
SUBSTITUTE HOUSE BILL 1449

State of Washington

64th Legislature

2015 Regular Session

By House Environment (originally sponsored by Representatives Farrell, Carlyle, Fitzgibbon, Ortiz-Self, Peterson, Walkinshaw, Gregerson, Senn, McBride, Robinson, Tarleton, Pollet, Cody, Ormsby, Riccelli, Kagi, Blake, Fey, Hudgins, Lytton, Bergquist, Sells, Takko, Tharinger, Jinkins, Wylie, S. Hunt, Stanford, Reykdal, Sawyer, Appleton, Van De Wege, Clibborn, Ryu, Goodman, and Kilduff; by request of Governor Inslee)

READ FIRST TIME 02/19/15.

1 AN ACT Relating to oil transportation safety; amending RCW
2 90.56.005, 90.56.010, 90.56.200, 90.56.210, 90.56.500, 90.56.510,
3 88.40.011, 88.40.025, 88.40.030, 88.40.040, 88.16.170, 88.16.190,
4 82.23B.010, 82.23B.020, 82.23B.030, 82.23B.040, 81.24.010, 81.53.010,
5 81.53.240, and 88.46.180; reenacting and amending RCW 88.46.010,
6 88.40.020, and 38.52.040; adding new sections to chapter 90.56 RCW;
7 adding a new section to chapter 81.44 RCW; adding a new section to
8 chapter 81.53 RCW; and providing an effective date.

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

10 **Sec. 1.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and
11 amended to read as follows:

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

14 (1) "Best achievable protection" means the highest level of
15 protection that can be achieved through the use of the best
16 achievable technology and those staffing levels, training procedures,
17 and operational methods that provide the greatest degree of
18 protection achievable. The director's determination of best
19 achievable protection shall be guided by the critical need to protect
20 the state's natural resources and waters, while considering:

21 (a) The additional protection provided by the measures;

1 (b) The technological achievability of the measures; and

2 (c) The cost of the measures.

3 (2)(a) "Best achievable technology" means the technology that
4 provides the greatest degree of protection taking into consideration:

5 (i) Processes that are being developed, or could feasibly be
6 developed, given overall reasonable expenditures on research and
7 development; and

8 (ii) Processes that are currently in use.

9 (b) In determining what is best achievable technology, the
10 director shall consider the effectiveness, engineering feasibility,
11 and commercial availability of the technology.

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

15 (4) "Cargo vessel" means a self-propelled ship in commerce, other
16 than a tank vessel or a passenger vessel, of three hundred or more
17 gross tons, including but not limited to, commercial fish processing
18 vessels and freighters.

19 (5) "Covered vessel" means a tank vessel, cargo vessel, or
20 passenger vessel.

21 (6) "Department" means the department of ecology.

22 (7) "Director" means the director of the department of ecology.

23 (8) "Discharge" means any spilling, leaking, pumping, pouring,
24 emitting, emptying, or dumping.

25 (9)(a) "Facility" means any structure, group of structures,
26 equipment, pipeline, or device, other than a vessel, located on or
27 near the navigable waters of the state that transfers oil in bulk to
28 or from a tank vessel or pipeline, that is used for producing,
29 storing, handling, transferring, processing, or transporting oil in
30 bulk.

31 (b) For the purposes of oil spill contingency planning in RCW
32 90.56.210, advanced notice of oil transfers in section 8 of this act,
33 and financial responsibility in RCW 88.40.025, facility also means a
34 railroad that is not owned by the state that transports oil as bulk
35 cargo.

36 (c) A facility does not include any: (i) (~~Railroad-car,~~) Motor
37 vehicle(~~, or other rolling stock~~) while transporting oil over the
38 highways (~~or rail lines~~) of this state; (ii) retail motor vehicle
39 motor fuel outlet; (iii) facility that is operated as part of an
40 exempt agricultural activity as provided in RCW 82.04.330; (iv)

1 underground storage tank regulated by the department or a local
2 government under chapter 90.76 RCW; or (v) marine fuel outlet that
3 does not dispense more than three thousand gallons of fuel to a ship
4 that is not a covered vessel, in a single transaction.

5 (10) "Marine facility" means any facility used for tank vessel
6 wharfage or anchorage, including any equipment used for the purpose
7 of handling or transferring oil in bulk to or from a tank vessel.

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

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

18 (13) "Oil" or "oils" means oil of any kind that is liquid at
19 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one
20 atmosphere of pressure and any fractionation thereof, including, but
21 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
22 well condensate, petroleum, gasoline, fuel oil, diesel oil,
23 biological oils and blends, oil sludge, oil refuse, and oil mixed
24 with wastes other than dredged spoil. Oil does not include any
25 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August
26 14, 1989, under section (~~(101(14))~~) 102(a) of the federal
27 comprehensive environmental response, compensation, and liability act
28 of 1980, as amended by P.L. 99-499.

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

34 (15)(a) "Owner or operator" means (i) in the case of a vessel,
35 any person owning, operating, or chartering by demise, the vessel;
36 (ii) in the case of an onshore or offshore facility, any person
37 owning or operating the facility; and (iii) in the case of an
38 abandoned vessel or onshore or offshore facility, the person who
39 owned or operated the vessel or facility immediately before its
40 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) "Passenger vessel" means a ship of three hundred or more
5 gross tons with a fuel capacity of at least six thousand gallons
6 carrying passengers for compensation.

7 (17) "Person" means any political subdivision, government agency,
8 municipality, industry, public or private corporation, copartnership,
9 association, firm, individual, or any other entity whatsoever.

10 (18) "Race Rocks light" means the nautical landmark located
11 southwest of the city of Victoria, British Columbia.

12 (19) "Regional vessels of opportunity response group" means a
13 group of nondedicated vessels participating in a vessels of
14 opportunity response system to respond when needed and available to
15 spills in a defined geographic area.

16 (20) "Severe weather conditions" means observed nautical
17 conditions with sustained winds measured at forty knots and wave
18 heights measured between twelve and eighteen feet.

19 (21) "Ship" means any boat, ship, vessel, barge, or other
20 floating craft of any kind.

21 (22) "Spill" means an unauthorized discharge of oil into the
22 waters of the state.

23 (23) "Strait of Juan de Fuca" means waters off the northern coast
24 of the Olympic Peninsula seaward of a line drawn from New Dungeness
25 light in Clallam county to Discovery Island light on Vancouver
26 Island, British Columbia, Canada.

27 (24) "Tank vessel" means a ship that is constructed or adapted to
28 carry, or that carries, oil in bulk as cargo or cargo residue, and
29 that:

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

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

33 (25) "Umbrella plan holder" means a nonprofit corporation
34 established consistent with this chapter for the purposes of
35 providing oil spill response and contingency plan coverage.

36 (26) "Vessel emergency" means a substantial threat of pollution
37 originating from a covered vessel, including loss or serious
38 degradation of propulsion, steering, means of navigation, primary
39 electrical generating capability, and seakeeping capability.

1 (27) "Vessels of opportunity response system" means nondedicated
2 boats and operators, including fishing and other vessels, that are
3 under contract with and equipped by contingency plan holders to
4 assist with oil spill response activities, including on-water oil
5 recovery in the near shore environment and the placement of oil spill
6 containment booms to protect sensitive habitats.

7 (28) "Volunteer coordination system" means an oil spill response
8 system that, before a spill occurs, prepares for the coordination of
9 volunteers to assist with appropriate oil spill response activities,
10 which may include shoreline protection and cleanup, wildlife
11 recovery, field observation, light construction, facility
12 maintenance, donations management, clerical support, and other
13 aspects of a spill response.

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

19 (30) "Worst case spill" means: (a) In the case of a vessel, a
20 spill of the entire cargo and fuel of the vessel complicated by
21 adverse weather conditions; and (b) in the case of an onshore or
22 offshore facility, the largest foreseeable spill in adverse weather
23 conditions.

24 **Sec. 2.** RCW 90.56.005 and 2010 1st sp.s. c 7 s 72 are each
25 amended to read as follows:

26 (1) The legislature declares that waterborne transportation as a
27 source of supply for oil and hazardous substances poses special
28 concern for the state of Washington. Each year billions of gallons of
29 crude oil and refined petroleum products are transported as cargo and
30 fuel by vessels on the navigable waters of the state. The movement of
31 crude oil through rail corridors and over Washington waters creates
32 safety and environmental risks. The sources and transport of crude
33 oil bring risks to our communities along rail lines and to the
34 Columbia river, Grays Harbor, and Puget Sound waters. These shipments
35 are expected to increase in the coming years. Vessels and trains
36 transporting oil into Washington travel on some of the most unique
37 and special marine environments in the United States. These marine
38 environments are a source of natural beauty, recreation, and economic
39 livelihood for many residents of this state. As a result, the state

1 has an obligation to ensure the citizens of the state that the waters
2 of the state will be protected from oil spills.

3 (2) The legislature finds that prevention is the best method to
4 protect the unique and special marine environments in this state. The
5 technology for containing and cleaning up a spill of oil or hazardous
6 substances is at best only partially effective. Preventing spills is
7 more protective of the environment and more cost-effective when all
8 the response and damage costs associated with responding to a spill
9 are considered. Therefore, the legislature finds that the primary
10 objective of the state is to achieve a zero spills strategy to
11 prevent any oil or hazardous substances from entering waters of the
12 state.

13 (3) The legislature also finds that:

14 (a) Recent accidents in Washington, Alaska, southern California,
15 Texas, Pennsylvania, and other parts of the nation have shown that
16 the transportation, transfer, and storage of oil have caused
17 significant damage to the marine environment;

18 (b) Even with the best efforts, it is nearly impossible to remove
19 all oil that is spilled into the water, and average removal rates are
20 only fourteen percent;

21 (c) Washington's navigable waters are treasured environmental and
22 economic resources that the state cannot afford to place at undue
23 risk from an oil spill;

24 (d) The state has a fundamental responsibility, as the trustee of
25 the state's natural resources and the protector of public health and
26 the environment to prevent the spill of oil; and

27 (e) In section 5002 of the federal oil pollution act of 1990, the
28 United States congress found that many people believed that
29 complacency on the part of industry and government was one of the
30 contributing factors to the Exxon Valdez spill and, further, that one
31 method to combat this complacency is to involve local citizens in the
32 monitoring and oversight of oil spill plans. Congress also found that
33 a mechanism should be established that fosters the long-term
34 partnership of industry, government, and local communities in
35 overseeing compliance with environmental concerns in the operation of
36 crude oil terminals. Moreover, congress concluded that, in addition
37 to Alaska, a program of citizen monitoring and oversight should be
38 established in other major crude oil terminals in the United States
39 because recent oil spills indicate that the safe transportation of
40 oil is a national problem.

1 (4) In order to establish a comprehensive prevention and response
2 program to protect Washington's waters and natural resources from
3 spills of oil, it is the purpose of this chapter:

4 (a) To establish state agency expertise in marine safety and to
5 centralize state activities in spill prevention and response
6 activities;

7 (b) To prevent spills of oil and to promote programs that reduce
8 the risk of both catastrophic and small chronic spills;

9 (c) To ensure that responsible parties are liable, and have the
10 resources and ability, to respond to spills and provide compensation
11 for all costs and damages;

12 (d) To provide for state spill response and wildlife rescue
13 planning and implementation;

14 (e) To support and complement the federal oil pollution act of
15 1990 and other federal law, especially those provisions relating to
16 the national contingency plan for cleanup of oil spills and
17 discharges, including provisions relating to the responsibilities of
18 state agencies designated as natural resource trustees. The
19 legislature intends this chapter to be interpreted and implemented in
20 a manner consistent with federal law;

21 (f) To provide broad powers of regulation to the department of
22 ecology relating to spill prevention and response;

23 (g) To provide for independent review on an ongoing basis the
24 adequacy of oil spill prevention, preparedness, and response
25 activities in this state; ((and))

26 (h) To provide an adequate funding source for state response and
27 prevention programs; and

28 (i) To maintain the best achievable protection that can be
29 obtained through the use of the best achievable technology and those
30 staffing levels, training procedures, and operational methods that
31 provide the greatest degree of protection achievable.

32 **Sec. 3.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to
33 read as follows:

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

36 (1) "Best achievable protection" means the highest level of
37 protection that can be achieved through the use of the best
38 achievable technology and those staffing levels, training procedures,
39 and operational methods that provide the greatest degree of

1 protection achievable. The director's determination of best
2 achievable protection shall be guided by the critical need to protect
3 the state's natural resources and waters, while considering (a) the
4 additional protection provided by the measures; (b) the technological
5 achievability of the measures; and (c) the cost of the measures.

6 (2) "Best achievable technology" means the technology that
7 provides the greatest degree of protection taking into consideration
8 (a) processes that are being developed, or could feasibly be
9 developed, given overall reasonable expenditures on research and
10 development, and (b) processes that are currently in use. In
11 determining what is best achievable technology, the director shall
12 consider the effectiveness, engineering feasibility, and commercial
13 availability of the technology.

14 (3) "Board" means the pollution control hearings board.

15 (4) "Cargo vessel" means a self-propelled ship in commerce, other
16 than a tank vessel or a passenger vessel, three hundred or more gross
17 tons, including but not limited to, commercial fish processing
18 vessels and freighters.

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

22 (6) "Committee" means the preassessment screening committee
23 established under RCW 90.48.368.

24 (7) "Covered vessel" means a tank vessel, cargo vessel, or
25 passenger vessel.

26 (8) "Department" means the department of ecology.

27 (9) "Director" means the director of the department of ecology.

28 (10) "Discharge" means any spilling, leaking, pumping, pouring,
29 emitting, emptying, or dumping.

30 (11)(a) "Facility" means any structure, group of structures,
31 equipment, pipeline, or device, other than a vessel, located on or
32 near the navigable waters of the state that transfers oil in bulk to
33 or from a tank vessel or pipeline, that is used for producing,
34 storing, handling, transferring, processing, or transporting oil in
35 bulk.

36 (b) For the purposes of oil spill contingency planning in RCW
37 90.56.210, advanced notice of oil transfers in section 8 of this act,
38 and financial responsibility in RCW 88.40.025, facility also means a
39 railroad that is not owned by the state that transports oil as bulk
40 cargo.

1 (c) A facility does not include any: (i) (~~(Railroad-car,)~~) Motor
2 vehicle(~~(, or other rolling stock)~~) while transporting oil over the
3 highways (~~(or rail lines)~~) of this state; (ii) underground storage
4 tank regulated by the department or a local government under chapter
5 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that
6 is operated as part of an exempt agricultural activity as provided in
7 RCW 82.04.330; or (v) marine fuel outlet that does not dispense more
8 than three thousand gallons of fuel to a ship that is not a covered
9 vessel, in a single transaction.

10 (12) "Fund" means the state coastal protection fund as provided
11 in RCW 90.48.390 and 90.48.400.

12 (13) "Having control over oil" shall include but not be limited
13 to any person using, storing, or transporting oil immediately prior
14 to entry of such oil into the waters of the state, and shall
15 specifically include carriers and bailees of such oil.

16 (14) "Marine facility" means any facility used for tank vessel
17 wharfage or anchorage, including any equipment used for the purpose
18 of handling or transferring oil in bulk to or from a tank vessel.

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

24 (16) "Necessary expenses" means the expenses incurred by the
25 department and assisting state agencies for (a) investigating the
26 source of the discharge; (b) investigating the extent of the
27 environmental damage caused by the discharge; (c) conducting actions
28 necessary to clean up the discharge; (d) conducting predamage and
29 damage assessment studies; and (e) enforcing the provisions of this
30 chapter and collecting for damages caused by a discharge.

31 (17) "Oil" or "oils" means oil of any kind that is liquid at
32 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one
33 atmosphere of pressure and any fractionation thereof, including, but
34 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
35 well condensate, petroleum, gasoline, fuel oil, diesel oil,
36 biological oils and blends, oil sludge, oil refuse, and oil mixed
37 with wastes other than dredged spoil. Oil does not include any
38 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August
39 14, 1989, under section (~~(101-14)~~) 102(a) of the federal

1 comprehensive environmental response, compensation, and liability act
2 of 1980, as amended by P.L. 99-499.

3 (18) "Offshore facility" means any facility located in, on, or
4 under any of the navigable waters of the state, but does not include
5 a facility any part of which is located in, on, or under any land of
6 the state, other than submerged land.

7 (19) "Onshore facility" means any facility any part of which is
8 located in, on, or under any land of the state, other than submerged
9 land, that because of its location, could reasonably be expected to
10 cause substantial harm to the environment by discharging oil into or
11 on the navigable waters of the state or the adjoining shorelines.

12 (20)(a) "Owner or operator" means (i) in the case of a vessel,
13 any person owning, operating, or chartering by demise, the vessel;
14 (ii) in the case of an onshore or offshore facility, any person
15 owning or operating the facility; and (iii) in the case of an
16 abandoned vessel or onshore or offshore facility, the person who
17 owned or operated the vessel or facility immediately before its
18 abandonment.

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

22 (21) "Passenger vessel" means a ship of three hundred or more
23 gross tons with a fuel capacity of at least six thousand gallons
24 carrying passengers for compensation.

25 (22) "Person" means any political subdivision, government agency,
26 municipality, industry, public or private corporation, copartnership,
27 association, firm, individual, or any other entity whatsoever.

28 (23) "Ship" means any boat, ship, vessel, barge, or other
29 floating craft of any kind.

30 (24) "Spill" means an unauthorized discharge of oil or hazardous
31 substances into the waters of the state.

32 (25) "Tank vessel" means a ship that is constructed or adapted to
33 carry, or that carries, oil in bulk as cargo or cargo residue, and
34 that:

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

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

38 (26) "Waters of the state" includes lakes, rivers, ponds,
39 streams, inland waters, underground water, salt waters, estuaries,
40 tidal flats, beaches and lands adjoining the seacoast of the state,

1 sewers, and all other surface waters and watercourses within the
2 jurisdiction of the state of Washington.

3 (27) "Worst case spill" means: (a) In the case of a vessel, a
4 spill of the entire cargo and fuel of the vessel complicated by
5 adverse weather conditions; and (b) in the case of an onshore or
6 offshore facility, the largest foreseeable spill in adverse weather
7 conditions.

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

13 **Sec. 4.** RCW 90.56.200 and 2000 c 69 s 19 are each amended to
14 read as follows:

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

26 (2) The spill prevention plan for an onshore or offshore facility
27 shall:

28 (a) Establish compliance with the federal oil pollution act of
29 1990, if applicable, and financial responsibility requirements under
30 federal and state law;

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

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

36 (d) Certify the implementation of alcohol and drug use awareness
37 programs;

1 (e) Describe the facility's maintenance and inspection program
2 and contain a current maintenance and inspection record of the
3 storage and transfer facilities and related equipment;

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

5 (g) Describe spill prevention technology that has been installed,
6 including overflow alarms, automatic overflow cut-off switches,
7 secondary containment facilities, and storm water retention,
8 treatment, and discharge systems;

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

12 (i) Describe the procedures followed by the facility to contain
13 and recover any oil that spills during the transfer of oil to or from
14 the facility;

15 (j) Provide for the incorporation into the facility during the
16 period covered by the plan of those measures that will provide the
17 best achievable protection for the public health and the environment;
18 and

19 (k) Include any other information reasonably necessary to carry
20 out the purposes of this chapter required by rules adopted by the
21 department.

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

25 (4) The department shall only approve a prevention plan if it
26 provides the best achievable protection from damages caused by the
27 discharge of oil into the waters of the state and if it determines
28 that the plan meets the requirements of this section and rules
29 adopted by the department.

30 ((+4)) (5) Upon approval of a prevention plan, the department
31 shall provide to the person submitting the plan a statement
32 indicating that the plan has been approved, the facilities covered by
33 the plan, and other information the department determines should be
34 included.

35 ((+5)) (6) The approval of a prevention plan shall be valid for
36 five years. An owner or operator of a facility shall notify the
37 department in writing immediately of any significant change of which
38 it is aware affecting its prevention plan, including changes in any
39 factor set forth in this section or in rules adopted by the

1 department. The department may require the owner or operator to
2 update a prevention plan as a result of these changes.

3 ~~((+6))~~ (7) The department by rule shall require prevention plans
4 to be reviewed, updated, if necessary, and resubmitted to the
5 department at least once every five years.

6 ~~((+7))~~ (8) Approval of a prevention plan by the department does
7 not constitute an express assurance regarding the adequacy of the
8 plan nor constitute a defense to liability imposed under this chapter
9 or other state law.

10 ~~((+8))~~ (9) This section does not authorize the department to
11 modify the terms of a collective bargaining agreement.

12 **Sec. 5.** RCW 90.56.210 and 2005 c 78 s 1 are each amended to read
13 as follows:

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

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

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

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

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

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

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

4 (g) Describe important features of the surrounding environment,
5 including fish and wildlife habitat, shellfish beds, environmentally
6 and archaeologically sensitive areas, and public facilities. The
7 departments of ecology, fish and wildlife, and natural resources, and
8 the ((office)) department of archaeology and historic preservation,
9 upon request, shall provide information that they have available to
10 assist in preparing this description. The description of
11 archaeologically sensitive areas shall not be required to be included
12 in a contingency plan until it is reviewed and updated pursuant to
13 subsection (9) of this section;

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

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

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

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

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

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

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

38 (2)(a) The following shall submit contingency plans to the
39 department within six months after the department adopts rules

1 establishing standards for contingency plans under subsection (1) of
2 this section:

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

5 (ii) Offshore facilities.

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

11 (3) The department by rule shall determine the contingency plan
12 requirements for railroads transporting oil in bulk. Federal oil
13 spill response plans created pursuant to 33 U.S.C. Sec. 1321 may be
14 submitted in lieu of contingency plans until state rules are adopted.

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

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

23 ((+4)) (5) A contingency plan prepared for an agency of the
24 federal government or another state that satisfies the requirements
25 of this section and rules adopted by the department may be accepted
26 by the department as a contingency plan under this section. The
27 department shall ensure that to the greatest extent possible,
28 requirements for contingency plans under this section are consistent
29 with the requirements for contingency plans under federal law.

30 ((+5)) (6) In reviewing the contingency plans required by this
31 section, the department shall consider at least the following
32 factors:

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

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

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

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

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

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

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

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

14 (~~(6)~~) (7) The department shall approve a contingency plan only
15 if it determines that the plan meets the requirements of this section
16 and that, if implemented, the plan is capable, in terms of personnel,
17 materials, and equipment, of removing oil promptly and properly and
18 minimizing any damage to the environment.

19 (~~(7)~~) (8) The approval of the contingency plan shall be valid
20 for five years. Upon approval of a contingency plan, the department
21 shall provide to the person submitting the plan a statement
22 indicating that the plan has been approved, the facilities or vessels
23 covered by the plan, and other information the department determines
24 should be included.

25 (~~(8)~~) (9) An owner or operator of a facility shall notify the
26 department in writing immediately of any significant change of which
27 it is aware affecting its contingency plan, including changes in any
28 factor set forth in this section or in rules adopted by the
29 department. The department may require the owner or operator to
30 update a contingency plan as a result of these changes.

31 (~~(9)~~) (10) The department by rule shall require contingency
32 plans to be reviewed, updated, if necessary, and resubmitted to the
33 department at least once every five years.

34 (~~(10)~~) (11) Approval of a contingency plan by the department
35 does not constitute an express assurance regarding the adequacy of
36 the plan nor constitute a defense to liability imposed under this
37 chapter or other state law.

38 **Sec. 6.** RCW 90.56.500 and 2009 c 11 s 9 are each amended to read
39 as follows:

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

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

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

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

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

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

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

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

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

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

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

33 **Sec. 7.** RCW 90.56.510 and 2000 c 69 s 22 are each amended to
34 read as follows:

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

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

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

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

38 (3) Before expending moneys from the account for a response under
39 subsection (2)(a) of this section, the director shall make reasonable
40 efforts to obtain funding for response costs under this section from

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

3 NEW SECTION. Sec. 8. A new section is added to chapter 90.56
4 RCW to read as follows:

5 (1)(a) The department must be provided prior notice before a
6 crude oil transfer, that is regulated under this chapter and that may
7 impact waters of the state, occurs between:

8 (i) A rail facility and another facility; or

9 (ii) A rail facility and a covered vessel.

10 (b) The notice required in (a) of this subsection is in addition
11 to the requirements found in RCW 88.46.165 and must rely on the
12 "advanced notice of transfer" system used by the department. The
13 notice must include the time, location, volume, and type of oil
14 transfer. The department shall adopt rules under this section.

15 (2) Twice per year, pipelines must report to the department the
16 type and volume of oil transported through the state. Reporting must
17 occur each year by July 31st for the period January 1st through June
18 30th and by January 31st for the period July 1st through December
19 31st.

20 (3) The department shall publish data collected under subsections
21 (1) and (2) of this section on a quarterly basis on the department
22 web site. Data reported with respect to oil transportation must be
23 aggregated by county and include county of transfer, volume
24 transferred, type of oil transferred, place of origin, mode of
25 transportation, route taken to the point of transfer, number of rail
26 cars transferring oil, and volume and number of oil spills en route
27 to or during transfer that are reported to the department.

28 NEW SECTION. Sec. 9. A new section is added to chapter 90.56
29 RCW to read as follows:

30 The department shall periodically evaluate and update planning
31 standards for oil spill response equipment required under contingency
32 plans required by this chapter in order to ensure access in the state
33 to equipment that represents the best achievable protection to
34 respond to a worst case spill and provide for continuous operation of
35 oil spill response activities to the maximum extent practicable and
36 without jeopardizing crew safety, as determined by the incident
37 commander or the unified command.

1 **Sec. 10.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to
2 read as follows:

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

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

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

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

12 (4) "Covered vessel" means a tank vessel, cargo vessel, or
13 passenger vessel.

14 (5) "Department" means the department of ecology.

15 (6) "Director" means the director of the department of ecology.

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

22 (b) For the purposes of oil spill contingency planning in RCW
23 90.56.210, advanced notice of oil transfers in section 8 of this act,
24 and financial responsibility in RCW 88.40.025, facility also means a
25 railroad that is not owned by the state that transports oil as bulk
26 cargo.

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

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

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

1 (10) "Hazardous substances" means any substance listed as of
2 March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under
3 section (~~(101-14)~~) 102(a) of the federal comprehensive environmental
4 response, compensation, and liability act of 1980, as amended by P.L.
5 99-499. The following are not hazardous substances for purposes of
6 this chapter:

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

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

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

14 (12) "Oil" or "oils" means oil of any kind that is liquid at
15 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one
16 atmosphere of pressure and any fractionation thereof, including, but
17 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
18 well condensate, petroleum, gasoline, fuel oil, diesel oil,
19 biological oils and blends, oil sludge, oil refuse, and oil mixed
20 with wastes other than dredged spoil. Oil does not include any
21 substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R.
22 Part 302 adopted under section (~~(101-14)~~) 102(a) of the federal
23 comprehensive environmental response, compensation, and liability act
24 of 1980, as amended by P.L. 99-499.

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

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

34 (15)(a) "Owner or operator" means (i) in the case of a vessel,
35 any person owning, operating, or chartering by demise, the vessel;
36 (ii) in the case of an onshore or offshore facility, any person
37 owning or operating the facility; and (iii) in the case of an
38 abandoned vessel or onshore or offshore facility, the person who
39 owned or operated the vessel or facility immediately before its
40 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) "Passenger vessel" means a ship of three hundred or more
5 gross tons with a fuel capacity of at least six thousand gallons
6 carrying passengers for compensation.

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

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

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

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

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

17 (20) "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 (21) "Certificate of financial responsibility" means an official
23 written acknowledgment issued by the director or the director's
24 designee that an owner or operator of a covered vessel or facility,
25 or the owner of the oil, has demonstrated to the satisfaction of the
26 director or the director's designee that the relevant entity has the
27 financial ability to pay for costs and damages caused by an oil
28 spill.

29 **Sec. 11.** RCW 88.40.020 and 2003 c 91 s 3 and 2003 c 56 s 3 are
30 each reenacted and amended to read as follows:

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

36 (2)(a) Except as provided in (b) or (c) of this subsection, a
37 tank vessel that carries oil as cargo in bulk shall demonstrate
38 financial responsibility to pay at least five hundred million

1 dollars. The amount of financial responsibility required under this
2 subsection is one billion dollars after January 1, 2004.

3 (b) The director by rule may establish a lesser standard of
4 financial responsibility for tank vessels of three hundred gross tons
5 or less. The standard shall set the level of financial responsibility
6 based on the quantity of cargo the tank vessel is capable of
7 carrying. The director shall not set the standard for tank vessels of
8 three hundred gross tons or less below that required under federal
9 law.

10 (c) The owner or operator of a tank vessel who is a member of an
11 international protection and indemnity mutual organization and is
12 covered for oil pollution risks up to the amounts required under this
13 section is not required to demonstrate financial responsibility under
14 this chapter. The director may require the owner or operator of a
15 tank vessel to prove membership in such an organization.

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

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

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

32 (a) For a fishing vessel carrying predominantly nonpersistent
33 product, one hundred thirty-three dollars and forty cents per
34 incident, for each barrel of total oil storage capacity, persistent
35 and nonpersistent product, on the vessel or one million three hundred
36 thirty-four thousand dollars, whichever is greater; or (b) for a
37 fishing vessel carrying predominantly persistent product, four
38 hundred dollars and twenty cents per incident, for each barrel of
39 total oil storage capacity, persistent product and nonpersistent

1 product, on the vessel or six million six hundred seventy thousand
2 dollars, whichever is greater.

3 (5) ~~The ((documentation of financial responsibility shall
4 demonstrate the ability of the document holder to meet state and
5 federal financial liability requirements for the actual costs for
6 removal of oil spills, for natural resource damages, and for
7 necessary expenses))~~ certificate of financial responsibility is
8 conclusive evidence that the person or entity holding the certificate
9 is the party responsible for the specified vessel, facility, or oil
10 for purposes of determining liability pursuant to this chapter.

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

13 **Sec. 12.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to
14 read as follows:

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

32 **Sec. 13.** RCW 88.40.030 and 2000 c 69 s 32 are each amended to
33 read as follows:

34 (1) Financial responsibility required by this chapter may be
35 established by any one of, or a combination of, the following methods
36 acceptable to the department of ecology: ((+1)) (a) Evidence of
37 insurance; ((+2)) (b) surety bonds; ((+3)) (c) qualification as a
38 self-insurer; ((or (4)) (d) guaranty; (e) letter of credit; (f)

1 certificate of deposits; (g) protection and indemnity club
2 membership; or (h) other evidence of financial responsibility. Any
3 bond filed shall be issued by a bonding company authorized to do
4 business in the United States. Documentation of such financial
5 responsibility shall be kept on any covered vessel and filed with the
6 department at least twenty-four hours before entry of the vessel into
7 the navigable waters of the state. A covered vessel is not required
8 to file documentation of financial responsibility twenty-four hours
9 before entry of the vessel into the navigable waters of the state, if
10 the vessel has filed documentation of financial responsibility with
11 the federal government, and the level of financial responsibility
12 required by the federal government is the same as or exceeds state
13 requirements. The owner or operator of the vessel may file with the
14 department a certificate evidencing compliance with the requirements
15 of another state's or federal financial responsibility requirements
16 if the state or federal government requires a level of financial
17 responsibility the same as or greater than that required under this
18 chapter.

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

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

23 ~~(1) ((It is unlawful for any vessel required to have financial~~
24 ~~responsibility under this chapter to enter or operate on Washington~~
25 ~~waters without meeting the requirements of this chapter or rules~~
26 ~~adopted under this chapter, except)) A vessel or facility need not
27 demonstrate financial responsibility under this chapter prior to
28 using any port or place in the state of Washington or the navigable
29 waters of the state when necessary to avoid injury to the vessel's or
30 facility's crew or passengers. Any vessel owner or operator that does
31 not meet the financial responsibility requirements of this chapter
32 and any rules prescribed thereunder or the federal oil pollution act
33 of 1990 shall be reported by the department to the United States
34 coast guard.~~

35 ~~(2) ((The department shall enforce section 1016 of the federal~~
36 ~~oil pollution act of 1990 as authorized by section 1019 of the~~
37 ~~federal act.)) Upon notification of an oil spill or discharge or
38 other action or potential liability, the director shall reevaluate
39 the validity of the certificate of financial responsibility. If the~~

1 director determines that, because of a spill outside of the state or
2 some other action or potential liability, the holder of a certificate
3 may not have the financial resources to pay damages for the oil spill
4 or discharge or other action or potential liability and have
5 resources remaining available to meet the requirements of this
6 chapter, the director may suspend or revoke the certificate.

7 (3) An owner or operator of more than one covered vessel, more
8 than one facility, or one or more vessels and facilities, is only
9 required to obtain a single certificate of financial responsibility
10 that applies to all of the owner or operator's vessels and
11 facilities.

12 (4) If a person holds a certificate for more than one covered
13 vessel or facility and a spill or spills occurs from one or more of
14 those vessels or facilities for which the owner or operator may be
15 liable for damages in an amount exceeding five percent of the
16 financial resources reflected by the certificate, as determined by
17 the director, the certificate is immediately considered inapplicable
18 to any vessel or facility not associated with the spill. In that
19 event, the owner or operator shall demonstrate to the satisfaction of
20 the director the amount of financial ability required pursuant to
21 this chapter, as well as the financial ability to pay all damages
22 that arise or have arisen from the spill or spills that have
23 occurred.

24 **Sec. 15.** RCW 88.16.170 and 1991 c 200 s 601 are each amended to
25 read as follows:

26 Because of the danger of spills, the legislature finds that the
27 transportation of crude oil and refined petroleum products by tankers
28 on the Columbia river, Grays Harbor, and on Puget Sound and adjacent
29 waters creates a great potential hazard to important natural
30 resources of the state and to jobs and incomes dependent on these
31 resources.

32 The legislature recognizes that the Columbia river has many
33 natural obstacles to navigation and shifting navigation channels that
34 create the risk of an oil spill. The legislature also recognizes
35 Grays Harbor and Puget Sound and adjacent waters are ((a)) relatively
36 confined salt water environments with irregular shorelines and
37 therefore there is a greater than usual likelihood of long-term
38 damage from any large oil spill.

1 The legislature further recognizes that certain areas of the
2 Columbia river, Grays Harbor, and Puget Sound and adjacent waters
3 have limited space for maneuvering a large oil tanker and that these
4 waters contain many natural navigational obstacles as well as a high
5 density of commercial and pleasure boat traffic.

6 For these reasons, it is important that large oil tankers be
7 piloted by highly skilled persons who are familiar with local waters
8 and that such ~~((tankers))~~ vessels have sufficient capability for
9 rapid maneuvering responses.

10 It is therefore the intent and purpose of RCW 88.16.180 and
11 88.16.190 to decrease the likelihood of oil spills on the Columbia
12 river, Grays Harbor, and on Puget Sound and its shorelines by
13 ~~((requiring all oil tankers above a certain size to employ licensed
14 pilots and to be escorted by a tug or tugs while navigating on
15 certain areas of Puget Sound and adjacent waters))~~ establishing
16 safety requirements that comprehensively address spill risks, which
17 may include the establishment of tug escorts and other measures to
18 mitigate safety risks in certain state waters.

19 **Sec. 16.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to
20 read as follows:

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

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

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

31 ~~(b) Twin screws; and~~

32 ~~(c) Double bottoms, underneath all oil and liquid cargo
33 compartments; and~~

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

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

38 ~~PROVIDED, That, if such forty to one hundred and twenty five
39 thousand deadweight ton tanker is in ballast or is under escort of a~~

1 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~
2 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
3 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
4 ~~horsepower equivalencies may be required under certain conditions as~~
5 ~~established by rule and regulation of the Washington utilities and~~
6 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~
7 ~~FURTHER, That))~~ Except as provided in subsection (2) of this section,
8 an oil tanker of greater than forty thousand deadweight tons may
9 operate in the waters described in (a) of this subsection, to the
10 extent that these waters are within the territorial boundaries of
11 Washington, only if the oil tanker is under the escort of a tug or
12 tugs in compliance with the requirements of subsection (4) of this
13 section.

14 (a) Those waters east of a line extending from Discovery Island
15 light south to New Dungeness light and all points in the Puget Sound
16 area.

17 (b) The state board of pilotage commissioners, in consultation
18 with the department of ecology and relying on the results of vessel
19 traffic risk assessments, may write rules to implement this
20 subsection (1)(b). These rules may include tug escort requirements
21 and other safety measures for oil tankers of greater than forty
22 thousand deadweight tons, all articulated tug barges, and other towed
23 waterborne vessels or barges that may apply in the following areas
24 consistent with subsections (2)(a) and (4) of this section:

25 (i) Within a two-mile radius of the Grays Harbor pilotage
26 district as defined in RCW 88.16.050;

27 (ii) Any inland portion of the Columbia river or within three
28 miles of Cape Disappointment at the mouth of the Columbia river; or

29 (iii) The waters identified in (a) of this subsection.

30 (c) The state board of pilotage commissioners, in consultation
31 with the department of ecology and relying on the results of vessel
32 traffic risk assessments, shall adopt rules by June 30, 2017, to
33 implement this subsection (1)(c). These rules may include tug escort
34 requirements and other safety measures for oil tankers of greater
35 than forty thousand deadweight tons, all articulated tug barges, and
36 other towed waterborne vessels or barges and apply in the following
37 areas consistent with subsections (2)(a) and (4) of this section: All
38 narrow channels of the San Juan Islands archipelago, including
39 Rosario Strait, Haro Strait, Boundary Pass, and connected waterways.

1 (2)(a) If an oil tanker, articulated tug barge, or other towed
2 waterborne vessel or barge is in ballast, the tug requirements of
3 subsection (1) of this section do not apply.

4 (b) If an oil tanker is a single-hulled oil tanker of greater
5 than five thousand gross tons, the requirements of subsection (1)(a)
6 of this section do not apply and the oil tanker must instead comply
7 with 33 C.F.R. Part 168, as of the effective date of this section.

8 (3)(a) Prior to proceeding with rule making as authorized under
9 subsection (1)(b) and (c) of this section, the commission shall
10 consult with the United States coast guard, the Oregon board of
11 maritime pilots, the Puget Sound, Grays Harbor, and Columbia river
12 harbor safety committees, area tribes, public ports in Oregon and
13 Washington, local governments, and other appropriate entities.

14 (b) The department may not adopt any rules under this subsection
15 or under subsection (1)(b) and (c) of this section until a vessel
16 traffic risk assessment has been completed for the waters subject to
17 the rule making. In order to adopt a rule under this section or
18 subsection (1)(b) and (c) of this section, the board of pilotage
19 commissioners must determine that the results of a vessel traffic
20 risk assessment provides evidence that the rules are necessary in
21 order to achieve best achievable protection as defined in RCW
22 88.46.010.

23 (4) Oil tankers of greater than forty thousand deadweight tons,
24 all articulated tug barges, and other towed waterborne vessels or
25 barges must ensure that any escort tugs they use have an aggregate
26 shaft horsepower equivalent to at least five percent of the
27 deadweight tons of the escorted oil tanker or articulated tug barge.
28 The state board of pilotage commissioners may adopt rules to ensure
29 that escort tugs have sufficient mechanical capabilities to provide
30 for safe escort. Rules adopted on this subject must be designed to
31 achieve best achievable protection as defined under RCW 88.46.010.

32 (5) A tanker assigned a deadweight of equal to or less than forty
33 thousand deadweight tons at the time of construction or
34 reconstruction as reported in Lloyd's Register of Ships is not
35 subject to the provisions of RCW 88.16.170 through 88.16.190.

36 (6) The provisions of this section do not apply to pilotage for
37 enrolled tankers.

38 (7) For the purposes of this section:

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

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

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

12 **Sec. 17.** RCW 82.23B.010 and 1992 c 73 s 6 are each amended to
13 read as follows:

14 (~~Unless the context clearly requires otherwise,~~) The
15 definitions in this section apply throughout this chapter unless the
16 context clearly requires otherwise.

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

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

22 (3) "Department" means the department of revenue.

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

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

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

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

37 (8) "Taxpayer" means the person owning crude oil or petroleum
38 products immediately after receipt of the same into the storage tanks
39 of a marine or bulk oil terminal in this state (~~from a waterborne~~

1 ~~vessel or barge~~) and who is liable for the taxes imposed by this
2 chapter.

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

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

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

13 **Sec. 18.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to
14 read as follows:

15 (1) An oil spill response tax is imposed on the privilege of
16 receiving: (a) Crude oil or petroleum products at a marine terminal
17 within this state from a waterborne vessel or barge operating on the
18 navigable waters of this state; (b) crude oil or petroleum products
19 at a bulk oil terminal within this state from a tank car; or (c)
20 crude oil or petroleum products at a bulk oil terminal within this
21 state from a pipeline. 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 or bulk oil
24 terminal from a tank car, pipeline, or waterborne vessel or barge at
25 the rate of one cent per barrel of crude oil or petroleum product
26 received.

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

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

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

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

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

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

39 (8) Upon prior approval of the department, the taxpayer may pay
40 the taxes imposed by this chapter directly to the department. The

1 department (~~shall~~) must give its approval for direct payment under
2 this section whenever it appears, in the department's judgment, that
3 direct payment will enhance the administration of the taxes imposed
4 under this chapter. The department (~~shall~~) must provide by rule for
5 the issuance of a direct payment certificate to any taxpayer
6 qualifying for direct payment of the taxes. Good faith acceptance of
7 a direct payment certificate by a terminal operator (~~shall~~)
8 relieves the marine or bulk oil terminal operator from any liability
9 for the collection or payment of the taxes imposed under this
10 chapter.

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

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

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

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

32 **Sec. 19.** RCW 82.23B.030 and 1992 c 73 s 9 are each amended to
33 read as follows:

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

1 **Sec. 20.** RCW 82.23B.040 and 1992 c 73 s 10 are each amended to
2 read as follows:

3 Credit (~~shall~~) must be allowed against the taxes imposed under
4 this chapter for any crude oil or petroleum products received at a
5 marine or bulk oil terminal and subsequently exported from or sold
6 for export from the state.

7 **Sec. 21.** RCW 38.52.040 and 2011 1st sp.s. c 21 s 27, 2011 c 336
8 s 789, and 2011 c 79 s 9 are each reenacted and amended to read as
9 follows:

10 (1) There is hereby created the emergency management council
11 (hereinafter called the council), to consist of not more than
12 seventeen members who shall be appointed by the adjutant general. The
13 membership of the council shall include, but not be limited to,
14 representatives of city and county governments, sheriffs and police
15 chiefs, the Washington state patrol, the military department, the
16 department of ecology, state and local fire chiefs, seismic safety
17 experts, state and local emergency management directors, search and
18 rescue volunteers, medical professions who have expertise in
19 emergency medical care, building officials, and private industry. The
20 representatives of private industry shall include persons
21 knowledgeable in emergency and hazardous materials management. The
22 councilmembers shall elect a chair from within the council
23 membership. The members of the council shall serve without
24 compensation, but may be reimbursed for their travel expenses
25 incurred in the performance of their duties in accordance with RCW
26 43.03.050 and 43.03.060 as now existing or hereafter amended.

27 (2) The emergency management council shall advise the governor
28 and the director on all matters pertaining to state and local
29 emergency management. The council may appoint such ad hoc committees,
30 subcommittees, and working groups as are required to develop specific
31 recommendations for the improvement of emergency management
32 practices, standards, policies, or procedures. The council shall
33 ensure that the governor receives an annual assessment of statewide
34 emergency preparedness including, but not limited to, specific
35 progress on hazard mitigation and reduction efforts, implementation
36 of seismic safety improvements, reduction of flood hazards, and
37 coordination of hazardous materials planning and response activities.
38 (~~The council or a subcommittee thereof shall periodically convene in~~
39 ~~special session and serve during those sessions as the state~~

1 ~~emergency response commission required by P.L. 99-499, the emergency~~
2 ~~planning and community right to know act. When sitting in session as~~
3 ~~the state emergency response commission, the council shall confine~~
4 ~~its deliberations to those items specified in federal statutes and~~
5 ~~state administrative rules governing the coordination of hazardous~~
6 ~~materials policy.))~~ The council shall review administrative rules
7 governing state and local emergency management practices and
8 recommend necessary revisions to the director.

9 (3) The council or a council subcommittee shall serve and
10 periodically convene in special session as the state emergency
11 response commission required by the emergency planning and community
12 right-to-know act (42 U.S.C. Sec. 11001 et seq.). The state emergency
13 response commission shall conduct those activities specified in
14 federal statutes and regulations and state administrative rules
15 governing the coordination of hazardous materials policy including,
16 but not limited to, review of local emergency planning committee
17 emergency response plans for compliance with the planning
18 requirements in the emergency planning and community right-to-know
19 act (42 U.S.C. Sec. 11001 et seq.). Committees shall annually review
20 their plans to address changed conditions, and submit their plans to
21 the state emergency response commission for review when updated, but
22 not less than at least once every five years. The department may
23 employ staff to assist local emergency planning committees in the
24 development and annual review of these emergency response plans. By
25 March 1, 2018, the department shall report to the governor and
26 legislature on progress towards compliance with planning
27 requirements. The report must also provide budget and policy
28 recommendations for continued support of local emergency planning.

29 (4)(a) The intrastate mutual aid committee is created and is a
30 subcommittee of the emergency management council. The intrastate
31 mutual aid committee consists of not more than five members who must
32 be appointed by the council chair from council membership. The chair
33 of the intrastate mutual aid committee is the military department
34 representative appointed as a member of the council. Meetings of the
35 intrastate mutual aid committee must be held at least annually.

36 (b) In support of the intrastate mutual aid system established in
37 chapter 38.56 RCW, the intrastate mutual aid committee shall develop
38 and update guidelines and procedures to facilitate implementation of
39 the intrastate mutual aid system by member jurisdictions, including
40 but not limited to the following: Projected or anticipated costs;

1 checklists and forms for requesting and providing assistance;
2 recordkeeping; reimbursement procedures; and other implementation
3 issues. These guidelines and procedures are not subject to the rule-
4 making requirements of chapter 34.05 RCW.

5 **Sec. 22.** RCW 81.24.010 and 2007 c 234 s 21 are each amended to
6 read as follows:

7 (1) Every company subject to regulation by the commission, except
8 those listed in subsection (3) of this section, shall, on or before
9 the date specified by the commission for filing annual reports under
10 RCW 81.04.080, file with the commission a statement on oath showing
11 its gross operating revenue from intrastate operations for the
12 preceding calendar year, or portion thereof, and pay to the
13 commission a fee equal to one-tenth of one percent of the first fifty
14 thousand dollars of gross operating revenue, plus two-tenths of one
15 percent of any gross operating revenue in excess of fifty thousand
16 dollars, except railroad companies which shall each pay to the
17 commission a fee equal to (~~one and one-half~~) two-tenths of one
18 percent of its combined intrastate gross operating revenue and the
19 Washington state portion of its gross interstate operating revenue.
20 The commission may, by rule, set minimum fees that do not exceed the
21 cost of collecting the fees. The commission may by rule waive any or
22 all of the minimum fee established pursuant to this section. Any
23 railroad association that qualifies as a nonprofit charitable
24 organization under the federal internal revenue code section
25 501(c)(3) is exempt from the fee required under this subsection.

26 (2) The percentage rates of gross operating revenue to be paid in
27 any one year may be decreased by the commission for any class of
28 companies subject to the payment of such fees, by general order
29 entered before March 1st of such year, and for such purpose railroad
30 companies are classified as class two. Every other company subject to
31 regulation by the commission, for which regulatory fees are not
32 otherwise fixed by law, shall pay fees as herein provided and shall
33 constitute additional classes according to kinds of businesses
34 engaged in.

35 (3) This section does not apply to private nonprofit
36 transportation providers, auto transportation companies, charter
37 party carriers and excursion service carriers, solid waste collection
38 companies, motor freight carriers, household goods carriers,

1 commercial ferries, and low-level radioactive waste storage
2 facilities.

3 NEW SECTION. **Sec. 23.** A new section is added to chapter 81.44
4 RCW to read as follows:

5 Commission employees certified by the federal railroad
6 administration to perform hazardous materials inspections may enter
7 the property of any business that receives, ships, or offers for
8 shipment hazardous materials by rail. Entry shall be at a reasonable
9 time and in a reasonable manner. The purpose of entry is limited to
10 performing inspections, investigations, or surveillance of equipment,
11 records, and operations relating to the packaging, loading,
12 unloading, or transportation of hazardous materials by rail, pursuant
13 only to the state participation program outlined in 49 C.F.R. Part
14 212. The term "business" is all inclusive and is not limited to
15 common carriers or public service companies.

16 **Sec. 24.** RCW 81.53.010 and 2013 c 23 s 302 are each amended to
17 read as follows:

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

20 ~~((The term))~~ (1) "Commission~~(())~~" ~~((when used in this chapter,))~~
21 means the utilities and transportation commission of Washington.

22 ~~((The term))~~ (2) "Highway~~(())~~" ~~((when used in this chapter,))~~
23 includes all state and county roads, streets, alleys, avenues,
24 boulevards, parkways, and other public places actually open and in
25 use, or to be opened and used, for travel by the public.

26 ~~((The term))~~ (3) "Railroad~~(())~~" ~~((when used in this chapter,))~~
27 means every railroad, including interurban and suburban electric
28 railroads, by whatsoever power operated, for the public use in the
29 conveyance of persons or property for hire, with all bridges,
30 ferries, tunnels, equipment, switches, spurs, sidings, tracks,
31 stations, and terminal facilities of every kind, used, operated,
32 controlled, managed, or owned by or in connection therewith. The
33 ~~((said))~~ term ~~((shall))~~ also includes every logging and other
34 industrial railway owned or operated primarily for the purpose of
35 carrying the property of its owners or operators or of a limited
36 class of persons, with all tracks, spurs, and sidings used in
37 connection therewith. The ~~((said))~~ term ~~((shall))~~ does not include

1 street railways operating within the limits of any incorporated city
2 or town.

3 ~~((The term))~~ (4) "Railroad company((~~7~~))" ~~((when used in this~~
4 ~~chapter~~7~~))~~ includes every corporation, company, association, joint
5 stock association, partnership, or person, its, their, or his or her
6 lessees, trustees, or receivers appointed by any court whatsoever,
7 owning, operating, controlling, or managing any railroad(~~(~~7~~ as that~~
8 ~~term is defined in this section))~~).

9 ~~((The term))~~ (5) "Over-crossing((~~7~~))" ~~((when used in this~~
10 ~~chapter~~7~~))~~ means any point or place where a highway crosses a
11 railroad by passing above the same. "Over-crossing" also means any
12 point or place where one railroad crosses another railroad not at
13 grade.

14 ~~((The term))~~ (6) "Under-crossing((~~7~~))" ~~((when used in this~~
15 ~~chapter~~7~~))~~ means any point or place where a highway crosses a
16 railroad by passing under the same. "Under-crossing" also means any
17 point or place where one railroad crosses another railroad not at
18 grade.

19 ~~((The term "over crossing" or "under crossing," shall also mean~~
20 ~~any point or place where one railroad crosses another railroad not at~~
21 ~~grade.~~

22 ~~The term))~~ (7) "Grade crossing((~~7~~))" ~~((when used in this~~
23 ~~chapter~~7~~))~~ means any point or place where a railroad crosses a
24 highway or a highway crosses a railroad or one railroad crosses
25 another, at a common grade.

26 (8) "Private crossing" means any point or place where a railroad
27 crosses a private road at grade or a private road crosses a railroad
28 at grade, where the private road is not a highway.

29 **Sec. 25.** RCW 81.53.240 and 1984 c 7 s 375 are each amended to
30 read as follows:

31 (1) Except to the extent necessary to permit participation by
32 first-class cities in the grade crossing protective fund, when an
33 election to participate is made as provided in RCW 81.53.261 through
34 81.53.291, or to the extent a first-class city requests to
35 participate in the commission's crossing safety inspection program
36 within the city, this chapter ((81.53 RCW)) is not operative within
37 the limits of first-class cities, and does not apply to street
38 railway lines operating on or across any street, alley, or other
39 public place within the limits of any city, except that a streetcar

1 line outside of cities of the first class shall not cross a railroad
2 at grade without express authority from the commission. The
3 commission may not change the location of a state highway without the
4 approval of the secretary of transportation, or the location of any
5 crossing thereon adopted or approved by the department of
6 transportation, or grant a railroad authority to cross a state
7 highway at grade without the consent of the secretary of
8 transportation.

9 (2) Within thirty days of the effective date of this section,
10 first-class cities must provide to the commission a list of all
11 existing public crossings within the limits of a first-class city,
12 including over and under-crossings, including the United States
13 department of transportation number for the crossing. Within thirty
14 days of modifying, closing, or opening a grade crossing within the
15 limits of a first-class city, the city must notify the commission in
16 writing of the action taken, identifying the crossing by United
17 States department of transportation number.

18 NEW SECTION. Sec. 26. A new section is added to chapter 81.53
19 RCW to read as follows:

20 (1) To address the potential public safety hazards presented by
21 private crossings in the state and by the transportation of hazardous
22 materials in the state, including crude oil, the commission is
23 authorized to and must adopt rules governing safety standards for
24 private crossings along the railroad tracks over which crude oil is
25 transported in the state. The commission is also authorized to
26 conduct inspections of the private crossings subject to this section,
27 to order the railroads to make improvements at the private crossings,
28 and enforce the orders.

29 (2) The commission must adopt rules governing private crossings
30 along railroad tracks over which crude oil is transported in the
31 state, establishing:

32 (a) Minimum safety standards for the private crossings subject to
33 this section, including, but not limited to, requirements for
34 signage;

35 (b) Criteria for prioritizing the inspection and improvements of
36 the private crossings subject to this section; and

37 (c) Requirements governing the improvements to private crossings
38 the railroad company must pay for and complete.

1 (3) Nothing in this section modifies existing agreements between
2 the railroad company and the landowner governing liability for
3 injuries or damages occurring at the private crossing.

4 **Sec. 27.** RCW 88.46.180 and 2011 c 122 s 2 are each amended to
5 read as follows:

6 (1) The department shall evaluate and update planning standards
7 for oil spill response equipment required under contingency plans
8 required by this chapter, including aerial surveillance, in order to
9 ensure access in the state to equipment that represents the best
10 achievable protection to respond to a worst case spill and provide
11 for continuous operation of oil spill response activities to the
12 maximum extent practicable and without jeopardizing crew safety, as
13 determined by the incident commander or the unified command.

14 (2) The department shall by rule update the planning standards at
15 five-year intervals to ensure the maintenance of best available
16 protection over time. Rule updates to covered nontank vessels shall
17 minimize potential impacts to discretionary cargo moved through the
18 state.

19 ~~((3) The department shall evaluate and update planning standards
20 for tank vessels by December 31, 2012.))~~

21 NEW SECTION. **Sec. 28.** Sections 17 through 20 of this act take
22 effect January 1, 2016.

23 NEW SECTION. **Sec. 29.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

--- END ---