

# SENATE BILL REPORT

## ESHB 1136

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As Passed Senate - Amended, April 4, 2017

**Title:** An act relating to exempting short-line railroads that haul nonfuel oils from oil spill contingency planning requirements.

**Brief Description:** Exempting short-line railroads that haul nonfuel oils from oil spill contingency planning requirements.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Dye, Blake, Haler, Shea, Taylor, Farrell, Dent, Nealey, Manweller, Short, Muri, Schmick, Ormsby, Fey, Young and Buys).

**Brief History:** Passed House: 3/01/17, 97-1.

**Committee Activity:** Energy, Environment & Telecommunications: 3/14/17, 3/28/17 [DPA].

**Floor Activity:**

Passed Senate - Amended: 4/04/17, 46-3.

### Brief Summary of Bill (As Amended by Senate)

- Exempts Class III railroads hauling 49 or more tank car loads of non-crude oil in bulk per year from certain oil spill contingency planning requirements.
- Requires Class III railroads hauling less than 49 tank car loads of non-crude oil to have a basic contingency plan.

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## SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Majority Report:** Do pass as amended.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Carlyle, Ranking Minority Member; Brown, Hobbs, Honeyford, Ranker, Short and Wellman.

**Staff:** Jan Odano (786-7486)

**Background:** The Department of Ecology (Ecology) administers an oil spill preparedness, prevention, and response program. Oil refineries, terminals, pipelines, railroads, other

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facilities, and vessel operators involved in the bulk transfer of oil are required to develop oil spill contingency plans that outline containment and remediation responses to potential oil spills. Contingency plans approved by Ecology must identify personnel, materials, and equipment capable of promptly and properly removing oil with minimal environmental damage.

In 2015, the Legislature directed Ecology to develop rules requiring railroads transporting bulk crude oil to have contingency plans. State-owned railroads are not subject to this requirement. Ecology adopted rules in August 2016. Railroads must develop and maintain oil spill contingency plans.

Railroad contingency plans include components such as:

- information regarding the worst case spill volume that the railroad anticipates could occur on a rail route;
- procedures for responding to the oil spill, including accounting for oil volumes, site-specific conditions, evaluations of impact to groundwater;
- an agreement with a primary response contractor that has the capabilities to respond to spilled oil that may weather, sink or submerge, and that maintains specified types of response equipment;
- information regarding the chain of command available to respond in the event of a spill, including the primary response contractor and other personnel;
- a field document that includes time-critical information included in the response plan for use by personnel involved in oil handling operations;
- a demonstration of the ability to access specified types and quantities of oil spill response equipment within 6, 12, 24, and 48 hours of a spill event; and
- specific plans for crude oil spills, on-site burning of oil, shoreline cleanup, air monitoring, wildlife rescue, and public and first responder notification.

For companies that must comply with the rule, Ecology developed a boilerplate for use. In addition, a company may request an alternative to the contingency plan. Companies that must submit a federal plan may use that plan with required Washington State-specific information added as an appendix.

Additionally, railroad contingency plan holders must participate in different types of drills and equipment verification process. The types of drills include unannounced drills at prescribed intervals, annual tabletop drills evaluating a worst-case discharge scenario, and twice-per-year deployment drills in which equipment listed in the contingency plan is tested in operating environments that could be impacted by spills.

The term oil for purposes of oil spill prevention, cleanup, and financial responsibility laws means any kind of oil that is liquid at 25 degrees Celsius and 1 atmosphere of pressure, including any distillate of that oil.

The Surface Transportation Board classifies railroads by their annual operation revenue. Operating revenues for: Class I railroads are more than \$433.2 million; Class II are between \$34.7 million and \$433.2 million; and Class III railroads have less than \$34.7 million. There are seven Class I freight railroads operating in the U.S. within Washington. The Class I railroads are Burlington Northern Santa Fe Railway (BNSF) and the Union Pacific Railroad

(UP). Together BNSF and UP own 60 percent of the rail infrastructure. These two railroads transport the majority of rail freight through the state.

There is only one Class II railroad operating in the state, Montana Rail Link. Class III railroads, or short-line railroads, are the smallest systems in terms of mileage and revenue.

There are 25 Class III railroads in Washington: 18 local railroads and 7 switching and terminal railroads. According to the 2014 Washington State Rail Plan, these short-line railroads usually serve local industry such as agriculture and forestry. The switching and terminal railroads serve ports by moving goods from carloads and containers from ocean terminals. The mileage for individual short-lines varies from 1-100 miles and combine to a total of 1400 miles of track statewide.

**Summary of Amended Bill:** Class III railroads hauling 49 or more tank car loads of non-crude oil in bulk per year may not require:

- contracted access to oil spill response equipment; or
- completion of more than one tabletop drill every 3 years.

For Class III railroads hauling less than 49 tank car loads of non-crude oil, rules may only require a basic contingency plan. Basic contingency plans include the following:

- field document for use in an initial response to a spill or threatened spill;
- documentation of the basic contingency plan filed with Ecology;
- identification of a primary contact who will be involved in the spill response; and
- accident insurance information.

A Class III railroad transporting non-crude oil in bulk may submit a federal Oil Spill Response Plan in lieu of a state contingency plan.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Our canola crush facilities increases domestic oil production; it is a value added industry and it provides important economic development in the state. This helps oil seed companies prosper in the state. We haul canola and french fry oil, cattle feed that supports both dairy and beef industry. The oil train rules should be for transporting bulk crude and catastrophic preparedness. However the definition of oil is too broad. This bill is in response to the definition to address short-line railroads that are not carrying Bakken crude. This bill will create different tiers for smaller railroads. Non-volatile, non-toxic oil should be regulated differently than Bakken crude. Short-line railroad carrying a few loads of canola oil was put under these rules. These short-line railroads ship in small volumes and at low speeds, however we are being regulated as if it is hauling highly volatile crude oil. We are looking

for relief from the current statutory requirements. We think these can be handled differently administratively. Not only is the oil seed crush industry affected but also the french fry oil industry. The cost of compliance for short-line railroads will make it impossible for them to transport the non-hazardous oils. These railroads have insurance—liability insurance for pollution and spill—as well as damage for cars they do and do not own. Their insurance also includes worker compensation. Most are going short distances at very low speeds. We primarily serve agricultural industry. Vegetable oil can have significant impacts on birds, especially their feathers. When vegetable oil gets on their feathers it mats the feathers and leaves the birds open to exposure and death. Oil in the water can suffocate fish. This provides a reasonable approach to deal with vegetable oil and smaller volumes of non-crude oil being transported.

OTHER: This bill has fiscal impacts that are not included in the Governor's budget, therefore we can not support it. Rail is a new client for Ecology. Part of this is building trust. We worked hard to make the rules scalable and implementable. We probably would have gotten to this point with feedback from the smaller railroads. However, biological oils are spilled and even though they are not volatile, they can be harmful to the environment. The good thing about planning, and planning ahead, is that you are prepared for an accident to rapidly respond. It is good to know that the small railroads have good insurance. Adequate insurance is necessary because of the costs to the railroads in the event of a spill to ensure the railroad does not go out of business. The small companies may submit their federal plans, which are required by law, in lieu of a state plan.

**Persons Testifying:** PRO: Representative Mary Dye, Prime Sponsor; Patrick Boss, Columbia Basin Railroad/Central Washington Railroad; Tim Kelly, Columbia Basin Railroad and Central Washington Railroads; Andy Carlson, WA Department of Fish and Wildlife; Amber Carter, Client: Portland Vancouver Junction Railroad.

OTHER: Dale Jensen, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** No one.