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HOUSE BILL 2965

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Van De Wege, Upthegrove, Williams, Nelson, and Simpson

Read first time 01/19/10. Referred to Committee on Finance.

1            AN ACT Relating to adjusting the oil spill response tax and oil  
2 spill administration tax; amending RCW 82.23B.010, 82.23B.020,  
3 82.23B.030, 82.23B.040, 82.23B.045, 82.23B.050, 90.56.500, 90.56.510,  
4 and 82.23B.901; adding a new section to chapter 82.23B RCW; creating a  
5 new section; decodifying RCW 82.23B.060, 82.23B.900, and 82.23B.902;  
6 and providing an effective date.

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

8            NEW SECTION.    **Sec. 1.** The legislature declares that Washington's  
9 waters are unique and have irreplaceable economic and environmental  
10 value for the citizens of the state. Washington's waters, including  
11 Puget Sound which is an estuary of national significance, provide  
12 critical habitat for numerous and diverse marine life and wildlife of  
13 which some are considered threatened or endangered. The waters also  
14 provide a major source of recreation, commercial fishing, tourism, and  
15 high quality of life for Washington's citizens. Washington's economy  
16 is highly dependent on the continued health of these waters and  
17 adjacent environments.

18            The legislature finds that the transporting and handling of oil and  
19 petroleum products upon and near Washington's waters creates a serious

1 potential hazard to these important natural resources and the economy.  
2 The state's oil spill prevention, preparedness, response, and  
3 environmental restoration programs have protected these waters since  
4 1990. The legislature therefore finds that in order to maintain its  
5 priority focus on the goal of zero spills and further protect these  
6 waters when spills occur, continued adequate funding is necessary. It  
7 is the legislature's intent that the state's oil spill, prevention,  
8 preparedness, response, and environmental restoration activities be  
9 sufficiently funded to maintain a world-class capability.

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

12 Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter.

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

16 (2) "Bulk oil terminal" means a marine terminal or facility of any  
17 kind, other than a waterborne vessel, that is used for transferring  
18 crude oil or petroleum products to or from a pipeline or waterborne  
19 vessel or barge.

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

23 ~~((3))~~ (4) "Department" means the department of revenue.

24 ~~((4))~~ (5) "Marine terminal" means a facility of any kind, other  
25 than a waterborne vessel, that is used for transferring crude oil or  
26 petroleum products to or from a waterborne vessel or barge.

27 ~~((5))~~ (6) "Navigable waters" means those waters of the state and  
28 their adjoining shorelines that are subject to the ebb and flow of the  
29 tide, including the Columbia and Snake rivers.

30 ~~((6))~~ (7) "Person" has the meaning provided in RCW 82.04.030.

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

1           ~~((8))~~ (9) "Pipeline" means any conveyance system capable of  
2 transporting ten thousand gallons or more per day of crude oil or  
3 petroleum products.

4           (10) "Taxpayer" means the person owning crude oil or petroleum  
5 products immediately after receipt of the same into the storage tanks  
6 of a ~~((marine))~~ bulk oil terminal in this state from a waterborne  
7 vessel ~~((or))~~, barge, or pipeline and who is liable for the taxes  
8 imposed by this chapter.

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

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

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

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

35           (3) The taxes imposed by this chapter ~~((shall))~~ must be collected  
36 by the ~~((marine))~~ bulk oil terminal operator from the taxpayer. If any  
37 person charged with collecting the taxes fails to bill the taxpayer for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3           Credit (~~shall~~) must be allowed against the taxes imposed under  
4 this chapter for any crude oil or petroleum products received at a  
5 (~~marine~~) bulk oil terminal and subsequently exported (~~from or sold~~  
6 ~~for export~~) from the state as a bulk commodity for resale. Petroleum  
7 product delivered into the fuel tanks of waterborne vessels or tug  
8 boats, airplanes, trains, and other vehicles is not considered as  
9 placed into the export stream and is not allowed a credit against the  
10 taxes imposed under this chapter.

11           **Sec. 6.** RCW 82.23B.045 and 1992 c 73 s 8 are each amended to read  
12 as follows:

13           (1) Any person having paid the tax imposed by this chapter who uses  
14 petroleum products as a consumer for a purpose other than as a fuel may  
15 claim refund or credit against the tax imposed under this chapter. For  
16 this purpose, the term "consumer" (~~shall be~~) is defined as provided  
17 in RCW 82.04.190.

18           (2) Any person having paid the tax imposed by this chapter who uses  
19 petroleum products as a component or ingredient in the manufacture of  
20 an item which is not a fuel may claim a refund or credit against the  
21 tax imposed by this chapter.

22           (3) The amount of refund or credit claimed under this section may  
23 not exceed the amount of tax paid by the person making such claim on  
24 the petroleum products so consumed or used. The refund or credit  
25 allowed by this section (~~shall~~) must be claimed on (~~such~~) the forms  
26 and subject to (~~such~~) the requirements as the department may  
27 prescribe by rule.

28           **Sec. 7.** RCW 82.23B.050 and 1991 c 200 s 808 are each amended to  
29 read as follows:

30           The department (~~shall~~) must adopt (~~such~~) rules as may be  
31 necessary to enforce and administer the provisions of this chapter.  
32 Chapter 82.32 RCW applies to the administration, collection, and  
33 enforcement of the taxes levied under this chapter.

34           **Sec. 8.** RCW 90.56.500 and 2009 c 11 s 9 are each amended to read  
35 as follows:

1 (1) The state oil spill response account is created in the state  
2 treasury. All receipts from RCW 82.23B.020(1) (~~shall~~) must be  
3 deposited in the account. All costs reimbursed to the state by a  
4 responsible party or any other person for responding to a spill of oil  
5 (~~shall~~) must also be deposited in the account. Moneys in the account  
6 (~~shall~~) may be spent only after appropriation. The account is  
7 subject to allotment procedures under chapter 43.88 RCW.

8 (2) The account (~~shall~~) must be used exclusively to pay for:

9 (a) The costs associated with the response to spills of crude oil  
10 or petroleum products into the navigable waters of the state; and

11 (b) The costs associated with the department's use of the emergency  
12 response towing vessel as described in RCW 88.46.135.

13 (3) Payment of response costs under subsection (2)(a) of this  
14 section (~~shall~~) must be limited to spills which the director has  
15 determined are likely to exceed fifty thousand dollars.

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

20 (5) Reimbursement for response costs (~~shall be~~) are allowed only  
21 for costs which are not covered by other funds appropriated to the  
22 agencies responsible for response activities. Costs associated with  
23 the response to spills of crude oil or petroleum products (~~shall~~)  
24 include:

25 (a) Natural resource damage assessment and related activities;

26 (b) Spill related response, containment, wildlife rescue, cleanup,  
27 disposal, and associated costs;

28 (c) Interagency coordination and public information related to a  
29 response; and

30 (d) Appropriate travel, goods and services, contracts, and  
31 equipment.

32 **Sec. 9.** RCW 90.56.510 and 2000 c 69 s 22 are each amended to read  
33 as follows:

34 (1) The oil spill prevention account is created in the state  
35 treasury. All receipts from RCW 82.23B.020(2) (~~shall~~) must be  
36 deposited in the account. Moneys from the account may be spent only  
37 after appropriation. The account is subject to allotment procedures

1 under chapter 43.88 RCW. If, on the first day of any calendar month,  
2 the balance of the oil spill response account is greater than nine  
3 million dollars and the balance of the oil spill prevention account  
4 exceeds the unexpended appropriation for the current biennium, then the  
5 tax under RCW 82.23B.020(2) (~~shall~~) must be suspended on the first  
6 day of the next calendar month until the beginning of the following  
7 biennium, provided that the tax (~~shall~~) not be suspended during the  
8 last six months of the biennium. If the tax imposed under RCW  
9 82.23B.020(2) is suspended during two consecutive biennia, the  
10 department (~~shall~~) must by November 1st after the end of the second  
11 biennium, recommend to the appropriate standing committees an  
12 adjustment in the tax rate. For the biennium ending June 30, 1999, and  
13 the biennium ending June 30, 2001, the state treasurer may transfer a  
14 total of up to one million dollars from the oil spill response account  
15 to the oil spill prevention account to support appropriations made from  
16 the oil spill prevention account in the omnibus appropriations act  
17 adopted not later than June 30, 1999.

18 (2) Expenditures from the oil spill prevention account (~~shall~~)  
19 must be used exclusively for the administrative costs related to the  
20 purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW.  
21 Starting with the 1995-1997 biennium, the legislature (~~shall~~) must  
22 give activities of state agencies related to prevention of oil spills  
23 priority in funding from the oil spill prevention account. Costs of  
24 prevention include the costs of:

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

36 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.23B  
37 RCW to read as follows:



1 (1) Beginning January 1, 2012, and on January 1st of each year  
2 thereafter, the department must adjust the tax imposed in RCW  
3 82.23B.020(2) using the fiscal growth factor, as defined in chapter  
4 43.135 RCW.

5 (2) The department must calculate the adjusted tax rate no later  
6 than November 1st of the calendar year preceding the January 1st  
7 effective date of the adjusted tax.

8 (3) To calculate the adjusted tax rate, the department must  
9 multiply the amount of the tax rate in effect for the calendar year  
10 preceding the January 1st effective date of the adjusted tax by the sum  
11 of one plus the fiscal growth factor, expressed as a decimal, for the  
12 previous fiscal year. The amount of the adjusted tax must be  
13 determined to the third decimal point.

14 **Sec. 11.** RCW 82.23B.901 and 1992 c 73 s 44 are each amended to  
15 read as follows:

16 (1) The amendment of RCW 82.23B.010, 82.23B.020, 82.23B.030, and  
17 82.23B.040 by chapter 73, Laws of 1992, (~~shall~~) may not be construed  
18 as affecting any existing right acquired or liability or obligation  
19 incurred under the sections or under any rule or order adopted under  
20 the sections, nor as affecting any proceeding instituted under the  
21 sections.

22 (2) The amendment of RCW 82.23B.045, 82.23B.050, 90.56.500, and  
23 90.56.510 by chapter . . ., Laws of 2010 (this act), may not be  
24 construed as affecting any existing right acquired or liability or  
25 obligation incurred under the sections or under any rule or order  
26 adopted under the sections, nor as affecting any proceeding instituted  
27 under the sections.

28 NEW SECTION. **Sec. 12.** RCW 82.23B.060, 82.23B.900, and 82.23B.902  
29 are decodified.

30 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2010.

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