

SENATE BILL REPORT

E2SSB 5057

As Amended by House, April 14, 2015

Title: An act relating to the safe transport of hazardous materials.

Brief Description: Concerning the safe transport of hazardous materials.

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

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 1/15/15, 1/22/15, 1/27/15 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/17/15, 2/24/15 [DP2S, DNP, w/oRec].

Passed Senate: 3/09/15, 26-23.

Passed House: 4/14/15, 58-40.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5057 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Braun, Brown and Honeyford.

Minority Report: Do not pass.

Signed by Senators Cleveland and Habib.

Minority Report: That it be referred without recommendation.

Signed by Senators McCoy, Ranking Minority Member; Ranker.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5057 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Hewitt, O'Ban, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.

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.

Signed by Senators Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Billig, Conway, Fraser, Hasegawa, Kohl-Welles and Rolfes.

Minority Report: That it be referred without recommendation.

Signed by Senator Hargrove, Ranking Member; Padden.

Staff: Sherry McNamara (786-7402)

Background: Oil Spill and Response. The Legislature enacted oil spill prevention and response measures in 1990 to promote the safety of marine transportation and protect state waters from oil spills. The Director of the Department of Ecology (Ecology) has the primary authority to oversee prevention, abatement, response, containment, and clean-up efforts for oil spills in state waters. The oil spill program requires oil spill prevention plans, contingency response plans, and documentation of financial responsibility for vessels and facilities that may discharge oil into navigable waters.

Owners and operators of onshore and offshore facilities must prepare and submit oil spill contingency and prevention plans. The contingency plan must meet standards identified by Ecology and provide for the containment and cleanup of oil spills into the waters of the state. 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. All covered vessels and facilities must have an oil spill contingency plan on file with Ecology. The contingency plan is a legally binding agreement on the party submitting the plan. Vessel operators are also required to provide advance notice to Ecology of time, location, and volume prior to transfers of oil involving a vessel.

As part of certain contingency plans, geographic response plans (GRPs) must be developed. GRPs are site-specific strategies to respond to a spill of oil or oil product on water. GRPs address the risk of spills from ships, refineries and facilities, pipelines, rail, dams, highways, and other transportation-related sources. GRPs provide guidance to a responder in the event of a spill, to ensure the response is fast and effective, and to protect sensitive resources. GRPs are developed in partnership with Ecology, the Oregon Department of Environmental Quality, the U.S. Coast Guard, and the U.S. Environmental Protection Agency (EPA).

Federal jurisdiction for oil spill prevention and preparedness is determined by the potential sources of oil spills, e.g., vessels, facilities, and pipelines. For example the EPA has jurisdiction over onshore, non-transportation facilities, whereas the U.S. Coast Guard and Department of Transportation (USDOT) have jurisdiction over onshore transportation facilities and deepwater ports. For offshore pipelines, transmission lines, and inland pipelines, the Pipeline and Materials Hazardous Safety Administration within USDOT has jurisdiction.

The definition of oil under oil spill prevention and financial responsibility means oil of any kind that is liquid at atmospheric temperature and fractionation, which is the use of heat to separate hydrocarbons to refine the oil. Those oils explicitly listed are, but are not limited to: crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Oil Spill Response Tax and Oil Spill Administration Tax. Current law provides for an oil spill administration tax and an oil spill response tax. These taxes are imposed when marine terminals in Washington receive crude oil or petroleum products from waterborne vessels or barges operating in the state's waters. The oil spill administration tax is \$0.04 tax on each 42 gallon barrel with the receipts funding oil spill prevention, response, and restoration programs as well as administrative costs and collection costs. The oil spill response tax is \$0.01 per barrel tax which funds the state response to those oil spills involving clean-up costs in excess of \$50,000. The oil spill response tax is deposited into the oil spill prevention account and the tax is suspended when that account's balance reaches \$9 million. The two oil spill taxes do not apply when crude oil is received at an oil terminal from a railroad tank car.

Railroad Safety. The Federal Railroad Administration (FRA) is responsible for establishing national railroad safety rules. The rules address concerns such as hazardous materials, track, signal and train control, operating practices, and motive of power and equipment. The Surface Transportation Board has jurisdiction over railroad rates, service issues, mergers, sales, construction, and abandonment of rail lines.

The Utilities and Transportation Commission (UTC) has jurisdiction for crossing safety, railroad employee safety, responding to citizen complaints, and promoting public awareness of railroad safety. UTC approves new crossings and modification or closures of existing crossings; inspects public crossings for compliance with federal safety standards; employs four inspectors certified by FRA to enforce federal safety rules for hazardous materials, signal and train control, track, and operating practices disciplines; inspects walkways within railroad yards and responds to requests for exemptions to overhead and side clearance rules; and investigates complaints related to crossing conditions, walkways, and train noise. The UTC funds its rail safety program from fees paid by railroads operating in the state. The fees are based on a percentage of railroad revenue from intrastate rail traffic.

Emergency Planning. In 1986 Congress passed the Emergency Planning and Community Right-to-Know Act in response to public concerns about hazardous and toxic materials in their communities. The Governor of each state designates a State Emergency Response Commission (SERC). SERC supervises and coordinates the activities of local emergency planning committees and reviews local emergency response plans. Local emergency planning committees develop emergency response plans and provide information about chemicals in the community to citizens. Local emergency planning committees are required to annually update their plans but not to resubmit to SERC.

Train Crews. 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 fewer than two crew members is subject to a safety review by the UTC. On April 9, 2014, FRA announced its intention to issue a proposed rule requiring two-person train crews on crude oil trains and establishing minimum crew size standards for most main line freight and passenger rail operations. FRA also announced its intention to advance a rulemaking on train securement and recommends a rulemaking on the movement of hazardous materials.

Study Provisions. During the 2014 Session, the Legislature incorporated study provisions into the supplemental operating budget, ESSB 6002. Under the budget proviso, Ecology, in consultation with other assigned agencies, must assess public health and safety, and analyze risks, gaps, and options for increasing public safety and improving spill prevention and response readiness, as well as environmental impacts associated with the transport of oil through the state. A draft report and recommendations were submitted to the Legislature on December 1, 2014. The final report is available as of March 1, 2015.

Summary of Engrossed Second Substitute Bill: Oil Spill and Response. Ecology must provide to the Legislature by December 1, 2015, a review of all state and federal GRPs as needed in required contingency spill prevention and response plans. Beginning December 31, 2016, through December of 2021, Ecology must provide annual updates on the progress made toward completing the GRPs. Ecology must contract with eligible third parties when practicable, to ensure at least 50 percent of the GRPs are completed by December 1, 2017.

Ecology must develop a grant program for emergency first responders to meet the needs for oil and hazardous materials spill prevention and response plans. Ecology, in consultation with emergency first responders, oil spill response cooperatives, and representatives from the oil, rail, and businesses receiving liquid bulk crude, must evaluate oil spill and hazardous material response and firefighting equipment and resources currently available throughout the state; review local emergency management coordinating efforts for oil spill and hazardous materials response; determine the need for equipment and resources; and identify areas or regions of the state in greatest need of oil spill and hazardous materials response and firefighting resources. Grants must be prioritized for applicants from areas determined to have the greatest need and coordinated to maximize currently existing equipment and resources.

For the purposes of financial responsibility of the transport of petroleum products, vessel oil spill and response, and oil and hazardous substance spill prevention and response, the definition of oil or oils is revised to mean any oil that is liquid at 25 degrees Celsius and one atmosphere of pressure, and to include bitumen, synthetic crude oil, and natural gas well condensate.

Facilities receiving crude oil from a railroad car must provide advance notice each week to Ecology for the succeeding seven days, except when crude oil is not expected within a seven-day timeframe. A facility is not responsible for meeting advance notice requirements when the schedule changes during a seven-day period. The advance notice must include the route taken within the state, if known, scheduled time, location, and volume and type of crude oil to be received. Ecology may share the information emergency first responders upon request. Ecology must publish quarterly on its website advance notice information aggregated on a statewide on a basis. Other information may be included such as place of origin, modes of transport, routes, and number and volume of spills. The information must be aggregated to the extent that a facility is not identifiable. Information provided in advance notice is exempt from public disclosure.

Ecology and UTC must hold a symposium on emergency spill prevention and response activities for the international transport of liquid bulk crude oil. The symposium must

address cooperative emergency spill prevention and response activities between shared international and state borders, expected risks posed by transport of Canadian crude oil or liquid bulk crude oil throughout the Pacific Northwest region; and an update of the marine transport of liquid bulk crude oil.

Oil Spill Response Tax and Oil Spill Administration Tax. The oil spill response tax and the oil spill administration tax are imposed on the privilege of receiving crude oil at a bulk oil terminal within this state from a rail tank car. A bulk oil terminal is defined in the bill as any kind of facility, other than a waterborne vessel, that is used to transfer crude oil from a rail tank car. A tank car is defined to mean a rail car with a body consisting of a tank for transporting liquids.

Railroad Safety. First-class cities may participate in UTC's crossing safety inspection program within the city. Within 30 days of the effective date of this act, first-class cities must provide UTC a list of all existing public crossings. In addition, the city must notify UTC within 30 days of modifying, closing, or opening a grade crossing within the city limits. The UTC may adopt rules for safety standards for private crossings where crude oil is transported including requirements for signage. UTC-certified inspectors are authorized to enter private property to conduct hazardous material inspections related to rail operations. UTC fees for railroads operating within the state are revised from 1.5 percent to 2.5 percent of the intrastate gross operating revenue. The authority for the UTC to charge the fee of 2.5 percent expires July 1, 2023, at which time the fee reverts to 1.5 percent.

Train Crews. Minimum crew size requirements are established for common carriers transporting freight or passengers and railroad carriers operating hazardous material trains. Exceptions are provided for certain trains transporting hazardous materials. The UTC may require certain carriers to comply with other requirements if it determines that the crew size is necessary to protect the public, employees, the environment, and to address local safety and security hazards. 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.

Emergency Planning. Local emergency planning committees must update their hazardous materials plans on a five-year cycle for compliance review by the director of the Emergency Planning Council.

Marine Safety. Ecology must convene a panel to evaluate and assess vessel traffic management and vessel traffic safety within the Columbia River and Grays Harbor. Panel members are specified. Ecology must provide recommendations to the appropriate committees of the Legislature by December 15, 2015.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2015.

Staff Summary of Public Testimony on Original Bill (Energy, Environment & Telecommunications): PRO: This bill is a step forward. The same principles applied to marine should be applied to rail. Safety is the primary mission of railroads. The resources provided in the bill for first responders is welcomed. North Dakota adopted rules for crude stabilization and vapor control. Extending the barrel tax to rail will help to replace loss of revenue from the marine side. Consider the reduction in oil prices and apply caution when using the MTCA funds for aspects in this bill as this will impact remedial action grants for cleanup.

CON: The bill needs to include public notification to improve transparency for needed changes. This will assist first responders to understand risk. Detailed information is important to adequately track and monitor the movement of oil through the state. The federal rule doesn't require sufficient detail. Financial disclosure is needed for rail to ensure sufficient resources to deal with spills instead of burdening local communities. There is a lack of meaningful safeguards for communities from oil trains. We need comprehensive action to ensure the safety and livelihood of Washington State citizens. Bakken crude poses new risks and tar sands pose other risks. Transport of Bakken crude has a poor safety record. There are gaps in the regulatory system for rail. Increased oil barges, especially on the Columbia River, create new risk that the state is not prepared for. The system needs to be expanded to include tug escorts on Puget Sound, Columbia River, and Grays Harbor. The UTC's authority should be expanded to private road crossings. MTCA funds should be used, oil companies should pay. Firefighters cannot handle these types of explosions and railroad tracks are not set up to handle these types of loads.

OTHER: Increased rail traffic causes safety issues and disrupts local economies. All emergency responses will fall to the local level. Local planning is a new requirement. Disclosure must be strengthened so that relevant information gets to local responders. Need to know the constituency of the materials being shipped so that first responders can appropriately address a spill or hazard. Local taxpayers should not have to subsidize the costs.

Persons Testifying (Energy, Environment & Telecommunications): PRO: Rick Wickman, Columbia River Steamship Operators Assn., Maritime Fire and Safety Assn., Port of Vancouver; Frank Holmes, Western States Petroleum Assn.; Johan Hellman, BNSF; Gerry O'Keefe, WA Public Ports Assn.; Herb Krohn, United Transportation Union, SMART Union Transportation Division; Cliff Webster, The American Waterways Operators.

CON: Kelly Thompson, UU Voices for Justice; Mary Hath Spokane, FOR, Climate Group; Darcy Nonemacher, WA Environmental Council; Bruce Wishart, Sierra Club; Chris Wilke, Puget Soundkeeper Alliance; Stacia Jenkins, city of Normandy Park, City Councilmember; Samuel Merrill, Black Hills Audubon Society; Patricia Holm, Confronting the Climate Crisis; Cager Clabaugh, International Longshore and Warehouse Union 4; Dean French, Wally Brown, Elizabeth Keeley-Arnold, Jennifer White, Ron Figlar-Barnes, citizens.

OTHER: Jon Snyder, Councilmember, city of Spokane; Rob Duff, Office of the Governor; Linda Pilkey-Jarvis, Ecology; Jason Lewis, UTC; April Putney, King County; Alison Hellberg, Assn. of WA Cities; Geoff Simpson, WA State Council of Fire Fighters.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: The Model Toxic Control Account's funding is critical for the support and training for first responders in addition to having the equipment necessary for hazardous response. The railroad has been providing training of first responders. This bill is moving us in the right direction. The marine safety study is appropriate, especially looking at the need for tug escorts on the Columbia River and in Grays Harbor.

CON: The extension of the oil spill tax to rail makes sense; it should also include pipeline. The right level of funding has not been addressed, even on the marine side the tax only supports about 30 percent of the program.

OTHER: The extension of the tax rate in this bill to the rail system doesn't fund the program or what is outlined in the legislation. The tax should be raised and extended to pipeline. The agency supports the extension to first-class cities allowing their participation in the crossing safety inspection program and to private crossings. There is a continued need to look at hazardous materials response teams, and the appropriate funding, composition, equipment, and training.

Persons Testifying (Ways & Means): PRO: Rick Wickman, Columbia River Steamship Operators Assn.; Maritime Fire and Safety Assn.; Frank Holmes, WSPA; Bill Stauffacher, BNSF Rail; Cliff Webster, The American Waterways Operators.

CON: Darcy Nonemacher, WA Environmental Council.

OTHER: Kathy Taylor, Ecology, Acting Program Manager, Spill Prevention Preparedness and Response Program; Jim Cahill, Office of Financial Management, Senior Budget Assistant; Jason Lewis, UTC.

House Amendment(s): Oil Spill Response Tax and Oil Spill Administration Tax. Applies the oil spill response tax and the oil spill administration tax to pipelines. The Oil Spill Administration tax is raised from \$0.04 to \$0.08. The Oil Spill Response Account may be used for spills or threats of spills into waters of the state. The threshold is reduced for \$50,000 to \$1,000. Costs of emergency response towing vessels other than Neah Bay vessels is authorized.

Financial Responsibility. Requires railroads to demonstrate the ability to pay for worst-case spills. Vessels, railroads, and facilities must have a certificate of financial responsibility. The certificate is subject to revocation after a spill.

Contingency Plans. All rail, refinery and facilities' contingency plans must achieve "best achievable protection." Ecology must periodically evaluate and update planning standards for oil spill response equipment for contingency plans to ensure best achievable protection and continuous operation of oil spill response activities.

Advance Notice. Pipelines must report crude oil transported twice per year, including the diluting agents used. The information about the diluting agents is exempt from public disclosure. The advance notice must include gravity of oil. Facilities must correct inaccuracies twice per year for the preceding six months.

Railroad Safety. UTC must adopt rules for safety standards for private crossings. Authorizes UTC to conduct inspections, to order railroads to make improvements and enforce orders. UTC's private crossing rules establish requirements for railroad responsibility to ensure that the payment and completion of private crossings improvements are completed. Removes the authority for UTC to charge the fee of 2.5 percent expires July 1, 2023, at which time the fee reverts to 1.5 percent.

Train Crews. All provisions regarding train crew size requirements are deleted

Emergency Planning. Local emergency planning committees must update their hazardous materials plans on a five-year cycle. Authorizes the Military Department to employ staff to assist local emergency planning committees with development and review of plan, which is funded by the Oil Spill Administration Tax. Planning progress report is due to the Legislature by 2018.

Marine Safety. Pilotage Commission must adopt rules by June 30, 2017, for northern Puget Sound if a vessel traffic risk assessment shows rules are necessary to achieve best achievable protection. Rules may not require tug escorts for oil tankers greater than 40,000 deadweight tons. Ecology must complete an evaluation and assessment of vessel traffic of the Columbia River and provide an initial report to the Legislature by December 15, 2017. A final report with recommendations to the Legislature must be completed by June 30, 2018. The Pilotage Commission may adopt rules for Grays Harbor, which may not affect authority to establish pilotage requirements or pilotage.

The symposium is deleted and replaced with at least one House and Senate joint committee meeting that must occur before the start of the 2016 Legislative session.