

---

SENATE BILL 5462

---

State of Washington

65th Legislature

2017 Regular Session

By Senators Carlyle, Ranker, Rolfes, Darneille, Hunt, Billig, McCoy, Pedersen, Wellman, Keiser, Kuderer, Saldaña, and Frockt

Read first time 01/25/17. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to oil transportation safety; amending RCW  
2 88.40.025, 88.40.030, 88.40.040, 88.16.190, 90.56.370, 82.23B.020,  
3 82.23B.030, 90.56.200, 90.56.240, 90.56.510, 90.56.565, 90.56.210,  
4 90.56.220, 90.56.230, and 80.50.060; reenacting and amending RCW  
5 88.40.011, 88.40.020, 82.23B.010, and 80.50.020; adding new sections  
6 to chapter 90.56 RCW; creating new sections; repealing RCW  
7 82.23B.040; prescribing penalties; providing an effective date;  
8 providing an expiration date; and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** (1) The legislature finds that the system  
11 of crude oil transportation by boat, rail, and pipeline in Washington  
12 has experienced significant changes in recent years. By enacting  
13 chapter 274, Laws of 2015 (the oil transportation safety act), the  
14 legislature took significant steps to address the risks of oil  
15 transportation. However, because that legislation primarily focused  
16 on the risks of crude oil transportation by rail, and did not address  
17 the growing risks of oil shipped through state waters, additional  
18 attention to this issue is warranted and the additional steps taken  
19 in this act will help continue to improve oil transportation safety.  
20 (2) In light of recent events since the passage of the oil  
21 transportation safety act, oil transportation patterns are expected

1 to continue to further change in coming years. With these changes,  
2 additional and changing risks are also expected:

3 (a) One important contextual change driving oil transportation  
4 risks in Washington was the recent decision by the United States  
5 congress in December 2015 to remove the longstanding prohibition on  
6 the export of crude oil from the United States. This reversal of  
7 federal law presents a significant prospective change to the patterns  
8 of oil shipment through the state and may bring additional  
9 environmental and public safety risks that are not adequately  
10 addressed by existing plans and safety regulations.

11 (b) A second change on the horizon, which will have huge  
12 ramifications for the transport of oil through the boundary waters  
13 and the Strait of Juan de Fuca, stems from the recently approved  
14 expansion of the Trans Mountain pipeline from Alberta to British  
15 Columbia, Canada. The expanded pipeline is anticipated to increase  
16 oil tanker traffic in the already busy United States-Canadian  
17 boundary water shipping lanes from five tankers per month to up to  
18 thirty-four oil laden tankers per month. Because the precipitating  
19 event for this increase in traffic is the construction of a facility  
20 in Canada, the environmental impacts of this traffic in Washington  
21 waters will not otherwise be mitigated under chapter 43.21C RCW, the  
22 state environmental policy act. Therefore, it is urgent and  
23 imperative that the legislature act now to enhance its marine oil  
24 transport risk reduction framework in order for the state to be even  
25 minimally prepared for the tectonic shift in oil transportation that  
26 is likely to occur in our ecologically fragile northern waters.

27 (3) Therefore, in light of these changes, it is the intent of the  
28 legislature to enhance a variety of safety measures that protect  
29 against the risk of oil spills occurring on land and on water, to  
30 provide a sustainable source of funding for the state's oil spill  
31 preparedness and response program, and to ensure the state's ability  
32 to recover from the full scope of economic harms that would result  
33 from a large oil spill.

34 **Sec. 2.** RCW 88.40.011 and 2015 c 274 s 9 are each reenacted and  
35 amended to read as follows:

36 The definitions in this section apply throughout this chapter  
37 unless the context clearly requires otherwise.

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

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

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

7 (4) "Certificate of financial responsibility" means an official  
8 written acknowledgment issued by the director or the director's  
9 designee that an owner or operator of a covered vessel or facility,  
10 or the owner of the oil, has demonstrated to the satisfaction of the  
11 director or the director's designee that the relevant entity has the  
12 financial ability to pay for costs and damages caused by an oil  
13 spill.

14 (5) "Covered vessel" means a tank vessel, cargo vessel, or  
15 passenger vessel.

16 ((+5)) (6) "Department" means the department of ecology.

17 ((+6)) (7) "Director" means the director of the department of  
18 ecology.

19 ((+7)) (8)(a) "Facility" means any structure, group of  
20 structures, equipment, pipeline, or device, other than a vessel,  
21 located on or near the navigable waters of the state that transfers  
22 oil in bulk to or from any vessel with an oil carrying capacity over  
23 two hundred fifty barrels or pipeline, that is used for producing,  
24 storing, handling, transferring, processing, or transporting oil in  
25 bulk.

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

35 (c) For the purposes of oil spill contingency planning in RCW  
36 90.56.210 and financial responsibility in RCW 88.40.025, "facility"  
37 also means a railroad that transports oil as bulk cargo.

38 ((+8)) (9) "Fishing vessel" means a self-propelled commercial  
39 vessel of three hundred or more gross tons that is used for catching  
40 or processing fish.

1        ~~((9))~~ (10) "Gross tons" means tonnage as determined by the  
2 United States coast guard under 33 C.F.R. section 138.30.

3        ~~((10))~~ (11) "Hazardous substances" means any substance listed  
4 as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted  
5 under section 102(a) of the federal comprehensive environmental  
6 response, compensation, and liability act of 1980, as amended by P.L.  
7 99-499. The following are not hazardous substances for purposes of  
8 this chapter:

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

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

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

16        ~~((12))~~ (13) "Offshore facility" means any facility located in,  
17 on, or under any of the navigable waters of the state, but does not  
18 include a facility any part of which is located in, on, or under any  
19 land of the state, other than submerged land.

20        ~~((13))~~ (14) "Oil" or "oils" means oil of any kind that is  
21 liquid at twenty-five degrees Celsius and one atmosphere of pressure  
22 and any fractionation thereof, including, but not limited to, crude  
23 oil, bitumen, synthetic crude oil, natural gas well condensate,  
24 petroleum, gasoline, fuel oil, diesel oil, biological oils and  
25 blends, oil sludge, oil refuse, and oil mixed with wastes other than  
26 dredged spoil. Oil does not include any substance listed as of March  
27 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section  
28 102(a) of the federal comprehensive environmental response,  
29 compensation, and liability act of 1980, as amended by P.L. 99-499.

30        ~~((14))~~ (15) "Onshore facility" means any facility any part of  
31 which is located in, on, or under any land of the state, other than  
32 submerged land, that because of its location, could reasonably be  
33 expected to cause substantial harm to the environment by discharging  
34 oil into or on the navigable waters of the state or the adjoining  
35 shorelines.

36        ~~((15))~~ (16)(a) "Owner or operator" means (i) in the case of a  
37 vessel, any person owning, operating, or chartering by demise, the  
38 vessel; (ii) in the case of an onshore or offshore facility, any  
39 person 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 (~~(16)~~) (17) "Passenger vessel" means a ship of three hundred or  
7 more gross tons with a fuel capacity of at least six thousand gallons  
8 carrying passengers for compensation.

9 (~~(17)~~) (18) "Ship" means any boat, ship, vessel, barge, or  
10 other floating craft of any kind.

11 (~~(18)~~) (19) "Spill" means an unauthorized discharge of oil into  
12 the waters of the state.

13 (~~(19)~~) (20) "Tank vessel" means a ship that is constructed or  
14 adapted to carry, or that carries, oil in bulk as cargo or cargo  
15 residue, and that:

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

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

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

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

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

31 (2)(a) Except as provided in (b) or (c) of this subsection, a  
32 tank vessel that carries oil as cargo in bulk shall demonstrate  
33 financial responsibility to pay at least five hundred million  
34 dollars. The amount of financial responsibility required under this  
35 subsection is one billion dollars after January 1, 2004.

36 (b) The director by rule may establish a lesser standard of  
37 financial responsibility for tank vessels of three hundred gross tons  
38 or less. The standard shall set the level of financial responsibility  
39 based on the quantity of cargo the tank vessel is capable of

1 carrying. The director shall not set the standard for tank vessels of  
2 three hundred gross tons or less below that required under federal  
3 law.

4 (c) The owner or operator of a tank vessel who is a member of an  
5 international protection and indemnity mutual organization and is  
6 covered for oil pollution risks up to the amounts required under this  
7 section is not required to demonstrate financial responsibility under  
8 this chapter. The director may require the owner or operator of a  
9 tank vessel to prove membership in such an organization.

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

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

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

26 (a) For a fishing vessel carrying predominantly nonpersistent  
27 product, one hundred thirty-three dollars and forty cents per  
28 incident, for each barrel of total oil storage capacity, persistent  
29 and nonpersistent product, on the vessel or one million three hundred  
30 thirty-four thousand dollars, whichever is greater; or (b) for a  
31 fishing vessel carrying predominantly persistent product, four  
32 hundred dollars and twenty cents per incident, for each barrel of  
33 total oil storage capacity, persistent product and nonpersistent  
34 product, on the vessel or six million six hundred seventy thousand  
35 dollars, whichever is greater.

36 (5) The ~~((documentation of financial responsibility shall  
37 demonstrate the ability of the document holder to meet state and  
38 federal financial liability requirements for the actual costs for  
39 removal of oil spills, for natural resource damages, and for  
40 necessary expenses))~~ certificate of financial responsibility is

1 conclusive evidence that the person or entity holding the certificate  
2 is the party responsible for the specified vessel, facility, or oil  
3 for purposes of determining liability pursuant to this chapter.

4 (6) This section shall not apply to a covered vessel owned or  
5 operated by the federal government or by a state or local government.

6 **Sec. 4.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to  
7 read as follows:

8 An onshore or offshore facility shall demonstrate financial  
9 responsibility in an amount determined by the department as necessary  
10 to compensate the state and affected counties and cities for damages  
11 that might occur during a reasonable worst case spill of oil from  
12 that facility into the navigable waters of the state. The department  
13 shall ~~((consider such matters as the amount of oil that could be  
14 spilled into the navigable waters from the facility, the cost of  
15 cleaning up the spilled oil, the frequency of operations at the  
16 facility, the damages that could result from the spill and the  
17 commercial availability and affordability of financial  
18 responsibility))~~ adopt by rule the amount necessary to demonstrate  
19 financial responsibility by multiplying the reasonable per barrel  
20 cleanup and damage cost of spilled oil by the worst case spill volume  
21 in barrels as determined in the applicant's oil spill contingency  
22 plan. This section shall not apply to an onshore or offshore facility  
23 owned or operated by the federal government or by the state or local  
24 government.

25 **Sec. 5.** RCW 88.40.030 and 2000 c 69 s 32 are each amended to  
26 read as follows:

27 (1) Financial responsibility required by this chapter may be  
28 established by any one of, or a combination of, the following methods  
29 acceptable to the department of ecology: ~~((1))~~ (a) Evidence of  
30 insurance; ~~((2))~~ (b) surety bonds; ~~((3))~~ (c) qualification as a  
31 self-insurer; ~~((or (4))~~ (d) guaranty; (e) letter of credit; (f)  
32 certificate of deposits; (g) protection and indemnity club  
33 membership; or (h) other evidence of financial responsibility. Any  
34 bond filed shall be issued by a bonding company authorized to do  
35 business in the United States. Documentation of such financial  
36 responsibility shall be kept on any covered vessel and filed with the  
37 department at least twenty-four hours before entry of the vessel into  
38 the navigable waters of the state. A covered vessel is not required

1 to file documentation of financial responsibility twenty-four hours  
2 before entry of the vessel into the navigable waters of the state, if  
3 the vessel has filed documentation of financial responsibility with  
4 the federal government, and the level of financial responsibility  
5 required by the federal government is the same as or exceeds state  
6 requirements. The owner or operator of the vessel may file with the  
7 department a certificate evidencing compliance with the requirements  
8 of another state's or federal financial responsibility requirements  
9 if the state or federal government requires a level of financial  
10 responsibility the same as or greater than that required under this  
11 chapter.

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

14 **Sec. 6.** RCW 88.40.040 and 2003 c 56 s 4 are each amended to read  
15 as follows:

16 (1) It is unlawful for any vessel or facility required to have  
17 financial responsibility under this chapter to enter or operate  
18 ~~((on))~~ in Washington ~~((waters))~~ without meeting the requirements of  
19 this chapter or rules adopted under this chapter, except when  
20 necessary to avoid injury to the vessel's or facility's crew or  
21 passengers. Any vessel owner or operator that does not meet the  
22 financial responsibility requirements of this chapter and any rules  
23 prescribed thereunder or the federal oil pollution act of 1990 shall  
24 be reported by the department to the United States coast guard.

25 ~~((The department shall enforce section 1016 of the federal~~  
26 ~~oil pollution act of 1990 as authorized by section 1019 of the~~  
27 ~~federal act.))~~ Upon notification of an oil spill or discharge or  
28 other action or potential liability, the director shall reevaluate  
29 the validity of the certificate of financial responsibility. If the  
30 director determines that, because of a spill outside of the state or  
31 some other action or potential liability, the holder of a certificate  
32 may not have the financial resources to pay damages for the oil spill  
33 or discharge or other action or potential liability and have  
34 resources remaining available to meet the requirements of this  
35 chapter, the director may suspend or revoke the certificate.

36 (3) An owner or operator of either more than one covered vessel  
37 or facility, or both is only required to obtain one certificate of  
38 financial responsibility for each vessel and facility owned or  
39 operated.



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

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

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

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

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

25       ~~(b) Twin screws; and~~

26       ~~(c) Double bottoms, underneath all oil and liquid cargo~~  
27 ~~compartments; and~~

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

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

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

1 ~~FURTHER, That~~) (a) Except as provided in subsection (3) of this  
2 section, an oil tanker of greater than forty thousand deadweight tons  
3 may operate in the waters east of a line extending from Discovery  
4 Island light south to New Dungeness light and all points in the Puget  
5 Sound area, to the extent that these waters are within the  
6 territorial boundaries of Washington, only if the oil tanker is under  
7 the escort of a tug or tugs in compliance with the requirements of  
8 subsection (4) of this section.

9 (b) The department of ecology, in consultation with the board of  
10 pilotage commissioners and relying on the results of vessel traffic  
11 risk assessments, shall adopt rules by November 1, 2018, to implement  
12 this subsection (2)(b). These rules may include tug escort  
13 requirements and other safety measures for oil tankers of greater  
14 than forty thousand deadweight tons, all articulated tug barges, and  
15 other towed waterborne vessels or barges. The geographic scope of the  
16 rules must be limited to the narrow channels of the San Juan Islands  
17 archipelago, including Rosario Strait, Haro Strait, Boundary Pass,  
18 and connected waterways. By November 1, 2019, the department of  
19 ecology must adopt tug escort requirements and other safety measures  
20 for the remaining areas of Puget Sound.

21 (c) In order to adopt a rule under this section, the department  
22 of ecology must determine that the results of a vessel traffic risk  
23 assessment provide evidence that the rules are necessary in order to  
24 achieve best achievable protection as defined in RCW 88.46.010.

25 (d) The department of ecology must consult with the United States  
26 coast guard, the Puget Sound safety committee, tribes, ports, local  
27 governments, and other appropriate entities before adopting tug  
28 escort requirements and other safety measures for Puget Sound.

29 (3)(a) If an oil tanker, articulated tug barge, or other towed  
30 waterborne vessel or barge is in ballast, the tug escort requirements  
31 of subsection (2)(a) of this section and any tug escort rules adopted  
32 pursuant to subsection (2)(b) of this section do not apply.

33 (b) If an oil tanker is a single-hulled oil tanker of greater  
34 than five thousand gross tons, the requirements of subsection (2)(a)  
35 of this section do not apply and the oil tanker must instead comply  
36 with 33 C.F.R. Part 168, as of the effective date of this section.

37 (4)(a) Oil tankers of greater than forty thousand deadweight  
38 tons, all articulated tug barges, and other towed waterborne vessels  
39 or barges must ensure that any escort tugs they use have an aggregate

1 shaft horsepower equivalent to at least five percent of the  
2 deadweight tons of the escorted oil tanker or articulated tug barge.

3 (b) The department of ecology may adopt rules to ensure that  
4 escort tugs have sufficient mechanical capabilities to provide for  
5 safe escort.

6 (c) Rules adopted under this subsection must be designed to  
7 achieve best achievable protection as defined under RCW 88.46.010.

8 (5) A tanker assigned a deadweight of equal to or less than forty  
9 thousand deadweight tons at the time of construction or  
10 reconstruction as reported in Lloyd's Register of Ships is not  
11 subject to the provisions of this section and RCW 88.16.170 (~~through~~  
12 ~~88.16.190~~) and 88.16.180.

13 (6) The definitions in this subsection apply throughout this  
14 section unless the context clearly requires otherwise.

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

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

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

26 **Sec. 8.** RCW 90.56.370 and 2011 c 122 s 10 are each amended to  
27 read as follows:

28 (1) Any person owning oil or having control over oil that enters  
29 the waters of the state in violation of RCW 90.56.320 shall be  
30 strictly liable, without regard to fault, for the damages to persons  
31 or property, public or private, caused by such entry.

32 (2) Damages for which responsible parties are liable under this  
33 section include loss of income, such as lost fishing income or lost  
34 lodging income due to reduced tourism, net revenue, the loss of means  
35 of producing income or revenue directly or indirectly attributable to  
36 oil entering waters of the state, lost real property value when it is  
37 demonstrated to be a direct result of an oil spill, or an economic  
38 benefit resulting from an injury to or loss of real or personal  
39 property or natural resources.

1 (3) Damages for which responsible parties are liable under this  
2 section include damages provided in subsections (1) and (2) of this  
3 section resulting from: (a) The use and deployment of chemical  
4 dispersants or from in situ burning in response to a violation of RCW  
5 90.56.320; and (b) any action conducted in response to a violation of  
6 RCW 90.56.320, including actions to collect, investigate, perform  
7 surveillance over, remove, contain, treat, or disperse oil discharged  
8 into waters of the state.

9 (4) In any action to recover damages resulting from the discharge  
10 of oil in violation of RCW 90.56.320, the owner or person having  
11 control over the oil shall be relieved from strict liability, without  
12 regard to fault, if that person can prove that the discharge was  
13 caused solely by:

14 (a) An act of war or sabotage;

15 (b) An act of God;

16 (c) Negligence on the part of the United States government; or

17 (d) Negligence on the part of the state of Washington.

18 (5) The liability established in this section shall in no way  
19 affect the rights which: (a) The owner or other person having control  
20 over the oil may have against any person whose acts may in any way  
21 have caused or contributed to the discharge of oil, or (b) the state  
22 of Washington may have against any person whose actions may have  
23 caused or contributed to the discharge of oil.

24 **Sec. 9.** RCW 82.23B.010 and 2015 c 274 s 13 are each reenacted  
25 and amended to read as follows:

26 The definitions in this section apply throughout this chapter  
27 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

15 (9) "Pipeline" means an interstate or intrastate pipeline subject  
16 to regulation by the United States department of transportation under  
17 49 C.F.R. Part 195 in effect on the effective date of this section,  
18 through which oil moves in transportation, including line pipes,  
19 valves, and other appurtenances connected to line pipes, pumping  
20 units, and fabricated assemblies associated with pumping units.

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

23 ~~((10))~~ (11) "Taxpayer" means the person owning crude oil or  
24 petroleum products immediately after receipt of the same into the  
25 storage tanks of a marine or bulk oil terminal in this state and who  
26 is liable for the taxes imposed by this chapter.

27 ~~((11))~~ (12) "Waterborne vessel or barge" means any ship, barge,  
28 or other watercraft capable of traveling on the navigable waters of  
29 this state and capable of transporting any crude oil or petroleum  
30 product in quantities of ten thousand gallons or more for purposes  
31 other than providing fuel for its motor or engine.

32 **Sec. 10.** RCW 82.23B.020 and 2015 c 274 s 14 are each amended to  
33 read as follows:

34 (1) An oil spill response tax is imposed on the privilege of  
35 receiving: (a) Crude oil or petroleum products at a marine terminal  
36 within this state from a waterborne vessel or barge operating on the  
37 navigable waters of this state; ~~((or))~~ (b) crude oil or petroleum  
38 products at a bulk oil terminal within this state from a tank car; or  
39 (c) crude oil or petroleum products at a bulk oil terminal within

1 this state from a pipeline. The tax imposed in this section is levied  
2 upon the owner of the crude oil or petroleum products immediately  
3 after receipt of the same into the storage tanks of a marine or bulk  
4 oil terminal from a tank car, pipeline, or waterborne vessel or barge  
5 at the rate of one cent per barrel of crude oil or petroleum product  
6 received.

7 (2) In addition to the tax imposed in subsection (1) of this  
8 section, an oil spill administration tax is imposed on the privilege  
9 of receiving: (a) Crude oil or petroleum products at a marine  
10 terminal within this state from a waterborne vessel or barge  
11 operating on the navigable waters of this state; ~~((or))~~ (b) crude oil  
12 or petroleum products at a bulk oil terminal within this state from a  
13 tank car; or (c) crude oil or petroleum products at a bulk oil  
14 terminal within this state from a pipeline. 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, pipeline, or  
18 waterborne vessel or barge at the rate of four cents per barrel of  
19 crude oil or petroleum product.

20 (3) The taxes imposed by this chapter must be collected by the  
21 marine or bulk oil terminal operator from the taxpayer. If any person  
22 charged with collecting the taxes fails to bill the taxpayer for the  
23 taxes, or in the alternative has not notified the taxpayer in writing  
24 of the taxes imposed, or having collected the taxes, fails to pay  
25 them to the department in the manner prescribed by this chapter,  
26 whether such failure is the result of the person's own acts or the  
27 result of acts or conditions beyond the person's control, he or she,  
28 nevertheless, is personally liable to the state for the amount of the  
29 taxes. Payment of the taxes by the owner to a marine or bulk oil  
30 terminal operator relieves the owner from further liability for the  
31 taxes.

32 (4) Taxes collected under this chapter must be held in trust  
33 until paid to the department. Any person collecting the taxes who  
34 appropriates or converts the taxes collected is guilty of a gross  
35 misdemeanor if the money required to be collected is not available  
36 for payment on the date payment is due. The taxes required by this  
37 chapter to be collected must be stated separately from other charges  
38 made by the marine or bulk oil terminal operator in any invoice or  
39 other statement of account provided to the taxpayer.

1 (5) If a taxpayer fails to pay the taxes imposed by this chapter  
2 to the person charged with collection of the taxes and the person  
3 charged with collection fails to pay the taxes to the department, the  
4 department may, in its discretion, proceed directly against the  
5 taxpayer for collection of the taxes.

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

10 (7) The amount of taxes, until paid by the taxpayer to the marine  
11 or bulk oil terminal operator or to the department, constitutes a  
12 debt from the taxpayer to the marine or bulk oil terminal operator.  
13 Any person required to collect the taxes under this chapter who, with  
14 intent to violate the provisions of this chapter, fails or refuses to  
15 do so as required and any taxpayer who refuses to pay any taxes due  
16 under this chapter, is guilty of a misdemeanor as provided in chapter  
17 9A.20 RCW.

18 (8) Upon prior approval of the department, the taxpayer may pay  
19 the taxes imposed by this chapter directly to the department. The  
20 department must give its approval for direct payment under this  
21 section whenever it appears, in the department's judgment, that  
22 direct payment will enhance the administration of the taxes imposed  
23 under this chapter. The department must provide by rule for the  
24 issuance of a direct payment certificate to any taxpayer qualifying  
25 for direct payment of the taxes. Good faith acceptance of a direct  
26 payment certificate by a terminal operator relieves the marine or  
27 bulk oil terminal operator from any liability for the collection or  
28 payment of the taxes imposed under this chapter.

29 (9) All receipts from the tax imposed in subsection (1) of this  
30 section must be deposited into the state oil spill response account  
31 created in RCW 90.56.500. All receipts from the tax imposed in  
32 subsection (2) of this section shall be deposited into the oil spill  
33 prevention account created in RCW 90.56.510.

34 (10) Within forty-five days after the end of each calendar  
35 quarter, the office of financial management must determine the  
36 balance of the oil spill response account as of the last day of that  
37 calendar quarter. Balance determinations by the office of financial  
38 management under this section are final and may not be used to  
39 challenge the validity of any tax imposed under this chapter. The  
40 office of financial management must promptly notify the departments

1 of revenue and ecology of the account balance once a determination is  
2 made. For each subsequent calendar quarter, the tax imposed by  
3 subsection (1) of this section shall be imposed during the entire  
4 calendar quarter unless:

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

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

11 **Sec. 11.** RCW 82.23B.030 and 2015 c 274 s 15 are each amended to  
12 read as follows:

13 (1) The taxes imposed under this chapter only apply to the first  
14 receipt of crude oil or petroleum products at a marine or bulk oil  
15 terminal in this state and not to the later transporting and  
16 subsequent receipt of the same oil or petroleum product, whether in  
17 the form originally received at a marine or bulk oil terminal in this  
18 state or after refining or other processing.

19 (2) The taxes imposed under this chapter do not apply to the  
20 receipt of crude oil or petroleum products that the state is  
21 prohibited from taxing under the United States Constitution.

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

24 (1) The department shall evaluate and update planning standards  
25 for oil spill response equipment required under contingency plans  
26 required by this chapter in order to ensure access in the state to  
27 equipment that represents the best achievable protection to respond  
28 to a worst case spill and provide for continuous operation of oil  
29 spill response activities to the maximum extent practicable and  
30 without jeopardizing crew safety, as determined by the incident  
31 commander or the unified command.

32 (2) The department shall place the earliest priority upon  
33 updating standards that address the increased volume of different  
34 types of crude oil and that address a worst case spill from  
35 articulated tug barges and from other towed waterborne vessels or  
36 barges.



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

3        (1) Each onshore and offshore oil refinery facility proposing to  
4    handle crude oil for export must revise its: Facility oil spill  
5    prevention plan required under RCW 90.56.200; facility oil spill  
6    contingency plan required under RCW 90.56.210; training and  
7    certification program required under RCW 90.56.220; and operations  
8    manual required under RCW 90.56.230 to specifically address all types  
9    of crude oil planned or anticipated to be handled at the facility,  
10   including crude oil from the Bakken oil fields as well as diluted  
11   bitumen crude from Canada. By December 31, 2018, the department must  
12   adopt by rule the required components of these plans addressing  
13   handling of crude oil for export and must require that the plans  
14   demonstrate best achievable protection from damages caused by the  
15   discharge of oil into the waters of the state or other casualty from  
16   the release, explosion, or ignition of the oil.

17        (2) No onshore or offshore refinery facility may handle crude oil  
18   for export without an oil spill prevention and contingency plan  
19   approved by the department.

20        **Sec. 14.**    RCW 90.56.200 and 2015 c 274 s 4 are each amended to  
21   read as follows:

22        (1) The owner or operator for each onshore and offshore facility,  
23   except as determined in subsection (3) of this section, shall prepare  
24   and submit to the department an oil spill prevention plan in  
25   conformance with the requirements of this chapter. The plans shall be  
26   submitted to the department in the time and manner directed by the  
27   department. The spill prevention plan may be consolidated with a  
28   spill contingency plan submitted pursuant to RCW 90.56.210. The  
29   department may accept plans prepared to comply with other state or  
30   federal law as spill prevention plans to the extent those plans  
31   comply with the requirements of this chapter. The department, by  
32   rule, shall establish standards for spill prevention plans.

33        (2) The spill prevention plan for an onshore or offshore facility  
34   shall:

35        (a) Establish compliance with the federal oil pollution act of  
36   1990, if applicable, and financial responsibility requirements under  
37   federal and state law;

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

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

6 (d) Certify the implementation of alcohol and drug use awareness  
7 programs;

8 (e) Describe the facility's maintenance and inspection program  
9 and contain a current maintenance and inspection record of the  
10 storage and transfer facilities and related equipment;

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

12 (g) Describe spill prevention technology that has been installed,  
13 including overflow alarms, automatic overflow cut-off switches,  
14 secondary containment facilities, and storm water retention,  
15 treatment, and discharge systems;

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

19 (i) Describe the procedures followed by the facility to contain  
20 and recover any oil that spills during the transfer of oil to or from  
21 the facility;

22 (j) Provide for the incorporation into the facility during the  
23 period covered by the plan of those measures that will provide the  
24 best achievable protection for the public health and the environment;  
25 and

26 (k) Include any other information reasonably necessary to carry  
27 out the purposes of this chapter required by rules adopted by the  
28 department.

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

32 (4) The department shall only approve a prevention plan if it  
33 provides the best achievable protection from damages caused by the  
34 discharge of oil into the waters of the state and if it determines  
35 that the plan meets the requirements of this section and rules  
36 adopted by the department.

37 (5) Upon approval of a prevention plan, the department shall  
38 provide to the person submitting the plan a statement indicating that  
39 the plan has been approved, the facilities covered by the plan, and  
40 other information the department determines should be included.

1 (6) The approval of a prevention plan shall be valid for five  
2 years. An owner or operator of a facility shall notify the department  
3 in writing immediately of any significant change of which it is aware  
4 affecting its prevention plan, including changes in any factor set  
5 forth in this section or in rules adopted by the department. The  
6 department may require the owner or operator to update a prevention  
7 plan as a result of these changes. The department shall require that  
8 a prevention plan be updated whenever a facility engaged in the  
9 refining of petroleum proposes to export crude oil from the facility  
10 in volumes that exceed ten percent of the annual average facility  
11 production of refined petroleum products over the preceding five  
12 years. The department shall provide notice of the proposal to  
13 interested parties, including local and tribal governments, and shall  
14 make the prevention plan updates available for public review and  
15 comment.

16 (7) The department by rule shall require prevention plans to be  
17 reviewed, updated, if necessary, and resubmitted to the department at  
18 least once every five years.

19 (8) Approval of a prevention plan by the department does not  
20 constitute an express assurance regarding the adequacy of the plan  
21 nor constitute a defense to liability imposed under this chapter or  
22 other state law.

23 (9) This section does not authorize the department to modify the  
24 terms of a collective bargaining agreement.

25 **Sec. 15.** RCW 90.56.240 and 1990 c 116 s 4 are each amended to  
26 read as follows:

27 The department shall by rule establish standards for persons who  
28 contract to provide spill management, cleanup, and containment  
29 services under contingency plans approved under RCW 90.56.210.

30 **Sec. 16.** RCW 90.56.510 and 2015 c 274 s 7 are each amended to  
31 read as follows:

32 (1) The oil spill prevention account is created in the state  
33 treasury. All receipts from RCW 82.23B.020(2) shall be deposited in  
34 the account. Moneys from the account may be spent only after  
35 appropriation. The account is subject to allotment procedures under  
36 chapter 43.88 RCW. ~~((If, on the first day of any calendar month, the~~  
37 ~~balance of the oil spill response account is greater than nine~~  
38 ~~million dollars and the balance of the oil spill prevention account~~

1 ~~exceeds the unexpended appropriation for the current biennium, then~~  
2 ~~the tax under RCW 82.23B.020(2) shall be suspended on the first day~~  
3 ~~of the next calendar month until the beginning of the following~~  
4 ~~biennium, provided that the tax shall not be suspended during the~~  
5 ~~last six months of the biennium. If the tax imposed under RCW~~  
6 ~~82.23B.020(2) is suspended during two consecutive biennia, the~~  
7 ~~department shall by November 1st after the end of the second~~  
8 ~~biennium, recommend to the appropriate standing committees an~~  
9 ~~adjustment in the tax rate. For the biennium ending June 30, 1999,~~  
10 ~~and the biennium ending June 30, 2001, the state treasurer may~~  
11 ~~transfer a total of up to one million dollars from the oil spill~~  
12 ~~response account to the oil spill prevention account to support~~  
13 ~~appropriations made from the oil spill prevention account in the~~  
14 ~~omnibus appropriations act adopted not later than June 30, 1999.)~~)

15 (2) Expenditures from the oil spill prevention account shall be  
16 used exclusively for the administrative costs related to the purposes  
17 of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. In  
18 addition, until June 30, 2019, expenditures from the oil spill  
19 prevention account may be used, subject to amounts appropriated  
20 specifically for this purpose, for the development and annual review  
21 of local emergency planning committee emergency response plans in RCW  
22 38.52.040(3). Starting with the 1995-1997 biennium, the legislature  
23 shall give activities of state agencies related to prevention of oil  
24 spills priority in funding from the oil spill prevention account.  
25 Costs of prevention include the costs of:

- 26 (a) Routine responses not covered under RCW 90.56.500;  
27 (b) Management and staff development activities;  
28 (c) Development of rules and policies and the statewide plan  
29 provided for in RCW 90.56.060;  
30 (d) Facility and vessel plan review and approval, drills,  
31 inspections, investigations, enforcement, and litigation;  
32 (e) Interagency coordination and public outreach and education;  
33 (f) Collection and administration of the tax provided for in  
34 chapter 82.23B RCW; and  
35 (g) Appropriate travel, goods and services, contracts, and  
36 equipment.

37 (3) Before expending moneys from the account for a response under  
38 subsection (2)(a) of this section, but without delaying response  
39 activities, the director shall make reasonable efforts to obtain  
40 funding for response costs under this section from the person

1 responsible for the spill and from other sources, including the  
2 federal government.

3 **Sec. 17.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to  
4 read as follows:

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

18 (b) Twice per year, pipelines that transport crude oil must  
19 report to the department the following information about the crude  
20 oil transported by the pipeline through the state: The volume of  
21 crude oil and the state or province of origin of the crude oil. This  
22 report must be submitted each year by July 31st for the period  
23 January 1st through June 30th and by January 31st for the period July  
24 1st through December 31st.

25 (2) The department may share information provided by a facility  
26 through the advance notice system established in this section with  
27 the state emergency management division and any county, city, tribal,  
28 port, ~~((or))~~ local government emergency response agency, or the  
29 legislative bodies of local governments that oversee community first  
30 response agencies upon request.

31 (3) The department must publish information collected under this  
32 section on a quarterly basis on the department's internet web site.  
33 With respect to the information reported under subsection (1)(a) of  
34 this section, the information published by the department must be  
35 aggregated on a statewide basis by route through the state, by week,  
36 and by type of crude oil. The report may also include other  
37 information available to the department including, but not limited  
38 to, place of origin, modes of transport, number of railroad cars

1 delivering crude oil, and number and volume of spills during  
2 transport and delivery.

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

8 (5) Consistent with the requirements of chapter 42.56 RCW, the  
9 department and any state, local, tribal, or public agency that  
10 receives information provided under this section may not disclose any  
11 such information to the public or to nongovernmental entities that  
12 contains proprietary, commercial, or financial information unless  
13 that information is aggregated. The requirement for aggregating  
14 information does not apply when information is shared by the  
15 department with emergency response agencies as provided in subsection  
16 (2) of this section.

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

21 **Sec. 18.** RCW 90.56.210 and 2015 c 274 s 5 are each amended to  
22 read as follows:

23 (1) Each onshore and offshore facility shall have a contingency  
24 plan for the containment and cleanup of oil spills from the facility  
25 into the waters of the state and for the protection of fisheries and  
26 wildlife, shellfish beds, natural resources, and public and private  
27 property from such spills. The department shall by rule adopt and  
28 periodically revise standards for the preparation of contingency  
29 plans. The department shall require contingency plans, at a minimum,  
30 to meet the following standards:

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

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

37 (c) Provide a clear, precise, and detailed description of how the  
38 plan relates to and is integrated into relevant contingency plans

1 which have been prepared by cooperatives, ports, regional entities,  
2 the state, and the federal government;

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

6 (e) State the number, training preparedness, and fitness of all  
7 dedicated, prepositioned personnel assigned to direct and implement  
8 the plan;

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

12 (g) Describe important features of the surrounding environment,  
13 including fish and wildlife habitat, shellfish beds, environmentally  
14 and archaeologically sensitive areas, and public facilities. The  
15 departments of ecology, fish and wildlife, and natural resources, and  
16 the department of archaeology and historic preservation, upon  
17 request, shall provide information that they have available to assist  
18 in preparing this description. The description of archaeologically  
19 sensitive areas shall not be required to be included in a contingency  
20 plan until it is reviewed and updated pursuant to subsection (9) of  
21 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) The department by rule shall determine the contingency plan  
21 requirements for railroads transporting oil in bulk. Federal oil  
22 spill response plans created pursuant to 33 U.S.C. Sec. 1321 may be  
23 submitted in lieu of contingency plans until state rules are adopted.

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

26 (b) The owner or operator of a facility shall update its  
27 contingency plan when the facility proposes to export crude oil in  
28 volumes that exceed ten percent of the annual average facility  
29 production of refined petroleum products over the preceding five  
30 years. The department shall provide notice of the proposal to  
31 interested parties, including local and tribal governments, and shall  
32 make the contingency plan updates available for public review and  
33 comment.

34 (c) A person who has contracted with a facility to provide  
35 containment and cleanup services and who meets the standards  
36 established pursuant to RCW 90.56.240, may submit the plan for any  
37 facility for which the person is contractually obligated to provide  
38 services. Subject to conditions imposed by the department, the person  
39 may submit a single plan for more than one facility.



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

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

10 (a) The adequacy of containment and cleanup equipment, personnel,  
11 communications equipment, notification procedures and call down  
12 lists, response time, and logistical arrangements for coordination  
13 and implementation of response efforts to remove oil spills promptly  
14 and properly and to protect the environment;

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

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

19 (d) The existence of navigational hazards within the area covered  
20 by the plan;

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

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

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

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

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

35 (8) The approval of the contingency plan shall be valid for five  
36 years. Upon approval of a contingency plan, the department shall  
37 provide to the person submitting the plan a statement indicating that  
38 the plan has been approved, the facilities or vessels covered by the  
39 plan, and other information the department determines should be  
40 included.

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

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

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

14 **Sec. 19.** RCW 90.56.220 and 1991 c 200 s 203 are each amended to  
15 read as follows:

16 (1) The department by rule shall adopt standards for onshore and  
17 offshore facilities regarding the equipment and operation of the  
18 facilities with respect to the transfer, storage, and handling of oil  
19 to ensure that the best achievable protection of the public health  
20 and the environment is employed at all times. The department shall  
21 implement a program to provide for the inspection of all onshore and  
22 offshore facilities on a regular schedule to ensure that each  
23 facility is in compliance with the standards.

24 (2) The department shall adopt rules for certification of  
25 supervisory and other key personnel in charge of the transfer,  
26 storage, and handling of oil at onshore and offshore facilities. The  
27 rules shall include, but are not limited to:

28 (a) Minimum training requirements for all facility workers  
29 involved in the transfer, storage, and handling of oil at a facility;

30 (b) Provisions for periodic renewal of certificates for  
31 supervisory and other key personnel involved in the transfer,  
32 storage, and handling of oil at the facility; and

33 (c) Continuing education requirements.

34 (3) The rules adopted by the department shall not conflict with  
35 or modify standards imposed pursuant to federal or state laws  
36 regulating worker safety.

37 (4) An owner or operator of a facility must update its training  
38 and certification program when the facility proposes to export crude  
39 oil in volumes that exceed ten percent of the annual average facility

1 production of refined petroleum products over the preceding five  
2 years.

3 **Sec. 20.** RCW 90.56.230 and 1991 c 200 s 204 are each amended to  
4 read as follows:

5 (1)(a) Each owner or operator of an onshore or offshore facility  
6 shall prepare an operations manual describing equipment and  
7 procedures involving the transfer, storage, and handling of oil that  
8 the operator employs or will employ for best achievable protection  
9 for the public health and the environment and to prevent oil spills  
10 in the navigable waters.

11 (b) An owner or operator of a facility must update its operations  
12 manual when the facility proposes to export crude oil in volumes that  
13 exceed ten percent of the annual average facility production of  
14 refined petroleum products over the preceding five years.

15 (c) The operations manual shall also describe equipment and  
16 procedures required for all vessels to or from which oil is  
17 transferred through use of the facility. The operations manual shall  
18 be submitted to the department for approval.

19 (2) Every existing onshore and offshore facility shall prepare  
20 and submit to the department its operations manual within eighteen  
21 months after the department has adopted rules governing the content  
22 of the manual.

23 (3) The department shall approve an operations manual for an  
24 onshore or offshore facility if the manual complies with the rules  
25 adopted by the department. If the department determines a manual does  
26 not comply with the rules, it shall provide written reasons for the  
27 decision. The owner or operator shall resubmit the manual within  
28 ninety days of notification of the reasons for noncompliance,  
29 responding to the reasons and incorporating any suggested  
30 modifications.

31 (4) The approval of an operations manual shall be valid for five  
32 years. The owner or operator of the facility shall notify the  
33 department in writing immediately of any significant change in its  
34 operations affecting its operations manual. The department may  
35 require the owner or operator to modify its operations manual as a  
36 result of these changes.

37 (5) All equipment and operations of an operator's onshore or  
38 offshore facility shall be maintained and carried out in accordance  
39 with the facility's operations manual. The owner or operator of the

1 facility shall ensure that all covered vessels docked at an onshore  
2 or offshore facility comply with the terms of the operations manual  
3 for the facility.

4 NEW SECTION. **Sec. 21.** (1) The department of ecology shall  
5 contract with an eligible independent third party to update the  
6 October 2006 report to the state emergency response commission  
7 regarding statewide response to chemical, biological, radiological,  
8 nuclear, and explosive materials. The updated report must also  
9 include an update to appendix A of that report, which addresses the  
10 state's current hazardous materials response capabilities and that  
11 reviews the emergency response programs of other states. The contract  
12 for the updated report must give special emphasis to addressing  
13 recent changes to patterns of hazardous material transportation,  
14 including crude oil transportation, and the availability of resources  
15 to respond to incidents resulting from the transport of hazardous  
16 materials. The contract must require the updated report to be  
17 completed by June 30, 2018.

18 (2) This section expires June 30, 2020.

19 **Sec. 22.** RCW 80.50.020 and 2010 c 152 s 1 are each reenacted and  
20 amended to read as follows:

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

23 (1) "Alternative energy resource" includes energy facilities of  
24 the following types: (a) Wind; (b) solar energy; (c) geothermal  
25 energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass  
26 energy based on solid organic fuels from wood, forest, or field  
27 residues, or dedicated energy crops that do not include wood pieces  
28 that have been treated with chemical preservatives such as creosote,  
29 pentachlorophenol, or copper-chrome-arsenic.

30 (2) "Applicant" means any person who makes application for a site  
31 certification pursuant to the provisions of this chapter.

32 (3) "Application" means any request for approval of a particular  
33 site or sites filed in accordance with the procedures established  
34 pursuant to this chapter, unless the context otherwise requires.

35 (4) "Associated facilities" means storage, transmission,  
36 handling, or other related and supporting facilities connecting an  
37 energy plant with the existing energy supply, processing, or  
38 distribution system, including, but not limited to, communications,

1 controls, mobilizing or maintenance equipment, instrumentation, and  
2 other types of ancillary transmission equipment, off-line storage or  
3 venting required for efficient operation or safety of the  
4 transmission system and overhead, and surface or subsurface lines of  
5 physical access for the inspection, maintenance, and safe operations  
6 of the transmission facility and new transmission lines constructed  
7 to operate at nominal voltages of at least 115,000 volts to connect a  
8 thermal power plant or alternative energy facilities to the northwest  
9 power grid. However, common carrier railroads or motor vehicles shall  
10 not be included.

11 (5) "Biofuel" has the same meaning as defined in RCW 43.325.010.

12 (6) "Certification" means a binding agreement between an  
13 applicant and the state which shall embody compliance to the siting  
14 guidelines, in effect as of the date of certification, which have  
15 been adopted pursuant to RCW 80.50.040 as now or hereafter amended as  
16 conditions to be met prior to or concurrent with the construction or  
17 operation of any energy facility.

18 (7) "Construction" means on-site improvements, excluding  
19 exploratory work, which cost in excess of two hundred fifty thousand  
20 dollars.

21 (8) "Council" means the energy facility site evaluation council  
22 created by RCW 80.50.030.

23 (9) "Counsel for the environment" means an assistant attorney  
24 general or a special assistant attorney general who shall represent  
25 the public in accordance with RCW 80.50.080.

26 (10) "Electrical transmission facilities" means electrical power  
27 lines and related equipment.

28 (11) "Energy facility" means an energy plant or transmission  
29 facilities: PROVIDED, That the following are excluded from the  
30 provisions of this chapter:

31 (a) Facilities for the extraction, conversion, transmission or  
32 storage of water, other than water specifically consumed or  
33 discharged by energy production or conversion for energy purposes;  
34 and

35 (b) Facilities operated by and for the armed services for  
36 military purposes or by other federal authority for the national  
37 defense.

38 (12) "Energy plant" means the following facilities together with  
39 their associated facilities:

1 (a) Any nuclear power facility where the primary purpose is to  
2 produce and sell electricity;

3 (b) Any nonnuclear stationary thermal power plant with generating  
4 capacity of three hundred fifty thousand kilowatts or more, measured  
5 using maximum continuous electric generating capacity, less minimum  
6 auxiliary load, at average ambient temperature and pressure, and  
7 floating thermal power plants of one hundred thousand kilowatts or  
8 more suspended on the surface of water by means of a barge, vessel,  
9 or other floating platform;

10 (c) Facilities which will have the capacity to receive liquefied  
11 natural gas in the equivalent of more than one hundred million  
12 standard cubic feet of natural gas per day, which has been  
13 transported over marine waters;

14 (d) Facilities which will have the capacity to receive more than  
15 an average of fifty thousand barrels per day of crude or refined  
16 petroleum or liquefied petroleum gas which has been or will be  
17 transported over marine waters, except that the provisions of this  
18 chapter shall not apply to storage facilities unless occasioned by  
19 such new facility construction;

20 (e) Any underground reservoir for receipt and storage of natural  
21 gas as defined in RCW 80.40.010 capable of delivering an average of  
22 more than one hundred million standard cubic feet of natural gas per  
23 day; and

24 (f) Facilities capable of processing more than twenty-five  
25 thousand barrels per day of petroleum or biofuel into refined  
26 products except where such biofuel production is undertaken at  
27 existing industrial facilities.

28 (13) "Independent consultants" means those persons who have no  
29 financial interest in the applicant's proposals and who are retained  
30 by the council to evaluate the applicant's proposals, supporting  
31 studies, or to conduct additional studies.

32 (14) "Land use plan" means a comprehensive plan or land use  
33 element thereof adopted by a unit of local government pursuant to  
34 chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise  
35 designated by chapter 325, Laws of 2007.

36 (15) "Person" means an individual, partnership, joint venture,  
37 private or public corporation, association, firm, public service  
38 company, political subdivision, municipal corporation, government  
39 agency, public utility district, or any other entity, public or  
40 private, however organized.

1 (16) "Preapplicant" means a person considering applying for a  
2 site certificate agreement for any transmission facility.

3 (17) "Preapplication process" means the process which is  
4 initiated by written correspondence from the preapplicant to the  
5 council, and includes the process adopted by the council for  
6 consulting with the preapplicant and with cities, towns, and counties  
7 prior to accepting applications for all transmission facilities.

8 (18) "Secretary" means the secretary of the United States  
9 department of energy.

10 (19) "Site" means any proposed or approved location of an energy  
11 facility, alternative energy resource, or electrical transmission  
12 facility.

13 (20) "Thermal power plant" means, for the purpose of  
14 certification, any electrical generating facility using any fuel for  
15 distribution of electricity by electric utilities.

16 (21) "Transmission facility" means any of the following together  
17 with their associated facilities:

18 (a) Crude ~~(( $\text{or}$ ))~~ oil transmission pipelines of the following  
19 dimensions: A pipeline larger than six inches minimum inside diameter  
20 between valves for the transmission of these products with a total  
21 length of at least five miles; or

22 (b) Refined petroleum or liquid petroleum product transmission  
23 pipeline of the following dimensions: A pipeline larger than six  
24 inches minimum inside diameter between valves for the transmission of  
25 these products with a total length of at least fifteen miles;

26 ~~(( $b$ ))~~ (c) Natural gas, synthetic fuel gas, or liquefied  
27 petroleum gas transmission pipeline of the following dimensions: A  
28 pipeline larger than fourteen inches minimum inside diameter between  
29 valves, for the transmission of these products, with a total length  
30 of at least fifteen miles for the purpose of delivering gas to a  
31 distribution facility, except an interstate natural gas pipeline  
32 regulated by the United States federal power commission.

33 (22) "Zoning ordinance" means an ordinance of a unit of local  
34 government regulating the use of land and adopted pursuant to chapter  
35 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state  
36 Constitution, or as otherwise designated by chapter 325, Laws of  
37 2007.

38 **Sec. 23.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to  
39 read as follows:

1 (1) The provisions of this chapter apply to the construction of  
2 energy facilities which includes the new construction of energy  
3 facilities and the reconstruction or enlargement of existing energy  
4 facilities where:

5 (a) The net increase in physical capacity or dimensions resulting  
6 from such reconstruction or enlargement meets or exceeds those  
7 capacities or dimensions set forth in RCW 80.50.020 (~~(7)~~) (12) and  
8 (~~(15)~~) (21) (b) and (c); or

9 (b) The total physical capacity or dimensions resulting from such  
10 a reconstruction or enlargement meets or exceeds those capacities or  
11 dimensions set forth in RCW 80.50.020(21)(a). No construction of such  
12 energy facilities may be undertaken, except as otherwise provided in  
13 this chapter, after July 15, 1977, without first obtaining  
14 certification in the manner provided in this chapter.

15 (2) The provisions of this chapter apply to the construction,  
16 reconstruction, or enlargement of a new or existing energy facility  
17 that exclusively uses alternative energy resources and chooses to  
18 receive certification under this chapter, regardless of the  
19 generating capacity of the project.

20 (3)(a) The provisions of this chapter apply to the construction,  
21 reconstruction, or modification of electrical transmission facilities  
22 when:

23 (i) The facilities are located in a national interest electric  
24 transmission corridor as specified in RCW 80.50.045;

25 (ii) An applicant chooses to receive certification under this  
26 chapter, and the facilities are: (A) Of a nominal voltage of at least  
27 one hundred fifteen thousand volts and are located in a completely  
28 new corridor, except for the terminus of the new facility or  
29 interconnection of the new facility with the existing grid, and the  
30 corridor is not otherwise used for electrical transmission  
31 facilities; and (B) located in more than one jurisdiction that has  
32 promulgated land use plans or zoning ordinances; or

33 (iii) An applicant chooses to receive certification under this  
34 chapter, and the facilities are: (A) Of a nominal voltage in excess  
35 of one hundred fifteen thousand volts; and (B) located outside an  
36 electrical transmission corridor identified in (a)(i) and (ii) of  
37 this subsection (3).

38 (b) For the purposes of this subsection, "modify" means a  
39 significant change to an electrical transmission facility and does  
40 not include the following: (i) Minor improvements such as the



1 replacement of existing transmission line facilities or supporting  
2 structures with equivalent facilities or structures; (ii) the  
3 relocation of existing electrical transmission line facilities; (iii)  
4 the conversion of existing overhead lines to underground; or (iv) the  
5 placing of new or additional conductors, supporting structures,  
6 insulators, or their accessories on or replacement of supporting  
7 structures already built.

8 (4) The provisions of this chapter shall not apply to normal  
9 maintenance and repairs which do not increase the capacity or  
10 dimensions beyond those set forth in RCW 80.50.020 (~~((7))~~) (12) and  
11 (~~((15))~~) (21) (b) and (c).

12 (5) Applications for certification of energy facilities made  
13 prior to July 15, 1977, shall continue to be governed by the  
14 applicable provisions of law in effect on the day immediately  
15 preceding July 15, 1977, with the exceptions of RCW 80.50.190 and  
16 80.50.071 which shall apply to such prior applications and to site  
17 certifications prospectively from July 15, 1977.

18 (6) Applications for certification shall be upon forms prescribed  
19 by the council and shall be supported by such information and  
20 technical studies as the council may require.

21 NEW SECTION. **Sec. 24.** RCW 82.23B.040 (Credit—Crude oil or  
22 petroleum exported or sold for export) and 2015 c 274 s 16, 1992 c 73  
23 s 10, & 1991 c 200 s 804 are each repealed.

24 NEW SECTION. **Sec. 25.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 26.** This act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of  
30 the state government and its existing public institutions, and takes  
31 effect July 1, 2017.

--- END ---