

SHB 1449 - H AMD 162

By Representative Farrell

ADOPTED 3/5/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and
4 amended to read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Best achievable protection" means the highest level of
8 protection that can be achieved through the use of the best
9 achievable technology and those staffing levels, training procedures,
10 and operational methods that provide the greatest degree of
11 protection achievable. The director's determination of best
12 achievable protection shall be guided by the critical need to protect
13 the state's natural resources and waters, while considering:

- 14 (a) The additional protection provided by the measures;
15 (b) The technological achievability of the measures; and
16 (c) The cost of the measures.

17 (2)(a) "Best achievable technology" means the technology that
18 provides the greatest degree of protection taking into consideration:

19 (i) Processes that are being developed, or could feasibly be
20 developed, given overall reasonable expenditures on research and
21 development; and

22 (ii) Processes that are currently in use.

23 (b) In determining what is best achievable technology, the
24 director shall consider the effectiveness, engineering feasibility,
25 and commercial availability of the technology.

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

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

1 (5) "Covered vessel" means a tank vessel, cargo vessel, or
2 passenger vessel.

3 (6) "Department" means the department of ecology.

4 (7) "Director" means the director of the department of ecology.

5 (8) "Discharge" means any spilling, leaking, pumping, pouring,
6 emitting, emptying, or dumping.

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

13 (b) For the purposes of oil spill contingency planning in RCW
14 90.56.210, advanced notice of oil transfers in section 8 of this act,
15 and financial responsibility in RCW 88.40.025, facility also means a
16 railroad that is not owned by the state that transports oil as bulk
17 cargo.

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

27 (10) "Marine facility" means any facility used for tank vessel
28 wharfage or anchorage, including any equipment used for the purpose
29 of handling or transferring oil in bulk to or from a tank vessel.

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

35 (12) "Offshore facility" means any facility located in, on, or
36 under any of the navigable waters of the state, but does not include
37 a facility any part of which is located in, on, or under any land of
38 the state, other than submerged land. "Offshore facility" does not
39 include a marine facility.

1 (13) "Oil" or "oils" means oil of any kind that is liquid at
2 ((~~atmospheric temperature~~)) twenty-five degrees Celsius and one
3 atmosphere of pressure and any fractionation thereof, including, but
4 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
5 well condensate, petroleum, gasoline, fuel oil, diesel oil,
6 biological oils and blends, oil sludge, oil refuse, and oil mixed
7 with wastes other than dredged spoil. Oil does not include any
8 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August
9 14, 1989, under section ((~~101(14)~~)) 102(a) of the federal
10 comprehensive environmental response, compensation, and liability act
11 of 1980, as amended by P.L. 99-499.

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

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

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

27 (16) "Passenger vessel" means a ship of three hundred or more
28 gross tons with a fuel capacity of at least six thousand gallons
29 carrying passengers for compensation.

30 (17) "Person" means any political subdivision, government agency,
31 municipality, industry, public or private corporation, copartnership,
32 association, firm, individual, or any other entity whatsoever.

33 (18) "Race Rocks light" means the nautical landmark located
34 southwest of the city of Victoria, British Columbia.

35 (19) "Regional vessels of opportunity response group" means a
36 group of nondedicated vessels participating in a vessels of
37 opportunity response system to respond when needed and available to
38 spills in a defined geographic area.

1 (20) "Severe weather conditions" means observed nautical
2 conditions with sustained winds measured at forty knots and wave
3 heights measured between twelve and eighteen feet.

4 (21) "Ship" means any boat, ship, vessel, barge, or other
5 floating craft of any kind.

6 (22) "Spill" means an unauthorized discharge of oil into the
7 waters of the state.

8 (23) "Strait of Juan de Fuca" means waters off the northern coast
9 of the Olympic Peninsula seaward of a line drawn from New Dungeness
10 light in Clallam county to Discovery Island light on Vancouver
11 Island, British Columbia, Canada.

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

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

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

18 (25) "Umbrella plan holder" means a nonprofit corporation
19 established consistent with this chapter for the purposes of
20 providing oil spill response and contingency plan coverage.

21 (26) "Vessel emergency" means a substantial threat of pollution
22 originating from a covered vessel, including loss or serious
23 degradation of propulsion, steering, means of navigation, primary
24 electrical generating capability, and seakeeping capability.

25 (27) "Vessels of opportunity response system" means nondedicated
26 boats and operators, including fishing and other vessels, that are
27 under contract with and equipped by contingency plan holders to
28 assist with oil spill response activities, including on-water oil
29 recovery in the near shore environment and the placement of oil spill
30 containment booms to protect sensitive habitats.

31 (28) "Volunteer coordination system" means an oil spill response
32 system that, before a spill occurs, prepares for the coordination of
33 volunteers to assist with appropriate oil spill response activities,
34 which may include shoreline protection and cleanup, wildlife
35 recovery, field observation, light construction, facility
36 maintenance, donations management, clerical support, and other
37 aspects of a spill response.

38 (29) "Waters of the state" includes lakes, rivers, ponds,
39 streams, inland waters, underground water, salt waters, estuaries,
40 tidal flats, beaches and lands adjoining the seacoast of the state,

1 sewers, and all other surface waters and watercourses within the
2 jurisdiction of the state of Washington.

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

8 **Sec. 2.** RCW 90.56.005 and 2010 1st sp.s. c 7 s 72 are each
9 amended to read as follows:

10 (1) The legislature declares that waterborne transportation as a
11 source of supply for oil and hazardous substances poses special
12 concern for the state of Washington. Each year billions of gallons of
13 crude oil and refined petroleum products are transported as cargo and
14 fuel by vessels on the navigable waters of the state. The movement of
15 crude oil through rail corridors and over Washington waters creates
16 safety and environmental risks. The sources and transport of crude
17 oil bring risks to our communities along rail lines and to the
18 Columbia river, Grays Harbor, and Puget Sound waters. These shipments
19 are expected to increase in the coming years. Vessels and trains
20 transporting oil into Washington travel on some of the most unique
21 and special marine environments in the United States. These marine
22 environments are a source of natural beauty, recreation, and economic
23 livelihood for many residents of this state. As a result, the state
24 has an obligation to ensure the citizens of the state that the waters
25 of the state will be protected from oil spills.

26 (2) The legislature finds that prevention is the best method to
27 protect the unique and special marine environments in this state. The
28 technology for containing and cleaning up a spill of oil or hazardous
29 substances is at best only partially effective. Preventing spills is
30 more protective of the environment and more cost-effective when all
31 the response and damage costs associated with responding to a spill
32 are considered. Therefore, the legislature finds that the primary
33 objective of the state is to achieve a zero spills strategy to
34 prevent any oil or hazardous substances from entering waters of the
35 state.

36 (3) The legislature also finds that:

37 (a) Recent accidents in Washington, Alaska, southern California,
38 Texas, Pennsylvania, and other parts of the nation have shown that

1 the transportation, transfer, and storage of oil have caused
2 significant damage to the marine environment;

3 (b) Even with the best efforts, it is nearly impossible to remove
4 all oil that is spilled into the water, and average removal rates are
5 only fourteen percent;

6 (c) Washington's navigable waters are treasured environmental and
7 economic resources that the state cannot afford to place at undue
8 risk from an oil spill;

9 (d) The state has a fundamental responsibility, as the trustee of
10 the state's natural resources and the protector of public health and
11 the environment to prevent the spill of oil; and

12 (e) In section 5002 of the federal oil pollution act of 1990, the
13 United States congress found that many people believed that
14 complacency on the part of industry and government was one of the
15 contributing factors to the Exxon Valdez spill and, further, that one
16 method to combat this complacency is to involve local citizens in the
17 monitoring and oversight of oil spill plans. Congress also found that
18 a mechanism should be established that fosters the long-term
19 partnership of industry, government, and local communities in
20 overseeing compliance with environmental concerns in the operation of
21 crude oil terminals. Moreover, congress concluded that, in addition
22 to Alaska, a program of citizen monitoring and oversight should be
23 established in other major crude oil terminals in the United States
24 because recent oil spills indicate that the safe transportation of
25 oil is a national problem.

26 (4) In order to establish a comprehensive prevention and response
27 program to protect Washington's waters and natural resources from
28 spills of oil, it is the purpose of this chapter:

29 (a) To establish state agency expertise in marine safety and to
30 centralize state activities in spill prevention and response
31 activities;

32 (b) To prevent spills of oil and to promote programs that reduce
33 the risk of both catastrophic and small chronic spills;

34 (c) To ensure that responsible parties are liable, and have the
35 resources and ability, to respond to spills and provide compensation
36 for all costs and damages;

37 (d) To provide for state spill response and wildlife rescue
38 planning and implementation;

39 (e) To support and complement the federal oil pollution act of
40 1990 and other federal law, especially those provisions relating to

1 the national contingency plan for cleanup of oil spills and
2 discharges, including provisions relating to the responsibilities of
3 state agencies designated as natural resource trustees. The
4 legislature intends this chapter to be interpreted and implemented in
5 a manner consistent with federal law;

6 (f) To provide broad powers of regulation to the department of
7 ecology relating to spill prevention and response;

8 (g) To provide for independent review on an ongoing basis the
9 adequacy of oil spill prevention, preparedness, and response
10 activities in this state; (~~and~~)

11 (h) To provide an adequate funding source for state response and
12 prevention programs; and

13 (i) To maintain the best achievable protection that can be
14 obtained through the use of the best achievable technology and those
15 staffing levels, training procedures, and operational methods that
16 provide the greatest degree of protection achievable.

17 **Sec. 3.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to
18 read as follows:

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

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

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

38 (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
4 vessels and freighters.

5 (5) "Bulk" means material that is stored or transported in a
6 loose, unpackaged liquid, powder, or granular form capable of being
7 conveyed 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
18 near the navigable waters of the state that transfers oil in bulk to
19 or from a tank vessel or pipeline, that is used for producing,
20 storing, handling, transferring, processing, or transporting oil in
21 bulk.

22 (b) For the purposes of oil spill contingency planning in RCW
23 90.56.210, advanced notice of oil transfers in section 8 of this act,
24 and financial responsibility in RCW 88.40.025, facility also means a
25 railroad that is not owned by the state that transports oil as bulk
26 cargo.

27 (c) A facility does not include any: (i) (~~Railroad-car,~~) Motor
28 vehicle(~~(, or other rolling stock)~~) while transporting oil over the
29 highways (~~(or rail lines)~~) of this state; (ii) underground storage
30 tank regulated by the department or a local government under chapter
31 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that
32 is operated as part of an exempt agricultural activity as provided in
33 RCW 82.04.330; or (v) marine fuel outlet that does not dispense more
34 than three thousand gallons of fuel to a ship that is not a covered
35 vessel, in a single transaction.

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

38 (13) "Having control over oil" shall include but not be limited
39 to any person using, storing, or transporting oil immediately prior

1 to entry of such oil into the waters of the state, and shall
2 specifically include carriers and bailees of such oil.

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

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

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

18 (17) "Oil" or "oils" means oil of any kind that is liquid at
19 (~~atmospheric temperature~~) twenty-five degrees Celsius and one
20 atmosphere of pressure and any fractionation thereof, including, but
21 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
22 well condensate, petroleum, gasoline, fuel oil, diesel oil,
23 biological oils and blends, oil sludge, oil refuse, and oil mixed
24 with wastes other than dredged spoil. Oil does not include any
25 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August
26 14, 1989, under section (~~101(14)~~) 102(a) of the federal
27 comprehensive environmental response, compensation, and liability act
28 of 1980, as amended by P.L. 99-499.

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

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

38 (20)(a) "Owner or operator" means (i) in the case of a vessel,
39 any person owning, operating, or chartering by demise, the vessel;
40 (ii) in the case of an onshore or offshore facility, any person

1 owning or operating the facility; and (iii) in the case of an
2 abandoned vessel or onshore or offshore facility, the person who
3 owned or operated the vessel or facility immediately before its
4 abandonment.

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

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

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

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

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

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

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

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

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

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

34 (28) "Crude oil" means any naturally occurring hydrocarbons
35 coming from the earth that are liquid at twenty-five degrees Celsius
36 and one atmosphere of pressure including, but not limited to, crude
37 oil, bitumen and diluted bitumen, synthetic crude oil, and natural
38 gas well condensate.

1 **Sec. 4.** RCW 90.56.200 and 2000 c 69 s 19 are each amended to
2 read as follows:

3 (1) The owner or operator for each onshore and offshore facility,
4 except as determined in subsection (3) of this section, shall prepare
5 and submit to the department an oil spill prevention plan in
6 conformance with the requirements of this chapter. The plans shall be
7 submitted to the department in the time and manner directed by the
8 department. The spill prevention plan may be consolidated with a
9 spill contingency plan submitted pursuant to RCW 90.56.210. The
10 department may accept plans prepared to comply with other state or
11 federal law as spill prevention plans to the extent those plans
12 comply with the requirements of this chapter. The department, by
13 rule, shall establish standards for spill prevention plans.

14 (2) The spill prevention plan for an onshore or offshore facility
15 shall:

16 (a) Establish compliance with the federal oil pollution act of
17 1990, if applicable, and financial responsibility requirements under
18 federal and state law;

19 (b) Certify that supervisory and other key personnel in charge of
20 transfer, storage, and handling of oil have received certification
21 pursuant to RCW 90.56.220;

22 (c) Certify that the facility has an operations manual required
23 by RCW 90.56.230;

24 (d) Certify the implementation of alcohol and drug use awareness
25 programs;

26 (e) Describe the facility's maintenance and inspection program
27 and contain a current maintenance and inspection record of the
28 storage and transfer facilities and related equipment;

29 (f) Describe the facility's alcohol and drug treatment programs;

30 (g) Describe spill prevention technology that has been installed,
31 including overflow alarms, automatic overflow cut-off switches,
32 secondary containment facilities, and storm water retention,
33 treatment, and discharge systems;

34 (h) Describe any discharges of oil to the land or the water of
35 more than twenty-five barrels in the prior five years and the
36 measures taken to prevent a reoccurrence;

37 (i) Describe the procedures followed by the facility to contain
38 and recover any oil that spills during the transfer of oil to or from
39 the facility;

1 (j) Provide for the incorporation into the facility during the
2 period covered by the plan of those measures that will provide the
3 best achievable protection for the public health and the environment;
4 and

5 (k) Include any other information reasonably necessary to carry
6 out the purposes of this chapter required by rules adopted by the
7 department.

8 (3) Plan requirements in subsection (2) of this section are not
9 applicable to railroad facility operators while transporting oil over
10 rail lines of this state.

11 (4) The department shall only approve a prevention plan if it
12 provides the best achievable protection from damages caused by the
13 discharge of oil into the waters of the state and if it determines
14 that the plan meets the requirements of this section and rules
15 adopted by the department.

16 ((+4)) (5) Upon approval of a prevention plan, the department
17 shall provide to the person submitting the plan a statement
18 indicating that the plan has been approved, the facilities covered by
19 the plan, and other information the department determines should be
20 included.

21 ((+5)) (6) The approval of a prevention plan shall be valid for
22 five years. An owner or operator of a facility shall notify the
23 department in writing immediately of any significant change of which
24 it is aware affecting its prevention plan, including changes in any
25 factor set forth in this section or in rules adopted by the
26 department. The department may require the owner or operator to
27 update a prevention plan as a result of these changes.

28 ((+6)) (7) The department by rule shall require prevention plans
29 to be reviewed, updated, if necessary, and resubmitted to the
30 department at least once every five years.

31 ((+7)) (8) Approval of a prevention plan by the department does
32 not constitute an express assurance regarding the adequacy of the
33 plan nor constitute a defense to liability imposed under this chapter
34 or other state law.

35 ((+8)) (9) This section does not authorize the department to
36 modify the terms of a collective bargaining agreement.

37 **Sec. 5.** RCW 90.56.210 and 2005 c 78 s 1 are each amended to read
38 as follows:

1 (1) Each onshore and offshore facility shall have a contingency
2 plan for the containment and cleanup of oil spills from the facility
3 into the waters of the state and for the protection of fisheries and
4 wildlife, shellfish beds, natural resources, and public and private
5 property from such spills. The department shall by rule adopt and
6 periodically revise standards for the preparation of contingency
7 plans. The department shall require contingency plans, at a minimum,
8 to meet the following standards:

9 (a) Include full details of the method of response to spills of
10 various sizes from any facility which is covered by the plan;

11 (b) Be designed to be capable in terms of personnel, materials,
12 and equipment, of promptly and properly, to the maximum extent
13 practicable, as defined by the department removing oil and minimizing
14 any damage to the environment resulting from a worst case spill;

15 (c) Provide a clear, precise, and detailed description of how the
16 plan relates to and is integrated into relevant contingency plans
17 which have been prepared by cooperatives, ports, regional entities,
18 the state, and the federal government;

19 (d) Provide procedures for early detection of oil spills and
20 timely notification of such spills to appropriate federal, state, and
21 local authorities under applicable state and federal law;

22 (e) State the number, training preparedness, and fitness of all
23 dedicated, prepositioned personnel assigned to direct and implement
24 the plan;

25 (f) Incorporate periodic training and drill programs to evaluate
26 whether personnel and equipment provided under the plan are in a
27 state of operational readiness at all times;

28 (g) Describe important features of the surrounding environment,
29 including fish and wildlife habitat, shellfish beds, environmentally
30 and archaeologically sensitive areas, and public facilities. The
31 departments of ecology, fish and wildlife, and natural resources, and
32 the ((office)) department of archaeology and historic preservation,
33 upon request, shall provide information that they have available to
34 assist in preparing this description. The description of
35 archaeologically sensitive areas shall not be required to be included
36 in a contingency plan until it is reviewed and updated pursuant to
37 subsection (9) of this section;

38 (h) State the means of protecting and mitigating effects on the
39 environment, including fish, shellfish, marine mammals, and other

1 wildlife, and ensure that implementation of the plan does not pose
2 unacceptable risks to the public or the environment;

3 (i) Provide arrangements for the repositioning of oil spill
4 containment and cleanup equipment and trained personnel at strategic
5 locations from which they can be deployed to the spill site to
6 promptly and properly remove the spilled oil;

7 (j) Provide arrangements for enlisting the use of qualified and
8 trained cleanup personnel to implement the plan;

9 (k) Provide for disposal of recovered spilled oil in accordance
10 with local, state, and federal laws;

11 (l) Until a spill prevention plan has been submitted pursuant to
12 RCW 90.56.200, state the measures that have been taken to reduce the
13 likelihood that a spill will occur, including but not limited to,
14 design and operation of a facility, training of personnel, number of
15 personnel, and backup systems designed to prevent a spill;

16 (m) State the amount and type of equipment available to respond
17 to a spill, where the equipment is located, and the extent to which
18 other contingency plans rely on the same equipment; and

19 (n) If the department has adopted rules permitting the use of
20 dispersants, the circumstances, if any, and the manner for the
21 application of the dispersants in conformance with the department's
22 rules.

23 (2)(a) The following shall submit contingency plans to the
24 department within six months after the department adopts rules
25 establishing standards for contingency plans under subsection (1) of
26 this section:

27 (i) Onshore facilities capable of storing one million gallons or
28 more of oil; and

29 (ii) Offshore facilities.

30 (b) Contingency plans for all other onshore and offshore
31 facilities shall be submitted to the department within eighteen
32 months after the department has adopted rules under subsection (1) of
33 this section. The department may adopt a schedule for submission of
34 plans within the eighteen-month period.

35 (3) The department by rule shall determine the contingency plan
36 requirements for railroads transporting oil in bulk. Federal oil
37 spill response plans created pursuant to 33 U.S.C. Sec. 1321 may be
38 submitted in lieu of contingency plans until state rules are adopted.

39 (4)(a) The owner or operator of a facility shall submit the
40 contingency plan for the facility.

1 (b) A person who has contracted with a facility to provide
2 containment and cleanup services and who meets the standards
3 established pursuant to RCW 90.56.240, may submit the plan for any
4 facility for which the person is contractually obligated to provide
5 services. Subject to conditions imposed by the department, the person
6 may submit a single plan for more than one facility.

7 ~~((4))~~ (5) A contingency plan prepared for an agency of the
8 federal government or another state that satisfies the requirements
9 of this section and rules adopted by the department may be accepted
10 by the department as a contingency plan under this section. The
11 department shall ensure that to the greatest extent possible,
12 requirements for contingency plans under this section are consistent
13 with the requirements for contingency plans under federal law.

14 ~~((5))~~ (6) In reviewing the contingency plans required by this
15 section, the department shall consider at least the following
16 factors:

17 (a) The adequacy of containment and cleanup equipment, personnel,
18 communications equipment, notification procedures and call down
19 lists, response time, and logistical arrangements for coordination
20 and implementation of response efforts to remove oil spills promptly
21 and properly and to protect the environment;

22 (b) The nature and amount of vessel traffic within the area
23 covered by the plan;

24 (c) The volume and type of oil being transported within the area
25 covered by the plan;

26 (d) The existence of navigational hazards within the area covered
27 by the plan;

28 (e) The history and circumstances surrounding prior spills of oil
29 within the area covered by the plan;

30 (f) The sensitivity of fisheries, shellfish beds, and wildlife
31 and other natural resources within the area covered by the plan;

32 (g) Relevant information on previous spills contained in on-scene
33 coordinator reports prepared by the department; and

34 (h) The extent to which reasonable, cost-effective measures to
35 prevent a likelihood that a spill will occur have been incorporated
36 into the plan.

37 ~~((6))~~ (7) The department shall approve a contingency plan only
38 if it determines that the plan meets the requirements of this section
39 and that, if implemented, the plan is capable, in terms of personnel,

1 materials, and equipment, of removing oil promptly and properly and
2 minimizing any damage to the environment.

3 ~~((+7))~~ (8) The approval of the contingency plan shall be valid
4 for five years. Upon approval of a contingency plan, the department
5 shall provide to the person submitting the plan a statement
6 indicating that the plan has been approved, the facilities or vessels
7 covered by the plan, and other information the department determines
8 should be included.

9 ~~((+8))~~ (9) An owner or operator of a facility shall notify the
10 department in writing immediately of any significant change of which
11 it is aware affecting its contingency plan, including changes in any
12 factor set forth in this section or in rules adopted by the
13 department. The department may require the owner or operator to
14 update a contingency plan as a result of these changes.

15 ~~((+9))~~ (10) The department by rule shall require contingency
16 plans to be reviewed, updated, if necessary, and resubmitted to the
17 department at least once every five years.

18 ~~((+10))~~ (11) Approval of a contingency plan by the department
19 does not constitute an express assurance regarding the adequacy of
20 the plan nor constitute a defense to liability imposed under this
21 chapter or other state law.

22 **Sec. 6.** RCW 90.56.500 and 2009 c 11 s 9 are each amended to read
23 as follows:

24 (1) The state oil spill response account is created in the state
25 treasury. All receipts from RCW 82.23B.020(1) shall be deposited in
26 the account. All costs reimbursed to the state by a responsible party
27 or any other person for responding to a spill of oil shall also be
28 deposited in the account. Moneys in the account shall be spent only
29 after appropriation. The account is subject to allotment procedures
30 under chapter 43.88 RCW.

31 (2) The account shall be used exclusively to pay for:

32 (a) The costs associated with the response to spills ~~((of crude
33 oil or petroleum products into the navigable))~~ or threats of spills
34 of oil or hazardous substances to the waters of the state; and

35 (b) The costs associated with the department's use of ~~((the))~~ an
36 emergency response towing vessel ~~((as described in RCW 88.46.135)).~~

37 (3) Payment of response costs under subsection (2)(a) of this
38 section shall be limited to spills which the director has determined
39 are likely to exceed ~~((fifty))~~ one thousand dollars.

1 (4) Before expending moneys from the account, the director shall
2 make reasonable efforts to obtain funding for response costs under
3 subsection (2) of this section from the person responsible for the
4 spill and from other sources, including the federal government.

5 (5) Reimbursement for response costs from this account shall be
6 allowed only for costs which are not covered by funds appropriated to
7 the agencies responsible for response activities. Costs associated
8 with the response to spills (~~of crude oil or petroleum products~~)
9 shall include:

- 10 (a) Natural resource damage assessment and related activities;
11 (b) Spill related response, containment, wildlife rescue,
12 cleanup, disposal, and associated costs;
13 (c) Interagency coordination and public information related to a
14 response; and
15 (d) Appropriate travel, goods and services, contracts, and
16 equipment.

17 **Sec. 7.** RCW 90.56.510 and 2000 c 69 s 22 are each amended to
18 read as follows:

19 (1) The oil spill prevention account is created in the state
20 treasury. All receipts from RCW 82.23B.020(2) shall be deposited in
21 the account. Moneys from the account may be spent only after
22 appropriation. The account is subject to allotment procedures under
23 chapter 43.88 RCW. If, on the first day of any calendar month, the
24 balance of the oil spill response account is greater than nine
25 million dollars and the balance of the oil spill prevention account
26 exceeds the unexpended appropriation for the current biennium, then
27 the tax under RCW 82.23B.020(2) shall be suspended on the first day
28 of the next calendar month until the beginning of the following
29 biennium, provided that the tax shall not be suspended during the
30 last six months of the biennium. If the tax imposed under RCW
31 82.23B.020(2) is suspended during two consecutive biennia, the
32 department shall by November 1st after the end of the second
33 biennium, recommend to the appropriate standing committees an
34 adjustment in the tax rate. For the biennium ending June 30, 1999,
35 and the biennium ending June 30, 2001, the state treasurer may
36 transfer a total of up to one million dollars from the oil spill
37 response account to the oil spill prevention account to support
38 appropriations made from the oil spill prevention account in the
39 omnibus appropriations act adopted not later than June 30, 1999.

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

11 (a) Routine responses not covered under RCW 90.56.500;

12 (b) Management and staff development activities;

13 (c) Development of rules and policies and the statewide plan
14 provided for in RCW 90.56.060;

15 (d) Facility and vessel plan review and approval, drills,
16 inspections, investigations, enforcement, and litigation;

17 (e) Interagency coordination and public outreach and education;

18 (f) Collection and administration of the tax provided for in
19 chapter 82.23B RCW; and

20 (g) Appropriate travel, goods and services, contracts, and
21 equipment.

22 (3) Before expending moneys from the account for a response under
23 subsection (2)(a) of this section, the director shall make reasonable
24 efforts to obtain funding for response costs under this section from
25 the person responsible for the spill and from other sources,
26 including the federal government.

27 NEW SECTION. Sec. 8. A new section is added to chapter 90.56
28 RCW to read as follows:

29 (1)(a) The department must be provided prior notice before a
30 crude oil transfer, that is regulated under this chapter and that may
31 impact waters of the state, occurs between:

32 (i) A railroad facility and another facility; or

33 (ii) A railroad facility and a covered vessel.

34 (b) The notice required in (a) of this subsection is in addition
35 to the requirements found in RCW 88.46.165 and must rely on the
36 "advanced notice of transfer" system used by the department. The
37 notice must include the time, location, volume, and type of oil
38 transfer. The department shall adopt rules under this section.

1 (2) Twice per year, pipelines must report to the department the
2 volume of oil and type of oil, including types of diluting agents in
3 the oil, transported through the state. Reporting must occur each
4 year by July 31st for the period January 1st through June 30th and by
5 January 31st for the period July 1st through December 31st.

6 (3) The department shall publish data collected under subsections
7 (1) and (2) of this section on a quarterly basis on the department
8 web site. Data reported with respect to oil transportation must be
9 aggregated by county and include county of transfer, volume
10 transferred, type of oil transferred, place of origin, mode of
11 transportation, route taken to the point of transfer, number of rail
12 cars transferring oil, and volume and number of oil spills en route
13 to or during transfer that are reported to the department.

14 (4) Consistent with RCW 42.56.270, the department, as well as
15 other entities that receive shared information from the department
16 under this section, may not disclose individual, nonaggregated
17 notices of transfers involving a railroad facility submitted to the
18 department under subsection (1)(a) of this section or information
19 submitted to the department under subsection (2) of this section
20 regarding the diluting agents contained in oil transported by
21 pipeline. However, the department may share unaggregated information
22 collected pursuant to subsections (1) and (2) of this section:

23 (a) For use by a local emergency planning committee for the
24 purposes of RCW 38.52.040; and

25 (b) For use by state or local police departments, fire
26 departments, paramedics, and other state or local government
27 personnel with an official emergency management or emergency response
28 duty.

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

31 The department shall periodically evaluate and update planning
32 standards for oil spill response equipment required under contingency
33 plans required by this chapter in order to ensure access in the state
34 to equipment that represents the best achievable protection to
35 respond to a worst case spill and provide for continuous operation of
36 oil spill response activities to the maximum extent practicable and
37 without jeopardizing crew safety, as determined by the incident
38 commander or the unified command.

1 **Sec. 10.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Barge" means a vessel that is not self-propelled.

6 (2) "Cargo vessel" means a self-propelled ship in commerce, other
7 than a tank vessel, fishing vessel, or a passenger vessel, of three
8 hundred or more gross tons.

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

12 (4) "Covered vessel" means a tank vessel, cargo vessel, or
13 passenger vessel.

14 (5) "Department" means the department of ecology.

15 (6) "Director" means the director of the department of ecology.

16 (7)(a) "Facility" means any structure, group of structures,
17 equipment, pipeline, or device, other than a vessel, located on or
18 near the navigable waters of the state that transfers oil in bulk to
19 or from any vessel with an oil carrying capacity over two hundred
20 fifty barrels or pipeline, that is used for producing, storing,
21 handling, transferring, processing, or transporting oil in bulk.

22 (b) For the purposes of oil spill contingency planning in RCW
23 90.56.210, advanced notice of oil transfers in section 8 of this act,
24 and financial responsibility in RCW 88.40.025, facility also means a
25 railroad that is not owned by the state that transports oil as bulk
26 cargo.

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

36 (8) "Fishing vessel" means a self-propelled commercial vessel of
37 three hundred or more gross tons that is used for catching or
38 processing fish.

39 (9) "Gross tons" means tonnage as determined by the United States
40 coast guard under 33 C.F.R. section 138.30.

1 (10) "Hazardous substances" means any substance listed as of
2 March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under
3 section (~~(101-14)~~) 102(a) of the federal comprehensive environmental
4 response, compensation, and liability act of 1980, as amended by P.L.
5 99-499. The following are not hazardous substances for purposes of
6 this chapter:

7 (a) Wastes listed as F001 through F028 in Table 302.4; and

8 (b) Wastes listed as K001 through K136 in Table 302.4.

9 (11) "Navigable waters of the state" means those waters of the
10 state, and their adjoining shorelines, that are subject to the ebb
11 and flow of the tide and/or are presently used, have been used in the
12 past, or may be susceptible for use to transport intrastate,
13 interstate, or foreign commerce.

14 (12) "Oil" or "oils" means oil of any kind that is liquid at
15 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one
16 atmosphere of pressure and any fractionation thereof, including, but
17 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
18 well condensate, petroleum, gasoline, fuel oil, diesel oil,
19 biological oils and blends, oil sludge, oil refuse, and oil mixed
20 with wastes other than dredged spoil. Oil does not include any
21 substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R.
22 Part 302 adopted under section (~~(101-14)~~) 102(a) of the federal
23 comprehensive environmental response, compensation, and liability act
24 of 1980, as amended by P.L. 99-499.

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

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

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

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

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

7 (17) "Ship" means any boat, ship, vessel, barge, or other
8 floating craft of any kind.

9 (18) "Spill" means an unauthorized discharge of oil into the
10 waters of the state.

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

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

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

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

22 (21) "Certificate of financial responsibility" means an official
23 written acknowledgment issued by the director or the director's
24 designee that an owner or operator of a covered vessel or facility,
25 or the owner of the oil, has demonstrated to the satisfaction of the
26 director or the director's designee that the relevant entity has the
27 financial ability to pay for costs and damages caused by an oil
28 spill.

29 **Sec. 11.** RCW 88.40.020 and 2003 c 91 s 3 and 2003 c 56 s 3 are
30 each reenacted and amended to read as follows:

31 (1) Any barge that transports hazardous substances in bulk as
32 cargo, using any port or place in the state of Washington or the
33 navigable waters of the state shall establish evidence of financial
34 responsibility in the amount of the greater of five million dollars,
35 or three hundred dollars per gross ton of such vessel.

36 (2)(a) Except as provided in (b) or (c) of this subsection, a
37 tank vessel that carries oil as cargo in bulk shall demonstrate
38 financial responsibility to pay at least five hundred million

1 dollars. The amount of financial responsibility required under this
2 subsection is one billion dollars after January 1, 2004.

3 (b) The director by rule may establish a lesser standard of
4 financial responsibility for tank vessels of three hundred gross tons
5 or less. The standard shall set the level of financial responsibility
6 based on the quantity of cargo the tank vessel is capable of
7 carrying. The director shall not set the standard for tank vessels of
8 three hundred gross tons or less below that required under federal
9 law.

10 (c) The owner or operator of a tank vessel who is a member of an
11 international protection and indemnity mutual organization and is
12 covered for oil pollution risks up to the amounts required under this
13 section is not required to demonstrate financial responsibility under
14 this chapter. The director may require the owner or operator of a
15 tank vessel to prove membership in such an organization.

16 (3)(a) A cargo vessel or passenger vessel that carries oil as
17 fuel shall demonstrate financial responsibility to pay at least three
18 hundred million dollars. However, a passenger vessel that transports
19 passengers and vehicles between Washington state and a foreign
20 country shall demonstrate financial responsibility to pay the greater
21 of at least six hundred dollars per gross ton or five hundred
22 thousand dollars.

23 (b) The owner or operator of a cargo vessel or passenger vessel
24 who is a member of an international protection and indemnity mutual
25 organization and is covered for oil pollution risks up to the amounts
26 required under this section is not required to demonstrate financial
27 responsibility under this chapter. The director may require the owner
28 or operator of a cargo vessel or passenger vessel to prove membership
29 in such an organization.

30 (4) A fishing vessel while on the navigable waters of the state
31 must demonstrate financial responsibility in the following amounts:

32 (a) For a fishing vessel carrying predominantly nonpersistent
33 product, one hundred thirty-three dollars and forty cents per
34 incident, for each barrel of total oil storage capacity, persistent
35 and nonpersistent product, on the vessel or one million three hundred
36 thirty-four thousand dollars, whichever is greater; or (b) for a
37 fishing vessel carrying predominantly persistent product, four
38 hundred dollars and twenty cents per incident, for each barrel of
39 total oil storage capacity, persistent product and nonpersistent

1 membership; or (h) other evidence of financial responsibility. Any
2 bond filed shall be issued by a bonding company authorized to do
3 business in the United States. Documentation of such financial
4 responsibility shall be kept on any covered vessel and filed with the
5 department at least twenty-four hours before entry of the vessel into
6 the navigable waters of the state. A covered vessel is not required
7 to file documentation of financial responsibility twenty-four hours
8 before entry of the vessel into the navigable waters of the state, if
9 the vessel has filed documentation of financial responsibility with
10 the federal government, and the level of financial responsibility
11 required by the federal government is the same as or exceeds state
12 requirements. The owner or operator of the vessel may file with the
13 department a certificate evidencing compliance with the requirements
14 of another state's or federal financial responsibility requirements
15 if the state or federal government requires a level of financial
16 responsibility the same as or greater than that required under this
17 chapter.

18 (2) A certificate of financial responsibility may not have a term
19 greater than one year.

20 **Sec. 14.** RCW 88.40.040 and 2003 c 56 s 4 are each amended to
21 read as follows:

22 ~~(1) ((It is unlawful for any vessel required to have financial~~
23 ~~responsibility under this chapter to enter or operate on Washington~~
24 ~~waters without meeting the requirements of this chapter or rules~~
25 ~~adopted under this chapter, except))~~ A vessel or facility need not
26 demonstrate financial responsibility under this chapter prior to
27 using any port or place in the state of Washington or the navigable
28 waters of the state when necessary to avoid injury to the vessel's or
29 facility's crew or passengers. Any vessel owner or operator that does
30 not meet the financial responsibility requirements of this chapter
31 and any rules prescribed thereunder or the federal oil pollution act
32 of 1990 shall be reported by the department to the United States
33 coast guard.

34 ~~(2) ((The department shall enforce section 1016 of the federal~~
35 ~~oil pollution act of 1990 as authorized by section 1019 of the~~
36 ~~federal act.))~~ Upon notification of an oil spill or discharge or
37 other action or potential liability, the director shall reevaluate
38 the validity of the certificate of financial responsibility. If the
39 director determines that, because of a spill outside of the state or

1 some other action or potential liability, the holder of a certificate
2 may not have the financial resources to pay damages for the oil spill
3 or discharge or other action or potential liability and have
4 resources remaining available to meet the requirements of this
5 chapter, the director may suspend or revoke the certificate.

6 (3) An owner or operator of more than one covered vessel, more
7 than one facility, or one or more vessels and facilities, is only
8 required to obtain a single certificate of financial responsibility
9 that applies to all of the owner or operator's vessels and
10 facilities.

11 (4) If a person holds a certificate for more than one covered
12 vessel or facility and a spill or spills occurs from one or more of
13 those vessels or facilities for which the owner or operator may be
14 liable for damages in an amount exceeding five percent of the
15 financial resources reflected by the certificate, as determined by
16 the director, the certificate is immediately considered inapplicable
17 to any vessel or facility not associated with the spill. In that
18 event, the owner or operator shall demonstrate to the satisfaction of
19 the director the amount of financial ability required pursuant to
20 this chapter, as well as the financial ability to pay all damages
21 that arise or have arisen from the spill or spills that have
22 occurred.

23 **Sec. 15.** RCW 88.16.170 and 1991 c 200 s 601 are each amended to
24 read as follows:

25 Because of the danger of spills, the legislature finds that the
26 transportation of crude oil and refined petroleum products by tankers
27 on the Columbia river, Grays Harbor, and on Puget Sound and adjacent
28 waters creates a great potential hazard to important natural
29 resources of the state and to jobs and incomes dependent on these
30 resources.

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

38 The legislature further recognizes that certain areas of the
39 Columbia river, Grays Harbor, and Puget Sound and adjacent waters

1 have limited space for maneuvering a large oil tanker and that these
2 waters contain many natural navigational obstacles as well as a high
3 density of commercial and pleasure boat traffic.

4 For these reasons, it is important that large oil tankers be
5 piloted by highly skilled persons who are familiar with local waters
6 and that such (~~tankers~~) vessels have sufficient capability for
7 rapid maneuvering responses.

8 It is therefore the intent and purpose of RCW 88.16.180 and
9 88.16.190 to decrease the likelihood of oil spills on the Columbia
10 river, Grays Harbor, and on Puget Sound and its shorelines by
11 (~~requiring all oil tankers above a certain size to employ licensed~~
12 ~~pilots and to be escorted by a tug or tugs while navigating on~~
13 ~~certain areas of Puget Sound and adjacent waters~~) establishing
14 safety requirements that comprehensively address spill risks, which
15 may include the establishment of tug escorts and other measures to
16 mitigate safety risks in certain state waters.

17 **Sec. 16.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to
18 read as follows:

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

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

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

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

30 (~~(c) Double bottoms, underneath all oil and liquid cargo~~
31 ~~compartments; and~~

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

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

36 ~~PROVIDED, That, if such forty to one hundred and twenty five~~
37 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
38 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~
39 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~

1 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
2 ~~horsepower equivalencies may be required under certain conditions as~~
3 ~~established by rule and regulation of the Washington utilities and~~
4 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~
5 ~~FURTHER, That))~~ Except as provided in subsection (3) of this section,
6 an oil tanker of greater than forty thousand deadweight tons may
7 operate in the waters described in (a) of this subsection, to the
8 extent that these waters are within the territorial boundaries of
9 Washington, only if the oil tanker is under the escort of a tug or
10 tugs in compliance with the requirements of subsection (5) of this
11 section.

12 (a) Those waters east of a line extending from Discovery Island
13 light south to New Dungeness light and all points in the Puget Sound
14 area.

15 (b) The state board of pilotage commissioners, in consultation
16 with the department of ecology and relying on the results of vessel
17 traffic risk assessments, may write rules to implement this
18 subsection (1)(b), but only after an event described in subsection
19 (2) of this section takes place and only for the waters directly
20 affected by the facility event. These rules may include tug escort
21 requirements and other safety measures for oil tankers of greater
22 than forty thousand deadweight tons, all articulated tug barges, and
23 other towed waterborne vessels or barges that may apply in the
24 following areas consistent with subsections (3)(a) and (5) of this
25 section:

26 (i) Within a two-mile radius of the Grays Harbor pilotage
27 district as defined in RCW 88.16.050;

28 (ii) Any inland portion of the Columbia river or within three
29 miles of Cape Disappointment at the mouth of the Columbia river; or

30 (iii) The waters identified in (a) of this subsection.

31 (c) The state board of pilotage commissioners, in consultation
32 with the department of ecology and relying on the results of vessel
33 traffic risk assessments, shall adopt rules by June 30, 2017, to
34 implement this subsection (1)(c). These rules may include tug escort
35 requirements and other safety measures for oil tankers of greater
36 than forty thousand deadweight tons, all articulated tug barges, and
37 other towed waterborne vessels or barges and apply in the following
38 areas consistent with subsections (3)(a) and (5) of this section: The
39 waters described in (a) of this subsection, including all narrow

1 channels of the San Juan Islands archipelago, Rosario Strait, Haro
2 Strait, Boundary Pass, and connected waterways.

3 (2) The state board of pilotage commissioners may adopt rules
4 under subsection (1)(b) of this section only after:

5 (a) The governor approves, after January 1, 2015, a
6 recommendation of the energy facility site evaluation council
7 pursuant to RCW 80.50.100 to certify a facility meeting the criteria
8 listed in RCW 80.50.020(12) (d) or (f);

9 (b) A state agency or a local jurisdiction makes a final
10 determination or issues a final permit after January 1, 2015, to site
11 a new facility required to have a contingency plan pursuant to
12 chapter 90.56 RCW or to provide authority for the first time to
13 process or receive crude oil, as defined in chapter 90.56 RCW, to an
14 existing facility required to have a contingency plan pursuant to
15 chapter 90.56 RCW, other than a facility that is:

16 (i) A transmission pipeline; or

17 (ii) A railroad facility; or

18 (c) The state of Oregon or any local jurisdiction in Oregon makes
19 a final determination or issues a final permit to site a new facility
20 in the watershed of the Columbia river that would be required to have
21 a contingency plan pursuant to chapter 90.56 RCW if an identical
22 facility were located in Washington, or to provide authority for the
23 first time to process or receive crude oil, as defined in chapter
24 90.56 RCW, to an existing facility that would be required to have a
25 contingency plan pursuant to chapter 90.56 RCW if an identical
26 facility were located in Washington, other than a facility that is:

27 (i) A transmission pipeline; or

28 (ii) A railroad facility.

29 (3)(a) If an oil tanker, articulated tug barge, or other towed
30 waterborne vessel or barge is in ballast, the tug requirements of
31 subsection (1) of this section do not apply.

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

36 (4)(a) Prior to proceeding with rule making as authorized under
37 subsection (1)(b) and (c) of this section, the state board of
38 pilotage commissioners shall consult with the United States coast
39 guard, the Oregon board of maritime pilots, the Puget Sound, Grays
40 Harbor, and Columbia river harbor safety committees, area tribes,

1 public ports in Oregon and Washington, local governments, and other
2 appropriate entities. In adopting rules, the state board of pilotage
3 commissioners must take into account any tug escort or other maritime
4 safety measures for a water body that were or are required as
5 mitigation or as a condition of a facility siting decision by a state
6 agency or local jurisdiction.

7 (b) The department may not adopt any rules under this subsection
8 or under subsection (1)(b) and (c) of this section until a vessel
9 traffic risk assessment has been completed for the waters subject to
10 the rule making. In order to adopt a rule under this section or
11 subsection (1)(b) and (c) of this section, the board of pilotage
12 commissioners must determine that the results of a vessel traffic
13 risk assessment provides evidence that the rules are necessary in
14 order to achieve best achievable protection as defined in RCW
15 88.46.010. In order for the state board of pilotage commissioners to
16 rely on a vessel traffic risk assessment that is conducted after
17 January 1, 2015, the vessel traffic risk assessment must involve a
18 simulation analysis of vessel traffic. A simulation analysis is not
19 required of a vessel traffic risk assessment relied upon by the state
20 board of pilotage commissioners that was conducted before January 1,
21 2015.

22 (5) Oil tankers of greater than forty thousand deadweight tons,
23 all articulated tug barges, and other towed waterborne vessels or
24 barges must ensure that any escort tugs they use have an aggregate
25 shaft horsepower equivalent to at least five percent of the
26 deadweight tons of the escorted oil tanker or articulated tug barge.
27 The state board of pilotage commissioners may adopt rules to ensure
28 that escort tugs have sufficient mechanical capabilities to provide
29 for safe escort. Rules adopted on this subject must be designed to
30 achieve best achievable protection as defined under RCW 88.46.010.

31 (6) A tanker assigned a deadweight of equal to or less than forty
32 thousand deadweight tons at the time of construction or
33 reconstruction as reported in Lloyd's Register of Ships is not
34 subject to the provisions of RCW 88.16.170 through 88.16.190.

35 (7) The provisions of this section do not apply to pilotage for
36 enrolled tankers.

37 (8) For the purposes of this section:

38 (a) "Articulated tug barge" means a tank barge and a towing
39 vessel joined by hinged or articulated fixed mechanical equipment
40 affixed or connecting to the stern of the tank barge.

1 (b) "Oil tanker" means a self-propelled deep draft tank vessel
2 designed to transport oil in bulk. "Oil tanker" does not include an
3 articulated tug barge tank vessel.

4 (c) "Waterborne vessel or barge" means any ship, barge, or other
5 watercraft capable of traveling on the navigable waters of this state
6 and capable of transporting any crude oil or petroleum product in
7 quantities of ten thousand gallons or more for purposes other than
8 providing fuel for its motor or engine.

9 **Sec. 17.** RCW 82.23B.010 and 1992 c 73 s 6 are each amended to
10 read as follows:

11 (~~Unless the context clearly requires otherwise,~~) The
12 definitions in this section apply throughout this chapter unless the
13 context clearly requires otherwise.

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

16 (2) "Crude oil" means any naturally occurring liquid hydrocarbons
17 at atmospheric temperature and pressure coming from the earth,
18 including condensate and natural gasoline.

19 (3) "Department" means the department of revenue.

20 (4) "Marine terminal" means a facility of any kind, other than a
21 waterborne vessel, that is used for transferring crude oil or
22 petroleum products to or from a waterborne vessel or barge.

23 (5) "Navigable waters" means those waters of the state and their
24 adjoining shorelines that are subject to the ebb and flow of the
25 tide, including the Columbia and Snake rivers.

26 (6) "Person" has the meaning provided in RCW 82.04.030.

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

34 (8) "Taxpayer" means the person owning crude oil or petroleum
35 products immediately after receipt of the same into the storage tanks
36 of a marine or bulk oil terminal in this state (~~from a waterborne~~
37 ~~vessel or barge~~) and who is liable for the taxes imposed by this
38 chapter.

1 (9) "Waterborne vessel or barge" means any ship, barge, or other
2 watercraft capable of (~~travelling~~) traveling on the navigable
3 waters of this state and capable of transporting any crude oil or
4 petroleum product in quantities of ten thousand gallons or more for
5 purposes other than providing fuel for its motor or engine.

6 (10) "Bulk oil terminal" means a facility of any kind, other than
7 a waterborne vessel, that is used for transferring crude oil or
8 petroleum products from a tank car or pipeline.

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

11 **Sec. 18.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to
12 read as follows:

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

25 (2) In addition to the tax imposed in subsection (1) of this
26 section, an oil spill administration tax is imposed on the privilege
27 of receiving: (a) Crude oil or petroleum products at a marine
28 terminal within this state from a waterborne vessel or barge
29 operating on the navigable waters of this state; (b) crude oil or
30 petroleum products at a bulk oil terminal within this state from a
31 tank car; and (c) crude oil or petroleum products at a bulk oil
32 terminal within this state from a pipeline. The tax imposed in this
33 section is levied upon the owner of the crude oil or petroleum
34 products immediately after receipt of the same into the storage tanks
35 of a marine or bulk oil terminal from a tank car, pipeline, or
36 waterborne vessel or barge at the rate of (~~four~~) ten cents per
37 barrel of crude oil or petroleum product.

38 (3) The taxes imposed by this chapter (~~shall~~) must be collected
39 by the marine or bulk oil terminal operator from the taxpayer. If any

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

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

20 (5) If a taxpayer fails to pay the taxes imposed by this chapter
21 to the person charged with collection of the taxes and the person
22 charged with collection fails to pay the taxes to the department, the
23 department may, in its discretion, proceed directly against the
24 taxpayer for collection of the taxes.

25 (6) The taxes (~~shall be~~) are due from the marine or bulk oil
26 terminal operator, along with reports and returns on forms prescribed
27 by the department, within twenty-five days after the end of the month
28 in which the taxable activity occurs.

29 (7) The amount of taxes, until paid by the taxpayer to the marine
30 or bulk oil terminal operator or to the department, (~~shall~~)
31 constitutes a debt from the taxpayer to the marine or bulk oil
32 terminal operator. Any person required to collect the taxes under
33 this chapter who, with intent to violate the provisions of this
34 chapter, fails or refuses to do so as required and any taxpayer who
35 refuses to pay any taxes due under this chapter, (~~shall be~~) is
36 guilty of a misdemeanor as provided in chapter 9A.20 RCW.

37 (8) Upon prior approval of the department, the taxpayer may pay
38 the taxes imposed by this chapter directly to the department. The
39 department (~~shall~~) must give its approval for direct payment under
40 this section whenever it appears, in the department's judgment, that

1 direct payment will enhance the administration of the taxes imposed
2 under this chapter. The department (~~shall~~) must provide by rule for
3 the issuance of a direct payment certificate to any taxpayer
4 qualifying for direct payment of the taxes. Good faith acceptance of
5 a direct payment certificate by a terminal operator (~~shall~~)
6 relieves the marine or bulk oil terminal operator from any liability
7 for the collection or payment of the taxes imposed under this
8 chapter.

9 (9) All receipts from the tax imposed in subsection (1) of this
10 section (~~shall~~) must be deposited into the state oil spill response
11 account. All receipts from the tax imposed in subsection (2) of this
12 section shall be deposited into the oil spill prevention account.

13 (10) Within forty-five days after the end of each calendar
14 quarter, the office of financial management (~~shall~~) must determine
15 the balance of the oil spill response account as of the last day of
16 that calendar quarter. Balance determinations by the office of
17 financial management under this section are final and (~~shall~~) may
18 not be used to challenge the validity of any tax imposed under this
19 chapter. The office of financial management (~~shall~~) must promptly
20 notify the departments of revenue and ecology of the account balance
21 once a determination is made. For each subsequent calendar quarter,
22 the tax imposed by subsection (1) of this section shall be imposed
23 during the entire calendar quarter unless:

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

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

30 **Sec. 19.** RCW 82.23B.030 and 1992 c 73 s 9 are each amended to
31 read as follows:

32 The taxes imposed under this chapter (~~shall~~) only apply to the
33 first receipt of crude oil or petroleum products at a marine or bulk
34 oil terminal in this state and not to the later transporting and
35 subsequent receipt of the same oil or petroleum product, whether in
36 the form originally received at a marine or bulk oil terminal in this
37 state or after refining or other processing.

1 **Sec. 20.** RCW 82.23B.040 and 1992 c 73 s 10 are each amended to
2 read as follows:

3 Credit (~~shall~~) must be allowed against the taxes imposed under
4 this chapter for any crude oil or petroleum products received at a
5 marine or bulk oil terminal and subsequently exported from or sold
6 for export from the state.

7 **Sec. 21.** RCW 38.52.040 and 2011 1st sp.s. c 21 s 27, 2011 c 336
8 s 789, and 2011 c 79 s 9 are each reenacted and amended to read as
9 follows:

10 (1) There is hereby created the emergency management council
11 (hereinafter called the council), to consist of not more than
12 seventeen members who shall be appointed by the adjutant general. The
13 membership of the council shall include, but not be limited to,
14 representatives of city and county governments, sheriffs and police
15 chiefs, the Washington state patrol, the military department, the
16 department of ecology, state and local fire chiefs, seismic safety
17 experts, state and local emergency management directors, search and
18 rescue volunteers, medical professions who have expertise in
19 emergency medical care, building officials, and private industry. The
20 representatives of private industry shall include persons
21 knowledgeable in emergency and hazardous materials management. The
22 councilmembers shall elect a chair from within the council
23 membership. The members of the council shall serve without
24 compensation, but may be reimbursed for their travel expenses
25 incurred in the performance of their duties in accordance with RCW
26 43.03.050 and 43.03.060 as now existing or hereafter amended.

27 (2) The emergency management council shall advise the governor
28 and the director on all matters pertaining to state and local
29 emergency management. The council may appoint such ad hoc committees,
30 subcommittees, and working groups as are required to develop specific
31 recommendations for the improvement of emergency management
32 practices, standards, policies, or procedures. The council shall
33 ensure that the governor receives an annual assessment of statewide
34 emergency preparedness including, but not limited to, specific
35 progress on hazard mitigation and reduction efforts, implementation
36 of seismic safety improvements, reduction of flood hazards, and
37 coordination of hazardous materials planning and response activities.
38 (~~The council or a subcommittee thereof shall periodically convene in~~
39 ~~special session and serve during those sessions as the state~~

1 ~~emergency response commission required by P.L. 99-499, the emergency~~
2 ~~planning and community right to know act. When sitting in session as~~
3 ~~the state emergency response commission, the council shall confine~~
4 ~~its deliberations to those items specified in federal statutes and~~
5 ~~state administrative rules governing the coordination of hazardous~~
6 ~~materials policy.))~~ The council shall review administrative rules
7 governing state and local emergency management practices and
8 recommend necessary revisions to the director.

9 (3) The council or a council subcommittee shall serve and
10 periodically convene in special session as the state emergency
11 response commission required by the emergency planning and community
12 right-to-know act (42 U.S.C. Sec. 11001 et seq.). The state emergency
13 response commission shall conduct those activities specified in
14 federal statutes and regulations and state administrative rules
15 governing the coordination of hazardous materials policy including,
16 but not limited to, review of local emergency planning committee
17 emergency response plans for compliance with the planning
18 requirements in the emergency planning and community right-to-know
19 act (42 U.S.C. Sec. 11001 et seq.). Committees shall annually review
20 their plans to address changed conditions, and submit their plans to
21 the state emergency response commission for review when updated, but
22 not less than at least once every five years. The department may
23 employ staff to assist local emergency planning committees in the
24 development and annual review of these emergency response plans. By
25 March 1, 2018, the department shall report to the governor and
26 legislature on progress towards compliance with planning
27 requirements. The report must also provide budget and policy
28 recommendations for continued support of local emergency planning.

29 (4)(a) The intrastate mutual aid committee is created and is a
30 subcommittee of the emergency management council. The intrastate
31 mutual aid committee consists of not more than five members who must
32 be appointed by the council chair from council membership. The chair
33 of the intrastate mutual aid committee is the military department
34 representative appointed as a member of the council. Meetings of the
35 intrastate mutual aid committee must be held at least annually.

36 (b) In support of the intrastate mutual aid system established in
37 chapter 38.56 RCW, the intrastate mutual aid committee shall develop
38 and update guidelines and procedures to facilitate implementation of
39 the intrastate mutual aid system by member jurisdictions, including
40 but not limited to the following: Projected or anticipated costs;

1 checklists and forms for requesting and providing assistance;
2 recordkeeping; reimbursement procedures; and other implementation
3 issues. These guidelines and procedures are not subject to the rule-
4 making requirements of chapter 34.05 RCW.

5 **Sec. 22.** RCW 81.24.010 and 2007 c 234 s 21 are each amended to
6 read as follows:

7 (1) Every company subject to regulation by the commission, except
8 those listed in subsection (3) of this section, shall, on or before
9 the date specified by the commission for filing annual reports under
10 RCW 81.04.080, file with the commission a statement on oath showing
11 its gross operating revenue from intrastate operations for the
12 preceding calendar year, or portion thereof, and pay to the
13 commission a fee equal to one-tenth of one percent of the first fifty
14 thousand dollars of gross operating revenue, plus two-tenths of one
15 percent of any gross operating revenue in excess of fifty thousand
16 dollars, except railroad companies which shall each pay to the
17 commission a fee equal to ~~((one and one-half))~~ two-tenths of one
18 percent of its combined intrastate gross operating revenue and the
19 Washington state portion of its gross interstate operating revenue.
20 The commission may, by rule, set minimum fees that do not exceed the
21 cost of collecting the fees. The commission may by rule waive any or
22 all of the minimum fee established pursuant to this section. Any
23 railroad association that qualifies as a nonprofit charitable
24 organization under the federal internal revenue code section
25 501(c)(3) is exempt from the fee required under this subsection.

26 (2) The percentage rates of gross operating revenue to be paid in
27 any one year may be decreased by the commission for any class of
28 companies subject to the payment of such fees, by general order
29 entered before March 1st of such year, and for such purpose railroad
30 companies are classified as class two. Every other company subject to
31 regulation by the commission, for which regulatory fees are not
32 otherwise fixed by law, shall pay fees as herein provided and shall
33 constitute additional classes according to kinds of businesses
34 engaged in.

35 (3) This section does not apply to private nonprofit
36 transportation providers, auto transportation companies, charter
37 party carriers and excursion service carriers, solid waste collection
38 companies, motor freight carriers, household goods carriers,

1 commercial ferries, and low-level radioactive waste storage
2 facilities.

3 NEW SECTION. **Sec. 23.** A new section is added to chapter 81.44
4 RCW to read as follows:

5 Commission employees certified by the federal railroad
6 administration to perform hazardous materials inspections may enter
7 the property of any business that receives, ships, or offers for
8 shipment hazardous materials by rail. Entry shall be at a reasonable
9 time and in a reasonable manner. The purpose of entry is limited to
10 performing inspections, investigations, or surveillance of equipment,
11 records, and operations relating to the packaging, loading,
12 unloading, or transportation of hazardous materials by rail, pursuant
13 only to the state participation program outlined in 49 C.F.R. Part
14 212. The term "business" is all inclusive and is not limited to
15 common carriers or public service companies.

16 **Sec. 24.** RCW 81.53.010 and 2013 c 23 s 302 are each amended to
17 read as follows:

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

20 ~~((The term))~~ (1) "Commission~~(())~~" ~~((when used in this chapter,))~~
21 means the utilities and transportation commission of Washington.

22 ~~((The term))~~ (2) "Highway~~(())~~" ~~((when used in this chapter,))~~
23 includes all state and county roads, streets, alleys, avenues,
24 boulevards, parkways, and other public places actually open and in
25 use, or to be opened and used, for travel by the public.

26 ~~((The term))~~ (3) "Railroad~~(())~~" ~~((when used in this chapter,))~~
27 means every railroad, including interurban and suburban electric
28 railroads, by whatsoever power operated, for the public use in the
29 conveyance of persons or property for hire, with all bridges,
30 ferries, tunnels, equipment, switches, spurs, sidings, tracks,
31 stations, and terminal facilities of every kind, used, operated,
32 controlled, managed, or owned by or in connection therewith. The
33 ~~((said))~~ term ~~((shall))~~ also includes every logging and other
34 industrial railway owned or operated primarily for the purpose of
35 carrying the property of its owners or operators or of a limited
36 class of persons, with all tracks, spurs, and sidings used in
37 connection therewith. The ~~((said))~~ term ~~((shall))~~ does not include

1 street railways operating within the limits of any incorporated city
2 or town.

3 ~~((The term))~~ (4) "Railroad company((~~τ~~))" ~~((when used in this~~
4 ~~chapter~~τ~~))~~ includes every corporation, company, association, joint
5 stock association, partnership, or person, its, their, or his or her
6 lessees, trustees, or receivers appointed by any court whatsoever,
7 owning, operating, controlling, or managing any railroad(~~(, as that~~
8 ~~term is defined in this section))~~).

9 ~~((The term))~~ (5) "Over-crossing((~~τ~~))" ~~((when used in this~~
10 ~~chapter~~τ~~))~~ means any point or place where a highway crosses a
11 railroad by passing above the same. "Over-crossing" also means any
12 point or place where one railroad crosses another railroad not at
13 grade.

14 ~~((The term))~~ (6) "Under-crossing((~~τ~~))" ~~((when used in this~~
15 ~~chapter~~τ~~))~~ means any point or place where a highway crosses a
16 railroad by passing under the same. "Under-crossing" also means any
17 point or place where one railroad crosses another railroad not at
18 grade.

19 ~~((The term "over crossing" or "under crossing," shall also mean~~
20 ~~any point or place where one railroad crosses another railroad not at~~
21 ~~grade.~~

22 ~~The term))~~ (7) "Grade crossing((~~τ~~))" ~~((when used in this~~
23 ~~chapter~~τ~~))~~ means any point or place where a railroad crosses a
24 highway or a highway crosses a railroad or one railroad crosses
25 another, at a common grade.

26 (8) "Private crossing" means any point or place where a railroad
27 crosses a private road at grade or a private road crosses a railroad
28 at grade, where the private road is not a highway.

29 **Sec. 25.** RCW 81.53.240 and 1984 c 7 s 375 are each amended to
30 read as follows:

31 (1) Except to the extent necessary to permit participation by
32 first-class cities in the grade crossing protective fund, when an
33 election to participate is made as provided in RCW 81.53.261 through
34 81.53.291, or to the extent a first-class city requests to
35 participate in the commission's crossing safety inspection program
36 within the city, this chapter ((81.53-RCW)) is not operative within
37 the limits of first-class cities, and does not apply to street
38 railway lines operating on or across any street, alley, or other
39 public place within the limits of any city, except that a streetcar

1 line outside of cities of the first class shall not cross a railroad
2 at grade without express authority from the commission. The
3 commission may not change the location of a state highway without the
4 approval of the secretary of transportation, or the location of any
5 crossing thereon adopted or approved by the department of
6 transportation, or grant a railroad authority to cross a state
7 highway at grade without the consent of the secretary of
8 transportation.

9 (2) Within thirty days of the effective date of this section,
10 first-class cities must provide to the commission a list of all
11 existing public crossings within the limits of a first-class city,
12 including over and under-crossings, including the United States
13 department of transportation number for the crossing. Within thirty
14 days of modifying, closing, or opening a grade crossing within the
15 limits of a first-class city, the city must notify the commission in
16 writing of the action taken, identifying the crossing by United
17 States department of transportation number.

18 NEW SECTION. Sec. 26. A new section is added to chapter 81.53
19 RCW to read as follows:

20 (1) To address the potential public safety hazards presented by
21 private crossings in the state and by the transportation of hazardous
22 materials in the state, including crude oil, the commission is
23 authorized to and must adopt rules governing safety standards for
24 private crossings along the railroad tracks over which crude oil is
25 transported in the state. The commission is also authorized to
26 conduct inspections of the private crossings subject to this section,
27 to order the railroads to make improvements at the private crossings,
28 and enforce the orders.

29 (2) The commission must adopt rules governing private crossings
30 along railroad tracks over which crude oil is transported in the
31 state, establishing:

32 (a) Minimum safety standards for the private crossings subject to
33 this section, including, but not limited to, requirements for
34 signage;

35 (b) Criteria for prioritizing the inspection and improvements of
36 the private crossings subject to this section; and

37 (c) Requirements governing the improvements to private crossings
38 the railroad company must pay for and complete.

1 (3) Nothing in this section modifies existing agreements between
2 the railroad company and the landowner governing liability for
3 injuries or damages occurring at the private crossing.

4 **Sec. 27.** RCW 88.46.180 and 2011 c 122 s 2 are each amended to
5 read as follows:

6 (1) The department shall evaluate and update planning standards
7 for oil spill response equipment required under contingency plans
8 required by this chapter, including aerial surveillance, in order to
9 ensure access in the state to equipment that represents the best
10 achievable protection to respond to a worst case spill and provide
11 for continuous operation of oil spill response activities to the
12 maximum extent practicable and without jeopardizing crew safety, as
13 determined by the incident commander or the unified command.

14 (2) The department shall by rule update the planning standards at
15 five-year intervals to ensure the maintenance of best available
16 protection over time. Rule updates to covered nontank vessels shall
17 minimize potential impacts to discretionary cargo moved through the
18 state.

19 ~~((3) The department shall evaluate and update planning standards
20 for tank vessels by December 31, 2012.))~~

21 **Sec. 28.** RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and
22 2014 c 144 s 6 are each reenacted and amended to read as follows:

23 The following financial, commercial, and proprietary information
24 is exempt from disclosure under this chapter:

25 (1) Valuable formulae, designs, drawings, computer source code or
26 object code, and research data obtained by any agency within five
27 years of the request for disclosure when disclosure would produce
28 private gain and public loss;

29 (2) Financial information supplied by or on behalf of a person,
30 firm, or corporation for the purpose of qualifying to submit a bid or
31 proposal for (a) a ferry system construction or repair contract as
32 required by RCW 47.60.680 through 47.60.750 or (b) highway
33 construction or improvement as required by RCW 47.28.070;

34 (3) Financial and commercial information and records supplied by
35 private persons pertaining to export services provided under chapters
36 43.163 and 53.31 RCW, and by persons pertaining to export projects
37 under RCW 43.23.035;

1 (4) Financial and commercial information and records supplied by
2 businesses or individuals during application for loans or program
3 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
4 43.168 RCW, or during application for economic development loans or
5 program services provided by any local agency;

6 (5) Financial information, business plans, examination reports,
7 and any information produced or obtained in evaluating or examining a
8 business and industrial development corporation organized or seeking
9 certification under chapter 31.24 RCW;

10 (6) Financial and commercial information supplied to the state
11 investment board by any person when the information relates to the
12 investment of public trust or retirement funds and when disclosure
13 would result in loss to such funds or in private loss to the
14 providers of this information;

15 (7) Financial and valuable trade information under RCW 51.36.120;

16 (8) Financial, commercial, operations, and technical and research
17 information and data submitted to or obtained by the clean Washington
18 center in applications for, or delivery of, program services under
19 chapter 70.95H RCW;

20 (9) Financial and commercial information requested by the public
21 stadium authority from any person or organization that leases or uses
22 the stadium and exhibition center as defined in RCW 36.102.010;

23 (10)(a) Financial information, including but not limited to
24 account numbers and values, and other identification numbers supplied
25 by or on behalf of a person, firm, corporation, limited liability
26 company, partnership, or other entity related to an application for a
27 horse racing license submitted pursuant to RCW 67.16.260(1)(b),
28 marijuana producer, processor, or retailer license, liquor license,
29 gambling license, or lottery retail license;

30 (b) Internal control documents, independent auditors' reports and
31 financial statements, and supporting documents: (i) Of house-banked
32 social card game licensees required by the gambling commission
33 pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted
34 by tribes with an approved tribal/state compact for class III gaming;

35 (11) Proprietary data, trade secrets, or other information that
36 relates to: (a) A vendor's unique methods of conducting business; (b)
37 data unique to the product or services of the vendor; or (c)
38 determining prices or rates to be charged for services, submitted by
39 any vendor to the department of social and health services for

1 purposes of the development, acquisition, or implementation of state
2 purchased health care as defined in RCW 41.05.011;

3 (12)(a) When supplied to and in the records of the department of
4 commerce:

5 (i) Financial and proprietary information collected from any
6 person and provided to the department of commerce pursuant to RCW
7 43.330.050(8); and

8 (ii) Financial or proprietary information collected from any
9 person and provided to the department of commerce or the office of
10 the governor in connection with the siting, recruitment, expansion,
11 retention, or relocation of that person's business and until a siting
12 decision is made, identifying information of any person supplying
13 information under this subsection and the locations being considered
14 for siting, relocation, or expansion of a business;

15 (b) When developed by the department of commerce based on
16 information as described in (a)(i) of this subsection, any work
17 product is not exempt from disclosure;

18 (c) For the purposes of this subsection, "siting decision" means
19 the decision to acquire or not to acquire a site;

20 (d) If there is no written contact for a period of sixty days to
21 the department of commerce from a person connected with siting,
22 recruitment, expansion, retention, or relocation of that person's
23 business, information described in (a)(ii) of this subsection will be
24 available to the public under this chapter;

25 (13) Financial and proprietary information submitted to or
26 obtained by the department of ecology or the authority created under
27 chapter 70.95N RCW to implement chapter 70.95N RCW;

28 (14) Financial, commercial, operations, and technical and
29 research information and data submitted to or obtained by the life
30 sciences discovery fund authority in applications for, or delivery
31 of, grants under chapter 43.350 RCW, to the extent that such
32 information, if revealed, would reasonably be expected to result in
33 private loss to the providers of this information;

34 (15) Financial and commercial information provided as evidence to
35 the department of licensing as required by RCW 19.112.110 or
36 19.112.120, except information disclosed in aggregate form that does
37 not permit the identification of information related to individual
38 fuel licensees;

1 (16) Any production records, mineral assessments, and trade
2 secrets submitted by a permit holder, mine operator, or landowner to
3 the department of natural resources under RCW 78.44.085;

4 (17)(a) Farm plans developed by conservation districts, unless
5 permission to release the farm plan is granted by the landowner or
6 operator who requested the plan, or the farm plan is used for the
7 application or issuance of a permit;

8 (b) Farm plans developed under chapter 90.48 RCW and not under
9 the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject
10 to RCW 42.56.610 and 90.64.190;

11 (18) Financial, commercial, operations, and technical and
12 research information and data submitted to or obtained by a health
13 sciences and services authority in applications for, or delivery of,
14 grants under RCW 35.104.010 through 35.104.060, to the extent that
15 such information, if revealed, would reasonably be expected to result
16 in private loss to providers of this information;

17 (19) Information gathered under chapter 19.85 RCW or RCW
18 34.05.328 that can be identified to a particular business;

19 (20) Financial and commercial information submitted to or
20 obtained by the University of Washington, other than information the
21 university is required to disclose under RCW 28B.20.150, when the
22 information relates to investments in private funds, to the extent
23 that such information, if revealed, would reasonably be expected to
24 result in loss to the University of Washington consolidated endowment
25 fund or to result in private loss to the providers of this
26 information; ~~((and))~~

27 (21) Market share data submitted by a manufacturer under RCW
28 70.95N.190(4); ~~((and))~~

29 (22) Financial information supplied to the department of
30 financial institutions or to a portal under RCW 21.20.883, when filed
31 by or on behalf of an issuer of securities for the purpose of
32 obtaining the exemption from state securities registration for small
33 securities offerings provided under RCW 21.20.880 or when filed by or
34 on behalf of an investor for the purpose of purchasing such
35 securities; and

36 (23)(a) Notices of a transfer of crude oil involving a railroad
37 facility submitted to the department of ecology pursuant to section
38 8(1)(a) of this act and that is in the possession of the department
39 of ecology or any entity with which the department of ecology has
40 shared the notice pursuant to section 8(4) of this act; and

1 (b) Information submitted to the department of ecology by
2 pipelines pursuant to section 8(2) of this act that is related to
3 diluting agents contained in transported oil and that is in the
4 possession of the department of ecology or any entity with which the
5 department of ecology has shared the information pursuant to section
6 8(4) of this act.

7 NEW SECTION. Sec. 29. Sections 17 through 20 of this act take
8 effect January 1, 2016.

9 NEW SECTION. Sec. 30. If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected."

13 Correct the title.

EFFECT: The floor striker makes the following changes to the substitute house bill:

(1) Requires pipelines to include information about the types of diluents contained in transported oil in their twice-yearly reports to the department of ecology.

(2) Creates an exemption in the public records act for unaggregated advanced notice of transfer information submitted to the department of ecology by railroads and for oil diluent information submitted by pipelines, but authorizes the department of ecology to share this information with local emergency planning committees and local government personnel with official emergency management duties.

(3) Makes the state board of pilotage commissioners' discretionary tug escort rules and other rule making pertaining to oil bearing vessels in Puget Sound, Grays Harbor, and the Columbia river contingent upon one of the following events taking place:

(a) The governor's approval of a recommendation by the energy facility site evaluation council to certify a facility with an oil receiving capacity of over 50,000 barrels per day or a processing capacity of over 25,000 barrels per day;

(b) The issuance of a final permit by a state agency or local jurisdiction to site an oil refinery or terminal or to provide first-time authorization for an existing facility to receive or process crude oil; or

(c) The issuance of a final permit by the state of Oregon to site a new facility that would be required to have a contingency plan if it were located in Washington or to provide first-time authority for a facility to receive or process crude oil.

(4) Limits the scope of the board of pilotage commissioners' rule-making authority to waters that are directly affected by new crude oil operations at a facility.

(5) Adds all Puget Sound waters to the scope of maritime safety mandatory rule making that must be completed for the narrow channels of the San Juan islands by the board of pilotage commissioners by June 2017.

(6) Requires that vessel traffic risk assessments performed after 2015 that form the basis for any tug escort or other maritime safety rules adopted by the state board of pilotage commissioners must include a simulation analysis.

(7) Requires that the state board of pilotage commissioners rule making take into account any maritime safety measures for a water body that have been required as mitigation for the siting of a facility.

(8) Requires that the financial responsibility demonstrated by railroads, refineries, and other oil facilities be calculated based on a reasonable worst-case spill volume, rather than specifically on the worst-case spill volume assumed in oil spill contingency plans submitted by facilities to the department of ecology.

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