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**SUBSTITUTE HOUSE BILL 1510**

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**State of Washington                      54th Legislature                      1995 Regular Session**

**By** House Committee on Transportation (originally sponsored by Representatives K. Schmidt, Benton, Reams, Robertson, Chandler, Mitchell, Delvin and D. Schmidt)

Read first time 03/06/95.

1            AN ACT Relating to the restructuring of oil spill prevention and  
2 response programs; amending RCW 43.21A.020, 43.21I.005, 43.21I.010,  
3 43.21I.030, 43.21I.040, 82.23B.020, 88.46.922, 88.46.925, and  
4 90.56.100; amending 1991 c 200 s 1120 (uncodified); amending 1993 c 281  
5 s 73 (uncodified); adding new sections to chapter 43.21A RCW; adding a  
6 new section to chapter 90.56 RCW; creating a new section; recodifying  
7 RCW 43.21I.005, 43.21I.010, 43.21I.030, and 43.21I.040; repealing RCW  
8 43.21I.020, 88.46.920, and 88.46.923.

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

10            **Sec. 1.** RCW 43.21A.020 and 1970 ex.s. c 62 s 2 are each amended to  
11 read as follows:

12            In recognition of the responsibility of state government to carry  
13 out the policies set forth in RCW 43.21A.010, it is the purpose of this  
14 chapter to establish a single state agency with the authority to manage  
15 and develop our air and water resources in an orderly, efficient, and  
16 effective manner and to carry out a coordinated program of pollution  
17 control involving these and related land resources. To this end a  
18 department of ecology is created by this chapter to undertake, in an  
19 integrated manner, the various water regulation, management, planning

1 and development programs now authorized to be performed by the  
2 department of water resources and the water pollution control  
3 commission, the air regulation and management program now performed by  
4 the state air pollution control board, the solid waste regulation and  
5 management program authorized to be performed by state government as  
6 provided by chapter 70.95 RCW, the oil spill prevention function now  
7 authorized to be performed by the office of marine safety, and such  
8 other environmental, management protection and development programs as  
9 may be authorized by the legislature.

10 **Sec. 2.** RCW 43.21I.005 and 1991 c 200 s 401 are each amended to  
11 read as follows:

12 ~~((The legislature declares that Washington's waters have  
13 irreplaceable value for the citizens of the state. These waters are  
14 vital habitat for numerous and diverse marine life and wildlife and the  
15 source of recreation, aesthetic pleasure, and pride for Washington's  
16 citizens. These waters are also vital for much of Washington's  
17 economic vitality.~~

18 ~~The legislature finds that the transportation of oil on these  
19 waters creates a great potential hazard to these important natural  
20 resources. The legislature also finds that there is no state agency  
21 responsible for maritime safety to ensure this state's interest in  
22 preserving these resources.~~

23 ~~The legislature therefore finds that in order to protect these  
24 waters it is necessary to establish an office of marine safety which  
25 will have the responsibility to promote the safety of marine  
26 transportation in Washington.))~~ (1) The legislature finds that the  
27 long-term environmental health of the state's waters depends upon the  
28 strength and vitality of its oil spill prevention and response program.  
29 It is the intent of this act to create an integrated oil spill  
30 prevention and response program that fosters planning, coordination,  
31 and incidence command. To that end, the merger of the office of marine  
32 safety with the department of ecology will: Ensure coordination via  
33 streamlining the marine safety functions of two agencies into one;  
34 provide a focused prevention and response program under a single  
35 administration; generate efficient incidence command to meet challenges  
36 threatening marine safety and the environment; and increase  
37 accountability owed to the public, the executive branch, and the  
38 legislature.

1       (2) It is the intent of the legislature that the merger of the  
2 office of marine safety with the department of ecology be accomplished  
3 in an organizational manner that maintains a priority focus and  
4 position for the oil spill prevention and response program. The merger  
5 shall allow for ready identification of the program by the public and  
6 ensure no diminution in the state's commitment to marine safety and  
7 environmental protection.

8       **Sec. 3.** RCW 43.21I.010 and 1992 c 73 s 4 are each amended to read  
9 as follows:

10       ~~(1) There is hereby created ((an agency of state government to be~~  
11 ~~known as the office of marine safety. The office shall be vested with~~  
12 ~~all powers and duties transferred to it and such other powers and~~  
13 ~~duties as may be authorized by law. The main administrative office of~~  
14 ~~the office shall be located in the city of Olympia. The administrator~~  
15 ~~may establish administrative facilities in other locations,)) within~~  
16 the department of ecology an integrated oil spill prevention and  
17 response program. The department shall establish a division for the  
18 purpose of housing the integrated oil spill prevention and response  
19 program. The division shall establish its focus and independence from  
20 the department's other authorized divisions and services. The director  
21 may establish administrative facilities in various locations within the  
22 state of Washington, if deemed necessary for the efficient operation of  
23 the office, and if consistent with the principles set forth in  
24 subsection (2) of this section.

25       ~~(2) The ((office of marine safety)) department shall ((be~~  
26 ~~organized)) organize the oil spill prevention and response division~~  
27 ~~consistent with the goals of providing the state ((government)) with a~~  
28 ~~focus in marine transportation and serving the people of this state.~~  
29 ~~((The legislature recognizes that the administrator needs sufficient~~  
30 ~~organizational flexibility to carry out the office's various duties.))~~  
31 ~~To the extent practical, the ((administrator)) director shall consider~~  
32 ~~the following organizational principles:~~

33       ~~(a) Clear lines of authority which avoid functional duplication~~  
34 ~~within and between subelements of the ((office)) department;~~

35       ~~(b) A clear and simplified organizational design promoting~~  
36 ~~accessibility, responsiveness, and accountability to the legislature,~~  
37 ~~the consumer, and the general public; and~~

1 (c) Maximum span of control without jeopardizing adequate  
2 supervision.

3 (3) The ~~((office))~~ department shall provide leadership and  
4 coordination in identifying and resolving threats to the safety of  
5 marine transportation and the impact of marine transportation on the  
6 environment:

7 (a) Working with other state agencies and local governments to  
8 strengthen the state and local governmental partnership in providing  
9 public protection;

10 (b) Providing expert advice to the executive and legislative  
11 branches of state government;

12 (c) Providing active and fair enforcement of rules;

13 (d) Working with other federal, state, and local agencies and  
14 facilitating their involvement in planning and implementing marine  
15 safety measures;

16 (e) Providing information to the public; and

17 (f) Carrying out such other related actions as may be appropriate  
18 to this purpose.

19 (4) In accordance with the Administrative Procedure Act, chapter  
20 34.05 RCW, the ~~((office))~~ department shall ensure an opportunity for  
21 consultation, review, and comment before the adoption of standards,  
22 guidelines, and rules.

23 (5) Consistent with the principles set forth in subsection (2) of  
24 this section, the ~~((administrator))~~ director may create ~~((such  
25 administrative divisions, offices, bureaus, and programs within the  
26 office as the administrator))~~ whatever organizational framework the  
27 director deems necessary to achieve the goals and objectives of this  
28 section so long as it is consistent with RCW 43.21I.005 through  
29 43.21I.040 (as recodified by this act) and chapter 88.46 RCW. The  
30 ~~((administrator))~~ director shall have complete charge of and  
31 supervisory powers over the ~~((office))~~ division, except where the  
32 ~~((administrator's))~~ director's authority is specifically limited by  
33 law.

34 (6) The ~~((administrator))~~ director shall appoint ~~((such personnel  
35 as are necessary to carry out the duties of the office))~~ an assistant  
36 director to carry out the duties of providing an oil spill prevention  
37 and response program consistent with RCW 43.21I.005 through 43.21I.040  
38 (as recodified by this act) and chapter 88.46 RCW. In addition to  
39 exemptions set forth in RCW 41.06.070~~((+28))~~ (3), the ~~((administrator,~~

1 ~~the administrator's confidential secretary, and up to four professional~~  
2 ~~staff members))~~ director shall be exempt from the provisions of chapter  
3 41.06 RCW. All other employees of the ((office)) division shall be  
4 subject to the provisions of chapter 41.06 RCW.

5 **Sec. 4.** RCW 43.21I.030 and 1992 c 73 s 11 are each amended to read  
6 as follows:

7 In addition to any other powers granted the ((administrator))  
8 director, the ((administrator)) director, in the administration of the  
9 oil spill prevention and response division, may:

10 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to  
11 carry out the provisions of this chapter and chapter 88.46 RCW;

12 (2) Appoint such advisory committees as may be necessary to carry  
13 out the provisions of this chapter and chapter 88.46 RCW. Members of  
14 such advisory committees are authorized to receive travel expenses in  
15 accordance with RCW 43.03.050 and 43.03.060. The ((administrator))  
16 director shall review each advisory committee within the jurisdiction  
17 of the ((office)) department's oil spill prevention and response  
18 division and each statutory advisory committee on a biennial basis to  
19 determine if such advisory committee is needed. The criteria specified  
20 in RCW 43.131.070 shall be used to determine whether or not each  
21 advisory committee shall be continued;

22 (3) Undertake studies, research, and analysis necessary to carry  
23 out the provisions of this chapter and chapter 88.46 RCW;

24 (4) Delegate powers, duties, and functions of the ((office))  
25 department's oil spill prevention and response division to employees of  
26 the ((office)) department as the ((administrator)) director deems  
27 necessary to carry out the provisions of RCW 43.21I.005 through  
28 43.21I.040 (as recodified by this ((chapter)) act) and chapter 88.46  
29 RCW;

30 (5) Enter into contracts on behalf of the ((office)) department's  
31 oil spill prevention and response division to carry out the purposes of  
32 RCW 43.21.005 through 43.21I.040 (as recodified by this ((chapter))  
33 act) and chapter 88.46 RCW;

34 (6) Act for the state in the initiation of, or the participation  
35 in, any intergovernmental program for the purposes of RCW 43.21I.005  
36 through 43.21I.040 (as recodified by this ((chapter)) act) and chapter  
37 88.46 RCW; or

38 (7) Accept gifts, grants, or other funds.

1       **Sec. 5.** RCW 43.21I.040 and 1991 c 200 s 407 are each amended to  
2 read as follows:

3       (1) The ((~~administrator~~)) director shall have full authority to  
4 administer oaths and take testimony thereunder, to issue subpoenas  
5 requiring the attendance of witnesses before the ((~~administrator~~))  
6 director together with all books, memoranda, papers, and other  
7 documents, articles or instruments, and to compel the disclosure by  
8 such witnesses of all facts known to them relative to the matters under  
9 investigation.

10       (2) Subpoenas issued in adjudicative proceedings shall be governed  
11 by chapter 34.05 RCW.

12       (3) Subpoenas issued in the conduct of investigations required or  
13 authorized by other statutory provisions or necessary in the  
14 enforcement of other statutory provisions shall be governed by chapter  
15 34.05 RCW.

16       **Sec. 6.** RCW 82.23B.020 and 1992 c 73 s 7 are each amended to read  
17 as follows:

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

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

35       (3) The taxes imposed by this chapter shall be collected by the  
36 marine terminal operator from the taxpayer. If any person charged with  
37 collecting the taxes fails to bill the taxpayer for the taxes, or in  
38 the alternative has not notified the taxpayer in writing of the

1 imposition of the taxes, or having collected the taxes, fails to pay  
2 them to the department in the manner prescribed by this chapter,  
3 whether such failure is the result of the person's own acts or the  
4 result of acts or conditions beyond the person's control, he or she  
5 shall, nevertheless, be personally liable to the state for the amount  
6 of the taxes. Payment of the taxes by the owner to a marine terminal  
7 operator shall relieve the owner from further liability for the taxes.

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

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

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

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

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

1 certificate by a terminal operator shall relieve the marine terminal  
2 operator from any liability for the collection or payment of the taxes  
3 imposed under this chapter.

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

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

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

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

24 ~~(11) ((The office of marine safety, the department of revenue, and  
25 the department of trade and economic development shall study tax  
26 credits for taxpayers employing vessels with the best achievable  
27 technology and the best available protection to reduce the risk of oil  
28 spills to the navigable waters of the state and submit the study to the  
29 appropriate standing committees of the legislature by December 1,  
30 1992))~~ By December 1, 1995, the legislative transportation committee  
31 shall evaluate the appropriateness of the cap amounts specified in  
32 subsection (10) of this section.

33 NEW SECTION. Sec. 7. (1) The office of financial management, in  
34 cooperation with the director of the department of ecology and the  
35 administrator of the office of marine safety shall, by September 1,  
36 1995, submit a plan to the governor for the consolidation and smooth  
37 transition of the office of marine safety with the department of  
38 ecology so that the integrated oil spill prevention and response



1 program will operate as a single entity by January 1, 1996. The plan  
2 shall include, but is not limited to:

3 (a) Combining the existing functions and responsibilities of the  
4 two agencies into an integrated oil spill prevention and response  
5 operation within the department of ecology; and

6 (b) Benchmarks by which to measure progress and to evaluate the  
7 performance and effectiveness of an integrated oil spill prevention and  
8 response program.

9 (2) In developing the plan, the office of financial management may  
10 consult with experts and organizations, both public and private, as  
11 deemed appropriate to meet the objectives of this section.

12 **Sec. 8.** RCW 88.46.922 and 1991 c 200 s 431 are each amended to  
13 read as follows:

14 All reports, documents, surveys, books, records, files, papers, or  
15 written material in the possession of the office of marine safety shall  
16 be delivered to the custody of the department of ecology. All  
17 cabinets, furniture, office equipment, motor vehicles, and other  
18 tangible property employed by the office of marine safety shall be made  
19 available to the department of ecology. All funds, credits, or other  
20 assets held by the office of marine safety shall be assigned to the  
21 department of ecology.

22 Any appropriations made to the office of marine safety shall, on  
23 (~~July 1, 1997~~) January 1, 1996, be transferred and credited to the  
24 department of ecology.

25 Whenever any question arises as to the transfer of any personnel,  
26 funds, books, documents, records, papers, files, equipment, or other  
27 tangible property used or held in the exercise of the powers and the  
28 performance of the duties and functions transferred, the director of  
29 financial management shall make a determination as to the proper  
30 allocation and certify the same to the state agencies concerned.

31 **Sec. 9.** RCW 88.46.925 and 1991 c 200 s 434 are each amended to  
32 read as follows:

33 The transfer of the powers, duties, and functions(~~(, and~~  
34 ~~personnel)~~) of the office of marine safety shall not affect the  
35 validity of any act performed prior to (~~July 1, 1997~~) January 1,  
36 1996.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 90.56 RCW  
2 to read as follows:

3        No moneys may be spent by the department from the oil spill  
4 administration account, as established in RCW 90.56.510, nor the oil  
5 spill response account, as established in RCW 90.56.500, for any  
6 purpose other than carrying out the purposes, programs, and services of  
7 oil spill prevention and response consistent with RCW 43.21I.005  
8 through 43.21I.040 (as recodified by this act) and chapter 88.46 RCW.

9        **Sec. 11.**    RCW 90.56.100 and 1994 c 264 s 94 are each amended to  
10 read as follows:

11        (1) The Washington wildlife rescue coalition shall (~~(be established~~  
12 ~~for the purpose of coordinating~~) coordinate the rescue and  
13 rehabilitation of wildlife injured or endangered by oil spills or the  
14 release of other hazardous substances into the environment.

15        (2) The Washington wildlife rescue coalition shall be composed of:

16        (a) A representative of the department of fish and wildlife  
17 designated by the director of fish and wildlife. The department of  
18 fish and wildlife shall be designated as lead agency in the operations  
19 of the coalition. The coalition shall be chaired by the representative  
20 from the department of fish and wildlife;

21        (b) A representative of the department of ecology designated by the  
22 director;

23        (c) A representative of the department of community, trade, and  
24 economic development emergency management program designated by the  
25 director of community, trade, and economic development;

26        (d) A representative of the state military department designated by  
27 the adjutant general;

28        (e) A licensed veterinarian, with experience and training in  
29 wildlife rehabilitation, appointed by the veterinary board of  
30 governors;

31        (~~(e)~~) (f) The director of the Washington conservation corps;

32        (~~(f)~~) (g) A lay person, with training and experience in the  
33 rescue and rehabilitation of wildlife appointed by the department; and

34        (~~(g)~~) (h) A person designated by the legislative authority of the  
35 county where oil spills or spills of other hazardous substances may  
36 occur. This member of the coalition shall serve on the coalition until  
37 wildlife rescue and rehabilitation is completed in that county. The

1 completion of any rescue or rehabilitation project shall be determined  
2 by the director of fish and wildlife.

3 (3) The duties of the Washington wildlife rescue coalition shall be  
4 to:

5 (a) Develop an emergency mobilization plan to rescue and  
6 rehabilitate waterfowl and other wildlife that are injured or  
7 endangered by an oil spill or the release of other hazardous substances  
8 into the environment;

9 (b) Develop and maintain a resource directory of persons,  
10 governmental agencies, and private organizations that may provide  
11 assistance in an emergency rescue effort;

12 (c) Provide advance training and instruction to volunteers and  
13 state military department personnel in rescuing and rehabilitating  
14 waterfowl and wildlife injured or endangered by oil spills or the  
15 release of other hazardous substances into the environment. The  
16 training may be provided through grants to community colleges or to  
17 groups that conduct programs for training volunteers. The coalition  
18 representatives from the agencies described in subsection (2) of this  
19 section shall coordinate training efforts with the director of the  
20 Washington conservation corps and work to provide training  
21 opportunities for young citizens;

22 (d) Obtain and maintain equipment and supplies used in emergency  
23 rescue efforts((÷

24 ~~(e) Report to the appropriate standing committees of the~~  
25 ~~legislature on the progress of the coalition's efforts and detail~~  
26 ~~future funding options necessary for the implementation of this section~~  
27 ~~and RCW 90.56.110. The coalition shall report by January 30, 1991)).~~

28 (4)(a) Expenses for the coalition may be provided by the coastal  
29 protection fund administered according to RCW 90.48.400.

30 (b) The ((coalition)) state military department is encouraged to  
31 seek grants, gifts, or donations from private sources in order to carry  
32 out the provisions of this section and RCW 90.56.110. Any private  
33 funds donated to the commission shall be deposited into the wildlife  
34 rescue account hereby created within the wildlife fund as authorized  
35 under Title 77 RCW.

36 NEW SECTION. Sec. 12. The department of fish and wildlife and the  
37 state military department shall enter into an agreement to carry out  
38 the intent of RCW 90.56.100. This agreement shall specify the

1 procedures for activation, training, and response of state military  
2 department personnel in oiled wildlife rescue and rehabilitation.

3 **Sec. 13.** 1991 c 200 s 1120 (uncodified) is amended to read as  
4 follows:

5 Sections 430 through 436 (~~of this act~~), chapter 200, Laws of 1991  
6 shall take effect (~~(July 1, 1997)~~) January 1, 1996.

7 **Sec. 14.** 1993 c 281 s 73 (uncodified) is amended to read as  
8 follows:

9 Section 67 (~~of this act~~), chapter 281, Laws of 1993 shall take  
10 effect (~~(July 1, 1997)~~) January 1, 1996.

11 NEW SECTION. **Sec. 15.** RCW 43.21I.005, 43.21I.010, 43.21I.030, and  
12 43.21I.040, as amended in this act, are each recodified as new sections  
13 in chapter 43.21A RCW.

14 NEW SECTION. **Sec. 16.** The following acts or parts of acts are  
15 each repealed:

- 16 (1) RCW 43.21I.020 and 1992 c 73 s 5 & 1991 c 200 s 403;  
17 (2) RCW 88.46.920 and 1991 c 200 s 429; and  
18 (3) RCW 88.46.923 and 1991 c 200 s 432.

--- END ---