HOUSE BILL REPORT
HB 1611

As Reported by House Committee On:
Environment
Finance

Title: An act relating to oil transportation safety.

Brief Description: Concerning oil transportation safety.

Sponsors: Representatives Farrell, Fitzgibbon, Fey, Peterson, Slatter, Tharinger, Pollet, Stonier, Senn, Appleton, Chapman, Goodman, Robinson, Pettigrew, Bergquist, Hudgins, McBride, Cody, Macri, Doglio, Stanford, Jinkins, Tarleton and Kagi.

Brief History:
Committee Activity:
Environment: 2/6/17, 2/16/17 [DPS];
Finance: 2/23/17, 3/30/17 [DP2S(w/o sub ENVI)].

Brief Summary of Second Substitute Bill

- Changes regulatory programs covering the overland and overwater transportation of oil, including requiring rule-making by the Board of Pilotage Commissioners to require tug escorts for oil-laden vessels in Puget Sound, and requiring updates to oil refinery spill prevention and contingency plans to address the handling of crude oil for export.
- Expands the scope of the Oil Spill Administration Tax (Administration Tax), and Oil Spill Response Tax to include oil received by pipeline, and makes certain other changes to the imposition of those taxes.
- Increases the Oil Spill Administration Tax rate from 4 cents per 42-gallon barrel of petroleum product to 6.5 cents per barrel.
- Eliminates the contingency to suspend Oil Spill Administration Tax collection based on the balances of the Oil Spill Prevention Account and the Oil Spill Administration Account.

HOUSE COMMITTEE ON ENVIRONMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Fey, Kagi and McBride.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys and Dye.

Staff: Jacob Lipson (786-7196).

Background:

Modes and Restrictions of Oil Transportation.

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.

In December 2015 the United States Congress eliminated many restrictions on the export of crude oil from the United States that had been in place since 1975. Prior to December 2015 the export of crude oil from the United States required a license and was allowed under certain limited circumstances, such as exports to Canada for consumption in Canada and exports of crude oil of foreign origin that was not commingled with American-produced oil. Certain restrictions on the export of crude oil remain in place under the new 2015 federal law, including the authority for the President to impose licensing requirements if there is a national emergency, or upon a finding that the export of crude oil leads to supply shortages that cause adverse employment effects in the United States.

Oil Spill Prevention Plans and Oil Spill Contingency Plans.

The Department of Ecology (ECY) administers an oil spill preparedness, prevention, and response program. Among other laws implemented by the ECY's Oil Spills Program, vessel operators and facilities, including oil refineries, terminals, pipelines, and railroads that are involved in the bulk transfer of oil, must 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.

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.

In addition to planning requirements, the ECY, by rule, establishes standards for a variety of aspects of oil facility operations. The ECY's rules for facility operations require: personnel at oil handling facilities to be specially certified and trained; oil facilities to prepare an operations manual based on facility-specific equipment and procedures; and the adherence to standards for the use of contractors that provide oil spill cleanup and containment services for contingency plans.

Oil Vessel Maritime Safety Regulations.

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 (BPC) has adopted rules regarding the applicability of oil tanker tug escort requirements. In addition to state oil tanker tug escort requirements for Puget Sound, federal law prohibits oil tankers larger than 125,000 deadweight tons from entering Puget Sound.

Certain oil-bearing 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. This vessel must be capable of response to vessel oil spill threats, and be stationed at Neah Bay on the Olympic Peninsula.

Oil tankers of greater than 5,000 gross tons operating in Puget Sound are subject to compulsory pilotage, which means they must hire a licensed pilot to assist with vessel navigation.

The Puget Sound Partnership, with input from the ECY and other maritime stakeholders, recently completed a vessel traffic risk assessment study of spill risks associated with the movement of vessels in Puget Sound under various scenarios.

Disclosure of Information about Oil Transportation.

Oil arriving in Washington by pipeline vessel and railroad is subject to various requirements to notify the ECY:

- Vessel operators are required to provide an advanced notice to the ECY prior to certain transfers of oil involving a vessel.
- Beginning in 2017, 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, gravity, and originating region of crude oil received. This advanced notice must be provided once per week to the ECY for the receipts scheduled for the following week.
- Pipelines must report to the ECY twice per year on the volume of crude oil they transported through the state and the originating state or province of the oil.

The ECY may share railroad and pipeline oil movement information with other government emergency response agencies, including local government emergency response agencies. The ECY must also publish a quarterly report featuring aggregated information from the oil receipt notices, including place of origin, mode of transport, number of railroad cars delivering oil, and the number and volume of spills during transport and delivery. Nonaggregated information is exempt from public disclosure.

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 or by railroad 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 facility. 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 Response Account. 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 $1,000 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.

- 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.
- If the balance in the Response Account exceeds $9 million and the balance of the Prevention Account exceeds the unexpended appropriation for the biennium, then the 4 cent per barrel Administration Tax is suspended until the beginning of the next biennium. If the Administration Tax is suspended for two consecutive biennia, the ECY is directed to recommend an adjustment to the Legislature in the Administration Tax rate.

Penalties for Oil Spills and Operational Requirement Violations.

Violation of oil tanker tug 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 BPC.

Oil spills in state waters are subject to civil penalties of up to $10,000 per day per violation, plus additional criminal penalties for willful violations. Parties responsible for oil spills must also pay natural resource damages associated with the spill according to either a prescribed schedule or based on an assessment of the damages to natural resources. Beyond environmental penalties and natural resource damages, strict liability is established for damages to public or private property due to oil spills, including loss of income, the means of producing revenue, or economic benefits resulting from an injury due to loss of real property or natural resources. In addition to damages accruing directly from the spill of oil into the water, strict liability also covers damages resulting from the use of chemical dispersants or burning the oil at the location where it was spilled.

Energy Facility Site Permitting.

The Energy Facility Site Evaluation Council (EFSEC) is responsible for making certification recommendations to the Governor for certain new energy facility construction or existing energy facility expansion proposals. The EFSEC is comprised of a chair appointed by the Governor and representatives from the following state agencies: the departments of Commerce, Ecology, Fish and Wildlife, Natural Resources, and the Utilities and Transportation Commission. When an application to site a facility is submitted to the EFSEC, representatives from particular cities, counties, or port districts affected by the project are appointed to the EFSEC for proceedings related to the project.

Among the types of projects that the EFSEC has jurisdiction to review are proposals to newly construct crude oil, refined petroleum product, or natural gas pipelines of at least 6 inches in diameter and 15 miles in length, and proposals that expand existing crude oil, petroleum product, and natural gas pipelines by at least 6 inches in diameter and 15 miles in length.

Oil facility projects which do not meet the size criteria meriting a review by the EFSEC are instead subject to the permitting processes established by the local jurisdiction in which the project is proposed. Certain state agencies, including the ECY, also have a role in administering air, water, hazardous waste management, and other permits that oil processing or storage facilities may need to operate.

Emergency Response Planning.

The federal Emergency Planning and Community Right to Know Act requires the state to establish a State Emergency Response Commission (SERC) to supervise and coordinate the work of local emergency response planning committees. In 2006 the ECY contracted for a report prepared for the SERC that assessed federal, state, and local capacities to respond to dangerous incidents in Washington involving chemical, biological, radioactive, nuclear, or explosive agents and other hazardous materials. The report recommended and outlined how the state could establish a program under the Office of the State Fire Marshal to train emergency responders to prepare for chemical, biological, radioactive, nuclear, or explosive incidents.

Summary of Substitute Bill:

Oil-Bearing Vessel Tug Escorts.

The BPC, in consultation with and assisted by the ECY, must adopt rules by December 1, 2018, that include tug escort requirements, and which may include other maritime safety measures. Other maritime safety measures that the rule-making may address include pilotage requirements and requirements providing for the establishment of an emergency towing vessel to be stationed in or near the narrow channels of the San Juan Islands. The BPC's rules must cover the entirety of Puget Sound and specifically address the narrow channels of the San Juan Islands. The types of vessels covered by the rule-making may include oil tankers of less than 40,000 deadweight tons, and articulated barges and vessels or barges of at least 5,000 deadweight tons.

In adopting the rules, the BPC must consider the results of recently completed vessel traffic risk assessments, and must consider accident records in Washington and British Columbia waters, the characteristics of waterways addressed by the rule, and the propulsion and design of tank vessels. Prior to rule-making, the ECY must consult with a specified list of maritime professionals and public agencies.

Any escort tugs used by oil tankers or other vessels to comply with tug escort requirements must have an aggregate shaft horsepower of at least 5 percent of the deadweight tonnage of the escorted vessel. The BPC may adopt additional rules to ensure that escort tugs have sufficient mechanical capability to provide safe escort.

Vessels not transporting bulk oil are not subject to tug escort requirements.

Oil Facility Operational Requirements.

Prior to exporting crude oil, oil refinery facilities must update their contingency plans, prevention plans, training and certification program, and operations manual to address all types of crude oil anticipated to be handled at the facility, including diluted bitumen from Canada or Baaken crude oil. By September 1, 2018, the ECY must adopt rules regarding components of plans, operation manuals, and training programs addressing crude oil for export, and must include a requirement that plans meet a best achievable protection standard against damages from a spill or other release. Prior to the adoption of rules by the ECY, the ECY may require oil refinery facilities handling crude oil for export to notify the ECY and submit descriptions of their crude oil handling activities. The ECY must provide notice of the crude oil export plan proposals to interested parties when these operational items are proposed to be updated, and make them available for public review and comment.

The ECY must also adopt rules for contingency plan personnel that provide spill management services, in addition to spill response and containment services.

Energy Facility Site Evaluation Council Jurisdiction.

The threshold for the size of crude oil transmission pipelines subject to Energy Facility Site Evaluation Council (EFSEC) jurisdiction is lowered. The construction or enlargement of crude oil pipelines that would have a resultant size of at least 5 miles in length or a 6 inch minimum diameter is made subject to EFSEC review.

Information on Oil Movement Disclosure.

The ECY is authorized to share unaggregated oil movement information received from railroads and pipelines with the legislative bodies of local governments that oversee community first response agencies.

Liability for Oil Spill Damages.

Lost fishing and lodging income and lost real property value are listed as examples of the types of lost income or revenues associated with an oil spill for which damages can be sought from a strictly liable party. Revenues lost because of an oil spill for which damages may be sought include revenue losses that are either directly or indirectly attributable to a spill. Damages attributable to any action taken in response to a spill are recoverable from a liable party.

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

The 1 cent per barrel Response Tax and the 4 cent per barrel Administration Tax are imposed on the receipt of crude oil and refined petroleum products that arrive at a facility via an oil pipeline.

The credit against barrel taxes owed for crude or refined petroleum products that are exported out of state is repealed. The barrel tax is not applied to oil that the state is prohibited from taxing under the United States Constitution.

The cap on the 4 cent Administration Tax that pauses the assessment of the tax if the connected account's balance exceeds the amount appropriated in the previous biennia is eliminated, as is the requirement that the ECY recommend an adjustment to the Legislature if the tax is not imposed for two consecutive biennia.

Emergency Response Planning.

By June 30, 2018, the ECY must hire an independent contractor to update the 2006 chemical, biological, radioactive, nuclear, or explosive incidents report to the State Emergency Response Commission (SERC). The report must include an updated analysis of the state's hazardous materials response capabilities and comparable response structures in other states. The report must give special emphasis to recent changes in transport patterns for crude oil and other hazardous materials and available response resources.

Substitute Bill Compared to Original Bill:

The substitute bill removes provisions requiring railroads, vessels, and oil facilities to obtain certificates of financial responsibility associated with their oil storage or transport activities. Responsibility for the tug escort and maritime safety rule-making is shifted from the ECY to the BPC. The BPC, in adopting maritime safety rules, must work in consultation with and be assisted by the ECY. The Puget Sound tug escort and maritime safety rule-making is condensed from a two-phase rule-making into a single rule-making which must be completed by December 1, 2018. The types of vessels covered by the rule-making are amended to include oil tankers of less than 40,000 deadweight tons, and articulated barges and vessels or barges of at least 5,000 deadweight tons. In addition, the BPC's rule-making must:

- cover the entirety of Puget Sound and specifically address the narrow channels of the San Juan Archipelago;
- rely on the results of previously completed vessel traffic risk assessments; and
- consider accident records, the characteristics of waterways, and the propulsion and design of tank vessels.

The BPC's rule-making may also include pilotage requirements and requirements providing for the establishment of an emergency towing vessel to be stationed in or near the narrow channels of the San Juan islands.

The ECY must adopt rules by September 1, 2018 regarding required updates to oil refinery facility contingency plans, prevention plans, operations manuals, and training programs that must occur prior to the facility handling crude oil for export. The ECY may require an oil refinery handling crude oil for export to provide it with notice and a description of the crude oil export handling activities prior to the ECY's adoption of rules. Crude oil export is defined to involve the transfer of oil from an onshore facility to a vessel in transit to an international destination or a domestic destination in another state. The substitute bill eliminates the minimum volumetric requirements that triggered oil refinery facilities updates to their spill contingency plans, prevention plans, operations manuals, and training programs; instead, oil refinery facilities must update contingency plans to address the handling of crude oil for export regardless of the volume of oil handled for export by the facility.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2017.

Staff Summary of Public Testimony:

(In support) Washington's oil program has been very successful at preventing spills, but needs to continue to adapt to changing oil transportation risks posed by the Kinder Morgan pipeline and the repeal of the federal crude oil export ban. The increased risk associated with additional crude oil export traffic should not be underestimated, and spills are likely to happen eventually. Improving oil transportation safety is a priority of the environmental community this year. This bill builds on the original Oil Transportation Safety Act by reviving important marine safety measures that were dropped from that bill before it was enacted. The tug escort safety measures for Puget Sound are the most important regulatory portion of the bill, and have been identified by vessel traffic studies and stakeholders as a needed measure to improve marine safety, particularly as more and more oil is transported by un-escorted articulated tug-barge vessels. Channels of north Puget Sound are particularly at risk of spills with the increase in vessel traffic. Prevention of oil spills must be the priority, since oil spill cleanups typically recover less than 10 percent of spilled oil, and heavy crude oils are especially difficult to clean from marine environments. The costs of additional spill prevention measures will be passed along by the industry to consumers, and thus everyone will better understand the costs associated with their petroleum consumption. Refinery workers understand the risks associated with the hazardous substances that they work with, and support appropriate safety measures, especially because workers also depend on a healthy environment for their recreational pursuits. The revenue from the barrel tax has not kept pace with the increased oil spill work required of the oil spills program, and needs to be adjusted both to ensure that the ECY's program has sufficient funding, and to close a loophole that allows oil coming into the state by pipeline to escape taxation. Expanding the tax is an appropriate way to pay for the cleanup program, and is preferable to placing the burden on state and local governments. Counties face dwindling financial support from the federal government for emergency response activities. The 2006 hazardous materials plan should be updated to help the state take better advantage of existing emergency response resources.

(Opposed) The railroad financial responsibility portions of the bill go beyond the state's proper authority, and are preempted by federal laws. The proposal to eliminate the export tax credit would violate the interstate commerce clause of the United States Constitution. The state has a strong oil spill program, and industry has been a proactive and willing partner in preventing oil spills and adequately funding the spills program. Only 3 percent of spills in Washington are directly associated with the petroleum industry, including transportation by ship, pipeline, or rail. Other sources of spills, such as motor vehicles, should share the cost burden of the program.

(Other) This bill is not in the Governor's budget. The bill's taxation approach would adequately fund the state Spills Program, and is a fine alternative to the tax increase proposal in other legislation put forward this year. The policy enhancements included in the bill would increase safety, but would come at a cost. Tug escort safety improvements have been recommended several times in past years, and were part of the Governor's proposed budget in 2015. Other provisions in the bill would enhance the state's emergency preparedness capacity, and the ability to respond to changing oil risks. The financial reporting to the Utilities and Transportation Commission by railroads in current law is not sufficient to get the full scope of valuable information that the state would like to have. The certificate of financial responsibility portions of the bill would fill in the gaps from the approach to financial responsibility that were included in the 2015 legislation.

Persons Testifying: (In support) Representative Farrell, prime sponsor; Bruce Wishart, Sierra Club; Chris Wilke, Puget Soundkeeper Alliance; Barnaby Dow, King County Emergency Management; Steve Garey, Blue Green Alliance; Bob Cecile, Cherry Point Aquatic Reserve Citizens Stewardship Committee; Tom Glade, Evergreen Island; Wayne Senter, Washington Fire Chiefs; Ed Laclergue, Washington Conservation Voters; Kelly Thompson, Unitarian Voices for Justice; and Peggy Bruton, Washington League of Women Voters.

(Opposed) Bill Stauffacher, Burlington Northern Santa Fe Railway; and Jessica Spiegel, Western States Petroleum Association.

(Other) Dale Jensen, Department of Ecology; Lauren McCloy, Utilities and Transportation Commission; and Jeff Parsons, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying: None.

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 Environment. Signed by 6 members: Representatives Lytton, Chair; Frame, Vice Chair; Dolan, Pollet, Springer and Wylie.

Minority Report: Do not pass. Signed by 4 members: Representatives Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta and Stokesbary.

Minority Report: Without recommendation. Signed by 1 member: Representative Wilcox.

Staff: Tracey O'Brien (786-7152).

Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Environment:

The credit against the Oil Spill Administration (Administration Tax) and Oil Spill Response Taxes (Response Tax) for oil exported from the state is restored. The extension of the Administration and Response Taxes to oil received from pipelines by bulk oil terminals is removed. The tax rate of the Administration Tax is increased to 6.5 cents per 42 gallon barrel.

The scope of the tug escorts adopted by the Board of Pilotages Commissioners is defined as "oil tankers of less than 40,000 deadweight tons, or other vessels of greater than 5,000 deadweight tons". The current statutory tug escort requirements for Puget Sound will only apply to oil tankers of at least 40,000 deadweight tons. Other maritime safety requirements adopted by rules will be applied to oil-bearing vessels of any size. The aggregate shaft horsepower of escort tugs must exceed 5 percent of the deadweight tons of any escorted barges and vessels.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2017.

Staff Summary of Public Testimony:

(In support) This is an important environmental bill. It will help protect Puget Sound from a major oil spill. In addition, it will allow the outdated Hazardous Material Plan to be updated. The funding mechanism reflects systemic changes in the transportation of oil in this state as well as the volatility of oil prices.

(Opposed) The premise of this bill, that there is a significant increase in transportation of oil by water, is incorrect. Also, the notion that the oil terminal in British Columbia and the Canadian pipeline will increase the threat of an oil spill is also wrong. If anything, we need to integrate with the Canadian program. This is just another tax, and it brings in more revenue than needed. The fiscal note on the original bill has significant, yet speculative, expenses at the Utilities and Transportation Commission. Ultimately, the consumers will bear the costs of this bill in the form of more expensive heating oil next winter. Moreover, we opposed the pilotage and tug charges.

(Other) This bill was not included in the Governor's budget; however, the important provisions can be implemented if the bill is enacted.

Persons Testifying: (In support) Wayne Senter, Washington Association of Fire Chiefs; and Bruce Wishart, Puget Soundkeeper Alliance and Sierra Club.

(Opposed) Greg Hanon, Western States Petroleum Association; and Dan Nutt and Cliff Webster, American Waterways Operators.

(Other) Dale Jensen, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.