in marine safety and to
29 centralize state activities in spill prevention and response
30 activities;

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

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

36 (d) To provide for state spill response and wildlife rescue
37 planning and implementation;

1 (e) To support and complement the federal oil pollution act of 1990
2 and other federal law, especially those provisions relating to the
3 national contingency plan for cleanup of oil spills and discharges,
4 including provisions relating to the responsibilities of state agencies
5 designated as natural resource trustees. The legislature intends this
6 chapter to be interpreted and implemented in a manner consistent with
7 federal law;

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

10 (g) To provide for an independent (~~oversight board~~) oil spill
11 advisory council to review on an ongoing basis the adequacy of oil
12 spill prevention, preparedness, and response activities in this state;
13 and

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

16 **Sec. 2.** RCW 90.56.010 and 2000 c 69 s 15 are each amended to read
17 as follows:

18 For purposes of this chapter, the following definitions shall apply
19 unless the context indicates otherwise:

20 (1) "Best achievable protection" means the highest level of
21 protection that can be achieved through the use of the best achievable
22 technology and those staffing levels, training procedures, and
23 operational methods that provide the greatest degree of protection
24 achievable. The director's determination of best achievable protection
25 shall be guided by the critical need to protect the state's natural
26 resources and waters, while considering (a) the additional protection
27 provided by the measures; (b) the technological achievability of the
28 measures; and (c) the cost of the measures.

29 (2) "Best achievable technology" means the technology that provides
30 the greatest degree of protection taking into consideration (a)
31 processes that are being developed, or could feasibly be developed,
32 given overall reasonable expenditures on research and development, and
33 (b) processes that are currently in use. In determining what is best
34 achievable technology, the director shall consider the effectiveness,
35 engineering feasibility, and commercial availability of the technology.

36 (3) "Board" means the pollution control hearings board.

1 (4) "Cargo vessel" means a self-propelled ship in commerce, other
2 than a tank vessel or a passenger vessel, three hundred or more gross
3 tons, including but not limited to, commercial fish processing vessels
4 and freighters.

5 (5) "Bulk" means material that is stored or transported in a loose,
6 unpackaged liquid, powder, or granular form capable of being conveyed
7 by a pipe, bucket, chute, or belt system.

8 (6) "Committee" means the preassessment screening committee
9 established under RCW 90.48.368.

10 (7) "Council" means the oil spill advisory council created in
11 section 3 of this act.

12 (8) "Covered vessel" means a tank vessel, cargo vessel, or
13 passenger vessel.

14 ~~((+8))~~ (9) "Department" means the department of ecology.

15 ~~((+9))~~ (10) "Director" means the director of the department of
16 ecology.

17 ~~((+10))~~ (11) "Discharge" means any spilling, leaking, pumping,
18 pouring, emitting, emptying, or dumping.

19 ~~((+11))~~ (12)(a) "Facility" means any structure, group of
20 structures, equipment, pipeline, or device, other than a vessel,
21 located on or near the navigable waters of the state that transfers oil
22 in bulk to or from a tank vessel or pipeline, that is used for
23 producing, storing, handling, transferring, processing, or transporting
24 oil in bulk.

25 (b) A facility does not include any: (i) Railroad car, motor
26 vehicle, or other rolling stock while transporting oil over the
27 highways or rail lines of this state; (ii) underground storage tank
28 regulated by the department or a local government under chapter 90.76
29 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is
30 operated as part of an exempt agricultural activity as provided in RCW
31 82.04.330; or (v) marine fuel outlet that does not dispense more than
32 three thousand gallons of fuel to a ship that is not a covered vessel,
33 in a single transaction.

34 ~~((+12))~~ (13) "Fund" means the state coastal protection fund as
35 provided in RCW 90.48.390 and 90.48.400.

36 ~~((+13))~~ (14) "Having control over oil" shall include but not be
37 limited to any person using, storing, or transporting oil immediately

1 prior to entry of such oil into the waters of the state, and shall
2 specifically include carriers and bailees of such oil.

3 ~~((14))~~ (15) "Marine facility" means any facility used for tank
4 vessel wharfage or anchorage, including any equipment used for the
5 purpose of handling or transferring oil in bulk to or from a tank
6 vessel.

7 ~~((15))~~ (16) "Marine waters" means the area within the state
8 boundaries that includes Hood Canal, Puget Sound, the Strait of Juan de
9 Fuca, the Pacific Ocean, and the Columbia river estuary.

10 (17) "Navigable waters of the state" means those waters of the
11 state, and their adjoining shorelines, that are subject to the ebb and
12 flow of the tide and/or are presently used, have been used in the past,
13 or may be susceptible for use to transport intrastate, interstate, or
14 foreign commerce.

15 ~~((16))~~ (18) "Necessary expenses" means the expenses incurred by
16 the department and assisting state agencies for (a) investigating the
17 source of the discharge; (b) investigating the extent of the
18 environmental damage caused by the discharge; (c) conducting actions
19 necessary to clean up the discharge; (d) conducting predamage and
20 damage assessment studies; and (e) enforcing the provisions of this
21 chapter and collecting for damages caused by a discharge.

22 ~~((17))~~ (19) "Oil" or "oils" means naturally occurring liquid
23 hydrocarbons at atmospheric temperature and pressure coming from the
24 earth, including condensate and natural gasoline, and any fractionation
25 thereof, including, but not limited to, crude oil, petroleum, gasoline,
26 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
27 other than dredged spoil. Oil does not include any substance listed in
28 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
29 section 101(14) of the federal comprehensive environmental response,
30 compensation, and liability act of 1980, as amended by P.L. 99-499.

31 ~~((18))~~ (20) "Offshore facility" means any facility located in,
32 on, or under any of the navigable waters of the state, but does not
33 include a facility any part of which is located in, on, or under any
34 land of the state, other than submerged land.

35 ~~((19))~~ (21) "Onshore facility" means any facility any part of
36 which is located in, on, or under any land of the state, other than
37 submerged land, that because of its location, could reasonably be

1 expected to cause substantial harm to the environment by discharging
2 oil into or on the navigable waters of the state or the adjoining
3 shorelines.

4 ~~((+20+))~~ (22)(a) "Owner or operator" means (i) in the case of a
5 vessel, any person owning, operating, or chartering by demise, the
6 vessel; (ii) in the case of an onshore or offshore facility, any person
7 owning or operating the facility; and (iii) in the case of an abandoned
8 vessel or onshore or offshore facility, the person who owned or
9 operated the vessel or facility immediately before its abandonment.

10 (b) "Operator" does not include any person who owns the land
11 underlying a facility if the person is not involved in the operations
12 of the facility.

13 ~~((+21+))~~ (23) "Passenger vessel" means a ship of three hundred or
14 more gross tons with a fuel capacity of at least six thousand gallons
15 carrying passengers for compensation.

16 ~~((+22+))~~ (24) "Person" means any political subdivision, government
17 agency, municipality, industry, public or private corporation,
18 copartnership, association, firm, individual, or any other entity
19 whatsoever.

20 ~~((+23+))~~ (25) "Ship" means any boat, ship, vessel, barge, or other
21 floating craft of any kind.

22 ~~((+24+))~~ (26) "Spill" means an unauthorized discharge of oil or
23 hazardous substances into the waters of the state.

24 ~~((+25+))~~ (27) "Tank vessel" means a ship that is constructed or
25 adapted to carry, or that carries, oil in bulk as cargo or cargo
26 residue, and that:

- 27 (a) Operates on the waters of the state; or
- 28 (b) Transfers oil in a port or place subject to the jurisdiction of
29 this state.

30 ~~((+26+))~~ (28) "Waters of the state" includes lakes, rivers, ponds,
31 streams, inland waters, underground water, salt waters, estuaries,
32 tidal flats, beaches and lands adjoining the seacoast of the state,
33 sewers, and all other surface waters and watercourses within the
34 jurisdiction of the state of Washington.

35 ~~((+27+))~~ (29) "Worst case spill" means: (a) In the case of a
36 vessel, a spill of the entire cargo and fuel of the vessel complicated
37 by adverse weather conditions; and (b) in the case of an onshore or

1 offshore facility, the largest foreseeable spill in adverse weather
2 conditions.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.56 RCW
4 to read as follows:

5 (1)(a) There is established in the office of the governor the oil
6 spill advisory council.

7 (b) The primary purpose of the council is to maintain the state's
8 vigilance in, by ensuring an emphasis on, the prevention of oil spills
9 to marine waters, while recognizing the importance of also improving
10 preparedness and response.

11 (c) The council shall be an advisory body only.

12 (2)(a) The council is composed of fifteen members representing
13 various interests as follows:

14 (i) Three representatives of environmental organizations;

15 (ii) One representative of commercial shellfish interests;

16 (iii) One representative of commercial fisheries that primarily
17 fishes in Washington waters;

18 (iv) One representative of marine recreation;

19 (v) One representative of tourism interests;

20 (vi) Three representatives of county government from counties
21 bordering Puget Sound, the Columbia river/Pacific Ocean, and the Strait
22 of Juan de Fuca/San Juan Islands;

23 (vii) Two representatives of marine trade interests;

24 (viii) One representative of major oil facilities;

25 (ix) One representative of public ports; and

26 (x) An individual who resides on a shoreline who has an interest,
27 experience, and familiarity in the protection of water quality.

28 (b) In addition to the members identified in this subsection, the
29 governor shall invite the participation of tribal governments through
30 the appointment of two representatives to the council.

31 (3) Appointments to the council shall reflect a geographical
32 balance and the diversity of populations within the areas potentially
33 affected by oil spills to state waters.

34 (4) Members shall be appointed by the governor and shall serve
35 four-year terms, except the initial members appointed to the council.
36 Initial members to the council shall be appointed as follows: Six
37 shall serve two-year terms, six shall serve three-year terms, and five

1 shall serve four-year terms. Vacancies shall be filled by appointment
2 in the same manner as the original appointment for the remainder of the
3 unexpired term of the position vacated. Members serve at the pleasure
4 of the governor.

5 (5) The council shall elect a chair from among its members in odd-
6 numbered years to serve for two years as chair. The chair shall
7 convene the council at least four times per year. At least one meeting
8 per year shall be held in a Columbia river community, an ocean coastal
9 community, and a Puget Sound community.

10 (6) Members shall not be compensated, but shall be reimbursed for
11 travel expenses while attending meetings of the council or technical
12 advisory committee as provided in RCW 43.03.050 and 43.03.060.

13 (7) The first meeting of the council shall be convened by the
14 governor or the governor's designee. Other meetings may be convened by
15 a vote of at least a majority of the voting members of the council, or
16 by call of the chair. All meetings are subject to the open public
17 meetings act. The council shall maintain minutes of all meetings.

18 (8) To the extent possible, all decisions of the council shall be
19 by the consensus of the members. If consensus is not possible, nine
20 voting members of the council may call for a vote on a matter. When a
21 vote is called, all decisions shall be determined by a majority vote of
22 the voting members present. Two-thirds of the voting members are
23 required to be present for a quorum for all votes. The subject matter
24 of all votes and the vote tallies shall be recorded in the minutes of
25 the council.

26 (9) The council may form subcommittees and technical advisory
27 committees.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.56 RCW
29 to read as follows:

30 (1) The duties of the council include:

31 (a) Selection and hiring of professional staff and expert
32 consultants to support the work of the council;

33 (b) Early consultation with government decision makers in relation
34 to the state's oil spill prevention, preparedness, and response
35 programs, analyses, rule making, and related oil spill activities;

36 (c) Providing independent advice, expertise, research, monitoring,
37 and assessment for review of and necessary improvements to the state's

1 oil spill prevention, preparedness, and response programs, analyses,
2 rule making, and other decisions, including those of the Northwest area
3 committee, as well as the adequacy of funding for these programs;

4 (d) Monitoring and providing information to the public as well as
5 state and federal agencies regarding state of the art oil spill
6 prevention, preparedness, and response programs;

7 (e) Actively seeking public comments on and proposals for specific
8 measures to improve the state's oil spill prevention, preparedness, and
9 response program, including measures to improve the effectiveness of
10 the Northwest area committee;

11 (f) Evaluating incident response reports and making recommendations
12 to the department regarding improvements;

13 (g) Consulting with the department on lessons learned and agency
14 progress on necessary actions in response to lessons learned;

15 (h) Promoting opportunities for the public to become involved in
16 oil spill response activities and provide assistance to community
17 groups with an interest in oil spill prevention and response, and
18 coordinating with the department on the development and implementation
19 of a citizens' involvement plan;

20 (i) Serving as an advisory body to the department on matters
21 relating to international, national, and regional issues concerning oil
22 spill prevention, preparedness, and response, and providing a mechanism
23 for stakeholder and public consideration of federal actions relating to
24 oil spill preparedness, prevention, and response in or near the waters
25 of the state with recommended changes or improvements in federal
26 policies on these matters;

27 (j) Accepting moneys from appropriations, gifts, grants, or
28 donations for the purposes of this section; and

29 (k) Any other activities necessary to maintain the state's
30 vigilance in preventing oil spills.

31 (2) The council is not intended to address issues related to spills
32 involving hazardous substances.

33 (3) By December 15, 2005, the council shall recommend to the
34 governor and appropriate committees of the legislature, proposals for
35 the long-term funding of the council's activities and for the long-term
36 sustainable funding for oil spill preparedness, prevention, and
37 response activities.

1 (4) By September 1st of each year, the council shall make
2 recommendations for the continuing improvement of the state's oil spill
3 prevention, preparedness, and response activities through a report to
4 the governor and the appropriate committees of the senate and house of
5 representatives.

6 **Sec. 5.** RCW 90.56.060 and 2004 c 226 s 4 are each amended to read
7 as follows:

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

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

20 (a) Take into consideration the elements of oil spill prevention
21 and contingency plans approved or submitted for approval pursuant to
22 this chapter and chapter 88.46 RCW and oil and hazardous substance
23 spill contingency plans prepared pursuant to other state or federal law
24 or prepared by federal agencies and regional entities;

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

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

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

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

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

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

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

11 (a) Consult with federal, provincial, municipal, and community
12 officials, other state agencies, the state of Oregon, and with
13 representatives of affected regional organizations;

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

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

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

21 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.56 RCW
22 to read as follows:

23 The oil spill advisory council account is created in the custody of
24 the state treasurer. All receipts from appropriations or gifts,
25 grants, or donations from public or private sources shall be deposited
26 into the fund. Expenditures from the fund may be used only for the
27 purposes of this act. Only the oil spill advisory council may
28 authorize expenditures from the fund. The fund is subject to allotment
29 procedures under chapter 43.88 RCW, but no appropriation is required
30 for expenditures."

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By Senators Spanel, Swecker

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1 On page 1, line 1 of the title, after "Relating to" strike the
2 remainder of the title and insert "the oil spill advisory council;
3 amending RCW 90.56.005, 90.56.010, and 90.56.060; and adding new
4 sections to chapter 90.56 RCW."

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