
Environment Committee

E2SSB 5057

Brief Description: Concerning the safe transport of hazardous materials.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Ericksen).

Brief Summary of Engrossed Second Substitute Bill

- Changes programs covering the overland and over-water transportation of oil, including directing the Department of Ecology to complete geographic response plans for potential oil spills and to make grants to emergency responders, and authorizing the Utilities and Transportation Commission to inspect private property associated with hazardous materials shipments and to adopt safety standards for private railroad crossings.
- Expands the scope of the 4 cent-per-barrel Oil Spill Administration Tax and 1-cent-per-barrel Oil Spill Response Tax on oil received by vessel to include oil received by rail.

Hearing Date: 3/16/15

Staff: Jacob Lipson (786-7196).

Background:

The 2014 Supplemental Operating Budget included a proviso directing the Department of Ecology (ECY) to study program gaps and public health and safety risks associated with oil transport over water and by rail. The ECY was directed to work with the Utilities and Transportation Commission (UTC), the Emergency Management Division of the Military Department, and other stakeholders in carrying out the study. In December 2014 the ECY issued a draft study featuring 43 recommended changes to federal, state, and local oil-transportation policies and programs, with a final report issued in March 2015.

Modes of Oil Transportation.

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.

Oil, including crude oil and refined petroleum products, is sometimes transported by vessel, pipeline, or train between the point of extraction, processing facilities, and other destinations. The types of vessels used to transport oil include oil tankers, tank barges towed by tugs, and articulated tug barges that feature a structural connection from the tug providing propulsion for the barge. Oil transported by rail is carried in individual tank cars; oil-carrying tank cars may comprise part or all of the cargo of a train.

Definition of Oil.

For the purposes of state laws regarding oil spill prevention, planning, and financial responsibility, oil is defined in state law as any kind or distillate of oil that is liquid at atmospheric temperature. Specific types of oil are explicitly included within this definition.

Oil Spill Prevention Plans and Oil Spill Contingency Plans.

The ECY administers an oil spill preparedness, prevention, and response program. Among other statutes administered by the ECY's Oil Spills Program, state law directs facilities including oil refineries, terminals, pipelines, and vessel operators involved in the bulk transfer of oil to put in place oil spill contingency plans that outline containment and remediation responses to potential oil spills. Contingency plans approved by the ECY must identify personnel, materials, and equipment capable of promptly and properly removing oil with minimal environmental damage. Railroad cars are not considered facilities for purposes of state spill contingency planning, but do conduct certain oil spill response planning under federal law. Under federal and state spill planning statutes, the ECY also maintains Geographic Response Plans (GRPs) to address potential spills in specific state water bodies. Geographic Response Plans provide guidance to responders in the event of a spill, and are developed by the ECY in partnership with various state and federal agencies.

In addition to, or as part of, state spill contingency plans, onshore facilities must submit oil spill prevention plans to the ECY. The ECY may only approve these plans if they incorporate measures providing for the best achievable protection of public health and the environment, which means that the plans must provide the highest level of protection through the best achievable technology and the most protective staffing levels, training procedures, and operational methods. Best achievable protection is also the standard established by the ECY rules that address operations of refineries, terminals, and other facilities.

Other Maritime Safety Provisions: Oil Tanker Tug Escorts and the Emergency Response Towing Vessel.

Tug escorts can be a tool to assist vessels in distress that have lost control of their power or steering. State law requires oil tankers of greater than 40,000 deadweight tons entering Puget Sound to have one tug escort with a minimum horsepower equivalent to 5 percent of the deadweight tonnage of the vessel the tug is escorting. The Board of Pilotage Commissioners (Pilotage Commission) has adopted rules regarding the applicability of oil tanker tug escort requirements. Violation of oil tanker escort requirements is a gross misdemeanor and may also trigger civil penalties of up to \$10,000 per day. Civil penalties may be sought by a county prosecutor or the Washington Attorney General upon the request of the Pilotage Commission.

Federal law prohibits oil tankers larger than 125,000 deadweight tons from entering Puget Sound. Federal law also requires that single-hulled oil tankers weighing above 5,000 gross tons entering Puget Sound be escorted by two tugs; however, the federal Oil Pollution Act of 1990

also phases out single-hulled oil tankers in American waters by 2015. All vessels operating in the Strait of Juan de Fuca must file with the ECY evidence of an emergency-response system that provides for the operation of an emergency-response towing vessel capable of response to vessel oil spill threats stationed at Neah Bay on the Olympic Peninsula.

Vessel operators are also required to provide an advanced notice to the ECY that includes time, location, and volume information prior to certain transfers of oil involving a vessel.

Emergency Response Planning.

The federal Emergency Planning and Community Right to Know Act (EPCRA) requires the state to establish a State Emergency Response Commission (SERC) to supervise and coordinate the work of local emergency response planning committees. The responsibilities of local committees include the development and maintenance of emergency-response plans that identify the transportation routes of extremely hazardous substances. Within the State Military Department, the Governor-appointed Emergency Management Council acts as the SERC.

Barrel Tax and Uses of Oil Spill Prevention Account and Oil Spill Response Accounts.

Crude oil and petroleum products that are transported by vessel on state waters are subject to an oil spill administration tax (administration tax) and an oil spill response tax (response tax) at the time of the product's initial receipt by a marine terminal. A credit is allowed against taxes imposed on oil that is initially received in Washington, but subsequently exported from the state.

The administration tax is 4 cents per 42-gallon barrel and is deposited in the Oil Spill Prevention Account (Prevention Account), while the response tax is 1 cent per barrel and is deposited in the Oil Spill Response Account (Response Account). If the Office of Financial Management determines that there is in excess of \$9 million in the Response Account, then the 1 cent response tax is no longer levied until the Response Account balance falls below \$8 million.

The Response Account is used for the costs associated with the response to oil spills into state waters that the ECY determines are likely to incur in excess of \$50,000 in response costs and for the emergency towing vessel stationed at Neah Bay. The Prevention Account is used for the administration of several ECY Oil Spill Program activities.

Utilities and Transportation Commission Regulation of Railroads.

The UTC administers a railroad safety program (Program). The activities of this Program include:

- the approval of petitions to open, close, or reconfigure railroad crossings of public roads, except within cities of over 10,000 in population; and
- inspections of public road-railroad crossings to ensure state and federal standards are met.

In addition, the UTC inspectors operate under delegated authority from the Federal Railroad Administration (FRA) to support the FRA oversight of railroad compliance with the FRA safety regulations. The UTC inspectors are restricted from conducting inspections at crossings between a private roadway and a railroad. The UTC inspectors are restricted, without accompaniment by a FRA inspector, from accessing private property for hazardous material transport inspections.

The UTC's Railroad regulatory activities are funded by a fee on railroads set at 1.5 percent of a railroad's gross operating revenue from intrastate operations.

Railroad Crew Requirements.

State statutes addressing crew size on freight and passenger trains explicitly state that no law or agency rule may prevent a railroad from staffing its freight or passenger trains in accordance with collective bargaining agreements or any national settlement regarding train crew size. For passenger trains, if there is no collective bargaining agreement or national settlement, a railroad operating with less than two crew members is subject to a safety review by the UTC. A violation of the crew size provision is a misdemeanor with associated fines of between \$100 and \$500 for each offense. Each train run in violation of the crew size provision is a separate offense. The penalty does not apply in the case of disability of a crew member while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each 24 hours.

Federal law provides that laws, regulations, and orders related to railroad safety must be nationally uniform to the extent practicable. A state may enact a law related to safety unless the United States Secretary of Transportation adopts a rule or issues an order covering the subject matter. A state may adopt a more stringent law when it: (1) is necessary to eliminate or reduce an essentially local safety or security hazard; (2) is not incompatible with a federal law; and (3) does not unreasonably burden interstate commerce.

Summary of Bill:

Oil Definition.

Oil is redefined in oil-spill prevention, cleanup, and financial responsibility laws to mean any kind of oil that is liquid at 25 degrees Celsius and 1 atmosphere of pressure, including any distillate of that oil. This definition also explicitly covers the following types of oil:

- bitumen, which is a heavy oil that will not flow until heated or diluted;
- synthetic crude, which results from the processing of bitumen; and
- natural gas well condensate, which is a liquid hydrocarbon mixture recovered at natural gas extraction wellheads.

Geographic Response Planning

The ECY is directed to provide the Legislature with a review of state GRPs for oil spills by December 31, 2015; this report must be subsequently followed by annual updates from 2016 through 2021 on progress towards completing GRPs. The ECY may hire an independent contractor to ensure that at least half of the required state GRPs are completed by December 1, 2017.

Disclosure of Information about Oil Transportation.

Facilities that receive oil from railroad cars must provide advanced notice to the ECY. The notice must include the route taken to the facility, the scheduled time, location, volume, and type of crude oil received. This advanced notice must be provided once per week to ECY for the receipts scheduled for the following week. The ECY may share this information with the state Emergency Management Division and with other government emergency response agencies. The ECY must also publish a quarterly report featuring information from the railroad receipt notices, including place of origin, mode of transport, route taken to the facility, number of railroad cars delivering oil, and the number and volume of spills during transport and delivery.

Information in the quarterly report must be aggregated on a statewide basis and must not allow for the identification of facilities.

The notices of crude oil transfer submitted to the ECY are exempt from public disclosure under the Public Records Act.

Scope of Oil Spill Prevention and Response Taxes.

The administration tax and response tax are levied on oil received by facilities from rail tank cars, in addition to vessels.

Emergency Planning and Response Activities.

Local emergency planning committees must update their hazardous materials plans under the EPICRA every five years for review by the Emergency Management Council.

The ECY must provide grants to emergency responders for oil and hazardous materials spill response and firefighting equipment. To determine grant allocations, the ECY consults with businesses and emergency responders to evaluate local coordinating efforts and current resources and equipment. Grants must be prioritized in areas with the greatest need for equipment, and to maximize the use of current equipment and resources.

Evaluations of Oil Transportation Safety.

The ECY is directed to convene a panel of businesses and maritime stakeholders involved in bulk crude oil transport to evaluate vessel traffic management and safety in Greys Harbor and the Columbia River. The panel must evaluate the need for tug escorts for vessels involved in bulk oil transportation, best achievable protection standards, and tug capabilities, and must make recommendations to the Legislature by December 15, 2015.

The ECY and the UTC must hold a symposium on oil spill prevention and response activities related to international crude oil transportation. The symposium must invite representatives from certain governments and tribes affected by crude oil transportation, and must provide an update on marine transport of liquid bulk crude oil and associated risks, as well as cooperative prevention and response activities.

Utilities and Transportation Commission Rail Safety Program.

The UTC regulatory fee for railroads is temporarily increased from 1.5 to 2.5 cents of railroads' gross intrastate operating revenues, until July 1, 2023.

The UTC inspectors may enter private property to conduct hazardous materials inspections, investigations, and surveillance under the federal partnership that delegates inspection authority to state inspectors.

The UTC may adopt safety standards, including signage requirements, for private road crossings of railroads used to transport crude oil.

Cities of over 10,000 people may elect to participate in the UTC public road-railroad crossing safety inspection program. Cities of over 10,000 people must provide a list of existing public crossings to the UTC within 30 days of the act's effective date, and must also notify the UTC within 30 days of the opening, closing, or modification of a crossing.

Railroad Crew Requirements.

The following minimum crew size requirements are established:

- Common carriers transporting freight or passengers must operate with no less than two crew members.
- Railroad carriers operating hazardous material trains must have no less than three crew members. One member must be assigned to the rear of the train, within rolling equipment, situated to safely observe and monitor the train's content and movement.
- Railroad carriers operating hazardous material trains consisting of 51 or more cars of any combination of hazardous materials, must have no less than four crew members. Two members must be assigned to the rear of the train, within rolling equipment, situated to safely observe and monitor the train's contents and movements.

In addition, the UTC may order larger railroad carriers to exceed the minimum crew size requirements and comply with other requirements if it determines that an increase in crew size is necessary to protect the public, employees, the environment, and to address local safety and security hazards.

Certain exemptions to these staffing requirements apply for trains transporting hazardous materials a distance of five miles or less, short-line railroad carriers, and short-line and class II carriers that travel at less than 25 miles per hour and transport less than 20 hazardous material cars. A violation of the crew size provision results in a civil penalty, rather than a misdemeanor, and the penalty is increased to \$1,000 at a minimum and up to \$100,000 maximum, for each offense. The exception to the penalty is eliminated for rail lines running two or fewer trains per 24 hours.

Other.

A severability clause is included. The completion of certain activities under the bill are subject to appropriation of funding, including the marine oil joint symposium, the oil-bearing vessel tug escort panel, and the UTC's development of private rail crossing safety standards.

Appropriation: None.

Fiscal Note: Requested on March 10, 2015.

Effective Date: The bill contains an emergency clause and takes effect immediately.