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**SECOND SUBSTITUTE HOUSE BILL 2347**

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**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 new sections 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. A new section is added to chapter 88.16 RCW  
31 to read as follows:

32 (1)(a) Prior to adopting rules pursuant to this section, the  
33 department of ecology must seek the input of stakeholders including  
34 maritime safety forums such as the Puget Sound, Grays Harbor, and lower  
35 Columbia region harbor safety committees. Both prior to and in  
36 adopting rules pursuant to this section, the department of ecology must  
37 consider the net benefits to navigational safety of any new tug escort

1 requirements. Both prior to and in adopting rules applicable to the  
2 area described in RCW 88.16.190(1)(a), the department of ecology must  
3 also consider the data and findings of the 2014 vessel traffic risk  
4 assessment completed under the direction of the Puget Sound partnership  
5 and maritime experts.

6 (b) Prior to adopting rules pursuant to this section, the  
7 department of ecology must submit a report to the legislature by  
8 December 1, 2014. The report must include a recommendation on the  
9 merits of establishing additional tug escort safeguards by rule  
10 pursuant to this section.

11 (c) Unless the 2015 legislature acts to repeal the department of  
12 ecology's rule-making authority based on the recommendations of the  
13 report, the department may adopt rules pursuant to this section.

14 (2) Beginning July 1, 2015, the department of ecology may adopt  
15 rules to require the escort of oil tankers by a tug or tugs in the  
16 areas listed in RCW 88.16.190(1).

17 (3) Beginning July 1, 2015, the department of ecology may adopt  
18 rules that require additional safeguards related to tanker escorts to  
19 address specific spill risks based on season, adverse weather  
20 conditions, the type of oil, as defined in RCW 90.56.010, being  
21 transported by the tanker, or geographic location. However, if an oil  
22 tanker is equipped with fully redundant systems, the department of  
23 ecology may not:

- 24 (a) Require escort by more than one tug; and
- 25 (b) Subject the oil tanker to any requirements adopted by rule  
26 under this subsection (3).

27 (4) In developing rules for Grays Harbor and the Columbia river,  
28 the department of ecology must recognize the differences between these  
29 areas and Puget Sound, including differences in the physical  
30 environment, vessel traffic, weather, and other relevant factors. The  
31 department of ecology must appropriately account for these unique local  
32 circumstances in any rules adopted pursuant to this section.

33 (5) The authority of the department of ecology to initiate rule  
34 making to adopt additional tug escort safety requirements pursuant to  
35 this section and RCW 88.16.190 expires January 1, 2020.

36 (6) For the purposes of this section, "redundant systems" includes,  
37 at minimum, all of the following features:

- 38 (a) A double hull;

1 (b) Two independent propellers each with a dedicated engine or  
2 motor, propulsion system, electrical system, fuel system, lube oil  
3 system, and any other system required to provide an independent means  
4 of propulsion;

5 (c) Two independent rudders, each with separate steering systems;  
6 and

7 (d) The arrangement of the propulsion and steering systems in (b)  
8 and (c) of this subsection such that a fire or flood in one space will  
9 not affect the equivalent system in the other space or spaces.

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

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

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

18 The definitions in this section apply throughout this chapter  
19 unless the context clearly requires otherwise.

20 (1) "Best achievable protection" means the highest level of  
21 protection that can be achieved through the use of the best achievable  
22 technology and those staffing levels, training procedures, and  
23 operational methods that provide the greatest degree of protection  
24 achievable. The director's determination of best achievable protection  
25 shall be guided by the critical need to protect the state's natural  
26 resources and waters, while considering (a) the additional protection  
27 provided by the measures; (b) the technological achievability of the  
28 measures; and (c) the cost of the measures.

29 (2) "Best achievable technology" means the technology that provides  
30 the greatest degree of protection taking into consideration (a)  
31 processes that are being developed, or could feasibly be developed,  
32 given overall reasonable expenditures on research and development, and  
33 (b) processes that are currently in use. In determining what is best  
34 achievable technology, the director shall consider the effectiveness,  
35 engineering feasibility, and commercial availability of the technology.

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

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

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

8 (6) "Committee" means the preassessment screening committee  
9 established under RCW 90.48.368.

10 (7) "Covered vessel" means a tank vessel, cargo vessel, or  
11 passenger vessel.

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

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

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

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

21 (b) A facility does not include any: (i) Railroad car, motor  
22 vehicle, or other rolling stock while transporting oil over the  
23 highways or rail lines of this state; (ii) underground storage tank  
24 regulated by the department or a local government under chapter 90.76  
25 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is  
26 operated as part of an exempt agricultural activity as provided in RCW  
27 82.04.330; or (v) marine fuel outlet that does not dispense more than  
28 three thousand gallons of fuel to a ship that is not a covered vessel,  
29 in a single transaction.

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

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

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

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

6 (16) "Necessary expenses" means the expenses incurred by the  
7 department and assisting state agencies for (a) investigating the  
8 source of the discharge; (b) investigating the extent of the  
9 environmental damage caused by the discharge; (c) conducting actions  
10 necessary to clean up the discharge; (d) conducting predamage and  
11 damage assessment studies; and (e) enforcing the provisions of this  
12 chapter and collecting for damages caused by a discharge.

13 (17) "Oil" or "oils" means oil of any kind that is liquid at  
14 atmospheric temperature and any fractionation thereof, including, but  
15 not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil,  
16 biological oils and blends, oil sludge, oil refuse, and oil mixed with  
17 wastes other than dredged spoil. Oil does not include any substance  
18 listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989,  
19 under section 101(14) of the federal comprehensive environmental  
20 response, compensation, and liability act of 1980, as amended by P.L.  
21 99-499.

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

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

31 (20)(a) "Owner or operator" means (i) in the case of a vessel, any  
32 person owning, operating, or chartering by demise, the vessel; (ii) in  
33 the case of an onshore or offshore facility, any person owning or  
34 operating the facility; and (iii) in the case of an abandoned vessel or  
35 onshore or offshore facility, the person who owned or operated the  
36 vessel or facility immediately before its abandonment.

37 (b) "Operator" does not include any person who owns the land

1 underlying a facility if the person is not involved in the operations  
2 of the facility.

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

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

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

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

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

- 16 (a) Operates on the waters of the state; or
- 17 (b) Transfers oil in a port or place subject to the jurisdiction of  
18 this state.

19 (26) "Waters of the state" includes lakes, rivers, ponds, streams,  
20 inland waters, underground water, salt waters, estuaries, tidal flats,  
21 beaches and lands adjoining the seacoast of the state, sewers, and all  
22 other surface waters and watercourses within the jurisdiction of the  
23 state of Washington.

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

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

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

1        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 90.56 RCW  
2 to read as follows:

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

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

12        (i) East of a line extending from Discovery Island light south to  
13 New Dungeness light and all points in the Puget Sound area, including  
14 but not limited to Haro Strait, Rosario Strait, the Strait of Georgia,  
15 Puget Sound, Hood Canal, and those portions of the Strait of Juan de  
16 Fuca east of the line between New Dungeness light and Discovery Island  
17 light;

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

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

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

23        (b) Regardless of whether the department makes a finding of  
24 recklessness or negligence under (a) of this subsection, the owner or  
25 operator of a tug is not subject to the penalties under (a) of this  
26 subsection if there were at least two individuals qualified by the  
27 United States coast guard in the control bridge of the tug for the  
28 duration of the voyage as recorded in the ship's log, one of whom was  
29 assigned to serve exclusively as lookout except during the docking of  
30 the vessel.

31        (c) The absence of a finding of recklessness or negligence by the  
32 department for purposes of the assessment of penalties under this  
33 subsection (2) may not be used as a defense to liability under RCW  
34 9A.08.010 or other statutes or common law that establish standards for  
35 the determination of recklessness or negligence.

36        (3) The penalty assessed in subsection (2) of this section is in  
37 addition to any natural resource damages provided for under RCW

1 90.48.366 or 90.48.367 and any other penalties provided for under this  
2 chapter or chapter 90.48 or 88.46 RCW.

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

5 The department of ecology may issue a penalty of up to ten thousand  
6 dollars a day for each violation of RCW 88.16.190 or 88.16.200 or rules  
7 adopted under section 8 of this act. Each violation is a separate and  
8 distinct offense, and in the case of a continuing violation, every  
9 day's continuance is a separate and distinct violation. Every act of  
10 commission or omission which procures, aids, or abets in the violation  
11 is considered a violation and subject to the penalty. The penalty  
12 amount must be set in consideration of the previous history of the  
13 violator and the severity of the violation's impact on public health,  
14 the environment, or both, in addition to other relevant factors.  
15 Penalties under this section shall be imposed pursuant to the  
16 procedures set forth in RCW 43.21B.300.

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

19 (1) The hearings board shall only have jurisdiction to hear and  
20 decide appeals from the following decisions of the department, the  
21 director, local conservation districts, the air pollution control  
22 boards or authorities as established pursuant to chapter 70.94 RCW,  
23 local health departments, the department of natural resources, the  
24 department of fish and wildlife, the parks and recreation commission,  
25 and authorized public entities described in chapter 79.100 RCW:

26 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
27 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, section 12 of  
28 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
29 90.56.330, section 11 of this act, and 90.64.102.

30 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
31 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
32 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

35 (d) Except as provided in RCW 90.03.210(2), the issuance,  
36 modification, or termination of any permit, certificate, or license by



1 the department or any air authority in the exercise of its  
2 jurisdiction, including the issuance or termination of a waste disposal  
3 permit, the denial of an application for a waste disposal permit, the  
4 modification of the conditions or the terms of a waste disposal permit,  
5 or a decision to approve or deny an application for a solid waste  
6 permit exemption under RCW 70.95.300.

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

9 (f) Decisions of local health departments regarding the issuance  
10 and enforcement of permits to use or dispose of biosolids under RCW  
11 70.95J.080.

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

15 (h) Decisions of local conservation districts related to the denial  
16 of approval or denial of certification of a dairy nutrient management  
17 plan; conditions contained in a plan; application of any dairy nutrient  
18 management practices, standards, methods, and technologies to a  
19 particular dairy farm; and failure to adhere to the plan review and  
20 approval timelines in RCW 90.64.026.

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

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

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

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

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

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

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

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

5 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
6 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

7 (c) Appeals of decisions by the department under RCW 90.03.110 and  
8 90.44.220.

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

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

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

16 (1) The hearings board shall only have jurisdiction to hear and  
17 decide appeals from the following decisions of the department, the  
18 director, local conservation districts, the air pollution control  
19 boards or authorities as established pursuant to chapter 70.94 RCW,  
20 local health departments, the department of natural resources, the  
21 department of fish and wildlife, the parks and recreation commission,  
22 and authorized public entities described in chapter 79.100 RCW:

23 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
24 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, section 12 of  
25 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
26 90.56.330, section 11 of this act, and 90.64.102.

27 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
28 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
29 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

30 (c) Except as provided in RCW 90.03.210(2), the issuance,  
31 modification, or termination of any permit, certificate, or license by  
32 the department or any air authority in the exercise of its  
33 jurisdiction, including the issuance or termination of a waste disposal  
34 permit, the denial of an application for a waste disposal permit, the  
35 modification of the conditions or the terms of a waste disposal permit,  
36 or a decision to approve or deny an application for a solid waste  
37 permit exemption under RCW 70.95.300.

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

3 (e) Decisions of local health departments regarding the issuance  
4 and enforcement of permits to use or dispose of biosolids under RCW  
5 70.95J.080.

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

9 (g) Decisions of local conservation districts related to the denial  
10 of approval or denial of certification of a dairy nutrient management  
11 plan; conditions contained in a plan; application of any dairy nutrient  
12 management practices, standards, methods, and technologies to a  
13 particular dairy farm; and failure to adhere to the plan review and  
14 approval timelines in RCW 90.64.026.

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

18 (i) Decisions of the department of natural resources, the  
19 department of fish and wildlife, and the department that are reviewable  
20 under chapter 76.09 RCW, and the department of natural resources'  
21 appeals of county, city, or town objections under RCW 76.09.050(7).

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

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

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

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

33 (2) The following hearings shall not be conducted by the hearings  
34 board:

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

37 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
38 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

1 (c) Appeals of decisions by the department under RCW 90.03.110 and  
2 90.44.220.

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

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

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

10 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,  
11 70.95.315, 70.105.080, 70.107.050, section 12 of this act, 88.46.090,  
12 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102  
13 and chapter 90.76 RCW shall be imposed by a notice in writing, either  
14 by certified mail with return receipt requested or by personal service,  
15 to the person incurring the penalty from the department or the local  
16 air authority, describing the violation with reasonable particularity.  
17 For penalties issued by local air authorities, within thirty days after  
18 the notice is received, the person incurring the penalty may apply in  
19 writing to the authority for the remission or mitigation of the  
20 penalty. Upon receipt of the application, the authority may remit or  
21 mitigate the penalty upon whatever terms the authority in its  
22 discretion deems proper. The authority may ascertain the facts  
23 regarding all such applications in such reasonable manner and under  
24 such rules as it may deem proper and shall remit or mitigate the  
25 penalty only upon a demonstration of extraordinary circumstances such  
26 as the presence of information or factors not considered in setting the  
27 original penalty.

28 (2) Any penalty imposed under this section may be appealed to the  
29 pollution control hearings board in accordance with this chapter if the  
30 appeal is filed with the hearings board and served on the department or  
31 authority thirty days after the date of receipt by the person penalized  
32 of the notice imposing the penalty or thirty days after the date of  
33 receipt of the notice of disposition by a local air authority of the  
34 application for relief from penalty.

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

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

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

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

6 (4) If the amount of any penalty is not paid to the department  
7 within thirty days after it becomes due and payable, the attorney  
8 general, upon request of the department, shall bring an action in the  
9 name of the state of Washington in the superior court of Thurston  
10 county, or of any county in which the violator does business, to  
11 recover the penalty. If the amount of the penalty is not paid to the  
12 authority within thirty days after it becomes due and payable, the  
13 authority may bring an action to recover the penalty in the superior  
14 court of the county of the authority's main office or of any county in  
15 which the violator does business. In these actions, the procedures and  
16 rules of evidence shall be the same as in an ordinary civil action.

17 (5) All penalties recovered shall be paid into the state treasury  
18 and credited to the general fund except those penalties imposed  
19 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
20 account as provided in RCW 18.104.155(7), RCW 70.94.431, the  
21 disposition of which shall be governed by that provision, RCW  
22 70.105.080, which shall be credited to the hazardous waste control and  
23 elimination account created by RCW 70.105.180, RCW 90.56.330, which  
24 shall be credited to the coastal protection fund created by RCW  
25 90.48.390, and RCW 90.76.080, which shall be credited to the  
26 underground storage tank account created by RCW 90.76.100.

27 NEW SECTION. **Sec. 16.** Section 13 of this act expires June 30,  
28 2019.

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

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

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

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