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SENATE BILL 5552

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Rockefeller, Spanel, Regala, Kohl-Welles, Kline and Oemig

Read first time 01/24/2007. Referred to Committee on Water, Energy & Telecommunications.

1            AN ACT Relating to discharges of oil; amending RCW 90.48.366,  
2 90.48.368, and 90.56.330; and prescribing penalties.

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

4            **Sec. 1.** RCW 90.48.366 and 1994 sp.s. c 9 s 855 are each amended to  
5 read as follows:

6            By July 1, 1991, the department, in consultation with the  
7 departments of (~~fisheries,~~) fish and wildlife(~~(7)~~) and natural  
8 resources, and the parks and recreation commission, shall adopt rules  
9 establishing a compensation schedule for the discharge of oil in  
10 violation of this chapter and chapter 90.56 RCW. The amount of  
11 compensation assessed under this schedule shall be no less than one  
12 dollar per gallon of oil spilled and no greater than (~~fifty~~) one  
13 hundred dollars per gallon of oil spilled. The compensation schedule  
14 shall reflect adequate compensation for unquantifiable damages or for  
15 damages not quantifiable at reasonable cost for any adverse  
16 environmental, recreational, aesthetic, or other effects caused by the  
17 spill and shall take into account:

18            (1) Characteristics of any oil spilled, such as toxicity,

1 dispersibility, solubility, and persistence, that may affect the  
2 severity of the effects on the receiving environment, living organisms,  
3 and recreational and aesthetic resources;

4 (2) The sensitivity of the affected area as determined by such  
5 factors as: (a) The location of the spill; (b) habitat and living  
6 resource sensitivity; (c) seasonal distribution or sensitivity of  
7 living resources; (d) areas of recreational use or aesthetic  
8 importance; (e) the proximity of the spill to important habitats for  
9 birds, aquatic mammals, fish, or to species listed as threatened or  
10 endangered under state or federal law; (f) significant archaeological  
11 resources as determined by the ((office)) department of archaeology and  
12 historic preservation; and (g) other areas of special ecological or  
13 recreational importance, as determined by the department((~~. If the~~  
14 ~~department has adopted rules for a compensation table prior to July 1,~~  
15 ~~1992, the sensitivity of significant archaeological resources shall~~  
16 ~~only be included among factors to be used in the compensation table~~  
17 ~~when the department revises the rules for the compensation table after~~  
18 ~~July 1, 1992))); and~~

19 (3) Actions taken by the party who spilled oil or any party liable  
20 for the spill that: (a) Demonstrate a recognition and affirmative  
21 acceptance of responsibility for the spill, such as the immediate  
22 removal of oil and the amount of oil removed from the environment; or  
23 (b) enhance or impede the detection of the spill, the determination of  
24 the quantity of oil spilled, or the extent of damage, including the  
25 unauthorized removal of evidence such as injured fish or wildlife.

26 **Sec. 2.** RCW 90.48.368 and 1994 c 264 s 92 are each amended to read  
27 as follows:

28 (1) The department shall adopt rules establishing a formal process  
29 for preassessment screening of damages resulting from spills to the  
30 waters of the state causing the death of, or injury to, fish, animals,  
31 vegetation, or other resources of the state. The rules shall specify  
32 the conditions under which the department shall convene a preassessment  
33 screening committee. The preassessment screening process shall occur  
34 concurrently with reconnaissance activities. The committee shall use  
35 information obtained from reconnaissance activities as well as any  
36 other relevant resource and resource use information. For each  
37 incident, the committee shall determine whether a damage assessment

1 investigation should be conducted, or, whether the compensation  
2 schedule authorized under RCW 90.48.366 and 90.48.367 should be used to  
3 assess damages. The committee may accept restoration or enhancement  
4 projects or studies proposed by the liable parties in lieu of some or  
5 all of: (a) The compensation schedule authorized under RCW 90.48.366  
6 and 90.48.367; or (b) the claims from damage assessment studies  
7 authorized under RCW 90.48.142.

8 (2) A preassessment screening committee may consist of  
9 representatives of the departments of ecology, archaeology and historic  
10 preservation, fish and wildlife, health, and natural resources,  
11 (~~social and health services, and emergency management,~~) and the parks  
12 and recreation commission, (~~the office of archaeology and historic~~  
13 ~~preservation,~~) as well as other federal, state, and local agencies,  
14 and tribal and local governments whose presence would enhance the  
15 reconnaissance or damage assessment aspects of spill response. The  
16 department shall chair the committee and determine which  
17 representatives will be needed on a spill-by-spill basis.

18 (3) The committee shall consider the following factors when  
19 determining whether a damage assessment study authorized under RCW  
20 90.48.367 should be conducted: (a) Whether evidence from  
21 reconnaissance investigations suggests that injury has occurred or is  
22 likely to occur to publicly owned resources; (b) the potential loss in  
23 services provided by resources injured or likely to be injured and the  
24 expected value of the potential loss; (c) whether a restoration project  
25 to return lost services is technically feasible; (d) the accuracy of  
26 damage quantification methods that could be used and the anticipated  
27 cost-effectiveness of applying each method; (e) the extent to which  
28 likely injury to resources can be verified with available  
29 quantification methods; and (f) whether the injury, once quantified,  
30 can be translated into monetary values with sufficient precision or  
31 accuracy.

32 (4) When a resource damage assessment is required for an oil spill  
33 in the navigable waters of the state, as defined in RCW 90.56.010, the  
34 state trustee agency responsible for the resource and habitat damaged  
35 shall conduct the damage assessment and pursue all appropriate remedies  
36 with the responsible party.

37 (5) Oil spill damage assessment studies authorized under RCW  
38 90.48.367 may only be conducted if the committee, after considering the

1 factors enumerated in subsection (3) of this section, determines that  
2 the damages to be investigated are quantifiable at a reasonable cost  
3 and that proposed assessment studies are clearly linked to  
4 quantification of the damages incurred.

5 (6) As new information becomes available, the committee may  
6 reevaluate the scope of damage assessment using the factors listed in  
7 subsection (3) of this section and may reduce or expand the scope of  
8 damage assessment as appropriate.

9 (7) The preassessment screening process shall provide for the  
10 ongoing involvement of persons who may be liable for damages resulting  
11 from an oil spill. The department may negotiate with a potentially  
12 liable party to perform restoration and enhancement projects or studies  
13 which may substitute for all or part of the compensation authorized  
14 under RCW 90.48.366 and 90.48.367 or the damage assessment studies  
15 authorized under RCW 90.48.367.

16 (8) For the purposes of this section and RCW 90.48.367, the cost of  
17 a damage assessment shall be considered "reasonable" when the  
18 anticipated cost of the damage assessment is expected to be less than  
19 the anticipated damage that may have occurred or may occur.

20 **Sec. 3.** RCW 90.56.330 and 1992 c 73 s 36 are each amended to read  
21 as follows:

22 Except as otherwise provided in RCW 90.56.390, any person who  
23 negligently discharges oil, or causes or permits the entry of the same,  
24 shall incur, in addition to any other penalty as provided by law, a  
25 penalty in an amount of up to (~~twenty~~) one hundred thousand dollars  
26 for every such violation, and for each day the spill poses risks to the  
27 environment as determined by the director. Any person who  
28 intentionally or recklessly discharges or causes or permits the entry  
29 of oil into the waters of the state shall incur, in addition to any  
30 other penalty authorized by law, a penalty of up to (~~one~~) five  
31 hundred thousand dollars for every such violation and for each day the  
32 spill poses risks to the environment as determined by the director.  
33 The amount of the penalty shall be determined by the director after  
34 taking into consideration the size of the business of the violator, the  
35 gravity of the violation, the previous record of the violator in  
36 complying, or failing to comply, with the provisions of chapter 90.48  
37 RCW, the speed and thoroughness of the collection and removal of the

1 oil, and such other considerations as the director deems appropriate.  
2 Every act of commission or omission which procures, aids or abets in  
3 the violation shall be considered a violation under the provisions of  
4 this section and subject to the penalty herein provided for. The  
5 penalty herein provided for shall be imposed pursuant to RCW  
6 43.21B.300.

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