

HOUSE BILL REPORT

HB 1186

As Reported by House Committee On:

Environment

General Government Appropriations & Oversight

Title: An act relating to requirements under the state's oil spill program.

Brief Description: Concerning requirements under the state's oil spill program.

Sponsors: Representatives Rolfes, Hudgins, Upthegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Lias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu and Seaquist.

Brief History:

Committee Activity:

Environment: 2/1/11, 2/8/11 [DPS];

General Government Appropriations & Oversight: 2/17/11 [DP2S(w/o sub ENVI)].

Brief Summary of Second Substitute Bill

- Requires additional contingency planning requirements for tank vessels, including enhanced standards and the formation of both a volunteer coordination system and a vessels of opportunity system.
- Increases the penalties for vessels violating the state's oil spill laws.
- Provides for state notification of vessel emergencies resulting in the discharge of oil or the threat of oil discharge.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Fitzgibbon, Jacks, Jinkins, Moscoso, Takko and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse and Taylor.

Staff: Jason Callahan (786-7117).

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.

Background:

Tank Vessel Contingency Plan Requirements.

All covered vessels and facilities are required to have an oil spill contingency plan on file with the Department of Ecology (Department). The contingency plan must meet standards identified by the Department and provide for the containment and cleanup of oil spilled into the waters of the state. The contingency plan is a legally binding agreement on the party submitting the plan.

The contingency plan requirements apply to facilities located on the land and to vessels that dock at the facilities. A facility is, with a few exceptions: a structure, a pipeline, a device, or equipment located on or near state waters that transfers oil to or from a vessel or pipeline. A covered vessel is: a tank vessel that is designed to carry oil in bulk as cargo; a cargo vessel weighing over 30 gross tons; or a passenger vessel weighing over 300 gross tons.

Contingency plans must meet the requirements developed in rules by the Department. These rules, which must be periodically updated, establish the standards that contingency plans must meet. Examples of the standards include: details for the method of response to spills of various sizes; lists of personnel and equipment used to remove oil and/or to minimize damage in a worst case spill; and procedures for early detection and timely notification of spills. Rules adopted by the Department also require the use of random, unannounced drills of contingency plan holders as a means for testing the adequacy of the contingency plans.

Emergency Communication.

A covered vessel located within 12 miles of the state's coastline is required to notify the United States Coast Guard (USCG) within one hour of becoming disabled, colliding with another vessel, or experiencing a near miss collision with another vessel. The Department, the Washington State Military Department, and the USCG are expected to negotiate an agreement that allows state notification of incidents reported to the USCG. From these notifications, the Department must create summaries of reported incidents.

Compensation Schedule.

The owner or operator of a covered vessel that experiences a spill in Washington waters or fails to satisfy the contingency planning requirements can face three different financial liabilities: civil penalties, natural resource damage assessments, and third party tort liability.

Civil penalties are assessed by the Department on covered vessels that enter the waters of the state without an approved contingency plan, or having met financial responsibility requirements in compliance with state and federal standards. In these cases, the Department may assess a civil penalty of up to \$100,000 for each day the vessel is in violation of compliance with the standards.

Natural resource damage assessments are issued by the Department in consultation with other natural resources agencies based on a compensation schedule for unlawful oil discharges. The amount of compensation must be at least \$1 per gallon and no more than \$100 per gallon

spilled. The compensation schedule must reflect compensation for impacts including those to the environment, recreation, and aesthetics.

A person whose private property is damaged by an unlawful oil discharge may bring an action against the owner or operator of the vessel. Generally, the vessel owner or operator faces strict liability for damages resulting from a spill.

Summary of Substitute Bill:

Tank Vessel Contingency Plan Requirements.

All tank vessels must submit updated contingency plans to the Department that provide for the establishment and funding of a vessels of opportunity system, a volunteer coordination system, and new standards relating to equipment access and operating abilities. These requirements only apply to tank vessels and not other vessels that are required to submit a contingency plan.

The vessels of opportunity system is an oil spill response system that utilizes at least six commercial fishing vessels, or other commercial vessels, to assist with spill response. These vessels are arranged into regional vessels of opportunity response groups. The response vessels must be under active contract with the tank vessel before a spill occurs and must be adequately equipped and trained for spill response. Tank vessel owners may achieve compliance with the vessels of opportunity system by participating in umbrella coverage provided by a private organization. Any umbrella coverage plan must provide for at least six groups of vessels of opportunity located strategically statewide.

The volunteer coordination system is an oil spill response system that utilizes local emergency management centers to implement a system to ensure that volunteers wishing to help in a spill response are trained appropriately and used efficiently. Like the vessels of opportunity system, the volunteer coordination system may also be provided through umbrella coverage offered by a private organization.

The additional contingency planning requirements for tank vessels also includes heightened standards relating to the ability to provide for rapid access to response equipment that reflects the best available protection, including multi-spectrum scanning technologies, and the ability to conduct a continuous spill response operation. The Department must review tank vessel contingency plans to ensure that these standards are being met. In reviewing, the Department must confirm that the plans allow for response activities that occur in areas that experience strong currents and response activities that are required during the night. The Department must also review the capacity for large volumes of recovered oil to be stored and properly disposed.

The Department is authorized to order tank vessel contingency plan drills to determine the ability of the multiple vessels being able to meet the necessary standards. These extra drills must be focused on the operational readiness of the spill response both during the first six hours of a spill and in the following operational periods.

Emergency Communication.

The owner or operator of a vessel experiencing an emergency at sea must notify the Department if there has been a discharge, or a substantial threat of discharge, caused by the emergency. This notification is in addition to similar notification that is required to be given to the USCG.

Federal Assistance.

The Director of the Department is required to formally request, from the federal government, a contribution to the establishment of regional oil equipment caches to ensure adequate response capabilities.

Compensation Schedule.

The range of compensation to be assessed by the Department for the unlawful discharge of oil is raised from between \$1 and \$100 per gallon of oil discharged to between \$3 and \$300.

Compliance Schedule.

The new contingency plan requirements are to be phased in according to the following schedule:

- emergency notification requirements on October 1, 2011;
- vessels of opportunity and multi-spectrum scanning technology requirements on July 1, 2012;
- enhanced requirements for tank vessel contingency plans on January 1, 2013; and
- the volunteer coordination system on July 1, 2014.

Substitute Bill Compared to Original Bill:

The substitute bill provides a definition for regional vessels of opportunity response groups; reduces the number of mandatory annual training missions for participants in the vessels of opportunity system from four to two; removes the requirement that tank vessels drill for simultaneous spill incidents; reduces the frequency of multi-plan drills from annually to triennially; requires the Department to request federal assistance in establishing oil spill response equipment caches; clarifies that contingency plan holders must fund a local volunteer coordination system but are not required to implement the system; requires tank vessels to have access to multi-spectrum scanning technologies; and creates a delayed compliance schedule for the various bill elements.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Oil spills threaten the state's environment, the economy, property values, and quality of life. The Department has a good oil spill program, but we have learned lessons that will allow the state's program to be elevated to the next level. The 2010 spill in the Gulf of Mexico should be a wake-up call. The systems and technology promised to prevent spills all failed. A large spill can happen here and it cannot be assumed that one will never occur. Washington is not prepared for a large spill.

The Puget Sound is unique due to the fact that it is an enclosed waterbody with strong currents. The ability to respond quickly is important in the Puget Sound. The existing standards do not reflect the reality of response needs for Puget Sound.

The existing contingency plans have shortcomings. The state must be assured there is capacity and ability available to remove and contain large volumes of oil. It is also important to know that those responding are trained for the unique nature of Washington's waters.

The existing vessels of opportunity system is insufficient. Participants, if trained at all, were called once and never contacted again. Training is a safety issue for the participants. To be successful, a vessels of opportunity system needs to have plenty of boats ready to respond anywhere in the state. There are coastal communities in the state with plenty of skilled mariners ready to participate.

An oil spill can devastate the commercial fishing and shellfish industry. Oil can close fishing grounds and have a devastating effect on public perception. The state has an interest in fishing and shellfishing, both as a state and as a co-manager of the resource with Indian tribes. The current damage schedule does not reflect the true costs of damage that can be done by oil spills.

(Neutral) This proposal is not in the Governor's budget, but it is always important to learn lessons from previous incidents and operate an oil spill program efficiently and with the best technology available. The bill is consistent with recommendations from groups that have studied the state's needs.

(With concerns) Ports are not directly affected, but they are competitive organizations. Any negative impacts on the shipping industry can be a threat to the competitiveness of Washington's ports.

There have been many recent improvements in oil spill programs both in Washington and nationwide that meet or exceed the standards in this bill. There are new federal requirements taking effect this year that will provide even greater protections. The existing plans already account for a worst case spill of a magnitude that will never occur. Washington contingency plans are the most aggressively drilled plans in the nation and adequate equipment caches are already present. The changes to the contingency planning process could have negative effects on organizations that offer plans for both cargo and oil vessels. Any changes need to

be done in concert with Oregon. There is already a vessels of opportunity system and volunteer coordination system in place in the state that works effectively. There are federal guidelines already in place for the use of volunteers, and it is more appropriate for the state to manage volunteers to avoid industry liability. The emergency notice provisions are redundant with current law and any shortcomings should be negotiated with the USCG. As for the enhanced penalties, there have been no incidents justifying an increase or showing that the current levels are insufficient.

Persons Testifying: (In support) Representative Rolfes, prime sponsor; Kathy Fletcher, People for Puget Sound; Jerry Joyce, Seattle Audubon; Chad Bowe chop, Makah Tribal Council; John McDonald; Commissioner Mike Doherty, Board of Clallam County Commissioners; Fred Forceman, Friends of the Earth; Steve Robinson, Center for Environmental Law and Policy; and Naki Stevens, Department of Natural Resources.

(Neutral) Todd Hass, Puget Sound Partnership.

(With concerns) Frank Holmes, Western States Petroleum Association; Dan Nutt, Washington State Maritime Cooperative; Jim Townley, Columbia River Steamship Operators Association; Scott Hazlegrove, Pacific Merchant Shipping Association; Johan Hellman, Washington Public Ports Association; and Dale Jensen, Department of Ecology.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

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 Environment. Signed by 8 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern and Wilcox.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On General Government Appropriations & Oversight Compared to Recommendation of Committee On Environment:

The second substitute bill removes the direction to the Department of Ecology (Department) to update contingency planning rules quadrennially, and returns the language to "periodically" as contained in current law. Some classes of damages that an oil spiller is responsible for compensating are identified, such as the loss of income to those affected by a spill, the costs to investigate the source of a spill, and the costs to respond to a spill. Umbrella contingency plan holders are required to identify the differences in worst case spills for member tank vessels and non-tank vessels and to document access to

additional response capabilities for member tank vessels. The second substitute bill clarifies that the Oil Spill Drill Program may conduct oil spill drills as joint drills, and that there are differences between a "vessels of opportunity system" and a "regional vessels of opportunity response group." The Department is directed to consult with stakeholders during implementation, and the Department is required to report back to the Legislature on the implementation of the bill and recommendations for change to the state's oil spill preparation and response capabilities.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The narrowness of the Puget Sound makes the threat of spills on beaches even more serious. The Dalco Passage Oil Spill a few years ago of 1,000 gallons impacted over 25 miles of shoreline. Studies have shown that the state is not prepared for a large spill. A major oil spill would be damaging environmentally and economically, and everything from property values to tourism would be affected. The state has industry worth \$10 billion and 165,000 jobs that are reliant on a healthy Puget Sound and outer coast. This bill greatly improves the state's spill response capability. Costs are born by the Oil Spill Prevention Account, and there will be no added cost to the state. The proposed substitute bill reduces the rule-making costs to the Department. Given the volume of oil transported across the state's waters, it is almost inevitable that the state will face a serious spill. Alaska and Norway both have stronger protections than the state. A "vessels of opportunity system" is modeled after the Alaskan system and is a proven technique that will work. This bill is the top priority of San Juan County, second only to ferries. The state is home to five refineries that import 225 million barrels per year. Three million gallons of spilled oil have impacted the Makah tribe.

(With concerns) The prime sponsor has held several meetings with stakeholders; however, this bill is still a work in progress. The cost related to regulation in this bill may cause tank vessels to pull out of the Columbia River and could potentially shift the costs in this bill to the cargo fleet. The vessel of opportunity system is the most expensive part of this legislation. The original bill has private industry fund a system of volunteers; the state would be better to coordinate these volunteers. The training does not meet federal or state standards, and that creates an uneven playing field for the six existing corporations that provide response capabilities on the Columbia River. The civil penalties for an unfiled contingency plan could be assessed on clerical errors. Civil penalties should be assessed only in instances of willful or intentional violation. There is some concern about the costs in this bill and the impact on the state's ferry system.

(Opposed) Washington has the safest shipping record in the country. Federal, state, and local agencies have worked closely with the maritime industry to make Puget Sound and the Columbia River very safe from the threat of oil spills. The petroleum industry has already

invested in \$200 million worth of equipment, and spends \$25 million annually to prevent and respond to spills. This bill will add over \$60 million in additional requirements. There needs to be a total system analysis before a policy like this is implemented. A stakeholder work group could come up with a more workable and cost-effective policy.

(Commented) This bill gives the state the opportunity to make process improvements that enhance capability at the local level and improve the state's readiness to clean spills under lessons learned from the state's oil spill program.

(Information only) The Puget Sound Partnership supports the intent of this bill as it is consistent with the recommendations of the Puget Sound Action Agenda. This bill helps to improve the state's response to oil spills. Legislation previously passed by the General Government Appropriations Committee could help to fund the requirements under this bill.

Persons Testifying: (In support) Naki Stevens, Department of Natural Resources; Neil Beaver, Washington Audubon; Bruce Wishart, People for Puget Sound; Lovel Pratt, San Juan County Council; and Fred Felleman, Makah Office of Maritime Affairs.

(With concerns) Rick Wickman, Columbia River Steamship Operators Association and Washington Maritime Fire and Safety Association; and Scott Hazelgrove, Pacific Merchant Shipping Association.

(Opposed) Frank Holmes, Western States Petroleum Association.

(Commented) Dale Jensen, Department of Ecology.

(Information only) Todd Hass, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying: None.