

# HOUSE BILL REPORT

## 2SHB 1488

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### As Amended by the Senate

**Title:** An act relating to protecting all of Washington's waters by enhancing the state's oil spill program.

**Brief Description:** Enhancing the state's oil spill response program.

**Sponsors:** By House Committee on Finance (originally sponsored by Representatives B. Sullivan, Upthegrove, Appleton, Dunshee, Hunt, Dickerson, VanDeWege, Campbell, Kessler, Eickmeyer, McCoy, Chase, Green, Sells, Kenney, Ericks, Roberts, Lantz, Goodman, Wood, Kagi, Moeller and Rolfes).

### Brief History:

#### Committee Activity:

Agriculture & Natural Resources: 1/29/07, 2/8/07 [DPS];

Finance: 2/27/07, 3/12/07 [DP2S(w/o sub AGNR)].

#### Floor Activity:

Passed House: 3/13/07, 66029.

Senate Amended.

Passed Senate: 4/12/07, 49-0.

### Brief Summary of Second Substitute Bill

- Expands the allowable uses of the Oil Spill Prevention Account to include funding of the Oil Spill Advisory Council and transfers to the Derelict Vessel Removal Account.
- Specifies that the direction for the Department of Ecology to use funding in the Vessel Response Account to fund a rescue tug at the entrance to the Strait of Juan de Fuca is to be used for a rescue tug that is available year round.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Dickerson, Eickmeyer, Grant, Lantz, McCoy, Strow and VanDeWege.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 5 members: Representatives Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Hailey, Newhouse and Orcutt.

**Staff:** Jason Callahan (786-7117).

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, McIntire and Santos.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member and Roach.

**Staff:** Jeff Mitchell (786-7139).

### **Background:**

#### Oil Spill Advisory Council

In 2005, the Legislature created the Oil Spill Advisory Council (Council) to provide advice as to how the state can maintain its vigilance in the prevention of oil spills. The Council is composed of 16 members representing various perspectives and a non-voting chair. The Council submitted a required report to the Legislature in 2006 that outlined proposals for long-term, sustainable funding for oil spill prevention, preparedness, and response.

#### Current Oil Spill Funding Structure

Many of the oil spill-related duties of the Department of Ecology (Department) are funded through two taxes on the receipt of crude oil at a marine terminal. The Oil Spill *Response Tax* (Response Tax) is levied at the rate of 1 cent per barrel, and the Oil Spill *Administration Tax* (Administration Tax) is levied at the rate of 4 cents per barrel. There is a credit available against these taxes for petroleum products that are subsequently exported from the state once they are received.

The Response Tax and the Administration Tax are deposited in separate accounts, which both fund various activities by the Department. The 4 cent Administration Tax is deposited into the Oil Spill *Prevention Account* (Prevention Account). Money in the Prevention Account may be used by the Department for activities related to the prevention of oil spills, including vessel plan reviews and public outreach.

The 1 cent Response Tax is deposited into the Oil Spill *Response Account* (Response Account). Money in the Response Account is used to pay for the costs associated with responding to spills of crude oil. If at any time the Response Account has a balance greater than \$9 million, the Department of Revenue suspends the collection of the Response Tax.

#### Rescue Tug

Until the end of Fiscal Year 2007, 16.60 percent of certain motor vehicle certification fees is dedicated to a Vessel Response Account. Money in the Vessel Response Account is used by the Department to fund the placement of a rescue tug near the mouth of the Strait of Juan de Fuca. After the end of Fiscal Year 2007, the portion of the vehicle certification fees reserved to fund a rescue tug lapses into an account managed by the Department of Transportation for road construction.

**Summary of Second Substitute Bill:**

The direction for the Department of Ecology (Department) to use funding in the Vessel Response Account to fund a rescue tug at the entrance to the Strait of Juan de Fuca is changed to specify that the rescue tug must be available year round. In addition, the Department's direction to use Vessel Response Account funding to pay for a *charter* tug program is changed so that the Department has the authority to fund *contingency* tugs.

The allowable uses of the Prevention Account is expanded to include funding of the Council and transfers to the Derelict Vessel Removal Account.

There is a null and void clause established for each section with substantive changes.

**EFFECT OF SENATE AMENDMENT(S):**

Replaces all language in the bill with legislative findings regarding the funding of oil spill prevention services and the federal support for the Neah Bay rescue tug, and directs the Joint Legislative Audit and Review Committee to examine funding mechanisms for oil spill prevention and response.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed. However, sections 3, 4, and 5 are null and void if not funded in the budget.

**Staff Summary of Public Testimony:** (Agriculture & Natural Resources)

(In support) The Legislature and the Department have pursued tough oil spill standards, but there is still a question of whether the state can do more to protect itself from a catastrophic oil spill. This bill responds directly to the request the Legislature gave to the Council.

The new revenue in the bill is equitable, as it requires those who create risk to pay for spill prevention in proportion to the risk being created. This will provide a long term, sustainable funding mechanism that is a small investment in protecting the waters of the Puget Sound. The existing export credit rewards making multiple fuel transfers over state waters, while not allowing those who create the risk to pay for prevention or response.

Equipment fails, workloads encourage risk taking, vessel traffic is growing, and people make mistakes. Even the most modern tankers can have spills. Not having a permanent, year-round rescue tug at Neah Bay is taking an unnecessary risk. The state tug program should

complement, not compete with federal efforts, and should enjoy permanent funding that is not pieced together from other programs. A catastrophic oil spill is the single greatest risk to the health of Puget Sound's orca whales. The Exxon Valdez incident in Alaska has left a legacy of beaches that are still spoiled today. All of the hard work that has been done to protect the Puget Sound could be undone with just one oil spill. The rescue tug provides career training opportunities for tribal members.

The operation and marketing of the state's shellfish industry relies on clean water, and the perception of clean water. An oil spill would threaten an industry that offers business opportunities in rural areas.

The Council was composed of volunteers, but it learned from the experts. It was able to see through inter-agency politics and communication issues between the state and federal governments. It could also ask the hard questions that no other body was in the position to ask. No voices were ignored, and all those who wanted to address the Council were given the opportunity to do so. The balance struck in the Council recommendations is the proper balance. The state should not just re-study issues when that work has already been done.

The funding for derelict vessel removal is insufficient to deal with removing the problems on the waters. Large dry docks and vessels are sinking, but they are expensive to remove and create environmental hazards. The current derelict vessel program is funded through fees paid by recreational boaters, but many derelict vessels are not recreational in nature.

(Opposed) The Council was not designed to be balanced or have expertise. The Council's process raised significant concerns, but not a proposal that deserves to be turned into law. Doing so would make the statement that the Governor and state have failed in their oil spill prevention efforts. The Council never reviewed the existing programs and methods.

A permanent tug at Neah Bay is unnecessary as there is no rational reason to station a tug in the summertime. If taxes are to increase, then those dollars should be used on the most effective prevention measures. There are better ways to spend the state's investment in spill protection than on a year-round tug and other tug programs that are already in place in the state.

Repealing the export credit is unconstitutional, as Oregon users of exported fuel can not be made to pay a Washington tax. All exported goods receive a tax credit in Washington.

It is perhaps unprecedented to apply the fiscal growth factor to taxes. Repealing the shut off mechanism to the Response Tax upsets the balance between the Response Program and the Administration Program. The Transfer Tax is an idea worth exploring, but not an idea to put in place just yet. It is a faux gas tax that violates the State Constitution.

Derelict vessels may be a problem, but most of these vessels are not the sort of ship that will bear most of the cost of these new taxes.

(With concerns) The new Transfer Tax is unlikely to be successfully administered. The Department of Revenue usually taxes businesses, but the bill taxes all physical transfers. This

includes transfers outside of a business relationship. The bill has no minimum thresholds and no clear reporting system. Collection of the Transfer Tax would require the development of a whole new reporting system.

**Staff Summary of Public Testimony:** (Finance)

(In support) This will begin the process of financing oil spill response. This bill creates sustainable long-term funding to improve Washington's oil spill program for Washington's Marine Ecosystems. This legislation reflects the findings of the Oil Spill Advisory Council, which was created by the Legislature to address these issues.

(With concerns) We have serious concerns about our ability to administer the taxes that we would be required to collect under the bill and about the potential constitutional issues raised the bill. We ask that the committee consider amendments to address these problems

(Opposed) The funding and expenditures provided for in the bill are not in our proposed budget and could jeopardize existing tax collection. The Governor has expressed her preference to secure increased assistance from the federal government before enacting new state policies. The bill also raises the potential for constitutional challenges under both the Commerce Clause and Import-Export Clause of the U.S. Constitution. While we have not had time to arrive at a clear position on the likelihood of such a challenge, the constitutionality of the bill has already been addressed by opponents in testimony before other committees in the House and Senate.

**Persons Testifying:** (Agriculture & Natural Resources) (In support) Mike Cooper, Oil Spill Advisory Council; Kathy Fletcher, People for Puget Sound; Sue Joerger, Puget Soundkeeper Alliance; Gerald Joyce, Audubon Washington; Doug Levy, City of Renton; Rich Doenges, Department of Natural Resources; Mike Doherty, Clallam County Board of County Commissioners; Steve Robinson, Northwest Indian Fisheries Commission; Brett Bishop, Pacific Coast Shellfish Growers Association; Gordon Baxter, Inland Boatmen's Union and International Longshore & Warehouse Union; Mike Racine, Washington Scuba Alliance; and Fred Felleman.

(Opposed) Randy Ray, Pacific Merchant Shipping Association and Pacific Seafood Processors Association; Rick Wickman, Columbia River Steamship Association; and Greg Hanon, Western States Petroleum Association.

(With concerns) Gil Brewer, Department of Revenue.

**Persons Testifying:** (Finance) (In support) Representative B. Sullivan, prime sponsor; Jacqui Brown Miller, Oil Spill Advisory Council; Bruce Wishart, People for Puget Sound; Doug Levy, City of Renton; Gordon Baxter, Inlandboatman's Union, International Longshore & Warehouse Union; and Rich Dengis, Department of Natural Resources.

(With concerns) Gil Brewer, Department of Revenue.

(Opposed) Greg Hanon, Western States Petroleum Association; Rick Wickman, Pacific Merchant Shipping Association; Charlie Brown, Washington Oil Marketers Association; and Mike Moore, Columbia River Steamship Operations.

**Persons Signed In To Testify But Not Testifying:** (Agriculture & Natural Resources) None.

**Persons Signed In To Testify But Not Testifying:** (Finance) None.