

2SHB 1611 - H AMD 846

By Representative Peterson

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

3 "PART 1

4 REVENUE

5 NEW SECTION. **Sec. 101.** (1) The legislature finds that:

6 (a) The 2004 legislature declared a zero spills goal for the
7 state of Washington. When a spill occurs, there is severe and
8 irreversible damage to the environment, human health, tribal and
9 other cultural and historical resources, and the economy. Fish,
10 orcas, wildlife habitats, shellfish beds, archaeologically sensitive
11 areas, clean air, and public facilities are put at risk when spills
12 occur in the state of Washington.

13 (b) The department of ecology's oil spill program faces a
14 critical funding gap due to the lack of adequate revenue to fully
15 fund the prevention and preparedness services required by state law,
16 including the 2015 oil transportation safety act. Moreover, the
17 program has endured a decline in capacity and resources to fully
18 utilize its existing authority for critical needs, like vessel
19 inspections and developing spill response plans. Without an adequate
20 investment in revenue, there will be a continued decline in required
21 prevention and preparedness services, causing an increased risk of
22 oil spills in the state of Washington and our shared waters with the
23 Canadian transboundary region.

24 (c) While oil transported into the state by rail and tank vessels
25 is taxed to fund the oil spill program's oil spill prevention and
26 preparedness activities, a third method of transport, pipelines,
27 currently is not taxed, despite it generating a sizeable oil spill
28 risk.

29 (d) Some oils are inherently heavy and are likely to stay
30 submerged in the water column or sink to the bottom of a water body.
31 In addition, many oils, depending on their qualities, weathering,

1 environmental factors, and method of discharge, may also submerge or
2 sink in water. Oils that submerge or sink in water pose a substantial
3 risk to the environment, human health, tribal and other cultural and
4 historical resources, and the economy and are a significant challenge
5 to cleanup. Oils are currently being transported by vessels, trains,
6 and pipelines in large volumes in our state, with increased volumes
7 of heavy oils being transported by vessel through our shared waters
8 from Canada. As knowledge about how oils submerge or sink in water
9 grows and technological advances to respond are developed, preventing
10 and preparing for these spills must be updated.

11 (2) Therefore, the legislature intends to provide adequate
12 revenue to fully fund prevention and preparedness services required
13 by state law, as well as direct the department of ecology to
14 specifically address the risks of oils submerging and sinking and
15 more extensively coordinate with our Canadian partners in order to
16 protect our state's economy and its shared resources.

17 **Sec. 102.** RCW 82.23B.010 and 2015 c 274 s 13 are each reenacted
18 and amended to read as follows:

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

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

23 (2) "Bulk oil terminal" means a facility of any kind, other than
24 a waterborne vessel, that is used for transferring crude oil or
25 petroleum products from a tank car or pipeline.

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

31 (4) "Department" means the department of revenue.

32 (5) "Marine terminal" means a facility of any kind, other than a
33 waterborne vessel, that is used for transferring crude oil or
34 petroleum products to or from a waterborne vessel or barge.

35 (6) "Navigable waters" means those waters of the state and their
36 adjoining shorelines that are subject to the ebb and flow of the
37 tide, including the Columbia and Snake rivers.

38 (7) "Person" has the meaning provided in RCW 82.04.030.

1 (8) "Petroleum product" means any liquid hydrocarbons at
2 atmospheric temperature and pressure that are the product of the
3 fractionation, distillation, or other refining or processing of crude
4 oil, and that are used as, useable as, or may be refined as a fuel or
5 fuel blendstock, including but not limited to, gasoline, diesel fuel,
6 aviation fuel, bunker fuel, and fuels containing a blend of alcohol
7 and petroleum.

8 (9) "Pipeline" means an interstate or intrastate pipeline subject
9 to regulation by the United States department of transportation under
10 49 C.F.R. Part 195 in effect on the effective date of this section,
11 through which oil moves in transportation, including line pipes,
12 valves, and other appurtenances connected to line pipes, pumping
13 units, and fabricated assemblies associated with pumping units.

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

16 ((+10)) (11) "Taxpayer" means the person owning crude oil or
17 petroleum products immediately after receipt of the same into the
18 storage tanks of a marine or bulk oil terminal in this state and who
19 is liable for the taxes imposed by this chapter.

20 ((+11)) (12) "Waterborne vessel or barge" means any ship, barge,
21 or other watercraft capable of traveling on the navigable waters of
22 this state and capable of transporting any crude oil or petroleum
23 product in quantities of ten thousand gallons or more for purposes
24 other than providing fuel for its motor or engine.

25 **Sec. 103.** RCW 82.23B.020 and 2015 c 274 s 14 are each amended to
26 read as follows:

27 (1) An oil spill response tax is imposed on the privilege of
28 receiving: (a) Crude oil or petroleum products at a marine terminal
29 within this state from a waterborne vessel or barge operating on the
30 navigable waters of this state; or (b) crude oil or petroleum
31 products at a bulk oil terminal within this state from a tank car or
32 pipeline. The tax imposed in this section is levied upon the owner of
33 the crude oil or petroleum products immediately after receipt of the
34 same into the storage tanks of a marine or bulk oil terminal from a
35 tank car ((~~or~~)), pipeline, waterborne vessel, or barge at the rate of
36 one cent per barrel of crude oil or petroleum product received.

37 (2) In addition to the tax imposed in subsection (1) of this
38 section, an oil spill administration tax is imposed on the privilege
39 of receiving: (a) Crude oil or petroleum products at a marine

1 terminal within this state from a waterborne vessel or barge
2 operating on the navigable waters of this state; or (b) crude oil or
3 petroleum products at a bulk oil terminal within this state from a
4 tank car or pipeline. The tax imposed in this section is levied upon
5 the owner of the crude oil or petroleum products immediately after
6 receipt of the same into the storage tanks of a marine or bulk oil
7 terminal from a tank car (~~(or)~~), pipeline, waterborne vessel, or
8 barge at the rate of (~~four~~) six cents per barrel of crude oil or
9 petroleum product.

10 (3) The taxes imposed by this chapter must be collected by the
11 marine or bulk oil terminal operator from the taxpayer. If any person
12 charged with collecting the taxes fails to bill the taxpayer for the
13 taxes, or in the alternative has not notified the taxpayer in writing
14 of the taxes imposed, or having collected the taxes, fails to pay
15 them to the department in the manner prescribed by this chapter,
16 whether such failure is the result of the person's own acts or the
17 result of acts or conditions beyond the person's control, he or she,
18 nevertheless, is personally liable to the state for the amount of the
19 taxes. Payment of the taxes by the owner to a marine or bulk oil
20 terminal operator relieves the owner from further liability for the
21 taxes.

22 (4) Taxes collected under this chapter must be held in trust
23 until paid to the department. Any person collecting the taxes who
24 appropriates or converts the taxes collected is guilty of a gross
25 misdemeanor if the money required to be collected is not available
26 for payment on the date payment is due. The taxes required by this
27 chapter to be collected must be stated separately from other charges
28 made by the marine or bulk oil terminal operator in any invoice or
29 other statement of account provided to the taxpayer.

30 (5) If a taxpayer fails to pay the taxes imposed by this chapter
31 to the person charged with collection of the taxes and the person
32 charged with collection fails to pay the taxes to the department, the
33 department may, in its discretion, proceed directly against the
34 taxpayer for collection of the taxes.

35 (6) The taxes are due from the marine or bulk oil terminal
36 operator, along with reports and returns on forms prescribed by the
37 department, within twenty-five days after the end of the month in
38 which the taxable activity occurs.

39 (7) The amount of taxes, until paid by the taxpayer to the marine
40 or bulk oil terminal operator or to the department, constitutes a

1 debt from the taxpayer to the marine or bulk oil terminal operator.
2 Any person required to collect the taxes under this chapter who, with
3 intent to violate the provisions of this chapter, fails or refuses to
4 do so as required and any taxpayer who refuses to pay any taxes due
5 under this chapter, is guilty of a misdemeanor as provided in chapter
6 9A.20 RCW.

7 (8) Upon prior approval of the department, the taxpayer may pay
8 the taxes imposed by this chapter directly to the department. The
9 department must give its approval for direct payment under this
10 section whenever it appears, in the department's judgment, that
11 direct payment will enhance the administration of the taxes imposed
12 under this chapter. The department must provide by rule for the
13 issuance of a direct payment certificate to any taxpayer qualifying
14 for direct payment of the taxes. Good faith acceptance of a direct
15 payment certificate by a terminal operator relieves the marine or
16 bulk oil terminal operator from any liability for the collection or
17 payment of the taxes imposed under this chapter.

18 (9) All receipts from the tax imposed in subsection (1) of this
19 section must be deposited into the state oil spill response account.
20 All receipts from the tax imposed in subsection (2) of this section
21 shall be deposited into the oil spill prevention account.

22 (10) Within forty-five days after the end of each calendar
23 quarter, the office of financial management must determine the
24 balance of the oil spill response account as of the last day of that
25 calendar quarter. Balance determinations by the office of financial
26 management under this section are final and may not be used to
27 challenge the validity of any tax imposed under this chapter. The
28 office of financial management must promptly notify the departments
29 of revenue and ecology of the account balance once a determination is
30 made. For each subsequent calendar quarter, the tax imposed by
31 subsection (1) of this section shall be imposed during the entire
32 calendar quarter unless:

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

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

1 **VESSELS**

2 **Sec. 201.** RCW 88.46.060 and 2011 c 122 s 6 are each amended to
3 read as follows:

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

12 (a) Include full details of the method of response to spills of
13 various sizes from any vessel which is covered by the plan;

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

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

23 (d) Provide procedures for early detection of spills and timely
24 notification of such spills to appropriate federal, state, and local
25 authorities under applicable state and federal law;

26 (e) State the number, training preparedness, and fitness of all
27 dedicated, prepositioned personnel assigned to direct and implement
28 the plan;

29 (f) Incorporate periodic training and drill programs consistent
30 with this chapter to evaluate whether personnel and equipment
31 provided under the plan are in a state of operational readiness at
32 all times;

33 (g) Describe important features of the surrounding environment,
34 including fish (~~and~~) habitat, water column species and subsurface
35 resources, wildlife habitat, shellfish beds, environmentally and
36 archaeologically sensitive areas, and public facilities, that are:
37 (i) Based on information documented in geographic response plans and
38 area contingency plans, as required under RCW 90.56.210; or (ii) for
39 areas without geographic response plans or area contingency plans,

1 based on existing practices protecting those resources used for
2 similar areas. The departments of ecology, fish and wildlife, natural
3 resources, and archaeology and historic preservation, upon request,
4 shall provide information that they have available to assist in
5 preparing this description. The description of archaeologically
6 sensitive areas shall not be required to be included in a contingency
7 plan until it is reviewed and updated pursuant to subsection (9) of
8 this section;

9 (h) State the means of protecting and mitigating effects on the
10 environment, including fish, shellfish, marine mammals, and other
11 wildlife, and ensure that implementation of the plan does not pose
12 unacceptable risks to the public or the environment;

13 (i) Establish guidelines for the use of equipment by the crew of
14 a vessel to minimize vessel damage, stop or reduce any spilling from
15 the vessel, and, only when appropriate and only when vessel safety is
16 assured, contain and clean up the spilled oil;

17 (j) Provide arrangements for the repositioning of spill
18 containment and cleanup equipment and trained personnel at strategic
19 locations from which they can be deployed to the spill site to
20 promptly and properly remove the spilled oil;

21 (k) Provide arrangements for enlisting the use of qualified and
22 trained cleanup personnel to implement the plan;

23 (l) Provide for disposal of recovered spilled oil in accordance
24 with local, state, and federal laws;

25 (m) Until a spill prevention plan has been submitted pursuant to
26 RCW 88.46.040, state the measures that have been taken to reduce the
27 likelihood that a spill will occur, including but not limited to,
28 design and operation of a vessel, training of personnel, number of
29 personnel, and backup systems designed to prevent a spill;

30 (n) State the amount and type of equipment available to respond
31 to a spill, where the equipment is located, and the extent to which
32 other contingency plans rely on the same equipment;

33 (o) If the department has adopted rules permitting the use of
34 dispersants, the circumstances, if any, and the manner for the
35 application of the dispersants in conformance with the department's
36 rules;

37 (p) Compliance with RCW 88.46.230 if the contingency plan is
38 submitted by an umbrella plan holder; and

39 (q) Include any additional elements of contingency plans as
40 required by this chapter.

1 (2) The owner or operator of a covered vessel must submit any
2 required contingency plan updates to the department within the
3 timelines established by the department.

4 (3)(a) The owner or operator of a tank vessel or of the
5 facilities at which the vessel will be unloading its cargo, or a
6 nonprofit corporation established for the purpose of oil spill
7 response and contingency plan coverage and of which the owner or
8 operator is a member, shall submit the contingency plan for the tank
9 vessel. Subject to conditions imposed by the department, the owner or
10 operator of a facility may submit a single contingency plan for tank
11 vessels of a particular class that will be unloading cargo at the
12 facility.

13 (b) The contingency plan for a cargo vessel or passenger vessel
14 may be submitted by the owner or operator of the cargo vessel or
15 passenger vessel, by the agent for the vessel resident in this state,
16 or by a nonprofit corporation established for the purpose of oil
17 spill response and contingency plan coverage and of which the owner
18 or operator is a member. Subject to conditions imposed by the
19 department, the owner, operator, or agent may submit a single
20 contingency plan for cargo vessels or passenger vessels of a
21 particular class.

22 (c) A person who has contracted with a covered vessel to provide
23 containment and cleanup services and who meets the standards
24 established pursuant to RCW 90.56.240, may submit the plan for any
25 covered vessel for which the person is contractually obligated to
26 provide services. Subject to conditions imposed by the department,
27 the person may submit a single plan for more than one covered vessel.

28 (4) A contingency plan prepared for an agency of the federal
29 government or another state that satisfies the requirements of this
30 section and rules adopted by the department may be accepted by the
31 department as a contingency plan under this section. The department
32 shall ensure that to the greatest extent possible, requirements for
33 contingency plans under this section are consistent with the
34 requirements for contingency plans under federal law.

35 (5) In reviewing the contingency plans required by this section,
36 the department shall consider at least the following factors:

37 (a) The adequacy of containment and cleanup equipment, personnel,
38 communications equipment, notification procedures and call down
39 lists, response time, and logistical arrangements for coordination

1 and implementation of response efforts to remove oil spills promptly
2 and properly and to protect the environment;

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

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

7 (d) The existence of navigational hazards within the area covered
8 by the plan;

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

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

13 (g) Relevant information on previous spills contained in on-scene
14 coordinator reports prepared by the director; and

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

18 (6)(a) The department shall approve a contingency plan only if it
19 determines that the plan meets the requirements of this section and
20 that, if implemented, the plan is capable, in terms of personnel,
21 materials, and equipment, of removing oil promptly and properly and
22 minimizing any damage to the environment.

23 (b) The department must notify the plan holder in writing within
24 sixty-five days of an initial or amended plan's submittal to the
25 department as to whether the plan is disapproved, approved, or
26 conditionally approved. If a plan is conditionally approved, the
27 department must clearly describe each condition and specify a
28 schedule for plan holders to submit required updates.

29 (7) The approval of the contingency plan shall be valid for five
30 years. Upon approval of a contingency plan, the department shall
31 provide to the person submitting the plan a statement indicating that
32 the plan has been approved, the vessels covered by the plan, and
33 other information the department determines should be included.

34 (8) An owner or operator of a covered vessel shall notify the
35 department in writing immediately of any significant change of which
36 it is aware affecting its contingency plan, including changes in any
37 factor set forth in this section or in rules adopted by the
38 department. The department may require the owner or operator to
39 update a contingency plan as a result of these changes.

1 (9) The department by rule shall require contingency plans to be
2 reviewed, updated, if necessary, and resubmitted to the department at
3 least once every five years.

4 (10) Approval of a contingency plan by the department does not
5 constitute an express assurance regarding the adequacy of the plan
6 nor constitute a defense to liability imposed under this chapter or
7 other state law.

8 NEW SECTION. **Sec. 202.** A new section is added to chapter 88.46
9 RCW to read as follows:

10 By December 31, 2019, consistent with the authority under RCW
11 88.46.060, the department must update rules for contingency plans to
12 require:

13 (1) Covered vessels to address situations where oils, depending
14 on their qualities, weathering, environmental factors, and method of
15 discharge, may submerge or sink in water; and

16 (2) Standards for best achievable protection for situations
17 involving the oils in subsection (1) of this section.

18 **Sec. 203.** RCW 88.46.220 and 2011 c 122 s 5 are each amended to
19 read as follows:

20 (1) The department is responsible for requiring joint large-
21 scale, multiple plan equipment deployment drills of (~~tank~~) covered
22 vessels to determine the adequacy of the owner's or operator's
23 compliance with the contingency plan requirements of this chapter.
24 The department must order at least one drill as outlined in this
25 section every three years, which must address situations where oils,
26 depending on their qualities, weathering, environmental factors, and
27 method of discharge, may submerge or sink in water.

28 (2) Drills required under this section must focus on, at a
29 minimum, the following:

30 (a) The functional ability for multiple contingency plans to be
31 simultaneously activated with the purpose of testing the ability for
32 dedicated equipment and trained personnel cited in multiple
33 contingency plans to be activated in a large scale spill; and

34 (b) The operational readiness during both the first six hours of
35 a spill and, at the department's discretion, over multiple
36 operational periods of response.

1 (3) Drills required under this section may be incorporated into
2 other drill requirements under this chapter to avoid increasing the
3 number of drills and equipment deployments otherwise required.

4 (4) Each successful drill conducted under this section may be
5 considered by the department as a drill of the underlying contingency
6 plan and credit may be awarded to the plan holder accordingly.

7 (5) The department shall, when practicable, coordinate with
8 applicable federal agencies, the state of Oregon, and the province of
9 British Columbia to establish a drill incident command and to help
10 ensure that lessons learned from the drills are evaluated with the
11 goal of improving the underlying contingency plans.

12 NEW SECTION. **Sec. 204.** A new section is added to chapter 88.46
13 RCW to read as follows:

14 (1) The department must establish the Salish Sea shared waters
15 forum to address common issues in the cross-boundary waterways
16 between Washington state and British Columbia such as: Enhancing
17 efforts to reduce oil spill risk; addressing navigational safety; and
18 promoting data sharing.

19 (2) The department must:

20 (a) Coordinate with provincial and federal Canadian agencies when
21 establishing the Salish Sea shared waters forum; and

22 (b) Seek participation from stakeholders that, at minimum,
23 includes representatives of the following: State, provincial, and
24 federal governmental entities, regulated entities, environmental
25 organizations, tribes, and first nations.

26 (3) The Salish Sea shared waters forum must meet at least twice
27 per year to consider the following:

28 (a) Gaps and conflicts in oil spill policies, regulations, and
29 laws;

30 (b) Opportunities to reduce oil spill risk, including requiring
31 tug escorts for oil tankers, articulated tug barges, and other
32 waterborne vessels or barges;

33 (c) Enhancing oil spill prevention, preparedness, and response
34 capacity; and

35 (d) Whether an emergency response system in Haro Strait, Boundary
36 Pass, and Rosario Strait, similar to the system implemented by the
37 maritime industry pursuant to RCW 88.46.130, will decrease oil spill
38 risk and how to fund such a shared system.

1 (4) The definitions in this subsection apply throughout this
2 section unless the context clearly requires otherwise.

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

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

11 **Sec. 205.** RCW 88.46.167 and 2006 c 316 s 2 are each amended to
12 read as follows:

13 In addition to other inspection authority provided for in this
14 chapter and chapter 90.56 RCW, the department may conduct inspections
15 of oil transfer operations regulated under RCW 88.46.160 or
16 88.46.165. The department must conduct specialized reviews and
17 prioritize adding capacity for the inspection of oil transfer
18 operations where oils, depending on their qualities, weathering,
19 environmental factors, and method of discharge, may submerge or sink
20 in water.

21 NEW SECTION. **Sec. 206.** (1)(a) The department of ecology, in
22 consultation with the Puget Sound partnership and the pilotage
23 commission, must complete a report of vessel traffic and vessel
24 traffic safety within the Strait of Juan de Fuca, Puget Sound area
25 that includes the San Juan archipelago, its connected waterways, Haro
26 Strait, Rosario Strait, Boundary Pass, and the waters south of
27 Admiralty Inlet. A draft report, including recommendations, must be
28 completed and submitted, consistent with RCW 43.01.036, to the
29 legislature by December 1, 2018. The final report must be completed
30 and submitted to the legislature by June 30, 2019.

31 (b) In conducting the evaluation to produce the report, the
32 department of ecology must rely only on existing current vessel
33 traffic risk assessments and other available studies, consult with
34 the United States coast guard, tribes, maritime experts, including
35 representatives of covered vessels, onshore and offshore facilities,
36 environmental organizations, commercial and noncommercial fishers,
37 recreational resource users, provincial experts, representatives of

1 the Salish Sea shared waters forum established in section 204 of this
2 act, and other appropriate entities.

3 (2) The report completed under subsection (1) of this section
4 must include an assessment and evaluation of:

5 (a) Worldwide incident and spill data for articulated tug barges
6 and other towed waterborne vessels or barges;

7 (b) Transport of bitumen and diluted bitumen;

8 (c) Emerging trends in vessel traffic;

9 (d) Tug escorts for oil tankers, articulated tug barges, and
10 other towed waterborne vessels or barges, including a review of
11 requirements in California and Alaska;

12 (e) Requirements for tug capabilities to ensure safe escort of
13 vessels, including manning and pilotage needs;

14 (f) An emergency response system in Haro Strait, Boundary Pass,
15 and Rosario Strait, similar to the system implemented by the maritime
16 industry pursuant to RCW 88.46.130;

17 (g) The differences between locations and navigational
18 requirements for vessels transporting petroleum;

19 (h) The economic impact of proposals for tug escorts and
20 limitations on vessel size; and

21 (i) Situations, where oils, depending on their qualities,
22 weathering, environmental factors, and method of discharge, may
23 submerge or sink in water.

24 (3) The report required under subsection (1) of this section must
25 include recommendations, accompanied by the approximate costs and
26 amounts of risk reduction associated with each of the following types
27 of risk reduction recommendations, for:

28 (a) Vessel traffic management and vessel traffic safety; and

29 (b) The viability of the following in reducing oil spill risk:

30 (i) Tug escorts for oil tankers, articulated tug barges, and
31 other towed waterborne vessels or barges. If tug escorts are
32 determined in this assessment to reduce oil spill risk, the
33 department of ecology must recommend specific requirements and
34 capabilities for tug escorts; and

35 (ii) An emergency response system in Haro Strait, Boundary Pass,
36 and Rosario Strait, similar to the system implemented by the maritime
37 industry pursuant to RCW 88.46.130. If the department of ecology
38 determines such a system will decrease oil spill risk, it must also
39 recommend an action plan to implement it.

1 (4) The definitions in this subsection apply throughout this
2 section unless the context clearly requires otherwise.

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

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

11 (5) This section expires June 30, 2019.

12 **PART 3**

13 **FACILITIES, GEOGRAPHIC RESPONSE PLANS, AND SPILL MANAGEMENT TEAMS**

14 **Sec. 301.** RCW 90.56.210 and 2017 c 239 s 1 are each amended to
15 read as follows:

16 (1) Each onshore and offshore facility shall have a contingency
17 plan for the containment and cleanup of oil spills from the facility
18 into the waters of the state and for the protection of fisheries and
19 wildlife, shellfish beds, natural resources, and public and private
20 property from such spills. The department shall by rule adopt and
21 periodically revise standards for the preparation of contingency
22 plans. The department shall require contingency plans, at a minimum,
23 to meet the following standards:

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

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

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

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

1 (e) State the number, training preparedness, and fitness of all
2 dedicated, prepositioned personnel assigned to direct and implement
3 the plan;

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

7 (g) Describe important features of the surrounding environment,
8 including fish (~~and~~) habitat, water column species and subsurface
9 resources, wildlife habitat, shellfish beds, environmentally and
10 archaeologically sensitive areas, and public facilities, that are:

11 (i) Based on information documented in geographic response plans and
12 area contingency plans, as required under this section; or (ii) for
13 areas without geographic response plans or area contingency plans,
14 based on existing practices protecting those resources used for
15 similar areas. The departments of ecology, fish and wildlife, and
16 natural resources, and the department of archaeology and historic
17 preservation, upon request, shall provide information that they have
18 available to assist in preparing this description. The description of
19 archaeologically sensitive areas shall not be required to be included
20 in a contingency plan until it is reviewed and updated pursuant to
21 subsection (9) of this section;

22 (h) State the means of protecting and mitigating effects on the
23 environment, including fish, shellfish, marine mammals, and other
24 wildlife, and ensure that implementation of the plan does not pose
25 unacceptable risks to the public or the environment;

26 (i) Provide arrangements for the prepositioning of oil spill
27 containment and cleanup equipment and trained personnel at strategic
28 locations from which they can be deployed to the spill site to
29 promptly and properly remove the spilled oil;

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

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

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

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

4 (n) If the department has adopted rules permitting the use of
5 dispersants, the circumstances, if any, and the manner for the
6 application of the dispersants in conformance with the department's
7 rules.

8 (2)(a) The following shall submit contingency plans to the
9 department within six months after the department adopts rules
10 establishing standards for contingency plans under subsection (1) of
11 this section:

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

14 (ii) Offshore facilities.

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

20 (3)(a) The department by rule shall determine the contingency
21 plan requirements for railroads transporting oil in bulk.

22 (b) For class III railroads transporting oil in bulk that is not
23 crude oil in an amount of forty-nine or more tank car loads per year,
24 the rules adopted under this subsection may not require contingency
25 plans to include:

26 (i) Contracted access to oil spill response equipment; or

27 (ii) The completion of more than a total of one basic table-top
28 drill every three years to test the contingency plans.

29 (c) For class III railroads transporting oil in bulk that is not
30 crude oil in an amount less than forty-nine tank car loads per year,
31 rules adopted under this subsection may only require railroads to
32 submit a basic contingency plan to the department. A basic
33 contingency plan filed under this subsection (3)(c) must be limited
34 to requiring the class III railroads to:

35 (i) Keep documentation of the basic contingency plan on file with
36 the department at the plan holder's principal place of business and
37 at dispatcher field offices of the railroad;

38 (ii) Identify and include contact information for the chain of
39 command and other personnel, including employees or spill response

1 contractors, who will be involved in the railroad's response in the
2 event of a spill;

3 (iii) Include information related to the relevant accident
4 insurance carried by the railroad and provide a certificate of
5 insurance upon request;

6 (iv) Develop a field document for use by personnel involved in
7 oil handling operations that includes time-critical information
8 regarding basic contingency plan procedures to be used in the initial
9 response to a spill or a threatened spill; and

10 (v) Annually review the plan for accuracy.

11 (d) Federal oil spill response plans created pursuant to 33
12 U.S.C. Sec. 1321 may be submitted in lieu of contingency plans by a
13 class III railroad transporting oil in bulk that is not crude oil.

14 (e) For the purposes of this section, "class III railroad" has
15 the same meaning as defined by the United States surface
16 transportation board as of January 1, 2017.

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

19 (b) A person who has contracted with a facility to provide
20 containment and cleanup services and who meets the standards
21 established pursuant to RCW 90.56.240, may submit the plan for any
22 facility for which the person is contractually obligated to provide
23 services. Subject to conditions imposed by the department, the person
24 may submit a single plan for more than one facility.

25 (5) A contingency plan prepared for an agency of the federal
26 government or another state that satisfies the requirements of this
27 section and rules adopted by the department may be accepted by the
28 department as a contingency plan under this section. The department
29 shall ensure that to the greatest extent possible, requirements for
30 contingency plans under this section are consistent with the
31 requirements for contingency plans under federal law.

32 (6) In reviewing the contingency plans required by this section,
33 the department shall consider at least the following factors:

34 (a) The adequacy of containment and cleanup equipment, personnel,
35 communications equipment, notification procedures and call down
36 lists, response time, and logistical arrangements for coordination
37 and implementation of response efforts to remove oil spills promptly
38 and properly and to protect the environment;

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

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

3 (d) The existence of navigational hazards within the area covered
4 by the plan;

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

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

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

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

14 (7) The department shall approve a contingency plan only if it
15 determines that the plan meets the requirements of this section and
16 that, if implemented, the plan is capable, in terms of personnel,
17 materials, and equipment, of removing oil promptly and properly and
18 minimizing any damage to the environment.

19 (8) The approval of the contingency plan shall be valid for five
20 years. Upon approval of a contingency plan, the department shall
21 provide to the person submitting the plan a statement indicating that
22 the plan has been approved, the facilities or vessels covered by the
23 plan, and other information the department determines should be
24 included.

25 (9) An owner or operator of a facility shall notify the
26 department in writing immediately of any significant change of which
27 it is aware affecting its contingency plan, including changes in any
28 factor set forth in this section or in rules adopted by the
29 department. The department may require the owner or operator to
30 update a contingency plan as a result of these changes.

31 (10) The department by rule shall require contingency plans to be
32 reviewed, updated, if necessary, and resubmitted to the department at
33 least once every five years.

34 (11) Approval of a contingency plan by the department does not
35 constitute an express assurance regarding the adequacy of the plan
36 nor constitute a defense to liability imposed under this chapter or
37 other state law.

38 NEW SECTION. **Sec. 302.** A new section is added to chapter 90.56
39 RCW to read as follows:

1 By December 31, 2019, consistent with the authority under RCW
2 90.56.210, the department must update rules for contingency plans to
3 require:

4 (1) Covered facilities to address situations where oils,
5 depending on their qualities, weathering, environmental factors, and
6 method of discharge, may submerge or sink in water; and

7 (2) Standards for best achievable protection for situations
8 involving the oils in subsection (1) of this section.

9 **Sec. 303.** RCW 90.56.240 and 1990 c 116 s 4 are each amended to
10 read as follows:

11 (1) The department shall by rule establish standards for persons
12 who contract to provide spill management, cleanup, and containment
13 services under contingency plans approved under RCW 90.56.210.

14 (2) For the purposes of this section, "spill management" means
15 managing:

16 (a) Some or all aspects of a response, containment, and cleanup
17 of a spill, and utilizing an incident command or unified command
18 structure; or

19 (b) Wildlife rehabilitation and recovery services for a spill
20 response.

21 **Sec. 304.** RCW 90.56.569 and 2015 c 274 s 25 are each amended to
22 read as follows:

23 (1) The department must provide to the relevant policy and fiscal
24 committees of the senate and house of representatives((+)

25 ~~(a) A review of all state geographic response plans and any~~
26 ~~federal requirements as needed in contingency plans required under~~
27 ~~RCW 90.56.210 and 88.46.060 by December 31, 2015; and~~

28 ~~(b)) updates ((every two years, beginning)) by December 31,~~
29 ~~((2017)) 2019, and ((ending)) December 31, 2021, consistent with the~~
30 ~~requirements of RCW 43.01.036, as to the progress made in completing~~
31 ~~state and federal geographic response plans as needed in contingency~~
32 ~~plans required under RCW 90.56.060, 90.56.210, and 88.46.060.~~

33 ~~(2) ((The department must contract, if practicable, with eligible~~
34 ~~independent third parties to ensure completion by December 1, 2017,~~
35 ~~of at least fifty percent of the geographic response plans as needed~~
36 ~~in contingency plans required under RCW 90.56.210 and 88.46.060 for~~
37 ~~the state.)) In its updates of geographic response plans, the
38 department must address situations where oils, depending on their~~

1 qualities, weathering, environmental factors, and method of
2 discharge, may submerge or sink in water.

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

6 NEW SECTION. Sec. 305. A new section is added to chapter 90.56
7 RCW to read as follows:

8 (1) The department is responsible for requiring joint large-
9 scale, multiple plan equipment deployment drills of onshore and
10 offshore facilities and covered vessels under chapter 88.46 RCW to
11 determine the adequacy of the owner's or operator's compliance with
12 the contingency plan requirements of this chapter and chapter 88.46
13 RCW. The department must order at least one drill as outlined in this
14 section every three years, which must address situations where oils,
15 depending on their qualities, weathering, environmental factors, and
16 method of discharge, may submerge or sink in water.

17 (2) Drills required under this section must focus on, at a
18 minimum, the following:

19 (a) The functional ability for multiple contingency plans to be
20 simultaneously activated with the purpose of testing the ability for
21 dedicated equipment and trained personnel cited in multiple
22 contingency plans to be activated in a large-scale spill; and

23 (b) The operational readiness during both the first six hours of
24 a spill and, at the department's discretion, over multiple
25 operational periods of response.

26 (3) Drills required under this section may be incorporated into
27 other drill requirements under this chapter to avoid increasing the
28 number of drills and equipment deployments otherwise required.

29 (4) Each successful drill conducted under this section may be
30 considered by the department as a drill of the underlying contingency
31 plan and credit may be awarded to the plan holder accordingly.

32 (5) The department must prioritize drills for situations where
33 oils, depending on their qualities, weathering, environmental
34 factors, and method of discharge, may submerge or sink in water.

35 **PART 4**
36 **SEVERABILITY AND EMERGENCY CLAUSE**

1 NEW SECTION. **Sec. 401.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 402.** Sections 102, 103, and 206 of this act
6 are necessary for the immediate preservation of the public peace,
7 health, or safety, or support of the state government and its
8 existing public institutions, and take effect April 1, 2018."

9 Correct the title.

EFFECT: Makes the following changes to the 2nd substitute house bill:

Oil spill administration tax

(1) Makes the 4-cent-per barrel oil spill administration tax 6 cents per barrel of crude oil or petroleum products, rather than 6.5 cents per barrel.

(2) Expands the oil spill administration tax, which is currently imposed on oil received at a bulk oil terminal by vessel or by rail tank cars, to also be imposed on oil received by pipeline.

(3) Restores the pause in the assessment of the oil spill administration tax that occurs when the connected account's balance exceeds the amount appropriated in a previous biennia.

Maritime safety measures in Puget Sound

(4) Eliminates the requirement that the board of pilotage commissioners adopt rules related to maritime safety, including tug escort requirements, in the Puget Sound and adjacent waters.

(5) Directs the department of ecology, working with the Puget Sound partnership and the board of pilotage commissioners, to complete a report of vessel traffic in the Strait of Juan de Fuca, the Puget Sound, and connected waterways that is based only on existing vessel traffic risk assessments and available studies, and to report with recommendations based on the assessment regarding vessel traffic management, safety, and the viability of reducing spill risk through tug escorts for certain vessels or an emergency response system in certain waters. These recommendations must be submitted to the legislature initially by December 1, 2018, and with a complete report by June 30, 2019.

(6) Directs the department of ecology to establish a Salish Sea forum that includes interested parties and Canadian agencies to:

(a) Address issues in waters shared by Washington and British Columbia; and

(b) Meet twice annually to consider certain oil spill prevention and response measures.

Oil spill planning requirements for facilities and vessels

(7) Eliminates requirements that facility oil spill prevention and contingency plans, operations manuals, and training and certification programs address all types of crude oil handled at the facility, if the facility handles crude oil for export.

(8) Eliminates requirements that the department of ecology provide public review and comment opportunities in the event that a facility plans to export crude oil.

(9) Requires vessel and facility oil spill contingency plans to describe water column species and subsurface resources, in addition to fish habitat, wildlife habitat, shellfish beds, and other features of the surrounding environment, and for the descriptions of these features of the surrounding environment to be based on information in geographic response plans or area contingency plans, where such plans have been developed.

(10) Directs the department of ecology to update facility and vessel oil spill contingency plan requirements by December 1, 2019, to require that the plans address situations where oils may submerge or sink in water and standards for best achievable protection under such situations.

(11) Expands the authority of the department of ecology to require joint, large-scale, multiple-plan equipment deployment vessel spill drills to:

(a) Include cargo vessels and passenger vessels, rather than just oil tankers;

(b) Address oils that may sink or submerge in water; and

(c) Require such drills of onshore and offshore facilities, or facilities and vessels simultaneously.

(12) Directs the department of ecology to conduct specialized reviews and prioritize adding capacity to vessel inspections for oil transfer operations in situations where oils may submerge or sink.

(13) Directs the department of ecology's updates of geographic response plans to address situations where oils may submerge or sink.

Miscellaneous provisions

(14) Eliminates changes to the types of oil spill damages for which a party responsible for an oil spill is liable.

(15) Eliminates changes that allowed the department of ecology to share information regarding upcoming transits of crude oil in railroad tank cars with the legislative bodies of local governments.

(16) Eliminates the direction to the department of ecology to contract with an independent party to update a 2006 report on response capacity for spills involving certain hazardous substances.

(17) Eliminates changes to the jurisdiction of the energy facility site evaluation council over certain oil pipeline expansion proposals.

(18) Specifies that the persons who contract to provide spill management (and who are being made newly subject to department of ecology standards) include persons managing aspects of a response, containment, and cleanup of a spill and that utilize an incident or unified command structure, as well as persons that provide wildlife rehabilitation and recovery.

(19) Rewrites the intent section.

(20) Declares an emergency and provides an effective date of April 1, 2018, for the changes to the oil spill administration tax and the vessel traffic assessment for Puget Sound that is to be conducted by the department of ecology.

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