
HOUSE BILL 1868

State of Washington

65th Legislature

2017 Regular Session

By Representatives Peterson, Doglio, Lytton, Farrell, Gregerson,
Fitzgibbon, and Stonier

1 AN ACT Relating to investing in water infrastructure on tribal
2 lands to protect the environment by imposing a tax on oil shipped
3 into Washington via pipeline; amending RCW 82.23B.020 and 90.56.510;
4 reenacting and amending RCW 82.23B.010; adding a new section to
5 chapter 90.48 RCW; and creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
8 transport of oil by pipeline carries inherent risks of spills, and
9 that the construction of oil infrastructure is accompanied by
10 environmental harms that are imposed in places and upon people who do
11 not reap comparable economic benefits from those projects.
12 Furthermore, the legislature finds that in the case of the Dakota
13 Access Pipeline being constructed from North Dakota to Illinois, the
14 sovereignty of tribes whose lands lie in the pipelines' path is being
15 impinged. Well-founded concerns about protecting tribal lands,
16 waters, and resources from degradation are at risk of being ignored
17 by a federal government newly intent on greenlighting the pipeline's
18 path. The legislature finds that it is unjust to allow short-term and
19 shortsighted profits from the pipeline to accrue to a connected few,
20 while placing environmental risks and burdens on marginalized groups.

1 (2) Therefore, it is the legislature's intent to do its part
2 toward rectifying the injustices borne out on tribal lands and waters
3 that result from the construction of oil pipelines elsewhere in the
4 United States by:

5 (a) Imposing a tax on oil entering the state by pipeline; and

6 (b) Using the proceeds from the tax to ensure that tribal waters
7 in Washington state receive investments to improve water quality as
8 means of beginning to counterbalance the degradation that is being
9 foisted upon tribal waters elsewhere in the United States.

10 **Sec. 2.** RCW 82.23B.010 and 2015 c 274 s 13 are each reenacted
11 and amended to read as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Barrel" means a unit of measurement of volume equal to
15 forty-two United States gallons of crude oil or petroleum product.

16 (2) "Bulk oil terminal" means a facility of any kind, other than
17 a waterborne vessel, that is used for transferring crude oil or
18 petroleum products from a tank car or pipeline.

19 (3) "Crude oil" means any naturally occurring hydrocarbons coming
20 from the earth that are liquid at twenty-five degrees Celsius and one
21 atmosphere of pressure including, but not limited to, crude oil,
22 bitumen and diluted bitumen, synthetic crude oil, and natural gas
23 well condensate.

24 (4) "Department" means the department of revenue.

25 (5) "Marine terminal" means a facility of any kind, other than a
26 waterborne vessel, that is used for transferring crude oil or
27 petroleum products to or from a waterborne vessel or barge.

28 (6) "Navigable waters" means those waters of the state and their
29 adjoining shorelines that are subject to the ebb and flow of the
30 tide, including the Columbia and Snake rivers.

31 (7) "Person" has the meaning provided in RCW 82.04.030.

32 (8) "Petroleum product" means any liquid hydrocarbons at
33 atmospheric temperature and pressure that are the product of the
34 fractionation, distillation, or other refining or processing of crude
35 oil, and that are used as, useable as, or may be refined as a fuel or
36 fuel blendstock, including but not limited to, gasoline, diesel fuel,
37 aviation fuel, bunker fuel, and fuels containing a blend of alcohol
38 and petroleum.

1 (9) "Pipeline" means an interstate or intrastate pipeline subject
2 to regulation by the United States department of transportation under
3 49 C.F.R. Part 195 in effect on the effective date of this section,
4 through which oil moves in transportation, including line pipes,
5 valves, and other appurtenances connected to line pipes, pumping
6 units, and fabricated assemblies associated with pumping units.

7 (10) "Tank car" means a rail car, the body of which consists of a
8 tank for transporting liquids.

9 (~~(10)~~) (11) "Taxpayer" means the person owning crude oil or
10 petroleum products immediately after receipt of the same into the
11 storage tanks of a marine or bulk oil terminal in this state and who
12 is liable for the taxes imposed by this chapter.

13 (~~(11)~~) (12) "Waterborne vessel or barge" means any ship, barge,
14 or other watercraft capable of traveling on the navigable waters of
15 this state and capable of transporting any crude oil or petroleum
16 product in quantities of ten thousand gallons or more for purposes
17 other than providing fuel for its motor or engine.

18 **Sec. 3.** RCW 82.23B.020 and 2015 c 274 s 14 are each amended to
19 read as follows:

20 (1) An oil spill response tax is imposed on the privilege of
21 receiving: (a) Crude oil or petroleum products at a marine terminal
22 within this state from a waterborne vessel or barge operating on the
23 navigable waters of this state; (~~(b)~~) (b) crude oil or petroleum
24 products at a bulk oil terminal within this state from a tank car; or
25 (c) crude oil or petroleum products at a bulk oil terminal within
26 this state from a pipeline. The tax imposed in this section is levied
27 upon the owner of the crude oil or petroleum products immediately
28 after receipt of the same into the storage tanks of a marine or bulk
29 oil terminal from a tank car or waterborne vessel or barge at the
30 rate of one cent per barrel of crude oil or petroleum product
31 received.

32 (2) In addition to the tax imposed in subsection (1) of this
33 section, an oil spill administration tax is imposed on the privilege
34 of receiving: (a) Crude oil or petroleum products at a marine
35 terminal within this state from a waterborne vessel or barge
36 operating on the navigable waters of this state; (~~(b)~~) (b) crude oil
37 or petroleum products at a bulk oil terminal within this state from a
38 tank car; or (c) crude oil or petroleum products at a bulk oil
39 terminal within this state from a pipeline. The tax imposed in this

1 section is levied upon the owner of the crude oil or petroleum
2 products immediately after receipt of the same into the storage tanks
3 of a marine or bulk oil terminal from a tank car, pipeline, or
4 waterborne vessel or barge. The tax is levied at the rate of four
5 cents per barrel of crude oil or petroleum product.

6 (3) The taxes imposed by this chapter must be collected by the
7 marine or bulk oil terminal operator from the taxpayer. If any person
8 charged with collecting the taxes fails to bill the taxpayer for the
9 taxes, or in the alternative has not notified the taxpayer in writing
10 of the taxes imposed, or having collected the taxes, fails to pay
11 them to the department in the manner prescribed by this chapter,
12 whether such failure is the result of the person's own acts or the
13 result of acts or conditions beyond the person's control, he or she,
14 nevertheless, is personally liable to the state for the amount of the
15 taxes. Payment of the taxes by the owner to a marine or bulk oil
16 terminal operator relieves the owner from further liability for the
17 taxes.

18 (4) Taxes collected under this chapter must be held in trust
19 until paid to the department. Any person collecting the taxes who
20 appropriates or converts the taxes collected is guilty of a gross
21 misdemeanor if the money required to be collected is not available
22 for payment on the date payment is due. The taxes required by this
23 chapter to be collected must be stated separately from other charges
24 made by the marine or bulk oil terminal operator in any invoice or
25 other statement of account provided to the taxpayer.

26 (5) If a taxpayer fails to pay the taxes imposed by this chapter
27 to the person charged with collection of the taxes and the person
28 charged with collection fails to pay the taxes to the department, the
29 department may, in its discretion, proceed directly against the
30 taxpayer for collection of the taxes.

31 (6) The taxes are due from the marine or bulk oil terminal
32 operator, along with reports and returns on forms prescribed by the
33 department, within twenty-five days after the end of the month in
34 which the taxable activity occurs.

35 (7) The amount of taxes, until paid by the taxpayer to the marine
36 or bulk oil terminal operator or to the department, constitutes a
37 debt from the taxpayer to the marine or bulk oil terminal operator.
38 Any person required to collect the taxes under this chapter who, with
39 intent to violate the provisions of this chapter, fails or refuses to
40 do so as required and any taxpayer who refuses to pay any taxes due

1 under this chapter, is guilty of a misdemeanor as provided in chapter
2 9A.20 RCW.

3 (8) Upon prior approval of the department, the taxpayer may pay
4 the taxes imposed by this chapter directly to the department. The
5 department must give its approval for direct payment under this
6 section whenever it appears, in the department's judgment, that
7 direct payment will enhance the administration of the taxes imposed
8 under this chapter. The department must provide by rule for the
9 issuance of a direct payment certificate to any taxpayer qualifying
10 for direct payment of the taxes. Good faith acceptance of a direct
11 payment certificate by a terminal operator relieves the marine or
12 bulk oil terminal operator from any liability for the collection or
13 payment of the taxes imposed under this chapter.

14 (9) All receipts from the tax imposed in subsection (1) of this
15 section must be deposited into the state oil spill response account
16 created in RCW 90.56.500. All receipts from the tax imposed in
17 subsection (2)(a) and (b) of this section shall be deposited into the
18 oil spill prevention account created in RCW 90.56.510. Receipts from
19 the tax imposed in subsection (2)(c) of this section must be
20 deposited into the tribal water protection fund established in
21 section 4 of this act.

22 (10) Within forty-five days after the end of each calendar
23 quarter, the office of financial management must determine the
24 balance of the oil spill response account as of the last day of that
25 calendar quarter. Balance determinations by the office of financial
26 management under this section are final and may not be used to
27 challenge the validity of any tax imposed under this chapter. The
28 office of financial management must promptly notify the departments
29 of revenue and ecology of the account balance once a determination is
30 made. For each subsequent calendar quarter, the tax imposed by
31 subsection (1) of this section shall be imposed during the entire
32 calendar quarter unless:

33 (a) Tax was imposed under subsection (1) of this section during
34 the immediately preceding calendar quarter, and the most recent
35 quarterly balance is more than nine million dollars; or

36 (b) Tax was not imposed under subsection (1) of this section
37 during the immediately preceding calendar quarter, and the most
38 recent quarterly balance is more than eight million dollars.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.48
2 RCW to read as follows:

3 (1) The tribal water protection fund is hereby established in the
4 state treasury. Moneys in the fund may be spent only after
5 legislative appropriation. Receipts from RCW 82.23B.020(2)(c) must be
6 deposited in the fund. Moneys in the fund may be spent only in a
7 manner consistent with this chapter.

8 (2) The fund must be used exclusively to provide financial
9 assistance in the form of grants or loans for the following purposes:

10 (a) For the construction or replacement of water pollution
11 control facilities as defined in the clean water act; and

12 (b) For the implementation of activities to manage nonpoint
13 sources of pollution.

14 (3) The fund must be used exclusively to provide financial
15 assistance for projects taking place within or benefiting waters
16 within Indian country, as defined in 18 U.S.C. Sec. 1151, or in the
17 usual and accustomed fishing areas of an Indian tribe.

18 (4) Grant or loan proposals put forward by Indian tribal
19 organizations, including federally recognized Indian tribes or tribal
20 entities, must receive priority consideration for use of the funds in
21 the fund.

22 **Sec. 5.** RCW 90.56.510 and 2015 c 274 s 7 are each amended to
23 read as follows:

24 (1) The oil spill prevention account is created in the state
25 treasury. All receipts from RCW 82.23B.020(2) (~~((shall))~~) (a) and (b)
26 must be deposited in the account. Moneys from the account may be
27 spent only after appropriation. The account is subject to allotment
28 procedures under chapter 43.88 RCW. If, on the first day of any
29 calendar month, the balance of the oil spill response account is
30 greater than nine million dollars and the balance of the oil spill
31 prevention account exceeds the unexpended appropriation for the
32 current biennium, then the tax under RCW 82.23B.020(2) (~~((shall))~~) must
33 be suspended on the first day of the next calendar month until the
34 beginning of the following biennium, provided that the tax shall not
35 be suspended during the last six months of the biennium. If the tax
36 imposed under RCW 82.23B.020(2) is suspended during two consecutive
37 biennia, the department shall by November 1st after the end of the
38 second biennium, recommend to the appropriate standing committees an
39 adjustment in the tax rate. For the biennium ending June 30, 1999,

1 and the biennium ending June 30, 2001, the state treasurer may
2 transfer a total of up to one million dollars from the oil spill
3 response account to the oil spill prevention account to support
4 appropriations made from the oil spill prevention account in the
5 omnibus appropriations act adopted not later than June 30, 1999.

6 (2) Expenditures from the oil spill prevention account shall be
7 used exclusively for the administrative costs related to the purposes
8 of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. In
9 addition, until June 30, 2019, expenditures from the oil spill
10 prevention account may be used, subject to amounts appropriated
11 specifically for this purpose, for the development and annual review
12 of local emergency planning committee emergency response plans in RCW
13 38.52.040(3). Starting with the 1995-1997 biennium, the legislature
14 shall give activities of state agencies related to prevention of oil
15 spills priority in funding from the oil spill prevention account.
16 Costs of prevention include the costs of:

- 17 (a) Routine responses not covered under RCW 90.56.500;
- 18 (b) Management and staff development activities;
- 19 (c) Development of rules and policies and the statewide plan
20 provided for in RCW 90.56.060;
- 21 (d) Facility and vessel plan review and approval, drills,
22 inspections, investigations, enforcement, and litigation;
- 23 (e) Interagency coordination and public outreach and education;
- 24 (f) Collection and administration of the tax provided for in
25 chapter 82.23B RCW; and
- 26 (g) Appropriate travel, goods and services, contracts, and
27 equipment.

28 (3) Before expending moneys from the account for a response under
29 subsection (2)(a) of this section, but without delaying response
30 activities, the director (~~shall~~) must make reasonable efforts to
31 obtain funding for response costs under this section from the person
32 responsible for the spill and from other sources, including the
33 federal government.

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