

ESHB 1449 - S AMD
By Senator Ericksen

ADOPTED AND ENGROSSED 4/15/2015

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

3 "NEW SECTION. **Sec. 1.** (1) Subject to the availability of
4 amounts appropriated for this specific purpose, the department of
5 ecology shall provide grants to emergency responders to assist with
6 oil spill and hazardous materials response and firefighting equipment
7 and resources needed to meet the requirements of this act.

8 (2) For the purposes of determining grant allocations, the
9 department of ecology, in consultation with emergency first
10 responders, oil spill response cooperatives, representatives from the
11 oil and rail industries, and businesses that are recipients of liquid
12 bulk crude oil shall: (a) Conduct an evaluation of oil spill and
13 hazardous materials response and firefighting equipment and resources
14 currently available for oil spill and hazardous materials response
15 activities throughout the state; (b) review the local emergency
16 management coordinating efforts for oil spill and hazardous materials
17 response; (c) determine the need for additional, new, or updated
18 equipment and resources; and (d) identify areas or regions of the
19 state that are in greatest need of resources and oil spill and
20 hazardous materials response and firefighting equipment.

21 (3) The department of ecology, in consultation with emergency
22 first responders, oil spill response cooperatives, representatives
23 from the oil and rail industries, and businesses that are recipients
24 of liquid bulk crude oil shall review grant applications to
25 prioritize grant awards using the evaluation of availability of oil
26 spill and hazardous materials response and firefighting equipment and
27 resources as determined in subsection (2) of this section.

28 (a) The application review must include evaluation of equipment
29 and resource requests, funding requirements, and coordination with
30 existing equipment and resources in the area.

31 (b) Funding must be prioritized for applicants from areas where
32 the need for firefighting and oil spill and hazardous materials

1 response equipment is the greatest as determined in subsection (2) of
2 this section.

3 (c) Grants must be coordinated to maximize currently existing
4 equipment and resources that have been put in place by first
5 responders and industry.

6 **Sec. 2.** RCW 82.23B.010 and 1992 c 73 s 6 are each amended to
7 read as follows:

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

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

14 (2) "Bulk oil terminal" means a facility of any kind, other than
15 a waterborne vessel, that is used for transferring crude oil from a
16 tank car.

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

20 ~~((3))~~ (4) "Department" means the department of revenue.

21 ~~((4))~~ (5) "Marine terminal" means a facility of any kind, other
22 than a waterborne vessel, that is used for transferring crude oil or
23 petroleum products to or from a waterborne vessel or barge.

24 ~~((5))~~ (6) "Navigable waters" means those waters of the state
25 and their adjoining shorelines that are subject to the ebb and flow
26 of the tide, including the Columbia and Snake rivers.

27 ~~((6))~~ (7) "Person" has the meaning provided in RCW 82.04.030.

28 ~~((7))~~ (8) "Petroleum product" means any liquid hydrocarbons at
29 atmospheric temperature and pressure that are the product of the
30 fractionation, distillation, or other refining or processing of crude
31 oil, and that are used as, useable as, or may be refined as a fuel or
32 fuel blendstock, including but not limited to, gasoline, diesel fuel,
33 aviation fuel, bunker fuel, and fuels containing a blend of alcohol
34 and petroleum.

35 ~~((8))~~ (9) "Tank car" means a rail car, the body of which
36 consists of a tank for transporting liquids.

37 (10) "Taxpayer" means the person owning crude oil or petroleum
38 products immediately after receipt of the same into the storage tanks
39 of a marine or bulk oil terminal in this state ~~((from a waterborne~~

1 ~~vessel or barge~~) and who is liable for the taxes imposed by this
2 chapter.

3 ~~((+9))~~ (11) "Waterborne vessel or barge" means any ship, barge,
4 or other watercraft capable of travelling on the navigable waters of
5 this state and capable of transporting any crude oil or petroleum
6 product in quantities of ten thousand gallons or more for purposes
7 other than providing fuel for its motor or engine.

8 **Sec. 3.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to
9 read as follows:

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

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

31 (3) The taxes imposed by this chapter ~~((shall))~~ must be collected
32 by the marine or bulk oil terminal operator from the taxpayer. If any
33 person charged with collecting the taxes fails to bill the taxpayer
34 for the taxes, or in the alternative has not notified the taxpayer in
35 writing of the ~~((imposition of the))~~ taxes imposed, or having
36 collected the taxes, fails to pay them to the department in the
37 manner prescribed by this chapter, whether such failure is the result
38 of the person's own acts or the result of acts or conditions beyond
39 the person's control, he or she ~~((shall))~~, nevertheless, ~~((be))~~ is

1 personally liable to the state for the amount of the taxes. Payment
2 of the taxes by the owner to a marine or bulk oil terminal operator
3 (~~shall~~) must relieve the owner from further liability for the
4 taxes.

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

14 (5) If a taxpayer fails to pay the taxes imposed by this chapter
15 to the person charged with collection of the taxes and the person
16 charged with collection fails to pay the taxes to the department, the
17 department may, in its discretion, proceed directly against the
18 taxpayer for collection of the taxes.

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

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

31 (8) Upon prior approval of the department, the taxpayer may pay
32 the taxes imposed by this chapter directly to the department. The
33 department (~~shall~~) must give its approval for direct payment under
34 this section whenever it appears, in the department's judgment, that
35 direct payment will enhance the administration of the taxes imposed
36 under this chapter. The department (~~shall~~) must provide by rule for
37 the issuance of a direct payment certificate to any taxpayer
38 qualifying for direct payment of the taxes. Good faith acceptance of
39 a direct payment certificate by a terminal operator (~~shall~~) must
40 relieve the marine or bulk oil terminal operator from any liability

1 for the collection or payment of the taxes imposed under this
2 chapter.

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

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

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

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

24 **Sec. 4.** RCW 82.23B.030 and 1992 c 73 s 9 are each amended to
25 read as follows:

26 The taxes imposed under this chapter (~~shall~~) only apply to the
27 first receipt of crude oil or petroleum products at a marine or bulk
28 oil terminal in this state and not to the later transporting and
29 subsequent receipt of the same oil or petroleum product, whether in
30 the form originally received at a marine or bulk oil terminal in this
31 state or after refining or other processing.

32 **Sec. 5.** RCW 82.23B.040 and 1992 c 73 s 10 are each amended to
33 read as follows:

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

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.56

2 RCW to read as follows:

3 (1) A facility that receives crude oil from a railroad car must
4 provide advance notice to the department that the facility will
5 receive crude oil from a railroad car, as provided in this section.
6 The advance notice must include the route taken to the facility
7 within the state, if known, and the scheduled time, location, volume,
8 region per bill of lading, and gravity of the oil, as measured by
9 standards developed by the American petroleum institute. Each week, a
10 facility that provides advance notice under this section must provide
11 the required information regarding the scheduled arrival of railroad
12 cars carrying crude oil to be received by the facility in the
13 succeeding seven-day period. A facility is not required to provide
14 advance notice when there is no receipt of crude oil from a railroad
15 car scheduled for a seven-day period.

16 (2) The department may share information provided by a facility
17 through the advance notice system established in this section with
18 the state emergency management division and any county, city, tribal,
19 port, or local government emergency response agency upon request.

20 (3) The department must publish information collected under this
21 section on a quarterly basis on the department's internet web site.
22 The information published by the department must be aggregated on a
23 statewide basis and may include other information available to the
24 department including, but not limited to, place of origin, modes of
25 transport, number of railroad cars delivering crude oil, and number
26 and volume of spills during transport and delivery. The department
27 must publish routes to facilities within the state, but may not
28 include specific information about volume or gravity of oil, as
29 measured by the standards developed by the American petroleum
30 institute transported to any particular facility along the routes.

31 (4) A facility providing advance notice under this section is not
32 responsible for meeting advance notice time frame requirements under
33 subsection (1) of this section in the event that the schedule of
34 arrivals of railroad cars carrying crude oil changes during a seven-
35 day period.

36 (5) Consistent with the requirements of chapter 42.56 RCW, the
37 department and any state, local, tribal, or public agency that
38 receives information provided under this section may not disclose any
39 such information to the public or to nongovernmental entities that is
40 not aggregated and that contains proprietary, commercial, or

1 financial information. The requirement for aggregating information
2 does not apply when information is shared by the department with
3 emergency response agencies as provided in subsection (2) of this
4 section.

5 (6) The department shall adopt rules to implement this section.
6 The advance notice system required in this section must be consistent
7 with the oil transfer reporting system adopted by the department
8 pursuant to RCW 88.46.165.

9 **Sec. 7.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to
10 read as follows:

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

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

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

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

20 (4) "Covered vessel" means a tank vessel, cargo vessel, or
21 passenger vessel.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (15)(a) "Owner or operator" means (i) in the case of a vessel,
40 any person owning, operating, or chartering by demise, the vessel;

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

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

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

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

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

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

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

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

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

27 **Sec. 8.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and
28 amended to read as follows:

29 The definitions in this section apply throughout this chapter
30 unless the context clearly requires otherwise.

31 (1) "Best achievable protection" means the highest level of
32 protection that can be achieved through the use of the best
33 achievable technology and those staffing levels, training procedures,
34 and operational methods that provide the greatest degree of
35 protection achievable. The director's determination of best
36 achievable protection shall be guided by the critical need to protect
37 the state's natural resources and waters, while considering:

38 (a) The additional protection provided by the measures;

39 (b) The technological achievability of the measures; and

1 (c) The cost of the measures.

2 (2)(a) "Best achievable technology" means the technology that
3 provides the greatest degree of protection taking into consideration:
4 (i) Processes that are being developed, or could feasibly be
5 developed, given overall reasonable expenditures on research and
6 development; and
7 (ii) Processes that are currently in use.

8 (b) In determining what is best achievable technology, the
9 director shall consider the effectiveness, engineering feasibility,
10 and commercial availability of the technology.

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

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

18 (5) "Covered vessel" means a tank vessel, cargo vessel, or
19 passenger vessel.

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

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

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

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

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

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

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

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

14 (13) "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 in Table 302.4 of 40 C.F.R. Part 302 adopted August
22 14, 1989, 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 (14) "Onshore facility" means any facility any part of which is
26 located in, on, or under any land of the state, other than submerged
27 land, that because of its location, could reasonably be expected to
28 cause substantial harm to the environment by discharging oil into or
29 on the navigable waters of the state or the adjoining shorelines.

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

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

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

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

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

9 (19) "Regional vessels of opportunity response group" means a
10 group of nondedicated vessels participating in a vessels of
11 opportunity response system to respond when needed and available to
12 spills in a defined geographic area.

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

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

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

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

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

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

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

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

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

37 (27) "Vessels of opportunity response system" means nondedicated
38 boats and operators, including fishing and other vessels, that are
39 under contract with and equipped by contingency plan holders to
40 assist with oil spill response activities, including on-water oil

1 recovery in the near shore environment and the placement of oil spill
2 containment booms to protect sensitive habitats.

3 (28) "Volunteer coordination system" means an oil spill response
4 system that, before a spill occurs, prepares for the coordination of
5 volunteers to assist with appropriate oil spill response activities,
6 which may include shoreline protection and cleanup, wildlife
7 recovery, field observation, light construction, facility
8 maintenance, donations management, clerical support, and other
9 aspects of a spill response.

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

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

20 **Sec. 9.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to
21 read as follows:

22 The definitions in this section apply throughout this chapter
23 unless the context clearly requires otherwise.

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

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

1 consider the effectiveness, engineering feasibility, and commercial
2 availability of the technology.

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

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

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

11 (6) "Committee" means the preassessment screening committee
12 established under RCW 90.48.368.

13 (7) "Covered vessel" means a tank vessel, cargo vessel, or
14 passenger vessel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 owned or operated the vessel or facility immediately before its
2 abandonment.

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 10.** A new section is added to chapter 88.16
33 RCW to read as follows:

34 (1) The board of pilotage commissioners may adopt rules to
35 implement this section. The rules may include tug escort requirements
36 and other safety measures for oil tankers of greater than forty
37 thousand deadweight tons, all articulated tug barges, and other towed
38 waterborne vessels or barges within a two-mile radius of the Grays
39 Harbor pilotage district as defined in RCW 88.16.050.

1 (2)(a) Prior to proposing a draft rule, the board of pilotage
2 commissioners must consult with the department of ecology, the United
3 States coast guard, the Grays Harbor safety committee, area tribes,
4 public ports, local governments, and other appropriate entities. The
5 board of pilotage commissioners may not adopt rules under this
6 section unless a state agency or a local jurisdiction, for a facility
7 within Grays Harbor that is required to have a contingency plan
8 pursuant to chapter 90.56 RCW:

9 (i) Makes a final determination or issues a final permit after
10 January 1, 2015, to site a new facility; or

11 (ii) Provides authority to an existing facility to process or
12 receive crude oil for the first time.

13 (b) This subsection does not apply to a transmission pipeline or
14 railroad facility.

15 (3) A rule adopted under this section must:

16 (a) Be designed to achieve best achievable protection as defined
17 in RCW 88.46.010;

18 (b) Ensure that any escort tugs used have an aggregate shaft
19 horsepower equivalent to at least five percent of the deadweight tons
20 of the escorted oil tanker or articulated tug barge; and

21 (c) Ensure that escort tugs have sufficient mechanical
22 capabilities to provide for safe escort.

23 (4) The provisions adopted under this section may not include
24 rules affecting pilotage. This section does not affect any existing
25 authority to establish pilotage requirements.

26 NEW SECTION. **Sec. 11.** A new section is added to chapter 81.04
27 RCW to read as follows:

28 (1) The commission must require a railroad company that
29 transports crude oil in Washington to submit information to the
30 commission relating to the railroad company's ability to pay damages
31 in the event of a spill or accident involving the transport of crude
32 oil by the railroad company in Washington. A railroad company must
33 include the information in the annual report submitted to the
34 commission pursuant to RCW 81.04.080.

35 (2) The commission may not use the information submitted by a
36 railroad company under this section as a basis for engaging in
37 economic regulation of a railroad company.

1 (3) The commission may not use the information submitted by a
2 railroad company under this section as a basis for penalizing a
3 railroad company.

4 (4) Nothing in this section may be construed as assigning
5 liability to a railroad company or establishing liquidated damages
6 for a spill or accident involving the transport of crude oil by a
7 railroad company.

8 (5) The commission may adopt rules for implementing this section
9 consistent with the requirements of RCW 81.04.080.

10 **Sec. 12.** RCW 81.53.240 and 1984 c 7 s 375 are each amended to
11 read as follows:

12 (1) Except to the extent necessary to permit participation by
13 first-class cities in the grade crossing protective fund, when an
14 election to participate is made as provided in RCW 81.53.261 through
15 81.53.291, or to the extent a first-class city requests to
16 participate in the commission's crossing safety inspection program
17 within the city, this chapter ((81.53-RCW)) is not operative within
18 the limits of first-class cities, and does not apply to street
19 railway lines operating on or across any street, alley, or other
20 public place within the limits of any city, except that a streetcar
21 line outside of cities of the first class shall not cross a railroad
22 at grade without express authority from the commission. The
23 commission may not change the location of a state highway without the
24 approval of the secretary of transportation, or the location of any
25 crossing thereon adopted or approved by the department of
26 transportation, or grant a railroad authority to cross a state
27 highway at grade without the consent of the secretary of
28 transportation.

29 (2) Within thirty days of the effective date of this section,
30 first-class cities must provide to the commission a list of all
31 existing public crossings within the limits of a first-class city,
32 including over and under-crossings, including the United States
33 department of transportation number for the crossing. Within thirty
34 days of modifying, closing, or opening a grade crossing within the
35 limits of a first-class city, the city must notify the commission in
36 writing of the action taken, identifying the crossing by the United
37 States department of transportation number. All requirements in this
38 subsection are subject to the availability of amounts appropriated
39 for the specific purposes described.

1 **Sec. 13.** RCW 38.52.040 and 2011 1st sp.s. c 21 s 27, 2011 c 336
2 s 789, and 2011 c 79 s 9 are each reenacted and amended to read as
3 follows:

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

21 (2) The emergency management council shall advise the governor
22 and the director on all matters pertaining to state and local
23 emergency management. The council may appoint such ad hoc committees,
24 subcommittees, and working groups as are required to develop specific
25 recommendations for the improvement of emergency management
26 practices, standards, policies, or procedures. The council shall
27 ensure that the governor receives an annual assessment of statewide
28 emergency preparedness including, but not limited to, specific
29 progress on hazard mitigation and reduction efforts, implementation
30 of seismic safety improvements, reduction of flood hazards, and
31 coordination of hazardous materials planning and response activities.
32 The council or a subcommittee thereof shall periodically convene in
33 special session and serve during those sessions as the state
34 emergency response commission required by P.L. 99-499, the emergency
35 planning and community right-to-know act. When sitting in session as
36 the state emergency response commission, the council shall confine
37 its deliberations to those items specified in federal statutes and
38 state administrative rules governing the coordination of hazardous
39 materials policy. Subject to the availability of amounts appropriated
40 for this specific purpose, the council must require local emergency

1 planning organizations to submit hazardous materials plans and to
2 update the plans on a five-year cycle for compliance review by the
3 director. The council shall review administrative rules governing
4 state and local emergency management practices and recommend
5 necessary revisions to the director.

6 (3)(a) The intrastate mutual aid committee is created and is a
7 subcommittee of the emergency management council. The intrastate
8 mutual aid committee consists of not more than five members who must
9 be appointed by the council chair from council membership. The chair
10 of the intrastate mutual aid committee is the military department
11 representative appointed as a member of the council. Meetings of the
12 intrastate mutual aid committee must be held at least annually.

13 (b) In support of the intrastate mutual aid system established in
14 chapter 38.56 RCW, the intrastate mutual aid committee shall develop
15 and update guidelines and procedures to facilitate implementation of
16 the intrastate mutual aid system by member jurisdictions, including
17 but not limited to the following: Projected or anticipated costs;
18 checklists and forms for requesting and providing assistance;
19 recordkeeping; reimbursement procedures; and other implementation
20 issues. These guidelines and procedures are not subject to the rule-
21 making requirements of chapter 34.05 RCW.

22 **Sec. 14.** RCW 38.52.070 and 1997 c 49 s 4 are each amended to
23 read as follows:

24 (1) Each political subdivision of this state is hereby authorized
25 and directed to establish a local organization or to be a member of a
26 joint local organization for emergency management in accordance with
27 the state comprehensive emergency management plan and program:
28 PROVIDED, That a political subdivision proposing such establishment
29 shall submit its plan and program for emergency management to the
30 state director and secure his or her recommendations thereon, and
31 verification of consistency with the state comprehensive emergency
32 management plan, in order that the plan of the local organization for
33 emergency management may be coordinated with the plan and program of
34 the state. Local comprehensive emergency management plans must: (a)
35 Specify the use of the incident command system for multiagency/
36 multijurisdiction operations; and (b) include hazardous materials
37 plans that are updated on a five-year cycle for compliance review by
38 the director. No political subdivision may be required to include in
39 its plan provisions for the emergency evacuation or relocation of

1 residents in anticipation of nuclear attack. If the director's
2 recommendations are adverse to the plan as submitted, and, if the
3 local organization does not agree to the director's recommendations
4 for modification to the proposal, the matter shall be referred to the
5 council for final action. The director may authorize two or more
6 political subdivisions to join in the establishment and operation of
7 a joint local organization for emergency management as circumstances
8 may warrant, in which case each political subdivision shall
9 contribute to the cost of emergency management upon such fair and
10 equitable basis as may be determined upon by the executive heads of
11 the constituent subdivisions. If in any case the executive heads
12 cannot agree upon the proper division of cost the matter shall be
13 referred to the council for arbitration and its decision shall be
14 final. When two or more political subdivisions join in the
15 establishment and operation of a joint local organization for
16 emergency management each shall pay its share of the cost into a
17 special pooled fund to be administered by the treasurer of the most
18 populous subdivision, which fund shall be known as the
19 emergency management fund. Each local organization or joint local
20 organization for emergency management shall have a director who shall
21 be appointed by the executive head of the political subdivision, and
22 who shall have direct responsibility for the organization,
23 administration, and operation of such local organization for
24 emergency management, subject to the direction and control of such
25 executive officer or officers. In the case of a joint local
26 organization for emergency management, the director shall be
27 appointed by the joint action of the executive heads of the
28 constituent political subdivisions. Each local organization or joint
29 local organization for emergency management shall perform emergency
30 management functions within the territorial limits of the political
31 subdivision within which it is organized, and, in addition, shall
32 conduct such functions outside of such territorial limits as may be
33 required pursuant to the provisions of this chapter.

34 (2) In carrying out the provisions of this chapter each political
35 subdivision, in which any disaster as described in RCW 38.52.020
36 occurs, shall have the power to enter into contracts and incur
37 obligations necessary to combat such disaster, protecting the health
38 and safety of persons and property, and providing emergency
39 assistance to the victims of such disaster. Each political
40 subdivision is authorized to exercise the powers vested under this

1 section in the light of the exigencies of an extreme emergency
2 situation without regard to time-consuming procedures and formalities
3 prescribed by law (excepting mandatory constitutional requirements),
4 including, but not limited to, budget law limitations, requirements
5 of competitive bidding and publication of notices, provisions
6 pertaining to the performance of public work, entering into
7 contracts, the incurring of obligations, the employment of temporary
8 workers, the rental of equipment, the purchase of supplies and
9 materials, the levying of taxes, and the appropriation and
10 expenditures of public funds.

11 **Sec. 15.** RCW 81.53.010 and 2013 c 23 s 302 are each amended to
12 read as follows:

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

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

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

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

35 ~~((The term))~~ (4) "Railroad company~~(())"~~ ~~((when used in this~~
36 ~~chapter,))~~ includes every corporation, company, association, joint
37 stock association, partnership, or person, its, their, or his or her
38 lessees, trustees, or receivers appointed by any court whatsoever,

1 owning, operating, controlling, or managing any railroad(~~(, as that~~
2 ~~term is defined in this section)~~)).

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

8 ~~((The term))~~ (6) "Under-crossing((~~τ~~))" ~~((when used in this~~
9 ~~chapter~~τ~~)~~) means any point or place where a highway crosses a
10 railroad by passing under the same. "Under-crossing" also means any
11 point or place where one railroad crosses another railroad not at
12 grade.

13 ~~((The term "over-crossing" or "under-crossing," shall also mean~~
14 ~~any point or place where one railroad crosses another railroad not at~~
15 ~~grade.~~

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

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

23 NEW SECTION. **Sec. 16.** A new section is added to chapter 81.53
24 RCW to read as follows:

25 (1) To address the potential public safety hazards presented by
26 private crossings in the state and by the transportation of hazardous
27 materials in the state, including crude oil, the commission is
28 authorized to adopt rules establishing criteria for inspection of
29 private crossings and governing safety standards for private
30 crossings along the railroad tracks over which crude oil is
31 transported in the state, including, but not limited to, requirements
32 for signage.

33 (2) Nothing in this section modifies existing agreements between
34 the railroad company and the landowner governing cost allocation for
35 upgrades to private crossing or liability for injuries or damages
36 occurring at the private crossing.

37 (3) All requirements in this section are subject to the
38 availability of amounts appropriated for the specific purposes
39 described.

1 NEW SECTION. **Sec. 17.** (1) The department of ecology must
2 complete an evaluation and assessment of vessel traffic management
3 and vessel traffic safety within and near the mouth of the Columbia
4 river. A draft evaluation and assessment must be completed and
5 submitted to the legislature consistent with RCW 43.01.036 by
6 December 15, 2017. A final evaluation and assessment must be
7 completed by June 30, 2018. In conducting this evaluation, the
8 department of ecology must consult with the United States coast
9 guard, the Oregon board of maritime pilots, Columbia river harbor
10 safety committee, the Columbia river bar pilots, the Columbia river
11 pilots, area tribes, public ports in Oregon and Washington, local
12 governments, and other appropriate entities.

13 (2) The evaluation and assessment completed under subsection (1)
14 of this section must include, but is not limited to, an assessment
15 and evaluation of: (a) The need for tug escorts for oil tankers,
16 articulated tug barges, and other towed waterborne vessels or barges;
17 (b) best achievable protection; and (c) required tug capabilities to
18 ensure safe escort of vessels on the waters that are the subject of
19 focus for each water body evaluated under subsection (1) of this
20 section.

21 (3) The assessment and evaluations submitted to the legislature
22 under subsection (1) of this section must include recommendations for
23 vessel traffic management and vessel traffic safety on the Columbia
24 river, including recommendations for tug escort requirements for
25 vessels transporting oil as bulk cargo.

26 (4) All requirements in this section are subject to the
27 availability of amounts appropriated for the specific purposes
28 described.

29 NEW SECTION. **Sec. 18.** A new section is added to chapter 81.44
30 RCW to read as follows:

31 Commission employees certified by the federal railroad
32 administration to perform hazardous materials inspections may enter
33 the property of any business that receives, ships, or offers for
34 shipment hazardous materials by rail. Entry shall be at a reasonable
35 time and in a reasonable manner. The purpose of entry is limited to
36 performing inspections, investigations, or surveillance of equipment,
37 records, and operations relating to the packaging, loading,
38 unloading, or transportation of hazardous materials by rail, pursuant
39 only to the state participation program outlined in 49 C.F.R. Part

1 212. The term "business" is all inclusive and is not limited to
2 common carriers or public service companies.

3 **Sec. 19.** RCW 81.24.010 and 2007 c 234 s 21 are each amended to
4 read as follows:

5 (1) Every company subject to regulation by the commission, except
6 those listed in subsection (3) of this section, shall, on or before
7 the date specified by the commission for filing annual reports under
8 RCW 81.04.080, file with the commission a statement on oath showing
9 its gross operating revenue from intrastate operations for the
10 preceding calendar year, or portion thereof, and pay to the
11 commission a fee equal to one-tenth of one percent of the first fifty
12 thousand dollars of gross operating revenue, plus two-tenths of one
13 percent of any gross operating revenue in excess of fifty thousand
14 dollars, except railroad companies which shall each pay to the
15 commission a fee (~~equal~~) up to (~~one~~) two and one-half percent of
16 its intrastate gross operating revenue for the purpose of
17 administering the rail safety program. However, class three railroads
18 that do not haul crude oil shall pay a fee equal to one and one-half
19 percent of its intrastate gross operating revenue. The commission
20 may, by rule, set minimum fees that do not exceed the cost of
21 collecting the fees. The commission may by rule waive any or all of
22 the minimum fee established pursuant to this section. Any railroad
23 association that qualifies as a nonprofit charitable organization
24 under the federal internal revenue code section 501(c)(3) is exempt
25 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 **Sec. 20.** RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and
4 2014 c 144 s 6 are each reenacted and amended to read as follows:

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

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

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

16 (3) Financial and commercial information and records supplied by
17 private persons pertaining to export services provided under chapters
18 43.163 and 53.31 RCW, and by persons pertaining to export projects
19 under RCW 43.23.035;

20 (4) Financial and commercial information and records supplied by
21 businesses or individuals during application for loans or program
22 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
23 43.168 RCW, or during application for economic development loans or
24 program services provided by any local agency;

25 (5) Financial information, business plans, examination reports,
26 and any information produced or obtained in evaluating or examining a
27 business and industrial development corporation organized or seeking
28 certification under chapter 31.24 RCW;

29 (6) Financial and commercial information supplied to the state
30 investment board by any person when the information relates to the
31 investment of public trust or retirement funds and when disclosure
32 would result in loss to such funds or in private loss to the
33 providers of this information;

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

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

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

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

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

16 (11) Proprietary data, trade secrets, or other information that
17 relates to: (a) A vendor's unique methods of conducting business; (b)
18 data unique to the product or services of the vendor; or (c)
19 determining prices or rates to be charged for services, submitted by
20 any vendor to the department of social and health services for
21 purposes of the development, acquisition, or implementation of state
22 purchased health care as defined in RCW 41.05.011;

23 (12)(a) When supplied to and in the records of the department of
24 commerce:

25 (i) Financial and proprietary information collected from any
26 person and provided to the department of commerce pursuant to RCW
27 43.330.050(8); and

28 (ii) Financial or proprietary information collected from any
29 person and provided to the department of commerce or the office of
30 the governor in connection with the siting, recruitment, expansion,
31 retention, or relocation of that person's business and until a siting
32 decision is made, identifying information of any person supplying
33 information under this subsection and the locations being considered
34 for siting, relocation, or expansion of a business;

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

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

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

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

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

15 (15) Financial and commercial information provided as evidence to
16 the department of licensing as required by RCW 19.112.110 or
17 19.112.120, except information disclosed in aggregate form that does
18 not permit the identification of information related to individual
19 fuel licensees;

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

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

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

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

36 (19) Information gathered under chapter 19.85 RCW or RCW
37 34.05.328 that can be identified to a particular business;

38 (20) Financial and commercial information submitted to or
39 obtained by the University of Washington, other than information the
40 university is required to disclose under RCW 28B.20.150, when the

1 information relates to investments in private funds, to the extent
2 that such information, if revealed, would reasonably be expected to
3 result in loss to the University of Washington consolidated endowment
4 fund or to result in private loss to the providers of this
5 information; (~~and~~)

6 (21) Market share data submitted by a manufacturer under RCW
7 70.95N.190(4); (~~and~~)

8 (22) Financial information supplied to the department of
9 financial institutions or to a portal under RCW 21.20.883, when filed
10 by or on behalf of an issuer of securities for the purpose of
11 obtaining the exemption from state securities registration for small
12 securities offerings provided under RCW 21.20.880 or when filed by or
13 on behalf of an investor for the purpose of purchasing such
14 securities; and

15 (23) Unaggregated or individualized information shared as part of
16 notices of transfer of crude oil that is financial, proprietary, or
17 commercial information, submitted to the department of ecology
18 pursuant to section 6 of this act, and in the possession of the
19 department of ecology or any entity with which the department of
20 ecology has shared it.

21 NEW SECTION. **Sec. 21.** The senate energy, environment, and
22 telecommunications committee and the house of representatives
23 environment committee must hold at least one joint meeting on oil
24 spill prevention and response activities for international transport
25 of liquid bulk crude oil. The committees may invite representatives
26 of affected parties from the United States and Canada to address
27 cooperative prevention and emergency response activities between
28 shared international and state borders; expected risks posed by
29 transport of Canadian crude oil or liquid bulk crude oil throughout
30 the Pacific Northwest region; and an update of the marine transport
31 of liquid bulk crude oil through the Pacific Northwest region.

32 NEW SECTION. **Sec. 22.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected."

ESHB 1449 - S AMD
By Senator Ericksen

ADOPTED 4/15/2015

1 On page 1, line 1 of the title, after "safety;" strike the
2 remainder of the title and insert "amending RCW 82.23B.010,
3 82.23B.020, 82.23B.030, 82.23B.040, 88.40.011, 90.56.010, 81.53.240,
4 38.52.070, 81.53.010, and 81.24.010; reenacting and amending RCW
5 88.46.010, 38.52.040, and 42.56.270; adding a new section to chapter
6 90.56 RCW; adding a new section to chapter 88.16 RCW; adding a new
7 section to chapter 81.04 RCW; adding a new section to chapter 81.53
8 RCW; adding a new section to chapter 81.44 RCW; and creating new
9 sections."

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