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**SUBSTITUTE HOUSE BILL 1403**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** House General Government Appropriations & Oversight (originally sponsored by Representatives Upthegrove, Hudgins, Rolfes, Kenney, Fitzgibbon, Pedersen, Roberts, Dickerson, Appleton, Reykdal, and Frockt)

READ FIRST TIME 02/10/11.

1       AN ACT Relating to establishing an oil transfer fee to fund oil  
2 spill prevention, preparedness, response, and restoration programs;  
3 amending RCW 90.56.010 and 88.46.090; adding new sections to chapter  
4 90.56 RCW; creating a new section; prescribing penalties; and providing  
5 an effective date.

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

7       NEW SECTION. **Sec. 1.** The legislature finds that:

8       (1) Washington's waters, including Puget Sound, the Strait of Juan  
9 de Fuca, the state's west coast, the Columbia river, and other diverse  
10 water bodies and watercourses are irreplaceable environmental,  
11 economic, and cultural assets;

12       (2) Oil spills can severely pollute Washington waters, thereby  
13 endangering the environment, impairing the economy, and disrupting  
14 local and regional cultures;

15       (3) Washington's oil spill prevention, preparedness, response, and  
16 restoration programs must be adequately funded to effectively protect  
17 Washington waters from the potentially calamitous consequences of oil  
18 spills; and

1 (4) Facilities and vessels that transfer or handle oil in bulk on  
2 or near Washington's waters, creating risks of oil spills, should pay  
3 a modest oil transfer fee to adequately fund state oil spill  
4 prevention, preparedness, response, and restoration programs.

5 **Sec. 2.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read  
6 as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

9 (1) "Best achievable protection" means the highest level of  
10 protection that can be achieved through the use of the best achievable  
11 technology and those staffing levels, training procedures, and  
12 operational methods that provide the greatest degree of protection  
13 achievable. The director's determination of best achievable protection  
14 shall be guided by the critical need to protect the state's natural  
15 resources and waters, while considering (a) the additional protection  
16 provided by the measures; (b) the technological achievability of the  
17 measures; and (c) the cost of the measures.

18 (2) "Best achievable technology" means the technology that provides  
19 the greatest degree of protection taking into consideration (a)  
20 processes that are being developed, or could feasibly be developed,  
21 given overall reasonable expenditures on research and development, and  
22 (b) processes that are currently in use. In determining what is best  
23 achievable technology, the director shall consider the effectiveness,  
24 engineering feasibility, and commercial availability of the technology.

25 (3) "Board" means the pollution control hearings board.

26 (4) "Cargo vessel" means a self-propelled ship in commerce, other  
27 than a tank vessel or a passenger vessel, three hundred or more gross  
28 tons, including but not limited to, commercial fish processing vessels  
29 and freighters.

30 (5) "Bulk" means material that is stored or transported in a loose,  
31 unpackaged liquid, powder, or granular form capable of being conveyed  
32 by a pipe, bucket, chute, or belt system.

33 (6) "Committee" means the preassessment screening committee  
34 established under RCW 90.48.368.

35 (7) "Covered vessel" means a tank vessel, cargo vessel, or  
36 passenger vessel.

37 (8) "Department" means the department of ecology.

1 (9) "Director" means the director of the department of ecology.

2 (10) "Discharge" means any spilling, leaking, pumping, pouring,  
3 emitting, emptying, or dumping.

4 (11)(a) "Facility" means any structure, group of structures,  
5 equipment, pipeline, or device, other than a vessel, located on or near  
6 the navigable waters of the state that transfers oil in bulk to or from  
7 a tank vessel or pipeline, that is used for producing, storing,  
8 handling, transferring, processing, or transporting oil in bulk.

9 (b) A facility does not include any: (i) Railroad car, motor  
10 vehicle, or other rolling stock while transporting oil over the  
11 highways or rail lines of this state; (ii) underground storage tank  
12 regulated by the department or a local government under chapter 90.76  
13 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is  
14 operated as part of an exempt agricultural activity as provided in RCW  
15 82.04.330; or (v) marine fuel outlet that does not dispense more than  
16 three thousand gallons of fuel to a ship that is not a covered vessel,  
17 in a single transaction.

18 (12) "Fund" means the state coastal protection fund as provided in  
19 RCW 90.48.390 and 90.48.400.

20 (13) "Having control over oil" shall include but not be limited to  
21 any person using, storing, or transporting oil immediately prior to  
22 entry of such oil into the waters of the state, and shall specifically  
23 include carriers and bailees of such oil.

24 (14) "Marine facility" means any facility used for tank vessel  
25 wharfage or anchorage, including any equipment used for the purpose of  
26 handling or transferring oil in bulk to or from a tank vessel.

27 (15) "Navigable waters of the state" means those waters of the  
28 state, and their adjoining shorelines, that are subject to the ebb and  
29 flow of the tide and/or are presently used, have been used in the past,  
30 or may be susceptible for use to transport intrastate, interstate, or  
31 foreign commerce.

32 (16) "Necessary expenses" means the expenses incurred by the  
33 department and assisting state agencies for:

34 (a) Investigating the source of the discharge;

35 (b) Investigating the extent of the environmental damage caused by  
36 the discharge;

37 (c) Conducting actions necessary to clean up the discharge;

38 (d) Conducting predamage and damage assessment studies; and

1 (e) Enforcing the provisions of this chapter and collecting for  
2 damages caused by a discharge.

3 (17) "Oil" or "oils" means oil of any kind that is liquid at  
4 atmospheric temperature and any fractionation thereof, including, but  
5 not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil,  
6 biological oils and blends, oil sludge, oil refuse, and oil mixed with  
7 wastes other than dredged spoil. Oil does not include any substance  
8 listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989,  
9 under section 101(14) of the federal comprehensive environmental  
10 response, compensation, and liability act of 1980, as amended by P.L.  
11 99-499.

12 (18) "Offshore facility" means any facility located in, on, or  
13 under any of the navigable waters of the state, but does not include a  
14 facility any part of which is located in, on, or under any land of the  
15 state, other than submerged land.

16 (19) "Onshore facility" means any facility any part of which is  
17 located in, on, or under any land of the state, other than submerged  
18 land, that because of its location, could reasonably be expected to  
19 cause substantial harm to the environment by discharging oil into or on  
20 the navigable waters of the state or the adjoining shorelines.

21 (20)(a) "Owner or operator" means (i) in the case of a vessel, any  
22 person owning, operating, or chartering by demise, the vessel; (ii) in  
23 the case of an onshore or offshore facility, any person owning or  
24 operating the facility; and (iii) in the case of an abandoned vessel or  
25 onshore or offshore facility, the person who owned or operated the  
26 vessel or facility immediately before its abandonment.

27 (b) "Operator" does not include any person who owns the land  
28 underlying a facility if the person is not involved in the operations  
29 of the facility.

30 (21) "Passenger vessel" means a ship of three hundred or more gross  
31 tons with a fuel capacity of at least six thousand gallons carrying  
32 passengers for compensation.

33 (22) "Person" means any political subdivision, government agency,  
34 municipality, industry, public or private corporation, copartnership,  
35 association, firm, individual, or any other entity whatsoever.

36 (23) "Ship" means any boat, ship, vessel, barge, or other floating  
37 craft of any kind.

1 (24) "Spill" means an unauthorized discharge of oil or hazardous  
2 substances into the waters of the state.

3 (25) "Tank vessel" means a ship that is constructed or adapted to  
4 carry, or that carries, oil in bulk as cargo or cargo residue, and  
5 that:

6 (a) Operates on the waters of the state; or

7 (b) Transfers oil in a port or place subject to the jurisdiction of  
8 this state.

9 (26) "Waters of the state" includes lakes, rivers, ponds, streams,  
10 inland waters, underground water, salt waters, estuaries, tidal flats,  
11 beaches and lands adjoining the seacoast of the state, sewers, and all  
12 other surface waters and watercourses within the jurisdiction of the  
13 state of Washington.

14 (27) "Worst case spill" means: (a) In the case of a vessel, a  
15 spill of the entire cargo and fuel of the vessel complicated by adverse  
16 weather conditions; and (b) in the case of an onshore or offshore  
17 facility, the largest foreseeable spill in adverse weather conditions.

18 (28) "Fee payer" means a facility or tank vessel that is subject to  
19 the risk-based oil spill prevention and response service transfer fee  
20 imposed pursuant to section 3 of this act.

21 (29) "Nonrecreational vessel" means a vessel that is not a  
22 recreational vessel as defined in this section.

23 (30) "Recreational vessel" means a vessel owned and operated solely  
24 for pleasure and not for monetary gain, or a vessel leased, rented, or  
25 chartered to another for operation for pleasure and not for monetary  
26 gain.

27 (31) "Risk-based oil spill prevention and response service transfer  
28 fee" or "oil transfer fee" means the fee imposed upon a facility or  
29 tank vessel pursuant to section 3 of this act.

30 NEW SECTION. Sec. 3. A new section is added to chapter 90.56 RCW  
31 to read as follows:

32 (1) Except as otherwise provided in this section, the department is  
33 authorized and directed to collect a risk-based oil spill prevention  
34 and response service transfer fee each time any oil is transferred on,  
35 over, or near the waters of the state due to any of the following  
36 occurrences:

37 (a) A transfer from a facility to a nonrecreational vessel;

1 (b) A transfer from a tank vessel to a nonrecreational vessel; or

2 (c) A transfer from a tank vessel to a facility.

3 (2) The risk-based oil spill prevention and response service  
4 transfer fee must be imposed on the transferor, and paid to the  
5 department, based on the volume of oil transferred by the transferor  
6 over an identified reporting period as provided in section 4 of this  
7 act. However, the department may allow a facility receiving oil from  
8 a tank vessel to pay the oil transfer fee for the tank vessel.

9 (3)(a) Except as provided in section 4 of this act, the oil  
10 transfer fee is to be collected at a rate of 0.0003 dollars per gallon  
11 of oil transferred.

12 (b) The department may authorize the oil transfer fee to be paid on  
13 a per barrel basis if the director of the department concludes that a  
14 per barrel collection creates administrative streamlining for the  
15 department or for the transferor. If the department collects the fee  
16 on a per barrel basis, then the per barrel amount must be proportional  
17 to the amount established in (a) of this subsection.

18 (4) A single transfer during any twenty-four hour period of less  
19 than one hundred gallons of oil to a facility or nonrecreational vessel  
20 is exempt from payment of the oil transfer fee established in this  
21 section.

22 (5) Facilities and tank vessels receiving oil from a foreign  
23 flagged tank vessel must inform the transferor in writing of the  
24 vessel's responsibilities under this section.

25 (6) The oil transfer fee collected under this section must be  
26 deposited into the oil transfer account as provided in section 6 of  
27 this act.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.56 RCW  
29 to read as follows:

30 (1) The department is authorized and directed to, by rule, adjust  
31 the risk-based oil spill prevention and response service transfer fee  
32 imposed by section 3 of this act biennially by a percentage rate that  
33 is less than or equal to the fiscal growth factor established pursuant  
34 to RCW 43.135.025 for the then current biennium. The department may  
35 only use this authority if the department finds that an increase in the  
36 oil transfer fee is necessary due to inflation to maintain the economic  
37 value of the fee collected.

1 (2) At least ninety days prior to the effective date of a change to  
2 the oil transfer fee, the department shall:

3 (a) Provide the public with notice of the change on its internet  
4 site; and

5 (b) Provide fee payers with notice of the change by first-class  
6 mail, which is considered provided when mailed, or, with prior  
7 agreement of the recipient, electronic mail, which is considered  
8 provided when sent.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.56 RCW  
10 to read as follows:

11 (1) Fee payers must submit oil transfer fees imposed pursuant to  
12 section 3 of this act to the department on a schedule to be determined  
13 by the department. However, the department may not require fee payers  
14 to submit payment more often than once a calendar quarter. If  
15 practicable, the department shall align the collection of the oil  
16 transfer fee with any other reporting documents a fee payer may be  
17 required to provide to the department.

18 (2) The department shall develop an oil transfer fee submittal form  
19 requiring a fee payer to, at a minimum, provide its business or  
20 corporate name, contact information, the quarter for which a fee is  
21 being paid, total gallons subject to the fee, and the calculated fee  
22 amount. An oil transfer fee submittal form must be signed and dated by  
23 a formally authorized representative of the fee payer.

24 (3) Fee payers must retain detailed records for each transfer  
25 subject to the oil transfer fee for three years. The department may  
26 audit the records of a fee payer. The department must limit the audit  
27 to records necessary to verify the date of oil transfer, the quantity  
28 of oil transferred, and the recipient of the oil.

29 (4) If the department does not receive an oil transfer fee from a  
30 fee payer on the schedule developed by the department under this  
31 section, the department must assess a late charge of five hundred  
32 dollars per every thirty days payment is tardy and assess interest at  
33 the rate of one percent per calendar month on the unpaid balance until  
34 full payment is received. Late charges and assessed interest must be  
35 deposited into the oil transfer account created in section 6 of this  
36 act.

1 (5) Failure of a fee payer to pay an oil transfer fee within ninety  
2 days of a due date may result in the assessment of penalties against  
3 the fee payer pursuant to RCW 88.46.090.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.56 RCW  
5 to read as follows:

6 (1) The oil transfer account is created in the state treasury. All  
7 receipts from the risk-based oil spill prevention and response service  
8 transfer fee imposed by section 3 of this act and all late charges and  
9 assessed interest collected pursuant to section 5 of this act must be  
10 deposited in the account. Moneys in the account may be spent only  
11 after appropriation.

12 (2) Moneys in the oil transfer account must be used exclusively to  
13 fund oil spill prevention, preparedness, response, and restoration  
14 activities authorized in this chapter and in chapters 88.46, 88.40, and  
15 90.48 RCW including, but not limited to:

16 (a) Reviewing and approving facility and vessel oil spill  
17 prevention and contingency plans;

18 (b) Conducting oil spill drills, inspections, investigations,  
19 natural resource damage assessments, enforcement, litigation, studies,  
20 and related work;

21 (c) Conducting oil spill prevention and oil transfer plan reviews,  
22 inspections, and investigations;

23 (d) Routine responses to spills resulting from oil transfers not  
24 otherwise covered under RCW 90.56.500;

25 (e) Developing rules and policies related to oil transfers;

26 (f) Administering the oil transfer fee imposed pursuant to section  
27 3 of this act;

28 (g) Conducting interagency coordination, public outreach and  
29 education, management and staff development, and appropriate travel  
30 relating to oil transfers; and

31 (h) Purchasing goods, services, and equipment relating to oil  
32 transfers.

33 **Sec. 7.** RCW 88.46.090 and 2000 c 69 s 9 are each amended to read  
34 as follows:

35 (1) Except as provided in subsection (4) of this section, it shall  
36 be unlawful for a covered vessel to enter the waters of the state



1 without an approved contingency plan required by RCW 88.46.060, a spill  
2 prevention plan required by RCW 88.46.040, or financial responsibility  
3 in compliance with chapter 88.40 RCW and the federal oil pollution act  
4 of 1990. The department may deny entry onto the waters of the state to  
5 any covered vessel that does not have a required contingency or spill  
6 prevention plan or financial responsibility.

7 (2) Except as provided in subsection (4) of this section, it shall  
8 be unlawful for a covered vessel to transfer oil to or from an onshore  
9 or offshore facility that does not have an approved contingency plan  
10 required under RCW 90.56.210, a spill prevention plan required by RCW  
11 90.56.200, or financial responsibility in compliance with chapter 88.40  
12 RCW and the federal oil pollution act of 1990.

13 (3) The director may assess a civil penalty of up to one hundred  
14 thousand dollars against the owner or operator of a vessel who is in  
15 violation of subsection (1) or (2) of this section. Each day that the  
16 owner or operator of a covered vessel is in violation of this section  
17 shall be considered a separate violation.

18 (4) It shall not be unlawful for a covered vessel to operate on the  
19 waters of the state if:

20 (a) A contingency plan, a prevention plan, or financial  
21 responsibility is not required for the covered vessel;

22 (b) A contingency plan and prevention plan has been submitted to  
23 the department as required by this chapter and rules adopted by the  
24 department and the department is reviewing the plan and has not denied  
25 approval; or

26 (c) The covered vessel has entered state waters after the United  
27 States coast guard has determined that the vessel is in distress.

28 (5) Any person may rely on a copy of the statement issued by the  
29 department to RCW 88.46.060 as evidence that the vessel has an approved  
30 contingency plan and the statement issued pursuant to RCW 88.46.040 as  
31 evidence that the vessel has an approved spill prevention plan.

32 (6) Except for violations of subsection (1) or (2) of this section,  
33 any person who violates the provisions of this chapter (~~(or)~~), rules or  
34 orders adopted or issued pursuant (~~(thereto,)~~) to this chapter, or  
35 requirements regarding the risk-based oil spill prevention and response  
36 service transfer fee as provided in section 5 of this act shall incur,  
37 in addition to any other penalty as provided by law, a penalty in an  
38 amount of up to ten thousand dollars a day for each violation. Each

1 violation is a separate offense, and in case of a continuing violation,  
2 every day's continuance is a separate violation. Every act of  
3 commission or omission which procures, aids, or abets in the violation  
4 shall be considered a violation under the provisions of this subsection  
5 and subject to penalty. The penalty amount shall be set in  
6 consideration of the previous history of the violator and the severity  
7 of the violation's impact on public health and the environment in  
8 addition to other relevant factors. The penalty shall be imposed  
9 pursuant to the procedures set forth in RCW 43.21B.300.

10 NEW SECTION. **Sec. 8.** This act takes effect October 1, 2011. The  
11 department of ecology may not use the authority provided in section 4  
12 of this act until the 2013-2015 biennium.

13 NEW SECTION. **Sec. 9.** If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

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