
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2347

State of Washington

63rd Legislature

2014 Regular Session

By House Appropriations (originally sponsored by Representatives Farrell, Hudgins, Carlyle, Wylie, Tarleton, Van De Wege, Bergquist, Tharinger, Pollet, Appleton, Kagi, Ryu, S. Hunt, Jinkins, Riccelli, Lias, Stanford, Reykdal, Roberts, Senn, Dunshee, Goodman, Freeman, Sawyer, Fey, Fitzgibbon, Green, Habib, and Walkinshaw)

READ FIRST TIME 02/11/14.

1 AN ACT Relating to enhancing the safety of the transportation of
2 oil; amending RCW 88.16.035, 88.16.170, 88.16.190, 88.16.200,
3 90.56.010, 43.21B.110, and 43.21B.110; adding new sections to chapter
4 90.56 RCW; adding a new section to chapter 88.16 RCW; creating new
5 sections; prescribing penalties; providing an effective date; providing
6 expiration dates; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that oil
9 transportation by train and vessel poses a potential hazard to the
10 health and well-being of Washington residents and the natural resources
11 and economic vitality of the state. Recent accidents, such as the oil
12 train explosions in North Dakota, Alabama, New Brunswick, and Quebec,
13 as well as the frequent incidence of leaks and spills from pipelines,
14 railcars, and vessels carrying oil across the nation, highlight the
15 risks to human health and the environment caused by the transportation
16 of oil. Furthermore, as the location and type of oil extracted in
17 North America changes with the advent of new technology, there are
18 associated changes in the patterns and methods of transporting crude
19 oil and refined petroleum products. According to the United States

1 department of transportation, the new types of oil being transported
2 through the state may also be particularly flammable and dangerous.
3 Measures to prevent spills from oil trains and tank vessels are
4 critical to lowering risks to the state's natural resources and
5 economic base. It is therefore the intent and purpose of this act to
6 establish appropriate measures to reduce the risk of oil spills from
7 vessels, to encourage the adoption of spill prevention measures, to
8 ensure that the public has access to information about the movement of
9 oil through the state, and to ensure that communities are fully
10 informed about any risks posed to their safety by the transportation of
11 oil.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.56 RCW
13 to read as follows:

14 The department shall make available on its web site a quarterly
15 report on the maritime and terrestrial transportation of oil in
16 Washington. The report must include information including, but not
17 limited to, the following sources:

18 (1) Information submitted to the department pursuant to section 3
19 of this act;

20 (2) Advanced notices of transfer and other information provided to
21 the department pursuant to RCW 88.46.165, including aggregated
22 information on the quantities and types of oil being transferred, the
23 frequency and duration of oil transfers, and the locations of product
24 transfers;

25 (3) Reported information on spills, accidents, discharges, or other
26 prohibited occurrences submitted to the department pursuant to RCW
27 90.56.050(1), 90.56.280, or 88.46.100; and

28 (4) Relevant information about the volume and type of oil
29 transported through Washington that is collected by federal agencies
30 including the United States department of transportation, United States
31 coast guard, United States department of energy, and United States army
32 corps of engineers.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.56 RCW
34 to read as follows:

35 (1) The owner or operator for each facility other than a

1 transmission pipeline shall submit to the department the following
2 information:

3 (a) The number of tank vessels and railcars that transferred or
4 delivered oil at the facility each week;

5 (b) The volume and type of oil that arrived at and departed from
6 the facility each week, including the volume and type of oil:

7 (i) By mode of arrival at the facility, including but not limited
8 to arrival by vessel, rail, pipeline, or motor vehicle;

9 (ii) By mode of departure from the facility, including but not
10 limited to departure by vessel, rail, pipeline, or motor vehicle;

11 (c) The route taken by any oil that arrived at the facility by
12 railcar.

13 (2) Beginning November 1, 2014, the owner or operator of each
14 facility must submit the information required pursuant to subsection
15 (1) of this section by February 1st, May 1st, August 1st, and November
16 1st of each year and each quarterly submission must include the
17 information in subsection (1) of this section for each week of the
18 quarter covered by the submission. The department may develop a
19 reporting form and guidance for the submission of the information in
20 subsection (1) of this section by facility owners or operators. To the
21 extent feasible, the department must integrate the reporting form with
22 other forms used by facilities to submit information to the department,
23 including forms used to submit the information required by RCW
24 88.46.165.

25 (3)(a) Prior to making any confidential information submitted
26 pursuant to this section available on its web site, the department must
27 aggregate the submitted information to the extent necessary to ensure
28 confidentiality if public disclosure of the specific information or
29 data would result in an unfair competitive disadvantage to the owner or
30 operator submitting the information.

31 (b) The department may not make publicly available specific
32 information about the volume of oil or the number of vessels or
33 railcars that arrive at or depart from individual facilities. Instead,
34 information about facility-specific arrivals and departures of oil must
35 be aggregated prior to disclosure in order to prevent unfair
36 competitive disadvantage to the owner or operator submitting the
37 information.

1 NEW SECTION. **Sec. 4.** (1) Washington State University shall
2 consult with the department of ecology and the emergency management
3 division of the military department to conduct a study regarding the
4 state's capacity to respond to and recover from accidents involving
5 railcars transporting oil. In conducting this study, Washington State
6 University shall consider the potential near-term increase in the
7 volume of oil being transported via rail through Washington as a result
8 of proposed new or expanded oil refining and storage facilities.
9 Washington State University shall seek the input of relevant
10 stakeholders and other state agencies in carrying out this study.

11 (2) The study required under subsection (1) of this section must:

12 (a) Examine the current and projected prevalence of oil
13 transportation by railcar through Washington communities;

14 (b) Make a preliminary identification of the communities at the
15 greatest risk of an accident involving oil transportation by railcar;

16 (c) Examine, generally, the extent to which state and local
17 emergency plans, oil spill contingency plans developed pursuant to
18 chapter 90.56 RCW, and geographic response plans address this threat;

19 (d) Examine the roles and responsibilities of federal, state,
20 local, and tribal entities in preparing for emergencies or oil spills;

21 (e) Determine whether adequate resources are available to respond
22 to and recover from such an accident in a timely and effective manner;
23 and

24 (f) Address the potential impacts to transportation networks and
25 other critical infrastructure from an accident involving oil
26 transported by railcar.

27 (3) Washington State University shall report its findings from the
28 study to the appropriate committees of the legislature by December 1,
29 2014.

30 (4) This section expires June 30, 2015.

31 **Sec. 5.** RCW 88.16.035 and 2009 c 496 s 1 are each amended to read
32 as follows:

33 (1) The board of pilotage commissioners shall:

34 (a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the
35 enforcement and administration of this chapter, except for rules
36 adopted after July 1, 2014, that implement RCW 88.16.190, 88.16.195,

1 88.16.200, and section 12 of this act, for which the department of
2 ecology may adopt rules as described in section 8 of this act;

3 (b)(i) Issue training licenses and pilot licenses to pilot
4 applicants meeting the qualifications provided for in RCW 88.16.090 and
5 such additional qualifications as may be determined by the board;

6 (ii) Establish a comprehensive training program to assist in the
7 training and evaluation of pilot applicants before final licensing; and

8 (iii) Establish additional training requirements, including a
9 program of continuing education developed after consultation with pilot
10 organizations, including those located within the state of Washington,
11 as required to maintain a competent pilotage service;

12 (c) Maintain a register of pilots, records of pilot accidents, and
13 other history pertinent to pilotage;

14 (d) Determine from time to time the number of pilots necessary to
15 be licensed in each district of the state to optimize the operation of
16 a safe, fully regulated, efficient, and competent pilotage service in
17 each district;

18 (e) Annually fix the pilotage tariffs for pilotage services
19 provided under this chapter: PROVIDED, That the board may fix extra
20 compensation for extra services to vessels in distress, for awaiting
21 vessels, for all vessels in direct transit to or from a Canadian port
22 where Puget Sound pilotage is required for a portion of the voyage, or
23 for being carried to sea on vessels against the will of the pilot, and
24 for such other services as may be determined by the board: PROVIDED
25 FURTHER, That as an element of the Puget Sound pilotage district
26 tariff, the board may consider pilot retirement plan expenses incurred
27 in the prior year in either pilotage district. However, under no
28 circumstances shall the state be obligated to fund or pay for any
29 portion of retirement payments for pilots or retired pilots;

30 (f) File annually with the governor and the chairs of the
31 transportation committees of the senate and house of representatives a
32 report which includes, but is not limited to, the following: The
33 number, names, ages, pilot license number, training license number, and
34 years of service as a Washington licensed pilot of any person licensed
35 by the board as a Washington state pilot or trainee; the names,
36 employment, and other information of the members of the board; the
37 total number of pilotage assignments by pilotage district, including
38 information concerning the various types and sizes of vessels and the

1 total annual tonnage; the annual earnings or stipends of individual
2 pilots and trainees before and after deduction for expenses of pilot
3 organizations, including extra compensation as a separate category; the
4 annual expenses of private pilot associations, including personnel
5 employed and capital expenditures; the status of pilotage tariffs,
6 extra compensation, and travel; the retirement contributions paid to
7 pilots and the disposition thereof; the number of groundings, marine
8 occurrences, or other incidents which are reported to or investigated
9 by the board, and which are determined to be accidents, as defined by
10 the board, including the vessel name, location of incident, pilot's or
11 trainee's name, and disposition of the case together with information
12 received before the board acted from all persons concerned, including
13 the United States coast guard; the names, qualifications, time
14 scheduled for examinations, and the district of persons desiring to
15 apply for Washington state pilotage licenses; summaries of dispatch
16 records, quarterly reports from pilots, and the bylaws and operating
17 rules of pilotage organizations; the names, sizes in deadweight tons,
18 surcharges, if any, port of call, name of the pilot or trainee, and
19 names and horsepower of tug boats for any and all oil tankers subject
20 to the provisions of RCW 88.16.190 together with the names of any and
21 all vessels for which the United States coast guard requires special
22 handling pursuant to their authority under the Ports and Waterways
23 Safety Act of 1972; the expenses of the board; and any and all other
24 information which the board deems appropriate to include;

25 (g) Make available information that includes the pilotage act and
26 other statutes of Washington state and the federal government that
27 affect pilotage, including the rules of the board, together with such
28 additional information as may be informative for pilots, agents,
29 owners, operators, and masters;

30 (h) Appoint advisory committees and employ marine experts as
31 necessary to carry out its duties under this chapter;

32 (i) Provide for the maintenance of efficient and competent pilotage
33 service on all waters covered by this chapter; and do such other things
34 as are reasonable, necessary, and expedient to insure proper and safe
35 pilotage upon the waters covered by this chapter and facilitate the
36 efficient administration of this chapter.

37 (2) If the department of ecology adopts rules after July 1, 2014,
38 pursuant to subsection (1)(a) of this section, any rules previously

1 adopted by the board pursuant to subsection (1)(a) of this section that
2 implement RCW 88.16.190, 88.16.195, and 88.16.200 are no longer in
3 effect as of the effective date of the rules adopted by the department
4 of ecology.

5 (3) The board may pay stipends to pilot trainees under subsection
6 (1)(b) of this section.

7 **Sec. 6.** RCW 88.16.170 and 1991 c 200 s 601 are each amended to
8 read as follows:

9 Because of the danger of spills, the legislature finds that the
10 transportation of crude oil and refined petroleum products by tankers
11 on the Columbia river, Grays Harbor, and on Puget Sound and adjacent
12 waters creates a great potential hazard to important natural resources
13 of the state and to jobs and incomes dependent on these resources.

14 The legislature recognizes that the Columbia river has many natural
15 obstacles to navigation and shifting navigation channels that create
16 the risk of an oil spill. The legislature also recognizes Grays Harbor
17 and Puget Sound and adjacent waters are ((a)) relatively confined salt
18 water environments with irregular shorelines and therefore there is a
19 greater than usual likelihood of long-term damage from any large oil
20 spill.

21 The legislature further recognizes that certain areas of the
22 Columbia river, Grays Harbor, and Puget Sound and adjacent waters have
23 limited space for maneuvering a large oil tanker and that these waters
24 contain many natural navigational obstacles as well as a high density
25 of commercial and pleasure boat traffic.

26 For these reasons, it is important that large oil tankers be
27 piloted by highly skilled persons who are familiar with local waters
28 and that such tankers have sufficient capability for rapid maneuvering
29 responses.

30 It is therefore the intent and purpose of RCW 88.16.180 and
31 88.16.190 to decrease the likelihood of oil spills on the Columbia
32 river, Grays Harbor, and on Puget Sound and its shorelines by requiring
33 all oil tankers above a certain size to employ licensed pilots and to
34 be escorted by a tug or tugs while navigating on certain areas of Puget
35 Sound and adjacent waters, and also in Grays Harbor and the Columbia
36 river if deemed prudent by the department of ecology.

1 **Sec. 7.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
2 as follows:

3 ~~(1) ((Any oil tanker, whether enrolled or registered, of greater~~
4 ~~than one hundred and twenty five thousand deadweight tons shall be~~
5 ~~prohibited from proceeding beyond a point east of a line extending from~~
6 ~~Discovery Island light south to New Dungeness light.~~

7 ~~(2) An oil tanker, whether enrolled or registered, of forty to one~~
8 ~~hundred and twenty five thousand deadweight tons may proceed beyond the~~
9 ~~points enumerated in subsection (1) if such tanker possesses all of the~~
10 ~~following standard safety features:~~

11 ~~(a) Shaft horsepower in the ratio of one horsepower to each two and~~
12 ~~one half deadweight tons; and~~

13 ~~(b) Twin screws; and~~

14 ~~(c) — Double — bottoms, — underneath — all — oil — and — liquid — cargo~~
15 ~~compartments; and~~

16 ~~(d) Two radars in working order and operating, one of which must be~~
17 ~~collision avoidance radar; and~~

18 ~~(e) — Such — other — navigational — position — location — systems — as — may — be~~
19 ~~prescribed from time to time by the board of pilotage commissioners:~~

20 ~~PROVIDED, — That, — if — such — forty — to — one — hundred — and — twenty — five~~
21 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
22 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~
23 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
24 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
25 ~~horsepower equivalencies may be required under certain conditions as~~
26 ~~established by rule and regulation of the Washington utilities and~~
27 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~

28 ~~FURTHER, That))~~ Except as provided in subsection (2) of this section,
29 an oil tanker of greater than forty thousand deadweight tons may enter
30 any of the waters in (a) of this subsection, to the extent that these
31 waters are within the territorial boundaries of Washington, only if the
32 oil tanker is under the escort of a tug or tugs in compliance with the
33 requirements of subsection (3) of this section and section 8 of this
34 act:

35 (a) East of a line extending from Discovery Island light south to
36 New Dungeness light and all points in the Puget Sound area, including
37 but not limited to Haro Strait, Rosario Strait, the Strait of Georgia,

1 Puget Sound, Hood Canal, and those portions of the Strait of Juan de
2 Fuca east of the line between New Dungeness light and Discovery Island
3 light;

4 (b) The department of ecology may designate the following
5 additional areas by rule where tug escorts are required:

6 (i) Within a two mile radius of the Grays Harbor pilotage district
7 as defined by RCW 88.16.050;

8 (ii) Within three miles of Cape Disappointment at the mouth of the
9 Columbia river; or

10 (iii) Any inland portion of the Columbia river up to Bonneville
11 dam.

12 (2)(a) If an oil tanker is in ballast, the tug requirements of
13 subsection (1) of this section do not apply.

14 (b) If an oil tanker is a single-hulled oil tanker of greater than
15 five thousand gross tons, the requirements of subsection (1)(a) of this
16 section do not apply and the oil tanker must instead comply with 33
17 C.F.R. Part 168, as of the effective date of this section.

18 (3) Oil tankers of greater than forty thousand deadweight tons must
19 ensure that any escort tugs they use have an aggregate shaft horsepower
20 equivalent to at least five percent of the deadweight tons of the
21 escorted oil tanker. The department of ecology may adopt rules to
22 ensure that escort tugs have sufficient capacity for safe escort.

23 (4) A tanker assigned a deadweight of less than forty thousand
24 deadweight tons at the time of construction or reconstruction as
25 reported in Lloyd's Register of Ships is not subject to the provisions
26 of RCW 88.16.170 through 88.16.190.

27 (5) For the purposes of this section, "oil tanker" means a self-
28 propelled deep draft tank vessel designed to transport oil in bulk.
29 "Oil tanker" does not include an articulated tug-barge tank vessel.

30 NEW SECTION. Sec. 8. (1) The department of ecology must submit a
31 report to the legislature by December 1, 2014. The report must include
32 a recommendation on the merits of establishing additional tug escort
33 requirements for oil tankers entering state waters.

34 (2) The additional tug escort requirements to be evaluated in the
35 department of ecology's report must include:

36 (a) Whether there is a need for a second escort tug for oil tankers
37 in waters where tug escort is already required by law;

1 (b) Whether there is a need for tug escorts for oil tankers in
2 waters where there are not currently tug escort requirements; and

3 (c) Whether other tug escort requirements are needed for oil
4 tankers entering state waters based on season, adverse weather
5 conditions, and the type of oil being transported by the tanker as
6 defined in RCW 90.56.010.

7 (3) In developing recommendations to include in the report, the
8 department of ecology must:

9 (a) Seek the input of stakeholders, including maritime safety
10 forums such as the Puget Sound, Grays Harbor, and lower Columbia region
11 harbor safety committees;

12 (b) Consider the net benefits to navigational safety of any new tug
13 escort requirements;

14 (c) Consider the data and findings of the 2014 vessel traffic risk
15 assessment completed under the direction of the Puget Sound partnership
16 and maritime experts in evaluating tug escort requirements for vessels
17 in Puget Sound;

18 (d) Consider the data and findings of any draft or final risk
19 assessment studies being performed for vessel traffic on the Columbia
20 river; and

21 (e) Account for the differences between Puget Sound, Grays Harbor,
22 and the Columbia river, including differences in the physical
23 environment, vessel traffic, weather, and other relevant factors, and
24 appropriately account for these unique local circumstances.

25 (4)(a) The department of ecology may adopt rules to require the
26 escort of oil tankers by a tug or tugs in the areas listed in RCW
27 88.16.190(1) if either of the following events take place:

28 (i) The governor approves, after January 1, 2014, a recommendation
29 of the energy facility site evaluation council pursuant to RCW
30 80.50.100 to certify a facility meeting the criteria listed in RCW
31 80.50.020(12) (d) or (f); or

32 (ii) A state agency or a local jurisdiction makes a final
33 determination or issues a final permit after January 1, 2014, to:

34 (A) Site a new facility as defined by RCW 90.56.010 other than a
35 transmission pipeline required to have a contingency plan pursuant to
36 RCW 90.56.210; or

37 (B) Expand the oil receiving or refining capacity by more than

1 fifteen thousand barrels per day of an existing facility as defined by
2 RCW 90.56.010 required to have a contingency plan pursuant to RCW
3 90.56.210, other than:

- 4 (I) A transmission pipeline; or
- 5 (II) A facility that had a permitted receiving capacity of more
6 than fifty thousand barrels of oil per day as of January 1, 2014.

7 (b) The department of ecology may adopt rules to require the escort
8 of oil tankers by a tug or tugs in the areas listed in RCW
9 88.16.190(1)(b)(ii) and (iii) if, after January 1, 2014, the state of
10 Oregon or any local jurisdiction in Oregon makes a final determination
11 or issues a final permit to:

12 (i) Site a new facility as defined by RCW 90.56.010 other than a
13 transmission pipeline in the watershed of the Columbia river that would
14 be required to have a contingency plan pursuant to RCW 90.56.210 if an
15 identical facility were located in Washington; or

16 (ii) Expand the oil receiving or refining capacity by more than
17 fifteen thousand barrels per day of an existing facility as defined by
18 RCW 90.56.010 other than a transmission pipeline in the watershed of
19 the Columbia river that would be required to have a contingency plan
20 pursuant to RCW 90.56.210 if an identical facility were located in
21 Washington.

22 (c) In adopting rules pursuant to this subsection, the department
23 of ecology must fulfill the requirements in subsection (3)(a) through
24 (e) of this section.

25 (d) The authority of the department of ecology to initiate rule
26 making to adopt additional tug escort requirements for oil tankers
27 pursuant to this section and RCW 88.16.190 expires January 1, 2020.

28 **Sec. 9.** RCW 88.16.200 and 2008 c 128 s 14 are each amended to read
29 as follows:

30 Any vessel designed for the purpose of carrying as its cargo
31 liquefied natural or liquefied petroleum gas shall adhere to the
32 provisions of RCW 88.16.190(~~(+2)~~) and rules adopted under section 8 of
33 this act as though it were an oil tanker.

34 **Sec. 10.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read
35 as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

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

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

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

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

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

27 (6) "Committee" means the preassessment screening committee
28 established under RCW 90.48.368.

29 (7) "Covered vessel" means a tank vessel, cargo vessel, or
30 passenger vessel.

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

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

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

35 (11)(a) "Facility" means any structure, group of structures,
36 equipment, pipeline, or device, other than a vessel, located on or near
37 the navigable waters of the state that transfers oil in bulk to or from

1 a tank vessel or pipeline, that is used for producing, storing,
2 handling, transferring, processing, or transporting oil in bulk.

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

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

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

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

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

26 (16) "Necessary expenses" means the expenses incurred by the
27 department and assisting state agencies for (a) investigating the
28 source of the discharge; (b) investigating the extent of the
29 environmental damage caused by the discharge; (c) conducting actions
30 necessary to clean up the discharge; (d) conducting predamage and
31 damage assessment studies; and (e) enforcing the provisions of this
32 chapter and collecting for damages caused by a discharge.

33 (17) "Oil" or "oils" means oil of any kind that is liquid at
34 atmospheric temperature and any fractionation thereof, including, but
35 not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil,
36 biological oils and blends, oil sludge, oil refuse, and oil mixed with
37 wastes other than dredged spoil. Oil does not include any substance
38 listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989,

1 under section 101(14) of the federal comprehensive environmental
2 response, compensation, and liability act of 1980, as amended by P.L.
3 99-499.

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

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

13 (20)(a) "Owner or operator" means (i) in the case of a vessel, any
14 person owning, operating, or chartering by demise, the vessel; (ii) in
15 the case of an onshore or offshore facility, any person owning or
16 operating the facility; and (iii) in the case of an abandoned vessel or
17 onshore or offshore facility, the person who owned or operated the
18 vessel or facility immediately before its abandonment.

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

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

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

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

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

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

- 35 (a) Operates on the waters of the state; or
- 36 (b) Transfers oil in a port or place subject to the jurisdiction of
37 this state.

1 (26) "Waters of the state" includes lakes, rivers, ponds, streams,
2 inland waters, underground water, salt waters, estuaries, tidal flats,
3 beaches and lands adjoining the seacoast of the state, sewers, and all
4 other surface waters and watercourses within the jurisdiction of the
5 state of Washington.

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

10 (28) "Transmission pipeline" means an interstate or intrastate
11 pipeline subject to regulation by the United States department of
12 transportation under Part 195 of Title 49 of the code of federal
13 regulations in effect as of January 1, 2014, through which oil moves in
14 transportation, including line pipes, valves, and other appurtenances
15 connected to line pipes, pumping units, and fabricated assemblies
16 associated with pumping units.

17 (29) "Type of oil" means crude oil or refined petroleum products
18 including gasoline, diesel, jet fuel, fuel oils, blending components,
19 and other petroleum products. Crude oil types must be specified by
20 their distinct place of origin.

21 NEW SECTION. Sec. 11. A new section is added to chapter 90.56 RCW
22 to read as follows:

23 (1) For the purposes of this section, "barge" means a vessel that
24 is not self-propelled.

25 (2)(a) If an oil spill occurs involving a barge laden with oil
26 towed by a tug in the following geographic areas and the department
27 finds that the owner or operator of the tug has acted with recklessness
28 or negligence, the tug owner or operator is subject to a penalty of
29 between one thousand and one thousand five hundred dollars per gallon
30 of oil discharged, to the extent that these waters are within the
31 territorial boundaries of Washington:

32 (i) East of a line extending from Discovery Island light south to
33 New Dungeness light and all points in the Puget Sound area, including
34 but not limited to Haro Strait, Rosario Strait, the Strait of Georgia,
35 Puget Sound, Hood Canal, and those portions of the Strait of Juan de
36 Fuca east of the line between New Dungeness light and Discovery Island
37 light;

1 (ii) Within a two mile radius of the Grays Harbor pilotage district
2 as defined by RCW 88.16.050;

3 (iii) Within three miles of Cape Disappointment at the mouth of the
4 Columbia river; or

5 (iv) Any inland portion of the Columbia river.

6 (b) Regardless of whether the department makes a finding of
7 recklessness or negligence under (a) of this subsection, the owner or
8 operator of a tug is not subject to the penalties under (a) of this
9 subsection if there were at least two individuals qualified by the
10 United States coast guard in the control bridge of the tug for the
11 duration of the voyage as recorded in the ship's log, one of whom was
12 assigned to serve exclusively as lookout except during the docking of
13 the vessel.

14 (c) The absence of a finding of recklessness or negligence by the
15 department for purposes of the assessment of penalties under this
16 subsection (2) may not be used as a defense to liability under RCW
17 9A.08.010 or other statutes or common law that establish standards for
18 the determination of recklessness or negligence.

19 (3) The penalty assessed in subsection (2) of this section is in
20 addition to any natural resource damages provided for under RCW
21 90.48.366 or 90.48.367 and any other penalties provided for under this
22 chapter or chapter 90.48 or 88.46 RCW.

23 NEW SECTION. **Sec. 12.** A new section is added to chapter 88.16 RCW
24 to read as follows:

25 The department of ecology may issue a penalty of up to ten thousand
26 dollars a day for each violation of RCW 88.16.190 or 88.16.200 or rules
27 adopted under section 8 of this act. Each violation is a separate and
28 distinct offense, and in the case of a continuing violation, every
29 day's continuance is a separate and distinct violation. Every act of
30 commission or omission which procures, aids, or abets in the violation
31 is considered a violation and subject to the penalty. The penalty
32 amount must be set in consideration of the previous history of the
33 violator and the severity of the violation's impact on public health,
34 the environment, or both, in addition to other relevant factors.
35 Penalties under this section shall be imposed pursuant to the
36 procedures set forth in RCW 43.21B.300.

1 **Sec. 13.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
2 read as follows:

3 (1) The hearings board shall only have jurisdiction to hear and
4 decide appeals from the following decisions of the department, the
5 director, local conservation districts, the air pollution control
6 boards or authorities as established pursuant to chapter 70.94 RCW,
7 local health departments, the department of natural resources, the
8 department of fish and wildlife, the parks and recreation commission,
9 and authorized public entities described in chapter 79.100 RCW:

10 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
11 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, section 12 of
12 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
13 90.56.330, section 11 of this act, and 90.64.102.

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
16 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

17 (c) A final decision by the department or director made under
18 chapter 183, Laws of 2009.

19 (d) Except as provided in RCW 90.03.210(2), the issuance,
20 modification, or termination of any permit, certificate, or license by
21 the department or any air authority in the exercise of its
22 jurisdiction, including the issuance or termination of a waste disposal
23 permit, the denial of an application for a waste disposal permit, the
24 modification of the conditions or the terms of a waste disposal permit,
25 or a decision to approve or deny an application for a solid waste
26 permit exemption under RCW 70.95.300.

27 (e) Decisions of local health departments regarding the grant or
28 denial of solid waste permits pursuant to chapter 70.95 RCW.

29 (f) Decisions of local health departments regarding the issuance
30 and enforcement of permits to use or dispose of biosolids under RCW
31 70.95J.080.

32 (g) Decisions of the department regarding waste-derived fertilizer
33 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
34 department regarding waste-derived soil amendments under RCW 70.95.205.

35 (h) Decisions of local conservation districts related to the denial
36 of approval or denial of certification of a dairy nutrient management
37 plan; conditions contained in a plan; application of any dairy nutrient

1 management practices, standards, methods, and technologies to a
2 particular dairy farm; and failure to adhere to the plan review and
3 approval timelines in RCW 90.64.026.

4 (i) Any other decision by the department or an air authority which
5 pursuant to law must be decided as an adjudicative proceeding under
6 chapter 34.05 RCW.

7 (j) Decisions of the department of natural resources, the
8 department of fish and wildlife, and the department that are reviewable
9 under chapter 76.09 RCW, and the department of natural resources'
10 appeals of county, city, or town objections under RCW 76.09.050(7).

11 (k) Forest health hazard orders issued by the commissioner of
12 public lands under RCW 76.06.180.

13 (l) Decisions of the department of fish and wildlife to issue,
14 deny, condition, or modify a hydraulic project approval permit under
15 chapter 77.55 RCW.

16 (m) Decisions of the department of natural resources that are
17 reviewable under RCW 78.44.270.

18 (n) Decisions of an authorized public entity under RCW 79.100.010
19 to take temporary possession or custody of a vessel or to contest the
20 amount of reimbursement owed that are reviewable by the hearings board
21 under RCW 79.100.120.

22 (2) The following hearings shall not be conducted by the hearings
23 board:

24 (a) Hearings required by law to be conducted by the shorelines
25 hearings board pursuant to chapter 90.58 RCW.

26 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
27 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

28 (c) Appeals of decisions by the department under RCW 90.03.110 and
29 90.44.220.

30 (d) Hearings conducted by the department to adopt, modify, or
31 repeal rules.

32 (3) Review of rules and regulations adopted by the hearings board
33 shall be subject to review in accordance with the provisions of the
34 administrative procedure act, chapter 34.05 RCW.

35 **Sec. 14.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
36 read as follows:

37 (1) The hearings board shall only have jurisdiction to hear and

1 decide appeals from the following decisions of the department, the
2 director, local conservation districts, the air pollution control
3 boards or authorities as established pursuant to chapter 70.94 RCW,
4 local health departments, the department of natural resources, the
5 department of fish and wildlife, the parks and recreation commission,
6 and authorized public entities described in chapter 79.100 RCW:

7 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
8 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, section 12 of
9 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
10 90.56.330, section 11 of this act, and 90.64.102.

11 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
12 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
13 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

14 (c) Except as provided in RCW 90.03.210(2), the issuance,
15 modification, or termination of any permit, certificate, or license by
16 the department or any air authority in the exercise of its
17 jurisdiction, including the issuance or termination of a waste disposal
18 permit, the denial of an application for a waste disposal permit, the
19 modification of the conditions or the terms of a waste disposal permit,
20 or a decision to approve or deny an application for a solid waste
21 permit exemption under RCW 70.95.300.

22 (d) Decisions of local health departments regarding the grant or
23 denial of solid waste permits pursuant to chapter 70.95 RCW.

24 (e) Decisions of local health departments regarding the issuance
25 and enforcement of permits to use or dispose of biosolids under RCW
26 70.95J.080.

27 (f) Decisions of the department regarding waste-derived fertilizer
28 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
29 department regarding waste-derived soil amendments under RCW 70.95.205.

30 (g) Decisions of local conservation districts related to the denial
31 of approval or denial of certification of a dairy nutrient management
32 plan; conditions contained in a plan; application of any dairy nutrient
33 management practices, standards, methods, and technologies to a
34 particular dairy farm; and failure to adhere to the plan review and
35 approval timelines in RCW 90.64.026.

36 (h) Any other decision by the department or an air authority which
37 pursuant to law must be decided as an adjudicative proceeding under
38 chapter 34.05 RCW.

1 (i) Decisions of the department of natural resources, the
2 department of fish and wildlife, and the department that are reviewable
3 under chapter 76.09 RCW, and the department of natural resources'
4 appeals of county, city, or town objections under RCW 76.09.050(7).

5 (j) Forest health hazard orders issued by the commissioner of
6 public lands under RCW 76.06.180.

7 (k) Decisions of the department of fish and wildlife to issue,
8 deny, condition, or modify a hydraulic project approval permit under
9 chapter 77.55 RCW.

10 (l) Decisions of the department of natural resources that are
11 reviewable under RCW 78.44.270.

12 (m) Decisions of an authorized public entity under RCW 79.100.010
13 to take temporary possession or custody of a vessel or to contest the
14 amount of reimbursement owed that are reviewable by the hearings board
15 under RCW 79.100.120.

16 (2) The following hearings shall not be conducted by the hearings
17 board:

18 (a) Hearings required by law to be conducted by the shorelines
19 hearings board pursuant to chapter 90.58 RCW.

20 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
21 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

22 (c) Appeals of decisions by the department under RCW 90.03.110 and
23 90.44.220.

24 (d) Hearings conducted by the department to adopt, modify, or
25 repeal rules.

26 (3) Review of rules and regulations adopted by the hearings board
27 shall be subject to review in accordance with the provisions of the
28 administrative procedure act, chapter 34.05 RCW.

29 **Sec. 15.** RCW 43.21B.300 and 2010 c 210 s 12 and 2010 c 84 s 4 are
30 each reenacted and amended to read as follows:

31 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
32 70.95.315, 70.105.080, 70.107.050, section 12 of this act, 88.46.090,
33 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102
34 and chapter 90.76 RCW shall be imposed by a notice in writing, either
35 by certified mail with return receipt requested or by personal service,
36 to the person incurring the penalty from the department or the local
37 air authority, describing the violation with reasonable particularity.

1 For penalties issued by local air authorities, within thirty days after
2 the notice is received, the person incurring the penalty may apply in
3 writing to the authority for the remission or mitigation of the
4 penalty. Upon receipt of the application, the authority may remit or
5 mitigate the penalty upon whatever terms the authority in its
6 discretion deems proper. The authority may ascertain the facts
7 regarding all such applications in such reasonable manner and under
8 such rules as it may deem proper and shall remit or mitigate the
9 penalty only upon a demonstration of extraordinary circumstances such
10 as the presence of information or factors not considered in setting the
11 original penalty.

12 (2) Any penalty imposed under this section may be appealed to the
13 pollution control hearings board in accordance with this chapter if the
14 appeal is filed with the hearings board and served on the department or
15 authority thirty days after the date of receipt by the person penalized
16 of the notice imposing the penalty or thirty days after the date of
17 receipt of the notice of disposition by a local air authority of the
18 application for relief from penalty.

19 (3) A penalty shall become due and payable on the later of:

20 (a) Thirty days after receipt of the notice imposing the penalty;

21 (b) Thirty days after receipt of the notice of disposition by a
22 local air authority on application for relief from penalty, if such an
23 application is made; or

24 (c) Thirty days after receipt of the notice of decision of the
25 hearings board if the penalty is appealed.

26 (4) If the amount of any penalty is not paid to the department
27 within thirty days after it becomes due and payable, the attorney
28 general, upon request of the department, shall bring an action in the
29 name of the state of Washington in the superior court of Thurston
30 county, or of any county in which the violator does business, to
31 recover the penalty. If the amount of the penalty is not paid to the
32 authority within thirty days after it becomes due and payable, the
33 authority may bring an action to recover the penalty in the superior
34 court of the county of the authority's main office or of any county in
35 which the violator does business. In these actions, the procedures and
36 rules of evidence shall be the same as in an ordinary civil action.

37 (5) All penalties recovered shall be paid into the state treasury
38 and credited to the general fund except those penalties imposed

1 pursuant to RCW 18.104.155, which shall be credited to the reclamation
2 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
3 disposition of which shall be governed by that provision, RCW
4 70.105.080, which shall be credited to the hazardous waste control and
5 elimination account created by RCW 70.105.180, RCW 90.56.330, which
6 shall be credited to the coastal protection fund created by RCW
7 90.48.390, and RCW 90.76.080, which shall be credited to the
8 underground storage tank account created by RCW 90.76.100.

9 NEW SECTION. **Sec. 16.** Section 13 of this act expires June 30,
10 2019.

11 NEW SECTION. **Sec. 17.** Section 14 of this act takes effect June
12 30, 2019.

13 NEW SECTION. **Sec. 18.** Section 4 of this act is necessary for the
14 immediate preservation of the public peace, health, or safety, or
15 support of the state government and its existing public institutions,
16 and takes effect immediately.

17 NEW SECTION. **Sec. 19.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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