

2 **SSB 6210 - H COMM AMD ADOPTED 3-1-00**  
3 By Committee on Agriculture & Ecology

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5 On page 36, after line 5, strike sections 27 and 28 and insert the  
6 following:

7 "Sec. 27. RCW 43.21I.010 and 1992 c 73 s 4 are each amended to  
8 read as follows:

9 (1) There is hereby created ~~((an agency of state government to be  
10 known as the office of marine safety. The office))~~ within the  
11 department of ecology an oil spill prevention program. For the  
12 program, the department shall be vested with all powers and duties  
13 transferred to it from the office of marine safety and such other  
14 powers and duties as may be authorized by law. The main administrative  
15 office ~~((of))~~ for the ((office)) program shall be located in the city  
16 of Olympia. The ~~((administrator))~~ director may establish  
17 administrative facilities in other locations, if deemed necessary for  
18 the efficient operation of the ~~((office))~~ program, and if consistent  
19 with the principles set forth in subsection (2) of this section.

20 (2) The ~~((office of marine safety))~~ oil spill prevention program  
21 shall be organized consistent with the goals of providing state  
22 government with a focus in marine transportation and serving the people  
23 of this state. The legislature recognizes that the ~~((administrator))~~  
24 director needs sufficient organizational flexibility to carry out the  
25 ~~((office's))~~ program's various duties. To the extent practical, the  
26 ~~((administrator))~~ director shall consider the following organizational  
27 principles:

28 (a) Clear lines of authority which avoid functional duplication  
29 within and between subelements of the ~~((office))~~ program;

30 (b) A clear and simplified organizational design promoting  
31 accessibility, responsiveness, and accountability to the legislature,  
32 the consumer, and the general public; and

33 (c) Maximum span of control without jeopardizing adequate  
34 supervision.

35 (3) The ~~((office))~~ department, through the program, shall provide  
36 leadership and coordination in identifying and resolving threats to the

1 safety of marine transportation and the impact of marine transportation  
2 on the environment:

3 (a) Working with other state agencies and local governments to  
4 strengthen the state and local governmental partnership in providing  
5 public protection;

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

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

9 (d) Working with other federal, state, and local agencies and  
10 facilitating their involvement in planning and implementing marine  
11 safety measures;

12 (e) Providing information to the public; and

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

15 (4) In accordance with the administrative procedure act, chapter  
16 34.05 RCW, the ((office)) department shall ensure an opportunity for  
17 consultation, review, and comment before the adoption of standards,  
18 guidelines, and rules.

19 (5) Consistent with the principles set forth in subsection (2) of  
20 this section, the ((administrator)) director may create such  
21 administrative divisions, offices, bureaus, and programs within the  
22 ((office)) program as the ((administrator)) director deems necessary.  
23 The ((administrator)) director shall have complete charge of and  
24 supervisory powers over the ((office)) program, except where the  
25 ((administrator's)) director's authority is specifically limited by  
26 law.

27 (6) The ((administrator)) director shall appoint such personnel as  
28 are necessary to carry out the duties of the ((office)) program. In  
29 addition to exemptions set forth in RCW 41.06.070((~~-28~~), ~~the~~  
30 ~~administrator, the administrator's confidential secretary, and~~)), up to  
31 four professional staff members shall be exempt from the provisions of  
32 chapter 41.06 RCW. All other employees of the ((office)) program shall  
33 be subject to the provisions of chapter 41.06 RCW.

34 (7) The definitions in this section apply throughout this chapter.

35 (a) "Department" means the department of ecology.

36 (b) "Director" means the director of the department.

37 **Sec. 28.** RCW 43.21I.030 and 1992 c 73 s 11 are each amended to  
38 read as follows:

1 In addition to any other powers granted the ((~~administrator~~))  
2 director, the ((~~administrator~~)) director may:

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

5 (2) Appoint such advisory committees as may be necessary to carry  
6 out the provisions of this chapter and chapter 88.46 RCW. Members of  
7 such advisory committees are authorized to receive travel expenses in  
8 accordance with RCW 43.03.050 and 43.03.060. The ((~~administrator~~))  
9 director shall review each advisory committee within the jurisdiction  
10 of the ((~~office~~)) program and each statutory advisory committee on a  
11 biennial basis to determine if such advisory committee is needed. The  
12 criteria specified in RCW 43.131.070 shall be used to determine whether  
13 or not each advisory committee shall be continued;

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

16 (4) Delegate powers, duties, and functions of the ((~~office~~))  
17 program to employees of the ((~~office~~)) department as the  
18 ((~~administrator~~)) director deems necessary to carry out the provisions  
19 of this chapter and chapter 88.46 RCW;

20 (5) Enter into contracts on behalf of the ((~~office~~)) department to  
21 carry out the purposes of this chapter and chapter 88.46 RCW;

22 (6) Act for the state in the initiation of, or the participation  
23 in, any intergovernmental program for the purposes of this chapter and  
24 chapter 88.46 RCW; or

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

26 **Sec. 29.** RCW 43.21I.040 and 1991 c 200 s 407 are each amended to  
27 read as follows:

28 (1) The ((~~administrator~~)) director shall have full authority to  
29 administer oaths and take testimony thereunder, to issue subpoenas  
30 requiring the attendance of witnesses before the ((~~administrator~~))  
31 director together with all books, memoranda, papers, and other  
32 documents, articles or instruments, and to compel the disclosure by  
33 such witnesses of all facts known to them relative to the matters under  
34 investigation.

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

37 (3) Subpoenas issued in the conduct of investigations required or  
38 authorized by other statutory provisions or necessary in the

1 enforcement of other statutory provisions shall be governed by chapter  
2 34.05 RCW.

3 **Sec. 30.** RCW 88.40.011 and 1992 c 73 s 12 are each amended to read  
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

7 ~~(1) ("Administrator" means the administrator of the office of~~  
8 ~~marine safety created in RCW 43.211.010.~~

9 ~~(2))~~ "Cargo vessel" means a self-propelled ship in commerce, other  
10 than a tank vessel or a passenger vessel, of three hundred or more  
11 gross tons, including but not limited to, commercial fish processing  
12 vessels and freighters.

13 ~~((3))~~ (2) "Bulk" means material that is stored or transported in  
14 a loose, unpackaged liquid, powder, or granular form capable of being  
15 conveyed by a pipe, bucket, chute, or belt system.

16 ~~((4))~~ (3) "Covered vessel" means a tank vessel, cargo vessel, or  
17 passenger vessel.

18 ~~((5))~~ (4) "Department" means the department of ecology.

19 ~~((6))~~ (5) "Director" means the director of the department of  
20 ecology.

21 ~~((7))~~ (6)(a) "Facility" means any structure, group of structures,  
22 equipment, pipeline, or device, other than a vessel, located on or near  
23 the navigable waters of the state that transfers oil in bulk to or from  
24 a tank vessel or pipeline, that is used for producing, storing,  
25 handling, transferring, processing, or transporting oil in bulk.

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

35 ~~((8))~~ (7) "Hazardous substances" means any substance listed in  
36 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
37 section 101(14) of the federal comprehensive environmental response,  
38 compensation, and liability act of 1980, as amended by P.L. 99-499.

1 The following are not hazardous substances for purposes of this  
2 chapter:

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

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

5 ~~((9))~~ (8) "Inland barge" means any barge operating on the waters  
6 of the state and certified by the coast guard as an inland barge.

7 ~~((10))~~ (9) "Navigable waters of the state" means those waters of  
8 the state, and their adjoining shorelines, that are subject to the ebb  
9 and flow of the tide and/or are presently used, have been used in the  
10 past, or may be susceptible for use to transport intrastate,  
11 interstate, or foreign commerce.

12 ~~((11))~~ "Office" means the office of marine safety established by  
13 RCW ~~43.211.010~~.

14 ~~(12))~~ (10) "Oil" or "oils" means any naturally occurring liquid  
15 hydrocarbons at atmospheric temperature and pressure coming from the  
16 earth, including condensate and natural gasoline, and any fractionation  
17 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
18 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes  
19 other than dredged spoil. Oil does not include any substance listed in  
20 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
21 section 101(14) of the federal comprehensive environmental response,  
22 compensation, and liability act of 1980, as amended by P.L. 99-499.

23 ~~((13))~~ (11) "Offshore facility" means any facility located in,  
24 on, or under any of the navigable waters of the state, but does not  
25 include a facility any part of which is located in, on, or under any  
26 land of the state, other than submerged land.

27 ~~((14))~~ (12) "Onshore facility" means any facility any part of  
28 which is located in, on, or under any land of the state, other than  
29 submerged land, that because of its location, could reasonably be  
30 expected to cause substantial harm to the environment by discharging  
31 oil into or on the navigable waters of the state or the adjoining  
32 shorelines.

33 ~~((15))~~ (13)(a) "Owner or operator" means (i) in the case of a  
34 vessel, any person owning, operating, or chartering by demise, the  
35 vessel; (ii) in the case of an onshore or offshore facility, any person  
36 owning or operating the facility; and (iii) in the case of an abandoned  
37 vessel or onshore or offshore facility, the person who owned or  
38 operated the vessel or facility immediately before its abandonment.

1 (b) "Operator" does not include any person who owns the land  
2 underlying a facility if the person is not involved in the operations  
3 of the facility.

4 (~~(16)~~) (14) "Passenger vessel" means a ship of three hundred or  
5 more gross tons with a fuel capacity of at least six thousand gallons  
6 carrying passengers for compensation.

7 (~~(17)~~) (15) "Ship" means any boat, ship, vessel, barge, or other  
8 floating craft of any kind.

9 (~~(18)~~) (16) "Spill" means an unauthorized discharge of oil into  
10 the waters of the state.

11 (~~(19)~~) (17) "Tank vessel" means a ship that is constructed or  
12 adapted to carry, or that carries, oil in bulk as cargo or cargo  
13 residue, and that:

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

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

17 (~~(20)~~) (18) "Waters of the state" includes lakes, rivers, ponds,  
18 streams, inland waters, underground water, salt waters, estuaries,  
19 tidal flats, beaches and lands adjoining the seacoast of the state,  
20 sewers, and all other surface waters and watercourses within the  
21 jurisdiction of the state of Washington.

22 **Sec. 31.** RCW 88.40.020 and 1992 c 73 s 13 are each amended to read  
23 as follows:

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

29 (2)(a) Except as provided in (c) of this subsection, a tank vessel  
30 that carries oil as cargo in bulk shall demonstrate financial  
31 responsibility to pay at least five hundred million dollars.

32 (b) The (~~administrator~~) director by rule may establish a lesser  
33 standard of financial responsibility for barges of three hundred gross  
34 tons or less. The standard shall set the level of financial  
35 responsibility based on the quantity of cargo the barge is capable of  
36 carrying. The (~~administrator~~) director shall not set the standard  
37 for barges of three hundred gross tons or less below that required  
38 under federal law.

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

7 (3) A cargo vessel or passenger vessel that carries oil as fuel  
8 shall demonstrate financial responsibility to pay the greater of at  
9 least six hundred dollars per gross ton or five hundred thousand  
10 dollars.

11 (4) The documentation of financial responsibility shall demonstrate  
12 the ability of the document holder to meet state and federal financial  
13 liability requirements for the actual costs for removal of oil spills,  
14 for natural resource damages, and necessary expenses.

15 (5) The ((~~office~~)) department may by rule set a lesser amount of  
16 financial responsibility for a tank vessel that meets standards for  
17 construction, propulsion, equipment, and personnel established by the  
18 ((~~office~~)) department. The ((~~office~~)) department shall require as a  
19 minimum level of financial responsibility under this subsection the  
20 same level of financial responsibility required under federal law.

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

23 **Sec. 32.** RCW 88.40.030 and 1991 c 200 s 705 are each amended to  
24 read as follows:

25 Financial responsibility required by this chapter may be  
26 established by any one of, or a combination of, the following methods  
27 acceptable to the ((~~office of marine safety or the~~)) department of  
28 ecology: (1) Evidence of insurance; (2) surety bonds; (3)  
29 qualification as a self-insurer; or (4) other evidence of financial  
30 responsibility. Any bond filed shall be issued by a bonding company  
31 authorized to do business in the United States. Documentation of such  
32 financial responsibility shall be kept on any covered vessel and filed  
33 with the ((~~office~~)) department at least twenty-four hours before entry  
34 of the vessel into the navigable waters of the state. A covered vessel  
35 is not required to file documentation of financial responsibility  
36 twenty-four hours before entry of the vessel into the navigable waters  
37 of the state, if the vessel has filed documentation of financial  
38 responsibility with the federal government, and the level of financial

1 responsibility required by the federal government is the same as or  
2 exceeds state requirements. The owner or operator of the vessel may  
3 file with the ((office)) department a certificate evidencing compliance  
4 with the requirements of another state's or federal financial  
5 responsibility requirements if the state or federal government requires  
6 a level of financial responsibility the same as or greater than that  
7 required under this chapter.

8 **Sec. 33.** RCW 88.40.040 and 1992 c 73 s 14 are each amended to read  
9 as follows:

10 (1) The ((office)) department shall deny entry to the waters of the  
11 state to any vessel that does not meet the financial responsibility  
12 requirements of this chapter. Any vessel owner or operator that does  
13 not meet the financial responsibility requirements of this chapter and  
14 any rules prescribed thereunder or the federal oil pollution act of  
15 1990 shall be reported by the ((office)) department to the United  
16 States coast guard.

17 (2) The ((office)) department shall enforce section 1016 of the  
18 federal oil pollution act of 1990 as authorized by section 1019 of the  
19 federal act.

20 **Sec. 34.** RCW 90.56.310 and 1992 c 73 s 35 are each amended to read  
21 as follows:

22 (1) Except as provided in subsection (3) of this section, it shall  
23 be unlawful:

24 (a) For the owner or operator to operate an onshore or offshore  
25 facility without an approved contingency plan as required under RCW  
26 90.56.210, a spill prevention plan required by RCW 90.56.200, or  
27 financial responsibility in compliance with chapter 88.40 RCW and the  
28 federal oil pollution act of 1990; or

29 (b) For the owner or operator of an onshore or offshore facility to  
30 transfer cargo or passengers to or from a covered vessel that does not  
31 have an approved contingency plan or an approved prevention plan  
32 required under chapter 88.46 RCW or financial responsibility in  
33 compliance with chapter 88.40 RCW and the federal oil pollution act of  
34 1990.

35 (2) The department may assess a civil penalty under RCW 43.21B.300  
36 of up to one hundred thousand dollars against any person who is in



1 violation of this section. Each day that a facility or person is in  
2 violation of this section shall be considered a separate violation.

3 (3) It shall not be unlawful for a facility or other person to  
4 operate or accept cargo or passengers from a covered vessel if:

5 (a) A contingency plan, a prevention plan, or financial  
6 responsibility is not required for the facility; or

7 (b) A contingency and prevention plan has been submitted to the  
8 department as required by this chapter and rules adopted by the  
9 department and the department is reviewing the plan and has not denied  
10 approval.

11 (4) Any person may rely on a copy of the statement issued by the  
12 department pursuant to RCW 90.56.210(7) as evidence that the facility  
13 has an approved contingency plan and the statement issued pursuant to  
14 RCW 90.56.200(4) as evidence that the facility has an approved spill  
15 prevention plan. Any person may rely on a copy of the statement issued  
16 by the office of marine safety, or its successor agency, the  
17 department, pursuant to RCW 88.46.060 as evidence that the vessel has  
18 an approved contingency plan and the statement issued pursuant to RCW  
19 88.46.040 as evidence that the vessel has an approved prevention plan.

20 **Sec. 35.** RCW 43.21I.005 and 1997 c 449 s 1 are each amended to  
21 read as follows:

22 (1) The legislature declares that Washington's waters have  
23 irreplaceable value for the citizens of the state. These waters are  
24 vital habitat for numerous and diverse marine life and wildlife and the  
25 source of recreation, aesthetic pleasure, and pride for Washington's  
26 citizens. These waters are also vital for much of Washington's  
27 economic vitality.

28 The legislature finds that the transportation of oil on these  
29 waters creates a great potential hazard to these important natural  
30 resources. The legislature also finds that there is no state agency  
31 responsible for maritime safety to ensure this state's interest in  
32 preserving these resources.

33 ~~((The legislature therefore finds that in order to protect these  
34 waters it is necessary to establish an office of marine safety which  
35 will have the responsibility to promote the safety of marine  
36 transportation in Washington.))~~

37 (2) The legislature finds that adequate funding is necessary for  
38 the state to continue its priority focus on the prevention of oil

1 spills, as well as maintain a strong oil spill response, planning, and  
2 environmental restoration capability. The legislature further finds  
3 that (~~{the}~~) the long-term environmental health of the state's waters  
4 depends upon the strength and vitality of its oil spill prevention and  
5 response program that fosters planning, coordination, and incident  
6 command. To that end, the merger of the office of marine safety with  
7 the department of ecology shall: Ensure coordination via streamlining  
8 the marine safety functions of two agencies into one; provide a focused  
9 prevention and response program under a single administration; generate  
10 efficient incident command response capability and continue to meet the  
11 challenges threatening marine safety and the environment; and increase  
12 accountability to the public, the executive branch, and the  
13 legislature.

14 (3) It is the intent of the legislature that the state's oil spill  
15 prevention, response, planning, and environmental restoration  
16 activities be sufficiently funded to maintain a strong prevention and  
17 response program. It is further the intent of the legislature that the  
18 merger of the office of marine safety with the department of ecology be  
19 accomplished in an organizational manner that maintains a priority  
20 focus and position for the oil spill prevention and response program.  
21 The merger shall allow for ready identification of the program by the  
22 public and ensure no diminution in the state's commitment to marine  
23 safety and environmental protection as follows:

24 (a) The director of the department of ecology shall consolidate all  
25 of the agency's oil spill prevention, planning, and response programs  
26 and personnel into a division or equivalent unit of organization within  
27 the department. The division shall be managed by a single  
28 administrator who is an assistant director or person of equivalent  
29 status in the department's organization. The administrator shall  
30 report directly to the director.

31 (b) The consolidated oil spill program unit within the department  
32 shall maintain prevention of oil spills as a specific program.

33 (c) The department shall identify and participate in resolving  
34 threats to safety of marine transportation and the impact of marine  
35 transportation on the environment.

36 NEW SECTION. **Sec. 36.** The following acts or parts of acts are  
37 each decodified:

- 1 (1) RCW 43.21I.005 (Findings--Consolidation of oil spill programs--  
2 Administrator of consolidated oil spill program);  
3 (2) RCW 88.46.150 (Tow boat standards--Study);  
4 (3) RCW 88.46.924 (Continuation of rules, pending business, and  
5 obligations);  
6 (4) RCW 88.46.925 (Prior acts valid); and  
7 (5) RCW 88.46.927 (Collective bargaining agreements not altered).

8 NEW SECTION. **Sec. 37.** The following acts or parts of acts are  
9 each repealed:

- 10 (1) RCW 88.46.140 (Unified and consistent planning) and 1991 c 200  
11 s 428;  
12 (2) RCW 90.56.903 (Report on implementation) and 1991 c 200 s 1109;  
13 and  
14 (3) RCW 88.46.922 (Transfer of property and appropriations) and  
15 1991 c 200 s 431."

16 **SSB 6210** - H COMM AMD  
17 By Committee on Agriculture & Ecology

18  
19 On page 1, line 6 of the title, after "90.56.560," strike the  
20 remainder of the title and insert "82.23B.020, 43.21I.010, 43.21I.030,  
21 43.21I.040, 88.40.011, 88.40.020, 88.40.030, 88.40.040, 90.56.310, and  
22 43.21I.005; creating a new section; decodifying RCW 43.21I.005,  
23 88.46.150, 88.46.924, 88.46.925, and 88.46.927; and repealing RCW  
24 88.46.140, 90.56.903, and 88.46.922."

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