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**SECOND SUBSTITUTE SENATE BILL 6269**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Ranker, Rolfes, Carlyle, Darneille, Hasegawa, Pedersen, Conway, Keiser, Hunt, Frockt, Kuderer, Chase, Liias, and Saldaña; by request of Department of Ecology)

AN ACT Relating to strengthening oil transportation safety; amending RCW 82.23B.020, 88.46.060, 88.46.220, 88.46.167, 90.56.210, 90.56.240, and 90.56.569, reenacting and amending RCW 82.23B.010; adding new sections to chapter 88.46 RCW; adding new sections to chapter 90.56 RCW; creating new sections; providing an effective date; providing an expiration date; and declaring an emergency.

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

**PART 1**

**REVENUE**

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

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

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

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

(d) Some oils are inherently heavy and are likely to stay submerged in the water column or sink to the bottom of a water body. In addition, many oils, depending on their qualities, weathering, environmental factors, and method of discharge, may also submerge or sink in water. Oils that submerge or sink in water pose a substantial risk to the environment, human health, tribal and other cultural and historical resources, and the economy and are a significant challenge to cleanup. Oils are currently being transported by vessels, trains, and pipelines in large volumes in our state, with increased volumes of heavy oils being transported by vessel through our shared waters from Canada. As knowledge about how oils submerge or sink in water grows and technological advances to respond are developed, preventing and preparing for these spills must be updated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9)(a) All receipts from the tax imposed in subsection (1) of this section must be deposited into the state oil spill response account. ((~~All~~))

(b) Beginning in fiscal year 2019 and each fiscal year thereafter, the first two hundred thousand dollars of receipts from the tax imposed in subsection (2) of this section ((~~shall~~)) must be deposited into the military department active state service account created in RCW 38.40.220, and the remainder of the receipts from the tax imposed in subsection (2) of this section must be deposited into the oil spill prevention account.

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

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

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

NEW SECTION. **Sec.**  The department of ecology shall provide a report to the legislature by July 1, 2020, on the following: (1) A description of activities conducted by the department's oil spill program that are expected to continue after fiscal year 2019, and activities that are not expected to continue after fiscal year 2019; (2) recommendations regarding potential sources of funding for the department's oil spill program other than, or in addition to, sources of funding existing on the effective date of this section; (3) recommendations regarding the allocation of funding from the taxes established in RCW 82.23B.020 among various state agencies, including whether funding should be discontinued or reduced for any agency; and (4) a forecast of the department's oil spill program funding needs after fiscal year 2019.

**PART 2**

**VESSELS**

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

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

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

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

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

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

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

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

(g) Describe important features of the surrounding environment, including fish ((~~and~~)) habitat, water column species and subsurface resources, wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities, that are: (i) Based on information documented in geographic response plans and area contingency plans, as required under RCW 90.56.210; or (ii) for areas without geographic response plans or area contingency plans, existing practices protecting these resources used for similar areas. The departments of ecology, fish and wildlife, natural resources, and archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The department must:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In conducting the evaluation to produce the report, the department of ecology must rely only on existing current vessel traffic risk assessments and other available studies, consult with the United States coast guard, maritime experts, including representatives of covered vessels, onshore and offshore facilities, environmental organizations, tribes, commercial and noncommercial fishers, recreational resource users, provincial experts, representatives of the Salish Sea shared waters forum established in section 204 of this act, and other appropriate entities.

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

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

(b) Transport of bitumen and diluted bitumen;

(c) Emerging trends in vessel traffic;

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

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

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

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

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

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

(3) The report required under subsection (1) of this section must include recommendations for:

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

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

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

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

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

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

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

(5) This section expires June 30, 2019.

**PART 3**

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

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

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

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

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

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

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

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

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

(g) Describe important features of the surrounding environment, including fish ((~~and~~)) habitat, water column species and subsurface resources, wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities, that are: (i) Based on information documented in geographic response plans and area contingency plans, as required under RCW 90.56.210; or (ii) for areas without geographic response plans or area contingency plans, existing practices protecting these resources used for similar areas. The departments of ecology, fish and wildlife, and natural resources, and the department of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

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

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

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

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

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

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

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

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

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

(ii) Offshore facilities.

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

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

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

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

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

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

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

(ii) Identify and include contact information for the chain of command and other personnel, including employees or spill response contractors, who will be involved in the railroad's response in the event of a spill;

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

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

(v) Annually review the plan for accuracy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The department must provide to the relevant policy and fiscal committees of the senate and house of representatives((~~:~~

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

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

(2) ((~~The department must contract, if practicable, with eligible independent third parties to ensure completion by December 1, 2017, of at least fifty percent of the geographic response plans as needed in contingency plans required under RCW 90.56.210 and 88.46.060 for the state.~~)) In its updates of geographic response plans, the department must address situations where oils, depending on their qualities, weathering, environmental factors, and method of discharge, may submerge or sink in water.

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

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

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

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

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

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

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

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

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

**PART 4**

**SEVERABILITY AND EMERGENCY CLAUSE**

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

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

**--- END ---**