
HOUSE BILL 1027

State of Washington**52nd Legislature****1991 Regular Session**

By Representatives Rust, Horn, Phillips, Heavey, Anderson, Basich, Vance, Wineberry, Wilson, R. Johnson, Wang, Sprenkle, Spanel, Miller, Ogden, Jones, Prentice, Leonard, Inslee, Fraser, R. King, Nelson, Pruitt, G. Fisher, Jacobsen, R. Fisher, Valle, Roland, Hine, Winsley, Rasmussen, Appelwick and Brekke; by request of Governor Gardner.

Read first time January 16, 1991. Referred to Committee on Environmental Affairs.

1 AN ACT Relating to oil and hazardous substances; amending RCW
2 90.48.315, 90.48.370, 90.48.365, 90.48.380, 90.48.378, 90.48.371,
3 90.48.373, 90.48.375, 90.48.376, 90.48.377, 90.48.320, 90.48.350,
4 90.48.325, 90.48.336, 90.48.338, 90.48.383, 90.48.340, 90.48.343,
5 90.48.366, 90.48.376, 90.48.368, 90.48.369, 90.48.385, 90.48.510,
6 88.16.170, 88.16.180, 88.16.190, 88.16.200, 88.40.005, 88.40.020,
7 88.40.030, 88.40.040, 88.40.050, 90.48.400, 88.44.010, 88.44.020,
8 88.44.030, 88.44.040, 88.44.080, 88.44.110, 88.44.160, 88.16.010,
9 88.16.050, 88.16.070, 88.16.110, 88.16.155, 90.48.037, 90.48.095,
10 90.48.100, 90.48.142, 90.48.156, 90.48.240, and 90.48.907; amending
11 1990 c 116 s 1 (uncodified); reenacting and amending RCW 90.48.390 and
12 88.16.090; adding a new chapter to Title 90 RCW; adding new sections to
13 chapter 43.131 RCW; creating new sections; recodifying sections 101,
14 103, 108, 109, 110, 201, 203, 204, 207, 401, 501, 705, 706, 707, 708,
15 709, and 1211 of this act, RCW 90.48.315, 90.48.370, 90.48.365,
16 90.48.380, 90.48.378, 90.48.387, 90.48.388, 90.48.371, 90.48.372,

1 90.48.373, 90.48.374, 90.48.375, 90.48.360, 90.48.376, 90.48.377,
2 90.48.320, 90.48.350, 90.48.325, 90.48.330, 90.48.335, 90.48.336,
3 90.48.338, 90.48.383, 90.48.340, 90.48.355, 90.48.343, 90.48.366,
4 90.48.367, 90.48.368, 90.48.369, 90.48.385, 90.48.510, 88.16.170,
5 88.16.180, 88.16.190, 88.16.195, 88.16.200, 88.40.005, 88.40.020,
6 88.40.030, 88.40.040, 88.40.050, 90.56.700, 90.56.705, 90.48.390,
7 90.48.400, and 90.48.907; repealing RCW 90.48.345, 90.48.381,
8 90.48.410, 88.40.010, 88.44.050, 88.44.060, 88.44.070, 88.44.090,
9 88.44.150, 88.44.170, 88.44.180, 88.44.200, 88.44.210, and 90.48.910;
10 prescribing penalties; and declaring an emergency.

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

12 **PART I**

13 **GENERAL PROVISIONS**

14 **Sec. 101.** 1990 c 116 s 1 (uncodified) is amended to read as
15 follows:

16 (1) The legislature (~~(finds)~~) declares that the increasing reliance
17 on water borne transportation as a source of supply for oil and
18 hazardous substances poses special concern for the state of Washington.
19 Each year billions of gallons of crude oil and refined petroleum
20 products and millions of tons of hazardous substances are transported
21 by vessel on the navigable waters of the state. These shipments are
22 expected to increase in the coming years. Vessels transporting oil
23 into Washington travel on some of the most unique and special marine
24 environments in the United States. These marine environments are a
25 source of natural beauty, recreation, and economic livelihood for many
26 residents of this state. As a result, the state has an obligation to
27 assure the citizens of the state that the waters of the state (~~(used~~

1 ~~for water borne transportation)) will be protected from oil and~~
2 ~~hazardous substance spills. ((The legislature declares that this act~~
3 ~~is the first step in developing a comprehensive approach to protecting~~
4 ~~this important and unique resource by developing a set of procedures to~~
5 ~~respond to spills of oil and hazardous substances into the state's~~
6 ~~waters.))~~

7 (2) The legislature ((also)) finds that prevention is the best
8 method to protect the unique and special marine environments in this
9 state. The technology for containing and cleaning up a spill of oil or
10 hazardous substances is in the early stages of development. Preventing
11 spills is more protective of the environment and more cost-effective
12 when all the costs associated with responding to a spill are
13 considered. ((The legislature declares that it will continue to
14 develop this first step in a comprehensive approach to protecting our
15 unique and special marine environment by adopting measures in future
16 sessions of the legislature to reduce the likelihood that a spill of
17 oil or hazardous substances will occur.))

18 (3) The legislature also finds that:

19 (a) Recent accidents in Washington, Alaska, southern California,
20 Texas, and other parts of the nation have shown that the
21 transportation, transfer, and storage of oil and hazardous substances
22 have caused significant damage to the marine environment;

23 (b) Prevention programs are inadequate and have not adequately
24 reduced the risk of discharge of oil and other hazardous substances
25 into state waters;

26 (c) Response and cleanup capabilities and technology are able to
27 remove only about ten to fifteen percent of oil that is spilled into
28 water;

29 (d) Washington's coast, shorelines, estuaries, bays, and beaches
30 are treasured environmental and economic resources that the state

1 cannot afford to place at undue risk from an oil or hazardous substance
2 spill;

3 (e) Because of the inadequacy of cleanup and response measures and
4 technology, the emphasis must be on the reduction of use of petroleum
5 products and hazardous substances and on prevention, if the risk and
6 consequences of spills are to be minimized;

7 (f) The state has a fundamental responsibility, as the trustee of
8 the state's natural resources and the protector of public health,
9 welfare, and safety, to prevent the spill of oil and hazardous
10 substances; and

11 (g) The state cannot confidently rely on industry self-regulation
12 or the United States coast guard and the federal environmental
13 protection agency to fully protect the state's waters.

14 (4) In order to establish a comprehensive prevention and response
15 program to protect Washington's waters and natural resources from
16 spills of oil and other hazardous substances, it is the purpose of this
17 chapter:

18 (a) To establish state agency expertise in marine safety and to
19 centralize all state activities in spill prevention and response
20 activities;

21 (b) To prevent spills of oil and other hazardous substances and to
22 promote programs such as vessel inspections and regulation of pilotage
23 which reduce the risk of both catastrophic and small chronic spills;

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

27 (d) To provide for state spill response and wildlife rescue
28 planning and implementation;

29 (e) To provide broad powers of regulation to the department of
30 ecology relating to spill prevention and response;

1 (f) To provide for an independent advisory board to review the
2 adequacy of industry's, the federal government's, and the state
3 government's spill prevention and response activities; and

4 (g) To provide an adequate funding source for state response and
5 prevention programs.

6 **Sec. 102.** RCW 90.48.315 and 1990 c 116 s 2 are each amended to
7 read as follows:

8 For purposes of (~~RCW 90.48.315 through 90.48.410, 78.52.020,~~
9 ~~78.52.125, 82.36.330, 90.48.903, 90.48.906, and 90.48.907~~)) this
10 chapter, the following definitions shall apply unless the context
11 indicates otherwise:

12 (1) "Administrator" means the administrator of the marine safety
13 and spill prevention office created in section 103 of this 1991 act.

14 (2) "Best achievable protection" means the highest level of
15 protection that can be achieved through the use of the best achievable
16 technology and those manpower levels, training procedures, and
17 operational methods that provide the greatest degree of protection
18 achievable.

19 (3) "Best achievable technology" means the technology that provides
20 the greatest degree of protection taking into consideration (a)
21 processes that are being developed, or could feasibly be developed
22 anywhere in the world, given overall reasonable expenditures on
23 research and development, and (b) processes that are currently in use
24 anywhere in the world. In determining what is best achievable
25 technology, the department shall consider the effectiveness and
26 engineering feasibility of the technology.

27 (4) "Board" shall mean the pollution control hearings board.

1 ~~((2))~~ (5) "Cargo vessel" means a ship in commerce, other than a
2 tank vessel, of three hundred gross tons or more, including but not
3 limited to, commercial fish processing vessels and freighters.

4 ~~((3))~~ (6) "Committee" (~~shall~~) means the preassessment screening
5 committee established under RCW 90.48.368.

6 ~~((4))~~ (7) "Covered vessel" means a tank vessel, cargo vessel, or
7 passenger vessel.

8 ~~((5))~~ (8) "Department" (~~shall~~) means the department of ecology.

9 ~~((6))~~ (9) "Director" (~~shall~~) means the director of the
10 department of ecology.

11 ~~((7))~~ (10) "Discharge" (~~shall~~) means any spilling, leaking,
12 pumping, pouring, emitting, emptying, or dumping.

13 ~~((8))~~ (11) (a) "Facility" means any structure, group of
14 structures, equipment, or device, other than a vessel or a motor
15 vehicle, located on or near the navigable waters of the state (~~that~~
16 ~~receives oil in bulk from a tank vessel~~), that is used for producing,
17 storing, handling, transferring, processing, or transporting oil or
18 hazardous substances in bulk, and is capable of storing ten thousand or
19 more gallons of oil or ten thousand pounds or more of hazardous
20 substances.

21 (b) A facility does not include any (~~railroad car, motor vehicle,~~
22 ~~or other rolling stock used to transport oil over the highways or rail~~
23 ~~lines of this state~~) underground storage tank regulated by the
24 department or a local government under chapter 90.76 RCW.

25 ~~((9))~~ (12) "Fund" (~~shall~~) means the state coastal protection
26 fund as provided in RCW (~~90.48.390 and 90.48.400~~) 90.56.735 and
27 90.56.740.

28 ~~((10))~~ (13) "Having control over oil" shall include but not be
29 limited to any person using, storing, or transporting oil immediately

1 prior to entry of such oil into the waters of the state, and shall
2 specifically include carriers and bailees of such oil.

3 ~~((11))~~ ~~"Maximum probable spill" means the maximum probable spill~~
4 ~~for a vessel operating in state waters considering the history of~~
5 ~~spills of vessels of the same class operating on the west coast of the~~
6 ~~United States, Alaska, and British Columbia.~~

7 ~~(12))~~ (14) "Hazardous substances" means any substance on the list
8 of extremely hazardous substances adopted by rule of the department of
9 community development to implement the federal emergency planning and
10 community right to know act of 1986 (P.L. 99-499) which substance is
11 reportable under section 312 of that act.

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

16 ~~((13))~~ (16) "Necessary expenses" means the expenses incurred by
17 the department and assisting state agencies for (a) investigating the
18 source of the discharge; (b) investigating the extent of the
19 environmental damage caused by the discharge; (c) conducting actions
20 necessary to clean up the discharge; (d) conducting predamage and
21 damage assessment studies; and (e) enforcing the provisions of this
22 chapter and collecting for damages caused by a discharge.

23 ~~((14))~~ (17) "Oil" or "oils" ~~((shall))~~ means oil, including
24 gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil
25 refuse, liquid natural gas, propane, butane, oils distilled from coal,
26 and other liquid hydrocarbons regardless of specific gravity, or any
27 other petroleum related product.

28 ~~((15))~~ (18) "Offshore facility" means any facility located in,
29 on, or under any of the navigable waters of the state.

1 (19) "Onshore facility" means any facility located in, on, or under
2 any land of the state, other than submerged land, that because of its
3 location, could reasonably be expected to cause substantial harm to the
4 environment by discharging oil or hazardous substances into or on the
5 navigable waters of the state or the adjoining shorelines.

6 (20) "Passenger vessel" means a ship of three hundred or more gross
7 tons carrying passengers for compensation.

8 ~~((16))~~ (21) "Person" (~~shall~~) means any political subdivision,
9 government agency, municipality, industry, public or private
10 corporation, copartnership, association, firm, individual, or any other
11 entity whatsoever and any owner, operator, master, officer, or employee
12 of a ship.

13 ~~((17))~~ (22) "Price deflator" means the United States department
14 of commerce, bureau of economic analysis, "Implicit Price Deflator for
15 Gross National Product" for "Government Purchases of Goods and
16 Services," for "State and Local Government" or another similar index
17 should this published series be discontinued.

18 (23) "Ship" (~~shall~~) means any boat, ship, vessel, barge, or other
19 floating craft of any kind.

20 ~~((18))~~ (24) "Spill" means ((a)) an unauthorized discharge of oil
21 or hazardous substances into the waters of the state.

22 ~~((19))~~ (25) "Tank vessel" means a ship that is constructed or
23 adapted to carry, or that carries, oil or hazardous substances in bulk
24 as cargo or cargo residue, and that:

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

26 (b) Transfers oil or hazardous substances in a port or place
27 subject to the jurisdiction of this state.

28 ~~((20))~~ (26) "Technical feasibility" or "technically feasible"
29 shall mean that given available technology, a restoration or

1 enhancement project can be successfully completed at a cost that is not
2 disproportionate to the value of the resource prior to the injury.

3 ~~((21))~~ (27) "Waters of the state" ~~((shall))~~ includes lakes,
4 rivers, ponds, streams, inland waters, underground water, salt waters,
5 estuaries, tidal flats, beaches and lands adjoining the seacoast of the
6 state, sewers, and all other surface waters and watercourses within the
7 jurisdiction of the state of Washington.

8 ~~((22))~~ (28) "Worst case spill" means: (a) In the case of a
9 vessel, a spill of the entire cargo and fuel of ((a)) the tank vessel
10 complicated by adverse weather conditions; and (b) in the case of an
11 onshore or offshore facility, the largest foreseeable spill in adverse
12 weather conditions.

13 NEW SECTION. **Sec. 103.** MARINE SAFETY AND SPILL PREVENTION

14 OFFICE. (1) The marine safety and spill prevention and response
15 office is established within the department of ecology. The
16 administrator of the office shall be appointed by the director.

17 (2) The administrator shall be responsible for all activities
18 required of the department by this chapter.

19 (3) The administrator has the primary authority to direct
20 prevention, abatement, response, containment, and cleanup efforts with
21 regard to all aspects of any oil or hazardous substance spill in the
22 navigable waters of the state, in accordance any applicable contingency
23 plan prepared pursuant to RCW 90.56.105. The administrator is the head
24 of the state incident command system in response to a spill of oil or
25 hazardous substances and shall coordinate the response efforts of all
26 state agencies and local emergency response personnel. The
27 administrator shall cooperate with the federal on-scene coordinator, as
28 specified in the national contingency plan.

1 **Sec. 104.** RCW 90.48.370 and 1971 ex.s. c 180 s 2 are each amended
2 to read as follows:

3 The powers, duties, and functions conferred by ((RCW 78.52.020,
4 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410,
5 90.48.903, 90.48.906 and 90.48.907)) this chapter shall be exercised by
6 the department of ecology and shall be deemed an essential government
7 function in the exercise of the police power of the state. Such
8 powers, duties, and functions of the department ((and those conferred
9 by RCW 90.48.315 through 90.48.365)) shall extend to all waters
10 ((within the boundaries)) under the jurisdiction of the state.

11 **Sec. 105.** RCW 90.48.365 and 1987 c 109 s 153 are each amended to
12 read as follows:

13 ((RCW 90.48.315 through 90.48.365 shall)) This chapter grants
14 authority to the department which is supplemental to and in no way
15 reduces or otherwise modifies the powers ((heretofore)) granted to the
16 department((, except as it may directly conflict therewith)) by other
17 statutes.

18 **Sec. 106.** RCW 90.48.380 and 1971 ex.s. c 180 s 3 are each amended
19 to read as follows:

20 The department may adopt rules ((and regulations)) including but
21 not limited to the following matters:

22 (1) Procedures and methods of reporting discharges and other
23 occurrences prohibited by ((RCW 90.48.315 through 90.48.365 and RCW
24 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through
25 90.48.410, 90.48.903, 90.48.906 and 90.48.907)) this chapter;

26 (2) Procedures, methods, means, and equipment to be used by persons
27 subject to regulation by ((RCW 90.48.315 through 90.48.365 and RCW
28 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through

1 90.48.410, ~~90.48.903, 90.48.906 and 90.48.907~~) this chapter and such
2 rules (~~and regulations~~) may prescribe the times, places, and methods
3 of transfer of oil and hazardous substances;

4 (3) Coordination of procedures, methods, means, and equipment to be
5 used in the removal of oil (~~pollutants~~) and hazardous substance
6 spills;

7 (4) Development and implementation of criteria and plans to meet
8 oil (~~pollution occurrences~~) and hazardous substance spills of various
9 kinds and degrees;

10 (5) The establishment (~~from time to time of control districts~~
11 ~~comprising sections of the state coast and the establishment of rules~~
12 ~~and regulations to meet the particular requirements of each such~~
13 ~~district~~;

14 ~~(6)~~) of standards for oil spill response capability to be
15 maintained on tank vessels;

16 (6) When and under what circumstances, if any, chemical agents,
17 such as coagulants, dispersants, and bioremediation, may be used in
18 response to an oil spill;

19 (7) The disposal of oil and hazardous substances recovered from an
20 oil or hazardous substance spill; and

21 (8) Such other rules and regulations as the exigencies of any
22 condition may require or such as may be reasonably necessary to carry
23 out the intent of ((RCW 90.48.315 through 90.48.365 and RCW 78.52.020,
24 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410,
25 90.48.903, 90.48.906 and 90.48.907)) this chapter.

26 **Sec. 107.** RCW 90.48.378 and 1990 c 116 s 10 are each amended to
27 read as follows:

28 (1) (~~Not later than July 1, 1991,~~) The department shall prepare
29 and ((thereafter)) annually update a state-wide master oil and

1 hazardous substance spill prevention and contingency plan. In
2 preparing the plan, the department shall consult with an advisory
3 committee representing diverse interests concerned with oil and
4 hazardous substance spills, including the United States coast guard,
5 the federal environmental protection agency, state agencies, local
6 governments, port districts, private facilities, environmental
7 organizations, oil companies, shipping companies, containment and
8 cleanup contractors, tow companies, and hazardous substance
9 manufacturers.

10 (2) The state master plan prepared under this section shall at a
11 minimum:

12 (a) Take into consideration the elements of oil spill prevention
13 and contingency plans approved or submitted for approval pursuant to
14 RCW (~~(90.48.371)~~) 90.56.105 and section 201 of this 1991 act and oil
15 and hazardous substance spill contingency plans prepared pursuant to
16 other state or federal law or prepared by federal agencies and regional
17 entities;

18 (b) State the respective responsibilities as established by
19 relevant statutes and rules of each of the following in the prevention
20 of and the assessment, containment, and cleanup of a (~~(catastrophic~~
21 ~~oil)~~) worst case spill (~~(or of a significant spill)~~) of ((a)) oil or
22 hazardous substances into the environment of the state: (i) State
23 agencies; (ii) local governments; (iii) appropriate federal agencies;
24 (iv) facility operators; (v) property owners whose land or other
25 property may be affected by the oil or hazardous substance spill; and
26 (vi) other parties identified by the department as having an interest
27 in or the resources to assist in the containment and cleanup of an oil
28 or hazardous substance spill;

29 (c) State the respective responsibilities of the parties identified
30 in (b) of this subsection in an emergency response;

1 (d) Identify actions necessary to reduce the likelihood of
2 catastrophic oil spills and significant spills of hazardous substances;
3 ((and))

4 (e) Identify and obtain mapping of environmentally sensitive areas
5 at particular risk to oil and hazardous substance spills;

6 (f) Establish an incident command system for responding to oil and
7 hazardous substance spills; and

8 (g) Establish an emergency response vessel system for the Strait of
9 Juan de Fuca, with the cooperation of the province of British Columbia
10 if possible and for the Pacific coast.

11 (3) In preparing and updating the state master plan, the department
12 shall:

13 (a) Consult with federal, provincial, municipal, and community
14 officials, other state agencies, the state of Oregon, and with
15 representatives of affected regional organizations;

16 (b) Submit the draft plan to the public for review and comment;

17 (c) Submit to the appropriate standing committees of the
18 legislature for review, not later than November 1 of each year, the
19 plan and any annual revision of the plan; and

20 (d) Require or schedule unannounced oil spill drills as required by
21 RCW ((90.48.374)) 90.56.130 to test the sufficiency of oil spill
22 contingency plans approved under RCW ((90.48.371)) 90.56.105.

23 NEW SECTION. Sec. 108. HAZARDOUS SUBSTANCES INCIDENT RESPONSE
24 TRAINING AND EDUCATION PROGRAM. Not later than twelve months after
25 the effective date of this section, the division of emergency
26 management shall establish and manage the Washington oil and hazardous
27 substances incident response training and education program to provide
28 approved classes in hazardous substance response, taught by trained

1 instructors, and to certify students who have completed these classes.

2 To carry out this program, the division of emergency management shall:

3 (1) Adopt rules necessary to implement the program;

4 (2) Establish a training and education program by developing the
5 curriculum to be used in the program in colleges, academies, and other
6 educational institutions;

7 (3) Certify students who have successfully completed a class
8 approved as meeting the requirements of the program;

9 (4) Provide training to local oil and hazardous materials emergency
10 response personnel; and

11 (5) Establish and collect admission fees and other fees that may be
12 necessary to the program.

13 NEW SECTION. **Sec. 109.** VESSEL INSPECTIONS. (1) All covered
14 vessels entering the navigable waters of the state shall be subject to
15 inspection to assure that they comply with all applicable federal and
16 state standards.

17 (2) The department shall review the vessel inspection programs
18 conducted by the United States coast guard and other federal agencies
19 to determine if the programs as actually operated by those agencies
20 provide the best achievable protection to the waters of the state. If
21 the department determines that the vessel inspection programs conducted
22 by these agencies are not adequate to protect the state's waters, it
23 shall adopt rules for a state vessel inspection program. The
24 department shall adopt rules providing for a random review of
25 individual vessel inspections conducted by federal agencies. The
26 department may accept a vessel inspection report issued by another
27 state if that state's vessel inspection program is determined by the
28 department to be at least as protective of the public health and safety
29 and the environment as the program adopted by the department.

1 (3) The state vessel inspection program shall ensure that all
2 covered vessels entering state waters are inspected at least annually.
3 To the maximum extent feasible, the state program shall consist of the
4 monitoring of existing vessel inspection programs conducted by the
5 federal government. The department shall consult with the coast guard
6 regarding the vessel inspection program.

7 (4) Any violation of coast guard or other federal regulations
8 uncovered during a state vessel inspection shall be immediately
9 reported to the appropriate agency.

10 NEW SECTION. **Sec. 110.** SMALL SPILL PREVENTION EDUCATION
11 PROGRAM. (1) The Washington sea grant program, in consultation with
12 the department, shall develop and conduct a spill prevention education
13 program that targets small spills from commercial fishing vessels,
14 ferries, cruise ships, ports, and marinas. Washington sea grant shall
15 coordinate the spill prevention education program with recreational
16 boater education performed by the state parks and recreation
17 commission.

18 (2) The spill prevention education program shall illustrate ways to
19 reduce oil contamination of bilge water, accidental spills of hydraulic
20 fluid and other hazardous substances during routine maintenance, and
21 reduce spillage during refueling. The program shall illustrate proper
22 disposal of hazardous materials and promote strategies to meet
23 shoreside hazardous material handling, and disposal needs of the
24 targeted groups. The program shall include a series of training
25 workshops and the development of educational materials.

26

PART II

27

FACILITY AND VESSEL PLANS

1 NEW SECTION. **Sec. 201.** PREVENTION PLANS.

(1) Each onshore and

2 offshore facility and covered vessel shall prepare and submit to the
3 department an oil and hazardous substances spill prevention plan in
4 conformance with the requirements of this chapter. The plans shall be
5 submitted to the department in the time and manner directed by the
6 department, but not later than eighteen months after the effective date
7 of this section. The spill prevention plan may be consolidated with a
8 spill contingency plan submitted pursuant to RCW 90.56.105. The
9 department, by rule, shall establish standards for spill prevention
10 plans.

11 (2) The spill prevention plan for an onshore or offshore facility
12 shall:

13 (a) Establish compliance with the federal oil pollution act of
14 1990, if applicable, and financial responsibility requirements under
15 federal and state law;

16 (b) Certify that all employees have received certification pursuant
17 to section 203 of this act;

18 (c) Certify that the facility has an operations manual required by
19 section 204 of this act;

20 (d) Certify the implementation of alcohol and drug use awareness
21 programs;

22 (e) Describe the facility's maintenance and inspection program and
23 contain a current maintenance and inspection record of the storage and
24 transfer facilities and related equipment;

25 (f) Describe the manner in which the facility determines whether
26 personnel have alcohol or drug-related problems;

27 (g) Describe spill prevention technology that has been installed,
28 including overflow alarms, automatic overflow cut-off switches,
29 secondary containment facilities, and storm water retention, treatment,
30 and discharge systems;

1 (h) Describe any discharges to the land or the water of more than
2 one hundred gallons in the prior ten years and the measures taken to
3 prevent a reoccurrence;

4 (i) Describe any spill prevention technologies that are available
5 but have not been installed and the reasons for the decision;

6 (j) Describe the procedures followed by the facility to contain and
7 recover any oil or hazardous substances that spill during the transfer
8 of oil or hazardous substances to or from the facility;

9 (k) Provide for the incorporation into the facility during the
10 period covered by the plan of those measures that will provide the best
11 achievable protection for the public safety, health, and welfare and
12 the environment; and

13 (l) Include any other information required by rules adopted by the
14 department.

15 (3) The spill prevention plan for a covered vessel shall:

16 (a) Establish compliance with the federal oil pollution act of 1990
17 and state and federal financial responsibility requirements, if
18 applicable;

19 (b) State all discharges of more than one hundred gallons from the
20 vessel within the prior ten years and what measures have been taken to
21 prevent a reoccurrence;

22 (c) Describe all accidents, collisions, groundings, and near miss
23 incidents in which the vessel has been involved in the prior ten years,
24 analyze the causes, and state the measures that have been taken to
25 prevent a reoccurrence;

26 (d) Describe the vessel operations with respect to staffing
27 standards;

28 (e) Describe the vessel inspection program carried out by the owner
29 or operator of the vessel;

1 (f) Describe the training given to vessel crews with respect to
2 spill prevention and drug and alcohol abuse;

3 (g) Describe the manner in which the facility determines whether
4 personnel have alcohol or drug-related problems;

5 (h) Describe all spill prevention technology that has been
6 incorporated into the vessel;

7 (i) Describe the procedures used by the vessel owner or operator to
8 ensure English language proficiency for every bridge officer while on
9 duty in waters of the state;

10 (j) Describe relevant prevention measures incorporated in any
11 applicable regional marine spill safety plan that have not been adopted
12 and the reasons for that decision; and

13 (k) Include any other information required by rules adopted by the
14 department.

15 (4) The department by rule may permit covered vessels that enter
16 state waters no more than once every two years to establish compliance
17 with the standards of this section without being required to file a
18 comprehensive plan.

19 (5) The department shall only approve a prevention plan if it
20 provides the best achievable protection from damages caused by the
21 discharge of oil or hazardous substances into the waters of the state
22 and if it determines that the plan meets the requirements of this
23 section and rules adopted by the department.

24 (6) Upon approval of a prevention plan, the department shall
25 provide to the person submitting the plan a statement indicating that
26 the plan has been approved, the facilities or vessels covered by the
27 plan, and other information the department determines should be
28 included.

29 (7) An owner or operator of a covered vessel or a facility shall
30 notify the department in writing immediately of any significant change

1 of which it is aware affecting its prevention plan, including changes
2 in any factor set forth in this section or in rules adopted by the
3 department. The department may require the owner or operator to update
4 a prevention plan as a result of these changes.

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

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

12 **Sec. 202.** RCW 90.48.371 and 1990 c 116 s 3 are each amended to
13 read as follows:

14 (1) Each onshore and offshore facility and covered vessel shall
15 have a contingency plan for the containment and cleanup of oil and
16 hazardous substance spills from the facility or covered vessel into the
17 waters of the state and for the protection of fisheries and wildlife,
18 natural resources, and public and private property from such spills.
19 The department shall by rule adopt and periodically revise standards
20 for the preparation of contingency plans. (~~The rules for facilities~~
21 ~~and, except as otherwise provided in this subsection, for covered~~
22 ~~vessels shall be adopted not later than July 1, 1991. The department~~
23 ~~shall exclude from the rules to be adopted by July 1, 1991, standards~~
24 ~~for tank vessels of less than twenty thousand deadweight tons, cargo~~
25 ~~vessels, and passenger vessels operating on the portion of the Columbia~~
26 ~~river for which the department determines that Washington and Oregon~~
27 ~~should cooperate in the adoption of standards for contingency plans.~~
28 ~~The department, after consultation with the appropriate state agencies~~
29 ~~in Oregon, shall adopt the rules for standards for contingency plans~~

1 ~~for this portion of the Columbia river at the earliest possible time,~~
2 ~~but not later than July 1, 1992.))~~ The department shall require
3 contingency plans, at a minimum, to meet the following standards:

4 (a) Include full details of the method of response to spills of
5 various sizes from any vessel, ship, or facility which is covered by
6 the plan;

7 (b) Be designed to be capable in terms of personnel, materials, and
8 equipment, of promptly and properly, to the maximum extent practicable,
9 as defined by the department:

10 (i) Removing oil and hazardous substances and minimizing any damage
11 to the environment resulting from a maximum probable spill; and

12 (ii) Removing oil and hazardous substances and minimizing any
13 damage to the environment resulting from a worst case spill;

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

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

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

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

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

1 (h) Provide a detailed description of equipment and procedures to
2 be used by the crew of a vessel to minimize vessel damage, stop or
3 reduce any spilling from the vessel, and, only when appropriate and the
4 vessel/safety is assured, contain and clean up the spilled oil or
5 hazardous substance;

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

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

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

14 (l) Until a spill prevention plan has been submitted pursuant to
15 section 201 of this 1991 act, state the measures that have been taken
16 to reduce the likelihood that a spill will occur, including but not
17 limited to, design and operation of a vessel or facility, training of
18 personnel, number of personnel, and backup systems designed to prevent
19 a spill;

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

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

27 (2)(a) ~~((Contingency plans for facilities capable of storing one~~
28 ~~million gallons or more of oil and for tank vessels of twenty thousand~~
29 ~~deadweight tons or more shall be submitted to the department)) The
30 following shall submit contingency plans to the department within six~~

1 months after the department adopts rules establishing standards for
2 contingency plans under subsection (1) of this section:

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

5 (ii) Onshore facilities capable of storing or handling hazardous
6 substances in bulk in quantities determined by the department to pose
7 a significant risk of harm to the public health, welfare, and safety or
8 the environment;

9 (iii) Offshore facilities; and

10 (iv) Tank vessels of twenty thousand deadweight tons or more.

11 ~~(b) ((Except as otherwise provided in (c) of this subsection,))~~
12 Contingency plans for all other facilities and covered vessels shall be
13 submitted to the department within eighteen months after the department
14 has adopted rules under subsection (1) of this section. The department
15 may adopt a schedule for submission of plans within the eighteen-month
16 period.

17 ~~((c) Contingency plans for covered vessels which are not required~~
18 ~~to submit plans within the six month period prescribed in (a) of this~~
19 ~~subsection and which operate on the portion of the Columbia river for~~
20 ~~which the department must adopt rules not later than July 1, 1992,~~
21 ~~shall be submitted to the department not later than January 1, 1993.))~~

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

24 (b) The owner or operator of a tank vessel or of the facilities at
25 which the vessel will be unloading its cargo shall submit the
26 contingency plan for the tank vessel. Subject to conditions imposed by
27 the department, the owner or operator of a facility may submit a single
28 contingency plan for tank vessels of a particular class that will be
29 unloading cargo at the facility.

1 (c) The contingency plan for a cargo vessel or passenger vessel may
2 be submitted by the owner or operator of the cargo vessel or passenger
3 vessel or by the agent for the vessel resident in this state. Subject
4 to conditions imposed by the department, the owner, operator, or agent
5 may submit a single contingency plan for cargo vessels or passenger
6 vessels of a particular class.

7 (d) A person who has contracted with a facility or covered vessel
8 to provide containment and cleanup services and who meets the standards
9 established pursuant to RCW ((90.48.372)) 90.56.120, may submit the
10 plan for any facility or covered vessel for which the person is
11 contractually obligated to provide services. Subject to conditions
12 imposed by the department, the person may submit a single plan for more
13 than one facility or covered vessel.

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

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

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

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

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

7 (f) The sensitivity of fisheries and wildlife and other natural
8 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) The department shall approve a contingency plan only if it
15 determines that the plan meets the requirements of this section and
16 that, if implemented, the plan is capable, in terms of personnel,
17 materials, and equipment, of removing oil or hazardous substances
18 promptly and properly and minimizing any damage to the environment.

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

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

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

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

8 NEW SECTION. **Sec. 203.** FACILITY OPERATION STANDARDS. (1) The
9 department by rule shall adopt standards for onshore and offshore
10 facilities regarding the equipment, personnel, and operation of the
11 facilities to ensure that the best achievable protection of the public
12 health and safety and the environment is employed at all times. The
13 department shall implement a program to provide for the inspection of
14 all onshore and offshore facilities on a regular schedule to ensure
15 that each facility is in compliance with the standards.

16 (2) The department shall adopt rules for certification of
17 supervisory and other key personnel in charge of the transfer, storage,
18 and handling of oil and other hazardous substances at onshore and
19 offshore facilities. The rules shall include, but are not limited to:

20 (a) Minimum training requirements to be provided by facility
21 operators to all facility workers involved in the transfer, storage,
22 and handling of oil or hazardous substances at a facility;

23 (b) Provisions for periodic renewal of certificates for supervisory
24 and other key personnel involved in the transfer, storage, and handling
25 of oil and other hazardous substances at the facility; and

26 (c) Continuing education requirements.

27 NEW SECTION. **Sec. 204.** OPERATIONS MANUALS. (1) Each operator of
28 an onshore or offshore facility shall prepare an operations manual

1 describing equipment and procedures that the operator employs or will
2 employ for best achievable protection for the public health, safety,
3 and welfare, and the environment and to prevent oil and hazardous
4 substance spills. The operations manual shall also describe equipment
5 and procedures required for all vessels to or from which oil or
6 hazardous substances is transferred through use of the facility. The
7 operations manual shall be submitted to the department for approval.

8 (2) Every existing onshore and offshore facility shall prepare and
9 submit to the department its operations manual within one year after
10 the department has adopted rules governing the content of the manual.

11 (3) The department shall approve an operations manual for an
12 onshore or offshore facility if the manual complies with the rules
13 adopted by the department. If the department determines a manual does
14 not comply with the rules, it shall provide written reasons for the
15 decision. The operator shall resubmit the manual within ninety days of
16 notification of the reasons for noncompliance, responding to the
17 reasons and incorporating any suggested modifications.

18 (4) The department may require modification of the operations
19 manual of any operator if the department determines that the manual is
20 no longer consistent with the rules adopted by the department.

21 (5) All equipment and operations of an operator's onshore or
22 offshore facility shall be maintained and carried out in accordance
23 with the facility's operations manual. All ships docked at an onshore
24 or offshore facility shall comply with the terms of the operations
25 manual for the facility.

26 **Sec. 205.** RCW 90.48.373 and 1990 c 116 s 5 are each amended to
27 read as follows:

28 The department shall annually publish an index of available, up-to-
29 date descriptions of prevention plans and contingency plans for oil and

1 hazardous substance spills submitted and approved pursuant to section
2 201 of this 1991 act and RCW ((90.48.371)) 90.56.105 and an inventory
3 of equipment available for responding to such spills.

4 **Sec. 206.** RCW 90.48.375 and 1990 c 116 s 7 are each amended to
5 read as follows:

6 The provisions of contingency plans approved by the department
7 under RCW ((90.48.371)) 90.56.105 and prevention plans approved by the
8 department pursuant to section 201 of this 1991 act shall be legally
9 binding on those persons submitting them to the department and on their
10 successors, assigns, agents, and employees. The superior court shall
11 have jurisdiction to restrain a violation of, compel specific
12 performance of, or otherwise to enforce such plans upon application by
13 the department. The department may issue an order pursuant to chapter
14 34.05 RCW requiring compliance with a contingency plan or a prevention
15 plan and may impose administrative penalties for failure to comply with
16 a plan. An order under this section is not subject to review by the
17 pollution control hearings board as provided in RCW 43.21B.110.

18 NEW SECTION. **Sec. 207.** NOTIFICATION OF ACCIDENTS AND NEAR MISS
19 INCIDENTS. (1) Any person responsible for a covered vessel shall notify
20 the coast guard within one hour:

21 (a) Of the disability of the covered vessel if the disabled vessel
22 is within twelve miles of the shore of the state; and

23 (b) Of a collision or a near miss incident within twelve miles of
24 the shore of the state.

25 (2) The department and the division of emergency services shall
26 request the coast guard to notify the division of emergency services as
27 soon as possible after the coast guard receives notice of a disabled
28 covered vessel within twelve miles of the shore of the state or of a

1 near miss incident. The department shall attempt to negotiate an
2 agreement with the coast guard governing procedures for coast guard
3 notification to the state regarding disabled covered vessels and near
4 miss incidents.

5 (3) The department shall prepare a summary of the information
6 collected under this section and provide the summary to the regional
7 marine safety committees, the coast guard, and others in order to
8 identify problems with the marine transportation system.

9 (4) For the purposes of this section:

10 (a) A tank vessel or cargo vessel is considered disabled if any of
11 the following occur:

12 (i) Any accidental or intentional grounding;

13 (ii) The total or partial failure of the main propulsion or primary
14 steering or any component or control system that causes a reduction in
15 the maneuvering capabilities of the vessel;

16 (iii) An occurrence materially and adversely affecting the vessel's
17 seaworthiness or fitness for service, including but not limited to,
18 fire, flooding, or collision with another vessel;

19 (iv) Any other occurrence that creates the serious possibility of
20 an oil or hazardous substance spill or an occurrence that may result in
21 such a spill.

22 (b) A barge is considered disabled if any of the following occur:

23 (i) The towing mechanism becomes disabled;

24 (ii) The towboat towing the barge becomes disabled through
25 occurrences defined in (a) of this subsection.

26 (c) A near miss incident has the meaning provided by rule adopted
27 by the board of pilotage commissioners under RCW 88.16.110.

28 **PART III**

29 **ENFORCEMENT**

1 **Sec. 301.** RCW 90.48.376 and 1990 c 116 s 8 are each amended to
2 read as follows:

3 (1) Except as provided in subsection (2) of this section, it shall
4 be unlawful for any person to knowingly and intentionally operate in
5 this state or on the waters of this state a facility or covered vessel
6 without an approved contingency plan as required by RCW ~~((90.48.371))~~
7 90.56.105 or an approved spill prevention plan as required by section
8 201 of this 1991 act. The first conviction under this section shall be
9 a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent
10 conviction shall be a class C felony under chapter 9A.20 RCW.

11 (2) It shall not be unlawful for a person to operate a facility or
12 covered vessel if:

13 (a) The facility or covered vessel is not required to have a
14 contingency plan or spill prevention plan;

15 (b) ~~((A))~~ All required plans ~~((has))~~ have been submitted to the
16 department as required by RCW ~~((90.48.371))~~ 90.56.105 and rules adopted
17 by the department and the department is reviewing the plan and has not
18 denied approval; or

19 (c) The covered vessel has entered state waters after the United
20 States coast guard has determined that the vessel is in distress.

21 (3) A facility may rely on a copy of the statement issued by the
22 department pursuant to RCW ~~((90.48.371(7)))~~ 90.56.105(7) as evidence
23 that the vessel has an approved contingency plan.

24 **Sec. 302.** RCW 90.48.377 and 1990 c 116 s 9 are each amended to
25 read as follows:

26 (1) Except as provided in subsection (4) of this section, it shall
27 be unlawful for a covered vessel to enter the waters of the state
28 without an approved contingency plan ~~((as provided in))~~ required by RCW
29 ~~((90.48.371))~~ 90.56.105 or a spill prevention plan required by section

1 201 of this 1991 act. The department may deny entry onto the waters of
2 the state to any covered vessel that does not have a required
3 contingency or spill prevention plan (~~and is so required~~).

4 (2) Except as provided in subsection (4) of this section, it shall
5 be unlawful:

6 (a) For a facility to operate without an approved contingency plan
7 as required under RCW (~~90.48.371~~) 90.56.105 or a spill prevention
8 plan required by section 201 of this 1991 act; or

9 (b) For a facility or any other person to accept cargo or
10 passengers from a covered vessel that does not have an approved
11 contingency plan required under RCW (~~90.48.371~~) 90.56.105 or a spill
12 prevention plan required by section 201 of this 1991 act.

13 (3) The department may notify the department of licensing to
14 suspend the business license of any facility or other person that is in
15 violation of this section. The department may assess a civil penalty
16 of up to one hundred thousand dollars against any person who is in
17 violation of this section. Each day that a facility, person, or
18 covered vessel is in violation of this section shall be considered a
19 separate violation.

20 (4) It shall not be unlawful for a covered vessel to operate on the
21 waters of the state or a facility or other person to operate or accept
22 cargo or passengers from a covered vessel if:

23 (a) A contingency plan or a prevention plan is not required for the
24 facility or covered vessel;

25 (b) A contingency plan has been submitted to the department as
26 required by RCW (~~90.48.371~~) 90.56.105 and a spill prevention plan has
27 been submitted as required by section 201 of this 1991 act and rules
28 adopted by the department and the department is reviewing the plan and
29 has not denied approval; or

1 (c) The covered vessel has entered state waters after the United
2 States coast guard has determined that the vessel is in distress.

3 (5) Any person may rely on a copy of the statement issued by the
4 department pursuant to RCW (~~(90.48.371(7))~~) 90.56.105(7) as evidence
5 that the vessel has an approved contingency plan or an approved spill
6 prevention plan.

7 **Sec. 303.** RCW 90.48.320 and 1990 c 116 s 17 are each amended to
8 read as follows:

9 It shall be unlawful, except under the circumstances hereafter
10 described in this section, for oil or hazardous substances to enter the
11 waters of the state from any ship or any fixed or mobile facility or
12 installation located offshore or onshore whether publicly or privately
13 operated, regardless of the cause of the entry or fault of the person
14 having control over the oil or hazardous substance, or regardless of
15 whether it be the result of intentional or negligent conduct, accident
16 or other cause. This section shall not apply to discharges of oil or
17 hazardous substances in the following circumstances:

18 (1) The person discharging was expressly authorized to do so by the
19 department prior to the entry of the oil or hazardous substances into
20 state waters; or

21 (2) The person discharging was authorized to do so by operation of
22 law as provided in RCW 90.48.200.

23 **Sec. 304.** RCW 90.48.350 and 1990 c 116 s 20 are each amended to
24 read as follows:

25 (1) Except as otherwise provided in RCW (~~(90.48.383)~~) 90.56.245,
26 any person who negligently discharges oil or hazardous substances, or
27 causes or permits the entry of the same, shall incur, in addition to
28 any other penalty as provided by law, a penalty in an amount of up to

1 ((~~twenty~~)) one hundred thousand dollars for every such violation, and
2 for each day the spill poses risks to the environment as determined by
3 the director.

4 (2) Any person who intentionally or recklessly discharges or causes
5 or permits the entry of oil or hazardous substances into the waters of
6 the state shall incur, in addition to any other penalty authorized by
7 law, a penalty of up to one ((~~hundred thousand~~)) million dollars for
8 every such violation and for each day the spill poses risks to the
9 environment as determined by the director.

10 (3) The amount of the penalty imposed under this section shall be
11 determined by the director after taking into consideration the gravity
12 of the violation, the previous record of the violator in complying, or
13 failing to comply, with the provisions of this chapter and chapter
14 90.48 RCW, the speed and thoroughness of the collection and removal of
15 the oil or hazardous substances, and such other considerations as the
16 director deems appropriate. Every act of commission or omission which
17 procures, aids or abets in the violation shall be considered a
18 violation under the provisions of this section and subject to the
19 penalty herein provided for. The penalty herein provided for shall be
20 imposed pursuant to RCW 43.21B.300.

21 **Sec. 305.** RCW 90.48.325 and 1970 ex.s. c 88 s 3 are each amended
22 to read as follows:

23 It shall be the obligation of any person owning or having control
24 over oil or hazardous substances entering waters of the state in
25 violation of RCW ((~~90.48.320~~)) 90.56.210 to immediately collect and
26 remove the same. If it is not feasible to collect and remove, said
27 person shall take all practicable actions to contain, treat and
28 disperse the same. The director shall prohibit or restrict the use of
29 any chemicals or other dispersant or treatment materials proposed for

1 use under this section whenever it appears to ((him)) the director that
2 use thereof would be detrimental to the public interest.

3 **Sec. 306.** RCW 90.48.336 and 1990 c 116 s 18 are each amended to
4 read as follows:

5 (1) Any person owning oil or hazardous substances or having control
6 over oil or hazardous substances that enter((s)) the waters of the
7 state in violation of RCW ((90.48.320)) 90.56.210 shall be strictly
8 liable, without regard to fault, for the damages to persons or
9 property, public or private, caused by such entry.

10 (2) In any action to recover damages resulting from the discharge
11 of oil or hazardous substances in violation of RCW ((90.48.320))
12 90.56.210, the owner or person having control over the oil or hazardous
13 substances shall be relieved from strict liability, without regard to
14 fault, if that person can prove that the discharge was caused solely
15 by:

16 (a) An act of war or sabotage;

17 (b) An act of God;

18 (c) Negligence on the part of the United States government; or

19 (d) Negligence on the part of the state of Washington.

20 (3) The liability established in this section shall in no way
21 affect the rights which (a) the owner or other person having control
22 over the oil or hazardous substances may have against any person whose
23 acts may in any way have caused or contributed to the discharge of oil
24 or hazardous substances or (b) the state of Washington may have against
25 any person whose actions may have caused or contributed to the
26 discharge of oil or hazardous substances.

27 (4) The chapter 116, Laws of 1990 changes to subsection (2) of this
28 section requiring the defenses in that subsection to be the sole causes

1 of the discharge, and the text of subsection (2)(b) of this section
2 shall apply prospectively and not retroactively after June 7, 1990.

3 **Sec. 307.** RCW 90.48.338 and 1990 c 116 s 19 are each amended to
4 read as follows:

5 In addition to any cause of action the state may have to recover
6 necessary expenses for the cleanup of oil or hazardous substances
7 pursuant to RCW (~~(90.48.325)~~) 90.56.220 and (~~(90.48.350)~~) 90.56.215,
8 and except as otherwise provided in RCW (~~(90.48.383)~~) 90.56.245, any
9 other person causing the entry of oil or hazardous substances shall be
10 directly liable to the state for the necessary expenses of (~~(oil)~~)
11 cleanup arising from such entry and the state shall have a cause of
12 action to recover from any or all of said persons. Except as otherwise
13 provided in RCW (~~(90.48.383)~~) 90.56.245, any person liable for cost of
14 (~~(oil)~~) cleanup as provided in RCW (~~(90.48.325)~~) 90.56.220 and
15 (~~(90.48.350)~~) 90.56.215 shall have a cause of action to recover for
16 costs of cleanup from any other person causing the entry of oil or
17 hazardous substances into the waters of the state including any amount
18 recoverable by the state as necessary expenses under RCW (~~(90.48.350)~~)
19 90.56.215.

20 **Sec. 308.** RCW 90.48.383 and 1990 c 116 s 25 are each amended to
21 read as follows:

22 (1) The following persons shall not be liable for necessary
23 expenses or property damage caused by an act or omission of that person
24 during the cleanup of oil or hazardous substances spilled into the
25 navigable waters of the state, unless the act or omission was performed
26 in bad faith or with gross negligence:

27 (a) The state or any unit of local government;

1 (b) A person who volunteers to assist in the cleanup of the spilled
2 oil or hazardous substance; and

3 (c) A person meeting the standards of RCW ((90.48.372)) 90.56.120.

4 (2) This section shall not affect the liability of any person
5 responsible for the spilled oil or hazardous substance or responsible
6 for the facility or covered vessel from which the oil or hazardous
7 substance was spilled.

8 **Sec. 309.** RCW 90.48.340 and 1987 c 109 s 148 are each amended to
9 read as follows:

10 The department shall investigate each activity or project conducted
11 under RCW ((90.48.330)) 90.56.225 to determine, if possible, the
12 circumstances surrounding the entry of oil or hazardous substances into
13 waters of the state and the person or persons allowing said entry or
14 responsible for the act or acts which result in said entry. Whenever
15 it appears to the department, after investigation, that a specific
16 person or persons are responsible for the necessary expenses incurred
17 by the state pertaining to a project or activity as specified in RCW
18 ((90.48.335)) 90.56.230, the department shall notify said person or
19 persons by appropriate order(~~(:—PROVIDED, That no order may be~~
20 ~~issued)).~~ The department may not issue an order pertaining to a
21 project or activity which was completed more than five years prior to
22 the date of the proposed issuance of the order. ((Said)) The order
23 shall state the findings of the department, the amount of necessary
24 expenses incurred by the department in conducting the project or
25 activity, and a notice that said amount is due and payable immediately
26 upon receipt of said order. The department may, upon application from
27 the recipient of an order received within thirty days from the receipt
28 of the order, reduce or set aside in its entirety the amount due and
29 payable, when it appears from the application, and from any further

1 investigation the department may desire to undertake, that a reduction
2 or setting aside is just and fair under all the circumstances. If the
3 amount specified in the order issued by the department notifying said
4 person or persons is not paid within thirty days after receipt of
5 notice imposing the same, or if an application has been made within
6 thirty days as herein provided and the amount provided in the order
7 issued by the department subsequent to such application is not paid
8 within fifteen days after receipt thereof, the attorney general, upon
9 request of the department, shall bring an action on behalf of the state
10 in the superior court of Thurston county or any county in which the
11 person to which the order is directed does business, or in any other
12 court of competent jurisdiction, to recover the amount specified in the
13 final order of the department. No order issued under this section
14 shall be construed as an order within the meaning of RCW 43.21B.310 and
15 shall not be appealable to the hearings board. In any action to
16 recover necessary expenses as herein provided said person shall be
17 relieved from liability for necessary expenses if ((he)) the person can
18 prove that the oil or hazardous substances to which the necessary
19 expenses relate entered the waters of the state by causes set forth in
20 RCW ((90.48.320(3))) 90.56.235(2).

21 **Sec. 310.** RCW 90.48.343 and 1987 c 109 s 149 are each amended to
22 read as follows:

23 Any person who proposes to discharge oil or hazardous substances or
24 cause or permit the entry of same into waters of the state shall prior
25 to such discharge obtain permission from the director. The director is
26 authorized to permit the discharge of oil or hazardous substances into
27 waters of the state consistent with the pertinent effluent and
28 receiving water standards and treatment requirements established by the
29 department. Permission for industrial or commercial discharges shall

1 be given through the terms of a waste discharge permit issued pursuant
2 to RCW 90.48.180. Permission shall be given in all other cases on a
3 form prescribed by the director.

4 **Sec. 311.** RCW 90.48.366 and 1989 c 388 s 2 are each amended to
5 read as follows:

6 By July 1, 1991, the department, in consultation with the
7 departments of fisheries, wildlife, and natural resources, and the
8 parks and recreation commission, shall adopt rules establishing a
9 compensation schedule for the discharge of oil or hazardous substances
10 in violation of RCW ((90.48.320)) 90.56.210, by persons liable under
11 RCW ((90.48.336)) 90.56.235. The department shall establish a
12 scientific advisory board to assist in establishing the compensation
13 schedule. The amount of compensation assessed under this schedule
14 shall be no less than one dollar per gallon of oil spilled and no
15 greater than fifty dollars per gallon of oil spilled. The compensation
16 schedule shall reflect adequate compensation for unquantifiable damages
17 or for damages not quantifiable at reasonable cost for any adverse
18 environmental, recreational, aesthetic, or other effects caused by the
19 ((oil)) spill and shall take into account:

20 (1) Characteristics of the oil or hazardous substance spilled, such
21 as toxicity, dispersibility, solubility, and persistence, that may
22 affect the severity of the effects on the receiving environment, living
23 organisms, and recreational and aesthetic resources;

24 (2) The sensitivity of the affected area as determined by such
25 factors as: (a) The location of the spill; (b) habitat and living
26 resource sensitivity; (c) seasonal distribution or sensitivity of
27 living resources; (d) areas of recreational use or aesthetic
28 importance; (e) the proximity of the spill to important habitats for
29 birds, aquatic mammals, fish, or to species listed as threatened or

1 endangered under state or federal law; and (f) other areas of special
2 ecological or recreational importance, as determined by the department;
3 and

4 (3) Actions taken by the party who spilled the oil or hazardous
5 substance or any party liable for the spill that: (a) Demonstrate a
6 recognition and affirmative acceptance of responsibility for the spill,
7 such as the immediate removal of oil or hazardous substance and the
8 amount of oil or hazardous substance removed from the environment; or
9 (b) enhance or impede the detection of the spill, the determination of
10 the ~~((number of gallons))~~ quantity of oil or hazardous substances
11 spilled, or the extent of damage, including the unauthorized removal of
12 evidence such as oiled or injured fish or wildlife.

13 **Sec. 312.** RCW 90.48.376 and 1989 c 388 s 3 are each amended to
14 read as follows:

15 (1) Prior to assessing compensation under RCW ~~((90.48.366))~~
16 90.56.265, the department shall conduct a formal preassessment
17 screening as provided in RCW ~~((90.48.368))~~ 90.56.275. The department
18 shall use the compensation schedule established under RCW ~~((90.48.366))~~
19 90.56.265 if the preassessment screening committee determines that:
20 (a) Restoration or enhancement of the injured resources is not
21 technically feasible; (b) damages are not quantifiable at a reasonable
22 cost; and (c) the restoration and enhancement projects or studies
23 proposed by the liable parties are insufficient to adequately
24 compensate the people of the state for damages sustained as a result of
25 the ~~((oil))~~ spill.

26 (2) Compensation shall not be assessed under this section for
27 ~~((oil))~~ spills for which damages have been or will be assessed under
28 RCW 90.48.142.

1 (3) Compensation assessed under this section shall be recoverable
2 in an action brought by the attorney general on behalf of the people of
3 the state of Washington in the superior court of Thurston county or any
4 county in which damages occurred. Moneys recovered by the attorney
5 general under this section shall be deposited in the coastal protection
6 fund established under RCW (~~(90.48.390)~~) 90.56.735, and shall only be
7 used for the purposes stated in RCW (~~(90.48.400)~~) 90.56.740.

8 (4) Compensation assessed under this section for a particular
9 (~~(oil)~~) spill shall preclude claims under this chapter by local
10 governments for compensation for damages to publicly owned resources
11 resulting from the same spill.

12 **Sec. 313.** RCW 90.48.368 and 1989 c 388 s 4 are each amended to
13 read as follows:

14 (1) The department shall adopt rules establishing a formal process
15 for preassessment screening of damages resulting from oil or hazardous
16 substance spills. The rules shall specify the conditions under which
17 the department shall convene a preassessment screening committee. The
18 preassessment screening process shall occur concurrently with
19 reconnaissance activities. The committee shall use information
20 obtained from (~~(oil)~~) spill reconnaissance activities as well as any
21 other relevant resource and resource use information. For each (~~(oil)~~)
22 spill, the committee shall determine whether a damage assessment
23 investigation should be conducted under RCW 90.48.142, or
24 alternatively, whether the compensation schedule authorized under RCW
25 (~~(90.48.366)~~) 90.56.265 and (~~(90.48.367)~~) 90.56.270 should be used to
26 assess damages. The committee may accept restoration or enhancement
27 projects or studies proposed by the liable parties in lieu of some or
28 all of: (a) The compensation schedule authorized under this chapter;

1 or (b) the claims from damage assessment studies authorized under RCW
2 90.48.142.

3 (2) A preassessment screening committee may consist of
4 representatives of the departments of ecology, fisheries, wildlife,
5 natural resources, social and health services, and emergency
6 management, the parks and recreation commission, as well as other
7 federal, state, and local agencies, and tribal and local governments
8 whose presence would enhance the reconnaissance or damage assessment
9 aspects of ((oil)) spill response. The department shall chair the
10 committee and determine which representatives will be needed on a
11 spill-by-spill basis.

12 (3) The committee shall consider the following factors when
13 determining whether a damage assessment study authorized under RCW
14 90.48.142 should be conducted: (a) Whether evidence from
15 reconnaissance investigations suggests that injury has occurred or is
16 likely to occur to publicly owned resources; (b) the potential loss in
17 services provided by resources injured or likely to be injured and the
18 expected value of the potential loss; (c) whether a restoration project
19 to return lost services is technically feasible; (d) the accuracy of
20 damage quantification methods that could be used and the anticipated
21 cost-effectiveness of applying each method; (e) the extent to which
22 likely injury to resources can be verified with available
23 quantification methods; and (f) whether the injury, once quantified,
24 can be translated into monetary values with sufficient precision or
25 accuracy.

26 (4) When a resource damage assessment is required, the state
27 trustee agency responsible for the resource and habitat damaged shall
28 conduct the damage assessment and pursue all appropriate remedies with
29 the responsible party.

1 (5) Oil and hazardous substance spill damage assessment studies
2 authorized under RCW 90.48.142 may only be conducted if the committee,
3 after considering the factors enumerated in subsection (3) of this
4 section, determines that the damages to be investigated are
5 quantifiable at a reasonable cost and that proposed assessment studies
6 are clearly linked to quantification of the damages incurred.

7 ~~((+5))~~ (6) As new information becomes available, the committee may
8 reevaluate the scope of damage assessment using the factors listed in
9 subsection (3) of this section and may reduce or expand the scope of
10 damage assessment as appropriate.

11 ~~((+6))~~ (7) The preassessment screening process shall provide for
12 the ongoing involvement of persons who may be liable for damages
13 resulting from an oil or hazardous substance spill. The department may
14 negotiate with a potentially liable party to perform restoration and
15 enhancement projects or studies which may substitute for all or part of
16 the compensation authorized under RCW ~~((90.48.366))~~ 90.56.265 and
17 ~~((90.48.367))~~ 90.56.270 or the damage assessment studies authorized
18 under RCW 90.48.142.

19 ~~((+7))~~ (8) For the purposes of this section and RCW ~~((90.48.367))~~
20 90.56.270, the cost of a damage assessment shall be considered
21 "reasonable" when the anticipated cost of the damage assessment is
22 expected to be less than the anticipated damage that may have occurred
23 or may occur.

24 **Sec. 314.** RCW 90.48.369 and 1989 c 388 s 5 are each amended to
25 read as follows:

26 The department shall submit an annual report to the appropriate
27 standing committees of the legislature for the next five years
28 beginning January 1, 1990. The annual report shall cover the
29 implementation of ~~((this act))~~ RCW 90.56.265 through 90.56.280 and

1 shall include information on each ((oil)) spill for which a
2 preassessment screening committee was convened, the outcome of each
3 process, any compensation claims imposed or damage assessment studies
4 conducted, and the revenues to and expenditures from the coastal
5 protection fund.

6 **PART IV**

7 **REGIONAL MARINE SAFETY COMMITTEES**

8 NEW SECTION. **Sec. 401.** REGIONAL MARINE SAFETY COMMITTEES. (1)

9 The department shall establish regional marine safety committees at
10 least for the Strait of Juan de Fuca/Puget Sound and Grays
11 Harbor/Pacific coast. The department shall also consult with the state
12 of Oregon to establish a joint regional marine safety committee for the
13 Columbia river. The department by rule shall establish the boundaries
14 of the committees.

15 (2) The department shall appoint to each regional committee for a
16 term of three years representatives from all of the following:

17 (a) The port authorities within the region;

18 (b) Tanker operators;

19 (c) The pilot organization;

20 (d) Commercial vessel operators;

21 (e) Commercial fishing boat operators;

22 (f) A representative of a native American tribe;

23 (g) A recognized nonprofit environmental organization that has as
24 a purpose the protection of marine resources;

25 (h) An organization of recreational boaters;

26 (i) A recognized labor organization involved with the operations of
27 vessels;

1 (j) A tug or barge operator who does not also operate either
2 tankers or commercial vessels;

3 (k) The department of wildlife; and

4 (m) The harbor master, if any.

5 (3) The department shall appoint a chair for each of the regional
6 committees. Each member of the committee shall be reimbursed for
7 actual and necessary expenses incurred in the performance of committee
8 duties in accordance with RCW 43.03.250.

9 (4) Each regional committee shall be responsible for planning for
10 the safe navigation and operation of tankers, barges, and other vessels
11 within each region. Each committee shall prepare a regional marine
12 safety plan, encompassing all vessel traffic within the region. The
13 coast guard, the federal environmental protection agency, the army
14 corps of engineers, and the navy shall be invited to attend the
15 meetings of each marine regional safety committee.

16 (5) The department shall adopt rules and guidelines for regional
17 marine safety plans in consultation with affected parties. The rules
18 shall require the plans to consider all of the following:

19 (a) Requirements for tug escorts of tankers and other commercial
20 vessels, and speed limits for tankers and other vessels in addition to
21 the requirements imposed by statute;

22 (b) A review and evaluation of the adequacy of and any changes
23 needed in:

24 (i) Anchorage designations and sounding checks;

25 (ii) Communications systems;

26 (iii) Commercial and recreational fishing, recreational boaters,
27 and other small vessel congestion in shipping lanes; and

28 (iv) Placement and effectiveness of navigational aids, channel
29 design plans, and the traffic and routings from port construction and
30 dredging projects;

1 (c) Procedures for routing vessels during emergencies that impact
2 navigation;

3 (d) Management requirements for vessel bridges;

4 (e) Special protection for environmentally sensitive areas;

5 (f) Suggested mechanisms to ensure that the provisions of the plan
6 are fully and regularly enforced; and

7 (g) A recommendation as to whether establishing or expanding vessel
8 traffic safety systems within the regions is desirable.

9 (6) Each regional marine safety plan shall be submitted to the
10 department for approval within one year after the regional marine
11 safety committee is established. The department shall review the plans
12 for consistency with the rules and guidelines and shall approve the
13 plans or give reasons for their disapproval. If a regional marine
14 safety committee does not submit a regional marine safety plan to the
15 department within one year after the committee is established, the
16 department, after consulting with affected interests, may adopt a plan
17 for the region that meets the requirements of subsection (5) of this
18 section.

19 (7) Upon approval of a plan, the department shall implement those
20 elements of the plan over which the state has authority. If federal
21 authority or action is required, the department shall petition the
22 appropriate agency or congress.

23 (8) Not later than July 1 of each even-numbered year each regional
24 marine safety committee shall report its findings and recommendations
25 to the oil and hazardous substances spill advisory committee
26 established in section 501 of this act and the department concerning
27 the vessel traffic safety in its region and any recommendations for
28 improving tanker, barge, and other vessel safety in the region by
29 amending the regional marine safety plan. The regional committees

1 shall also provide technical assistance to the oil and hazardous
2 substances spill advisory committee.

3 **PART V**

4 **GOVERNOR'S ADVISORY COMMITTEE**

5 NEW SECTION. **Sec. 501.** GOVERNOR'S ADVISORY COMMITTEE. (1) The
6 oil and hazardous substance spill advisory committee is established to
7 provide independent judgment of the actions of the federal government,
8 industry, the department, and other state agencies with respect to oil
9 and hazardous substance spill prevention and response. The committee
10 shall consist of five members.

11 (2)(a) The committee may, at its own discretion, study any aspect
12 of oil and hazardous substance prevention and response in the state.
13 The committee shall provide recommendations to the department on
14 activities of the federal government and industry with respect to oil
15 and hazardous substance spill prevention and response, including
16 recommendations for the state's response to those actions. The
17 committee shall also make recommendations to the legislature, the
18 governor, and other state agencies on any provision of this chapter,
19 other state laws, and rules, policies, and guidelines adopted by the
20 department or other state agencies relating to the prevention and
21 cleanup of oil and hazardous substance spills into the waters of the
22 state.

23 (b) To minimize duplication of effort, reviews conducted by the
24 committee shall be coordinated with related activities of the federal
25 government, the department, and other appropriate state and
26 international entities.

1 (c) The committee shall evaluate and report at least annually to
2 the governor and the legislature on oil spill and hazardous substance
3 response and preparedness programs within the state.

4 (3) There shall be five members of the committee appointed by the
5 governor for terms of three years. The members of the committee shall
6 be representative of the public and shall have demonstrable knowledge
7 of environmental protection and the study of marine ecosystems, or have
8 familiarity with marine transportation systems. No member of the
9 committee may be in the business of, or be employed by, or under
10 contract with, any person or entity that is in the business of
11 transporting, storing, or handling oil or hazardous substances.

12 (4) A chair shall be selected by majority vote of the committee.
13 The committee shall meet as often as required, but at least four times
14 per year. Members shall be reimbursed for travel and expenses for
15 attending meetings as provided in RCW 43.03.050 and 43.03.060.

16 (5) The chair may hire staff as necessary for the committee to
17 fulfill its responsibilities.

18 **PART VI**

19 **VESSEL STANDARDS**

20 **Sec. 601.** RCW 90.48.385 and 1990 c 116 s 16 are each amended to
21 read as follows:

22 The department (~~of ecology~~) shall (~~study~~) establish and enforce
23 standards for the manner in which, and the equipment with which, tow
24 boats may tow barges carrying oil or hazardous substances as cargo or
25 cargo residue. The standards shall address but are not limited to:
26 Wire rope specifications, catenary, the design of related on-board
27 equipment, number of cables, and back-up or barge retrieval systems in

1 case of cable break. The standards shall include the operation,
2 maintenance, and inspection of cables and other tow equipment.

3 ~~((The department shall seek voluntary compliance with such~~
4 ~~standards.~~

5 ~~Finally, the department shall study state jurisdiction over and~~
6 ~~liability of mandatory compliance with such standards. The department~~
7 ~~shall report to the appropriate standing committees of the legislature~~
8 ~~by July 1, 1991, recommendations regarding mandatory compliance with~~
9 ~~such standards.))~~

10 **Sec. 602.** RCW 90.48.510 and 1987 c 479 s 2 are each amended to
11 read as follows:

12 ~~((After June 30, 1988,))~~ Any person or facility conducting ship
13 refueling and bunkering operations, or the lightering of petroleum
14 products, and any person or facility transferring oil between an
15 onshore or offshore facility and a tank vessel shall have containment
16 and recovery equipment readily available for deployment in the event of
17 the discharge of oil into the waters of the state and shall deploy the
18 containment and recovery equipment in accordance with standards adopted
19 by the department. All persons conducting refueling, bunkering, or
20 lightering operations, or oil transfer operations shall be trained in
21 the use and deployment of oil spill containment and recovery equipment.
22 ~~((After examining existing equipment locations, the methods and~~
23 ~~conditions of deployment, and accessibility of any federal or other~~
24 ~~publicly or privately owned and operated containment and recovery~~
25 ~~equipment or systems, and reviewing federal, state, or local laws,~~
26 ~~rules, or regulations and ordinances governing refueling, bunkering, or~~
27 ~~lightering of petroleum products,)).~~ The department ((of ecology may))
28 shall adopt rules as necessary to carry out the provisions of this
29 section. The rules shall include standards for the circumstances under

1 which containment equipment should be deployed. The facility or
2 vessel shall include the procedures used to contain and recover
3 discharges in the vessel's or facility's contingency plan.

4 **PART VII**

5 **TANKER REQUIREMENTS**

6 **Sec. 701.** RCW 88.16.170 and 1975 1st ex.s. c 125 s 1 are each
7 amended to read as follows:

8 Because of the danger of spills, the legislature finds that the
9 transportation of crude oil and refined petroleum products by tankers
10 on the Columbia river and on Puget Sound and adjacent waters creates a
11 great potential hazard to important natural resources of the state and
12 to jobs and incomes dependent on these resources.

13 The legislature recognizes that the Columbia river has many natural
14 obstacles to navigation and shifting navigation channels that create
15 considerable likelihood of an oil spill. The legislature also
16 recognizes Puget Sound and adjacent waters are a relatively confined
17 salt water environment with irregular shorelines and therefore there is
18 a greater than usual likelihood of long-term damage from any large oil
19 spill.

20 The legislature further recognizes that certain areas of the
21 Columbia river and Puget Sound and adjacent waters have limited space
22 for maneuvering a large oil tanker and that these waters contain many
23 natural navigational obstacles as well as a high density of commercial
24 and pleasure boat traffic.

25 For these reasons, it is important that large oil tankers be
26 piloted by highly skilled persons who are familiar with local waters
27 and that such tankers have sufficient capability for rapid maneuvering
28 responses.

1 It is therefore the intent and purpose of RCW ~~((88.16.180))~~
2 90.56.505 and ~~((88.16.190))~~ 90.56.510 to decrease the likelihood of oil
3 spills on the Columbia river and on Puget Sound and its shorelines by
4 requiring all oil tankers above a certain size to employ ~~((Washington~~
5 ~~state))~~ licensed pilots and ~~((, if lacking certain safety and~~
6 ~~maneuvering capability requirements,))~~ to be escorted by a tug or tugs
7 while navigating on the Columbia river and certain areas of Puget Sound
8 and adjacent waters.

9 **Sec. 702.** RCW 88.16.180 and 1983 c 3 s 231 are each amended to
10 read as follows:

11 Notwithstanding the provisions of RCW 88.16.070, any registered oil
12 tanker ~~((, whether enrolled or registered,))~~ of ~~((fifty))~~ forty thousand
13 deadweight tons or greater, shall be required:

14 (1) To take a Washington state licensed pilot while navigating
15 Puget Sound and adjacent waters and shall be liable for and pay
16 pilotage rates pursuant to RCW 88.16.035; and

17 (2) To take a Washington or Oregon licensed pilot while navigating
18 the Columbia river and shall be liable for and pay pilotage rates
19 pursuant to RCW 88.16.035 if a Washington state licensed pilot is
20 taken.

21 **Sec. 703.** RCW 88.16.190 and 1975 1st ex.s. c 125 c 3 are each
22 amended to read as follows:

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

1 (2) Except as provided in subsections (3) and (4) of this section,
2 an oil tanker, whether enrolled or registered, of forty ((to one
3 hundred and twenty five)) thousand deadweight tons ((may proceed)) or
4 larger proceeding beyond ((the points enumerated in subsection (1) if
5 such tanker)) a point east of a line extending due north from Port
6 Angeles shall be accompanied by two tugs.

7 (2) All commercial barges, whether enrolled or registered,
8 proceeding into the Columbia river east of Astoria, Oregon, shall be
9 either:

10 (a) Pushed by a tug; or

11 (b) Towed by a tug and assisted by a tail boat.

12 (3) An oil tanker, whether enrolled or registered, of forty
13 thousand deadweight tons or larger proceeding into the Columbia river
14 east of Astoria, Oregon, shall be accompanied by two tugs.

15 (4) If a tanker required by subsection (1) or (3) of this section
16 to have two escort tugs possesses all of the following standard safety
17 features it is required to have only a single tug escort:

18 (a) Shaft horsepower in the ratio ((of one horsepower to each two
19 and one half deadweight tons)) determined by the department by rule;
20 and

21 (b) Twin screws or double boilers; and

22 (c) Double bottoms, underneath all oil and liquid cargo
23 compartments; and

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

26 (e) Such other navigational position location systems as may be
27 prescribed from time to time by the ((board of pilotage commissioners:
28 PROVIDED, That,)) department of ecology; and

29 (f) Staffing requirements established by the department of ecology;
30 and

1 (g) English language fluency of bridge officers.

2 (5) If ((such forty to one hundred and twenty five thousand
3 deadweight ton)) a tanker otherwise required to have a tug escort by
4 this section is in ballast ((or is under escort of a tug or tugs with
5 an aggregate shaft horsepower equivalent to five percent of the
6 deadweight tons of that tanker, subsection (2) of this section shall
7 not apply: PROVIDED FURTHER, That additional tug shaft horsepower
8 equivalencies may be required under certain conditions as established
9 by rule and regulation of the Washington utilities and transportation
10 commission pursuant to chapter 34.05 RCW: PROVIDED FURTHER, That a
11 tanker of less than forty thousand deadweight tons is not subject to
12 the provisions of RCW 88.16.170 through 88.16.190)) it is not required
13 to have a tug escort.

14 (6) The department of ecology shall determine the appropriate ratio
15 of tug shaft horsepower to tanker deadweight tonnage for the tug
16 escorts required by this section. The regional marine safety
17 committees established under section 401 of this 1991 act may adopt
18 standards for tug escorts that exceed the standards provided for in
19 this section or in rule adopted by the department of ecology.

20 **Sec. 704.** RCW 88.16.200 and 1977 ex.s. c 337 s 16 are each amended
21 to read as follows:

22 Any vessel designed for the purpose of carrying as its cargo
23 liquefied natural or propane gas shall adhere to the provisions of RCW
24 ~~((88.16.190(2)))~~ 90.56.510 as though it ~~((was))~~ were an oil tanker.

25 NEW SECTION. Sec. 705. RECKLESS OPERATION OF A VESSEL. (1) A
26 person commits the crime of reckless operation of a vessel if, while
27 recklessly operating, navigating, or piloting a covered vessel, the
28 person causes a release of oil or hazardous substances.

1 (2) Reckless operation of a vessel is a class B felony under
2 chapter 9A.20 RCW.

3 NEW SECTION. **Sec. 706.** NEGLIGENT OPERATION OF A VESSEL. (1)

4 A person commits the crime of negligent operation of a vessel if, while
5 operating, navigating, or piloting a covered vessel, the person, with
6 criminal negligence, causes a release of oil or a hazardous substance.

7 (2) Negligent operation of a vessel is a class C felony under
8 chapter 9A.20 RCW.

9 NEW SECTION. **Sec. 707.** OPERATION OF A VESSEL WHILE UNDER

10 INFLUENCE OF LIQUOR OR DRUGS. (1) A person is guilty of operating a
11 vessel while under the influence of intoxicating liquor or any drug if
12 the person operates a covered vessel within this state while:

13 (a) The person has 0.06 grams or more of alcohol per two hundred
14 ten liters of breath, as shown by analysis of the person's breath made
15 under section 708 of this act; or

16 (b) The person has 0.06 percent or more by weight of alcohol in the
17 person's blood as shown by analysis of the person's blood made under
18 section 708 of this act; or

19 (c) The person is under the influence of or affected by
20 intoxicating liquor or any drug; or

21 (d) The person is under the combined influence of or affected by
22 intoxicating liquor or any drug.

23 (2) The fact that any person charged with a violation of this
24 section is or has been entitled to use such drug under the laws of this
25 state shall not constitute a defense against any charge of violating
26 this section.

27 (3) Operating a vessel while intoxicated is a class C felony under
28 chapter 9A.20 RCW.

1 NEW SECTION. **Sec. 708.** BREATH OR BLOOD ANALYSIS. (1) Upon the
2 trial of any civil or criminal action or proceeding arising out of acts
3 alleged to have been committed by a person while operating a vessel
4 while under the influence of intoxicating liquor or any drug, if the
5 amount of alcohol in the person's blood or breath at the time alleged
6 as shown by analysis of his blood or breath is less than 0.06 percent
7 by weight of alcohol in his blood or 0.06 grams of alcohol per two
8 hundred ten liters of the person's breath, it is evidence that may be
9 considered with other competent evidence in determining whether the
10 person was under the influence of intoxicating liquor or any drug.

11 (2) The breath analysis shall be based upon grams of alcohol per
12 two hundred ten liters of breath. The foregoing provisions of this
13 section shall not be construed as limiting the introduction of any
14 other competent evidence bearing upon the question whether the person
15 was under the influence of intoxicating liquor or any drug.

16 (3) Analysis of the person's blood or breath to be considered valid
17 under this section shall have been performed according to methods
18 approved by the state toxicologist and by an individual possessing a
19 valid permit issued by the state toxicologist for this purpose. The
20 state toxicologist shall approve satisfactory techniques or methods, to
21 supervise the examination of individuals to ascertain their
22 qualifications and competence to conduct such analyses, and to issue
23 permits that are subject to termination or revocation at the discretion
24 of the state toxicologist.

25 (4) If a blood test is administered under this section, the
26 withdrawal of blood for the purpose of determining its alcoholic
27 content may be performed only by a physician, a registered nurse, or a
28 qualified technician. This limitation shall not apply to the taking of
29 breath specimens.

1 (5) The person tested may have a physician, or a qualified
2 technician, chemist, registered nurse, or other qualified person of his
3 or her own choosing administer one or more tests in addition to any
4 administered at the direction of a law enforcement officer. The
5 failure or inability to obtain an additional test by a person shall not
6 preclude the admission of evidence relating to the test or tests taken
7 at the direction of a law enforcement officer.

8 (6) Upon the request of the person who submits to a test or tests
9 at the request of a law enforcement officer, full information
10 concerning the test or tests shall be made available to the person or
11 his or her attorney.

12 NEW SECTION. **Sec. 709.** LIMITED IMMUNITY FOR BLOOD WITHDRAWAL.

13 No physician, registered nurse, qualified technician, or hospital, or
14 duly licensed clinical laboratory employing or using services of the
15 physician, registered nurse, or qualified technician, may incur any
16 civil or criminal liability as a result of the act of withdrawing blood
17 from any person when directed by a law enforcement officer to do so for
18 the purpose of a blood test under section 708 of this act. This
19 section shall not relieve any physician, registered nurse, qualified
20 technician, or hospital or duly licensed clinical laboratory from civil
21 liability arising from the use of improper procedures or failing to
22 exercise the required standard of care.

23 **PART VIII**

24 **FINANCIAL RESPONSIBILITY**

25 **Sec. 801.** RCW 88.40.005 and 1990 c 116 s 29 are each amended to
26 read as follows:

1 The legislature recognizes that oil and hazardous substance spills
2 and other forms of incremental pollution present serious danger to the
3 fragile marine environment of Washington state. It is the intent and
4 purpose of this chapter to define and prescribe financial
5 responsibility requirements for vessels that transport petroleum
6 products and hazardous substances as cargo or as fuel across the waters
7 of the state of Washington. The financial responsibility requirements
8 are imposed to meet the liability to the state of Washington for the
9 following: (1) The actual costs for removal of spills of petroleum
10 products or hazardous substances; (2) civil penalties and fines; and
11 (3) natural resource damages.

12 **Sec. 802.** RCW 88.40.020 and 1990 c 116 s 31 are each amended to
13 read as follows:

14 ~~((Any vessel over three hundred gross tons, that transports~~
15 ~~petroleum products as cargo, and any inland barge that transports oil~~
16 ~~or hazardous substances as cargo, using any port or place in the state~~
17 ~~of Washington or the navigable waters of the state shall establish,~~
18 ~~under rules prescribed by the director of the department of ecology,~~
19 ~~evidence of financial responsibility in the amount of the greater of~~
20 ~~one million dollars, or one hundred fifty dollars per gross ton of such~~
21 ~~vessel, to meet the liability to the state of Washington for the~~
22 ~~following: (1) The actual costs for removal of spills of petroleum~~
23 ~~products or hazardous substances; (2) civil penalties and fines; and~~
24 ~~(3) natural resource damages.))~~ (1)(a) A tank vessel that carries oil
25 or hazardous substances as cargo in bulk shall demonstrate financial
26 responsibility to pay at least five hundred million dollars.

27 (b) The department by rule may establish a lesser standard of
28 financial responsibility for small barges. The standard shall set the
29 level of financial responsibility based on the quantity of cargo a

1 small barge is capable of carrying. The department shall not set the
2 standard for small barges below that required under federal law.

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

7 (3) An onshore or offshore facility shall demonstrate financial
8 responsibility in an amount determined by the department as necessary
9 to compensate the state for damages that might occur during a
10 reasonable worst case spill of oil or hazardous substances from that
11 facility into the navigable waters of the state. The department shall
12 consider such matters as the amount of oil or hazardous materials that
13 could be spilled into the navigable waters from the facility, the cost
14 of cleaning up the spilled oil or hazardous substances, the frequency
15 of operations at the facility, and the damages that could result from
16 the spill.

17 (4) The certificate of financial responsibility shall meet the
18 liability of the certificate holder to the state of Washington for the
19 following: (a) The actual costs for removal of spills of petroleum
20 products or hazardous substances; (b) civil penalties and fines; and
21 (c) natural resource damages.

22 (5) The department by rule may increase the minimum level of
23 financial responsibility established by this section if it determines
24 this is in the best interest of the public health and safety and to
25 protect the environment.

26 (6)(a) The department may by rule set a lesser amount of financial
27 responsibility for a tank vessel that meets the following standards:

28 (i) Shaft horsepower in the ratio to vessel size determined by the
29 department by rule;

30 (ii) Twin screws or double boilers;

1 (iii) Double bottoms underneath all oil and liquid cargo
2 compartments;

3 (iv) Two radars in working order and operating, one of which must
4 be collision avoidance radar;

5 (v) Staffing requirements determined by the department;

6 (vi) English language fluency of bridge officers; and

7 (vii) Navigational position location systems prescribed by the
8 department.

9 (b) The department shall require as a minimum level of financial
10 responsibility under this subsection the same level of financial
11 responsibility required under federal law.

12 **Sec. 803.** RCW 88.40.030 and 1990 c 116 s 32 are each amended to
13 read as follows:

14 Financial responsibility required by RCW 90.56.605 may be
15 established by any one of, or a combination of, the following methods
16 acceptable to the ~~((director of the))~~ department of ecology: (1)
17 Evidence of insurance; (2) surety bonds; (3) qualification as a self-
18 insurer; or (4) other evidence of financial responsibility. Any bond
19 filed shall be issued by a bonding company authorized to do business in
20 the United States. Documentation of such financial responsibility
21 shall be kept on any ~~((barge or tank))~~ covered vessel ~~((transporting~~
22 ~~petroleum products or hazardous substances as cargo))~~ and filed with
23 the department at least twenty-four hours before entry of the vessel
24 into the navigable waters of the state. ~~((The owner or operator of any~~
25 ~~other vessel shall maintain on the vessel a certificate issued by the~~
26 ~~United States coast guard evidencing compliance with the requirements~~
27 ~~of section 311 of the federal clean water act, 33 U.S.C. Sec. 1251 et~~
28 ~~seq.))~~ The owner or operator of the vessel may file with the
29 department a certificate evidencing compliance with the requirements of

1 another state's or federal financial responsibility requirements if the
2 state or federal government requires a level of financial
3 responsibility at least as high as that required under this chapter.
4 The certificate shall indicate that the financial responsibility will
5 protect this state's resources in the event of a spill.

6 **Sec. 804.** RCW 88.40.040 and 1989 1st ex.s. c 2 s 5 are each
7 amended to read as follows:

8 (1) The department shall deny entry to the waters of the state to
9 any vessel that does not meet the financial liability requirements of
10 this chapter. Any vessel owner or operator that does not meet the
11 financial responsibility requirements of ((this chapter)) RCW 90.56.600
12 through 90.56.620 and any rules prescribed thereunder shall be reported
13 by the department to the ((secretary of transportation who shall
14 suspend the privilege of operating said vessel until financial
15 responsibility is demonstrated)) United States coast guard.

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

18 (3) Any onshore or offshore facility owner or operator who does not
19 meet the financial responsibility requirements of RCW 90.56.605 and any
20 rules adopted by the department shall be reported to the department of
21 licensing. The department of licensing shall suspend the facility's
22 privilege of operating in this state until financial responsibility is
23 demonstrated.

24 **Sec. 805.** RCW 88.40.050 and 1989 1st ex.s. c 2 s 6 are each
25 amended to read as follows:

26 Any owner or operator of a vessel or a facility subject to ((this
27 chapter)) RCW 90.56.605, who fails to comply with RCW ((88.40.020))
28 90.56.605 or any ((regulation)) rule issued thereunder, shall be

1 subject to a penalty not to exceed (~~ten~~) one hundred thousand dollars
2 for each day that the violation occurs. The penalty shall be imposed
3 pursuant to RCW 43.21B.300.

4 **PART IX**

5 **FUNDS**

6 NEW SECTION. **Sec. 901.** PURPOSES FOR WHICH FUNDS MAY BE
7 SPENT. (Reserved)

8 NEW SECTION. **Sec. 902.** OIL AND HAZARDOUS SUBSTANCE SPILL
9 PREVENTION TAX. (1) In order to carry out the purposes of this
10 chapter, an oil and hazardous substance spill prevention and response
11 tax is levied on the first possession of oil and hazardous substance
12 for commercial use in a facility in this state.

13 (2) The tax revenues shall be deposited into the oil and hazardous
14 substance spill prevention and response account for the purposes of
15 that account.

16 (3) The tax levied by this section shall be cents per gallon
17 of oil and cents per pound of hazardous substance.

18 NEW SECTION. **Sec. 903.** ADMINISTRATION OF TAX. (1) T h e
19 administration of the oil and hazardous substance spill prevention and
20 response tax shall be administered as provided for in this chapter.

21 (2) The tax levied by section 902 of this act shall be remitted
22 quarterly, beginning with the first quarter of 1992.

23 (3) The tax levied by section 902 of this act shall be adjusted
24 annually for inflation as provided by section 907 of this act.

1 NEW SECTION. **Sec. 904.** COLLECTION AND DEPOSIT OF TAX. (1) For
2 the purposes of efficiency of government, the department of revenue
3 shall collect the tax levied by section 902 of this act and shall
4 deposit it into the appropriate account designated by that section.

5 (2) For the purposes of administering this tax, chapter 82.32 RCW
6 shall apply. The provisions for interest, penalties, and collection
7 procedures in chapter 82.32 RCW shall apply.

8 (3) The department of revenue shall adopt rules necessary to
9 implement the collection of this tax.

10 (4) The department of revenue shall deduct its costs of
11 administration before depositing the tax revenues to the oil and
12 hazardous substance spill prevention and response account.

13 NEW SECTION. **Sec. 905.** PROVISIONS FOR OIL AND HAZARDOUS SUBSTANCE
14 SPILL PREVENTION AND RESPONSE ACCOUNT. (1) The oil and hazardous
15 substance spill prevention and response account is established to be
16 used by the department of ecology as a revolving account to provide for
17 oil and hazardous substance spill prevention, response, and cleanup.

18 (2) The cost of administering the program shall be appropriated
19 from this account.

20 (3) To this account there shall be credited:

21 (a) The spill prevention and response tax under section 902 of this
22 act;

23 (b) Recoveries of costs funded by this account;

24 (c) Interest earned on the moneys in the account; and

25 (d) Federal or other governmental agency funds received to pay for
26 response, containment, abatement, and rehabilitation costs from an oil
27 spill in waters protected under this chapter.

28 (4) The tax shall be collected until the account exceeds thirty-
29 three million dollars. In any calendar quarter that the account is

1 less than thirty-one million dollars, the collection of the tax shall
2 begin for the succeeding calendar quarter.

3 NEW SECTION. **Sec. 906.** COMMERCIAL USE DEFINED. F o r t h e
4 purposes of section 902 of this act, "commercial use" includes:

5 (1) Employing, applying, consuming, or otherwise using a substance;

6 (2) Creating, purifying, refining, cleaning, processing, combining,
7 diluting, treating, mixing, blending, or otherwise making a substance
8 or substances into a substance or substances with different
9 characteristics;

10 (3) Retaining, storing, holding, containing, or otherwise keeping
11 a substance;

12 (4) Transporting or moving a substance; and

13 (5) Burning, evaporating, dispersing, abandoning, rejecting,
14 discarding, or otherwise disposing of the substance.

15 NEW SECTION. **Sec. 907.** INDEXING MONETARY INSTRUMENTS. Resource
16 damages, penalties, the compensation schedule, account maximums and
17 account minimums, and taxes allowed or imposed under this chapter lose
18 their effectiveness within a short period of time if they are not
19 adjusted to offset the effects of inflation. In order to retain the
20 economic value of monetary instruments over time the department shall
21 adjust resource damages, the compensation schedule, penalties, maximum
22 and minimum account balances, taxes, tax rates, and annual taxes
23 provided for in this chapter by conducting the calculation set forth in
24 subsection (1) of this section and taking the actions set forth in
25 subsection (2) of this section.

26 (1) On an annual basis the resource damages, penalties, taxes, tax
27 rates, annual taxes, and maximum and minimum account balances provided
28 for in this chapter shall be multiplied by a factor equal to the most

1 recent quarterly price deflator available, divided by the second
2 quarter price deflator for 1991.

3 (2) The adjusted schedules provided in subsection (1) of this
4 section shall be published. The department may round penalties and
5 other monetary instruments having greater than a one-dollar value to
6 the nearest dollar.

7 **Sec. 908.** RCW 90.48.390 and 1989 c 388 s 7 and 1989 c 262 s 3 are
8 each reenacted and amended to read as follows:

9 The coastal protection fund is established to be used by the
10 department as a revolving fund for carrying out the purposes of RCW
11 (~~((90.48.315 through 90.48.365, 78.52.020, 78.52.125, 82.36.330,))~~)
12 90.48.142(~~(, 90.48.315, 90.48.370 through 90.48.410, 90.48.903,~~
13 ~~90.48.906 and 90.48.907, and 90.48.366 through 90.48.368))~~) and this
14 chapter. To this fund there shall be credited penalties, fees,
15 damages, and charges received pursuant to the provisions of RCW
16 90.48.142 and (~~((90.48.315 through 90.48.365))~~) this chapter,
17 compensation for damages received under (~~(RCW 90.48.366 through~~
18 ~~90.48.368))~~) this chapter, and an amount equivalent to one cent per
19 gallon from each marine use refund claim under RCW 82.36.330.

20 Moneys in the fund not needed currently to meet the obligations of
21 the department in the exercise of its powers, duties, and functions
22 under RCW (~~((90.48.315 through 90.48.365 and RCW 78.52.020,))~~)
23 78.52.125(~~(, 82.36.330, 90.48.142, 90.48.315, 90.48.370 through~~
24 ~~90.48.410, 90.48.903, 90.48.906 and 90.48.907))~~) and this chapter shall
25 be deposited with the state treasurer to the credit of the fund and may
26 be invested in such manner as is provided for by law. Interest
27 received on such investment shall be credited to the fund.

1 **Sec. 909.** RCW 90.48.400 and 1990 c 116 s 14 are each amended to
2 read as follows:

3 (1) Moneys in the coastal protection fund shall be disbursed for
4 the following purposes and no others:

5 (a) All costs of the department related to the enforcement of RCW
6 (~~((90.48.315 through 90.48.365, 90.48.371 through 90.48.378, 90.48.381,~~
7 ~~90.48.383, 90.48.385, 90.48.387, 90.48.388, 78.52.020,))~~) 78.52.125,
8 (~~((82.36.330,))~~) 90.48.142, (~~((90.48.903, 90.48.906, and 90.48.907))~~) and
9 this chapter including but not limited to equipment rental and
10 contracting costs.

11 (b) All costs involved in the abatement of pollution related to the
12 discharge of oil and other hazardous substances.

13 (c) The director may allocate a portion of the fund to be devoted
14 to research and development in the causes, effects, and removal of
15 pollution caused by the discharge of oil or other hazardous substances.

16 (2) Moneys disbursed from the coastal protection fund for the
17 abatement of pollution caused by the discharge of oil or other
18 hazardous substances shall be reimbursed to the fund whenever:

19 (a) Moneys are available under any federal program; or

20 (b) Moneys are available from a recovery made by the department
21 from the person liable for the discharge of oil or other hazardous
22 substances.

23 (3) Moneys collected under RCW 90.48.142 shall only be used for the
24 purposes enumerated in that section, subject to the approval of the
25 steering committee created in RCW 90.48.142.

26 (4) A steering committee consisting of representatives of the
27 department of ecology, fisheries, wildlife, and natural resources, and
28 the parks and recreation commission shall authorize the expenditure of
29 the moneys collected under RCW (~~((90.48.366))~~) 90.56.265 through
30 (~~((90.48.368))~~) 90.56.275, after consulting impacted local agencies and

1 local and tribal governments. The moneys collected under RCW
2 ((90.48.366)) 90.56.265 through ((90.48.368)) 90.56.275 shall only be
3 used for the following purposes: (a) Environmental restoration and
4 enhancement projects intended to restore or enhance environmental,
5 recreational, or aesthetic resources for the benefit of Washington's
6 citizens; (b) investigations of the long-term effects of oil spills and
7 the release of other hazardous substances on state resources; (c)
8 reimbursement of agencies for reasonable reconnaissance and damage
9 assessment costs; and (d) wildlife rescue and rehabilitation. Agencies
10 may not be reimbursed under this section for the salaries and benefits
11 of permanent employees for routine operational support. Agencies may
12 only be reimbursed under this section if money for reconnaissance and
13 damage assessment activities is unavailable from other sources.

14 **PART X**

15 **MARITIME SAFETY ADVISORY COMMISSION**

16 **Sec. 1001.** RCW 88.44.010 and 1990 c 117 s 2 are each amended to
17 read as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

20 (1) "Business class" means a recognized trade segment of the
21 maritime industry.

22 (2) "Commission" means the Washington state maritime commission.

23 (3) "Director" means the director of the department of ecology or
24 ((their duly authorized representative)) the director's designee.

25 (4) "Fishing vessel" means a vessel ((that)) (a) on which persons
26 commercially engage((s)) in: ((+a)) (i) Catching, taking, or
27 harvesting fish; ((+b)) (ii) preparing fish or fish products; or
28 ((+e)) (b) that supplies, stores, refrigerates, or transports fish,

1 fish products, or materials directly related to fishing or the
2 preparation of fish.

3 (5) "Foreign vessel" means a vessel of foreign registry or operated
4 under the authority of a country, except the United States.

5 (6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel
6 oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural
7 gas, propane, butane, oils distilled from coal, and other liquid
8 hydrocarbons regardless of specific gravity, or any other petroleum
9 related products.

10 (7) "Oceanographic research vessel" means a vessel (~~that is~~) on
11 which persons are employed only in instruction in oceanography or
12 limnology, or both, or only in oceanographic or limnological research,
13 including those studies about the sea such as seismic, gravity meter,
14 and magnetic exploration and other marine geophysical or geological
15 surveys, atmospheric research, and biological research.

16 (8) "Protection and indemnity club" means a mutual insurance
17 organization formed by a group of shipowners or operators in order to
18 secure cover for various risks of vessel operation, including oil spill
19 costs, not covered by normal hull insurance.

20 (9) "Public vessel" means a vessel that is owned, or chartered and
21 operated by the United States government, by a state of the United
22 States, or a government of a foreign country and is not engaged in
23 commercial service.

24 (10) "State" means a state of the United States, Guam, Puerto Rico,
25 the Virgin Islands, American Samoa, the District of Columbia, the
26 Northern Mariana Islands, and any other territory or possession of the
27 United States.

28 (11) "Steamship agent or agency" means an agent or agency appointed
29 by a vessel owner or operator to enter or clear vessels at ports within
30 the state of Washington and to conduct onshore activities, or contract

1 on behalf of the owner or operator for whatever is required for the
2 efficient operation of the vessel.

3 (12) "Steamship liner company" means a steamship company
4 maintaining a regular schedule of calls at designated ports of the
5 state of Washington.

6 (13) "Towboat" means a commercial vessel engaged in, or intending
7 to engage in, the service of pulling, pushing, or hauling along side,
8 or any combination of pulling, pushing, or hauling along side.

9 (14) "United States flag vessel" means a vessel documented under
10 the laws of the United States or registered under the laws of any state
11 of the United States.

12 (15) "Vessel" means every description of watercraft, other than a
13 seaplane on water, used or capable of being used as a means of
14 transportation on water, carrying oil as fuel or cargo, and over three
15 hundred gross registered tons, except oceanographic research vessels,
16 public vessels, vessels being employed exclusively for pleasure, or
17 vessels which, prior to entering Washington waters, have formerly
18 arranged with an officially recognized cleanup cooperative or with a
19 private cleanup contractor for immediate oil spill response.

20 (16) "Vessel owner or operator" means the legal owner of a vessel
21 and/or the charterer or other person in charge of the day-to-day
22 operation.

23 (17) "Waters of this state" or "waters of the state of Washington"
24 (~~((shall mean all navigable waters within the state of Washington as
25 defined in Article 24, section 1 of the state Constitution))~~) has the
26 meaning in RCW 90.56.010.

27 **Sec. 1002.** RCW 88.44.020 and 1990 c 117 s 3 are each amended to
28 read as follows:

1 There is created ((a)) the Washington state maritime commission
2 (~~to be known and designated and declared a corporate body~~). The
3 powers and duties of the commission ((shall)) include the following:

4 (1) To ~~(elect a chairperson and such other officers as it deems~~
5 ~~advisable; and to)~~ adopt(~~, rescind, and amend~~) rules and orders for
6 the exercise of its powers(~~, which shall have the force and effect of~~
7 ~~the law when not inconsistent with existing laws~~);

8 (2) To administer and enforce the provisions of this chapter, and
9 do all things reasonably necessary to effectuate the purposes of this
10 chapter;

11 (3) To employ(~~, and at its pleasure discharge, a manager,~~
12 ~~secretary, agents, attorneys, consultants, companies, organizations,~~
13 ~~and employees~~) staff as it deems necessary(~~, and to prescribe their~~
14 ~~duties and powers and fix their compensation~~) who shall be subject to
15 civil service law, chapter 41.06 RCW;

16 (4) (~~To establish offices, incur expenses, enter into contracts,~~
17 ~~and create such liabilities as may be reasonable for the proper~~
18 ~~administration and enforcement of this chapter~~;

19 ~~(5))~~ To assess vessels transiting the waters of this state, to
20 collect such assessments, investigate violations, and enforce the
21 provisions of this chapter, except for vessels which transit upon the
22 portion of the Columbia river that runs between the states of
23 Washington and Oregon;

24 (~~(6) To keep accurate record of all of its dealings, which shall~~
25 ~~be open to inspection and audit by the state auditor~~;

26 ~~(7) To sue and be sued, adopt a corporate seal, and have all of the~~
27 ~~powers of a corporation~~;

28 ~~(8))~~ (5) To expend funds for commission-related education and
29 training programs as the commission deems appropriate;

30 (~~(9) To borrow money and incur indebtedness~~;

1 ~~(10))~~ (6) To establish an oil spill first response system, except
2 for vessels which transit upon the portion of the Columbia river that
3 runs between the states of Washington and Oregon. This system will
4 provide a mandatory emergency response communications network for
5 vessels involved in commerce in Washington waters, and provide an
6 immediate response to such vessels which, for whatever reason,
7 discharge oil into the state's waters. In the event of an oil spill or
8 threatened oil spill, the system must be able to provide a complete
9 response for the first twenty-four hours after the initial report,
10 which may include, but not be limited to, as needed, response vessel or
11 vessels, boom equipment, skimmers, qualified personnel, and wildlife
12 care centers.

13 The commission may establish, by or before July 1, 1992, an oil
14 spill first response system for vessels which transit upon the portion
15 of the Columbia river that runs between the states of Washington and
16 Oregon;

17 ~~((11))~~ (7) To enter into contracts with cleanup contractors to
18 provide spill response, or with other organizations or companies for
19 communication services;

20 ~~((12))~~ (8) To recover oil spill first response system costs from
21 a responsible vessel owner or operator in the event of a spill or
22 threatened release;

23 ~~((13))~~ (9) To hold response readiness drills with state and
24 federal agencies;

25 ~~((14))~~ (10) To work with other states' and countries' maritime
26 organizations, cleanup cooperatives, and governmental response
27 agencies; ~~((and~~

28 ~~(15))~~ (11) To develop an oil spill contingency plan to comply with
29 state statutes and rules for those vessels covered by the commission,
30 except for vessels operating on the portion of the Columbia river that

1 runs between the states of Washington and Oregon. The commission shall
2 develop an oil spill contingency plan for vessels which transit upon
3 the portion of the Columbia river that runs between the states of
4 Washington and Oregon, not later than January 1, 1993; and

5 (12) To report annually to the governor, the department of ecology,
6 and the appropriate standing committees of the legislature on the
7 commission's work and the number of incidents to which the commission's
8 first response system has responded, and make recommendations to
9 improve the safety of maritime transportation.

10 **Sec. 1003.** RCW 88.44.030 and 1990 c 117 s 4 are each amended to
11 read as follows:

12 The commission shall be comprised of nine voting members. ~~((Six))~~
13 Seven persons ~~((, each representing a))~~ shall be appointed by the
14 governor to represent specific business classes ~~((, shall be elected to~~
15 ~~membership in the commission and one person shall be appointed by the~~
16 ~~commission members))~~. Two of the members shall represent steamship
17 liner companies, one American flag and one foreign flag. One member
18 shall represent towboat companies. One member shall represent fishing
19 vessels. One member shall represent steamship agencies serving tramp
20 vessels. One member shall represent protection and indemnity clubs or
21 other marine brokers or insurers of oil spill cleanup costs for vessels
22 operating in Washington waters. One member shall represent steamship
23 agencies serving tramp vessels on the Columbia river. The governor
24 shall also appoint one member with maritime, marine labor, or marine
25 spill cleanup experience and one member from the environmental
26 community with marine experience ~~((shall be appointed from the public~~
27 ~~by the governor))~~. In addition, the director ~~((, the United States~~
28 ~~coast guard captain of the port for Puget Sound, the United States~~
29 ~~coast guard captain of the port for that portion of the Columbia river~~

1 ~~that runs between Washington and Oregon,~~) and a state pilot licensed
2 under chapter 88.16 RCW(~~(7)~~) who pilots in the waters of the state of
3 Washington, or their designees, will serve as nonvoting (~~(ex officio)~~)
4 members. The United States coast guard captain of the port for Puget
5 Sound and the United States coast guard captain of the port for that
6 portion of the Columbia river that runs between Washington and Oregon
7 shall be invited to attend meetings of the commission. The state-
8 licensed pilot shall be selected by the Washington state board of
9 pilotage commissioners.

10 Members of the commission must have had a minimum of five years'
11 experience in their business class and be actively employed by or on
12 behalf of a company within the business class for whom they shall
13 represent. However, the protection and indemnity or insurance member
14 may be a designee of the international group of protection and
15 indemnity clubs, or any such marine insurers engaged in business within
16 the state.

17 The commission shall meet at least (~~(quarterly every)~~) twice each
18 year.

19 **Sec. 1004.** RCW 88.44.040 and 1990 c 117 s 5 are each amended to
20 read as follows:

21 (~~The regular term of office of the members of the commission shall~~
22 ~~be three years from July 1 following their election and until their~~
23 ~~successors are elected and qualified. The commission shall hold its~~
24 ~~annual meeting during the month of October each year for the purpose of~~
25 ~~electing officers and the transaction of other business and shall hold~~
26 ~~such other meetings during the year as it shall determine.~~

27 Commission members shall be first nominated and elected in 1990 in
28 the manner set forth in RCW 88.44.050 and shall take office as soon as

1 they are qualified. However, expiration of the term of the respective
2 commission members first elected in 1990 shall be as follows:

3 (1) Foreign flag liner and fishing vessel members on July 1, 1991;

4 (2) Protection and indemnity club or marine member, and public
5 member on July 1, 1992; and

6 (3) All other members on July 1, 1993.) The governor shall
7 appoint members of the commission for three-year terms. The members of
8 the commission elected before the effective date of this section shall
9 continue as members until their terms would have expired under 1990 c
10 117 s 5.

11 The respective terms shall end on June 30 of each third year
12 thereafter. Any vacancies that occur on the commission shall be filled
13 by ~~((appointment of an eligible person by the other members of the~~
14 ~~commission, and such appointee shall hold office for the remainder of~~
15 ~~the term for which they are appointed to fill, so that commission~~
16 ~~memberships shall be on a uniform staggered basis))~~ the governor to
17 serve out the remainder of the unexpired term. The members of the
18 commission are subject to the public disclosure act, chapter 42.17 RCW.

19 **Sec. 1005.** RCW 88.44.080 and 1990 c 117 s 9 are each amended to
20 read as follows:

21 A majority of the voting members of the commission shall constitute
22 a quorum for the transaction of all business and the carrying out of
23 the duties of the commission.

24 Each member of the commission shall be compensated in accordance
25 with RCW 43.03.240 and shall be reimbursed for actual travel expenses
26 incurred in carrying out the provisions of this chapter. Employees of
27 the commission may also be reimbursed for actual travel expenses when
28 out-of-state on official commission business. Compensation and
29 reimbursement shall be from commission funds only.

1 (~~Resignations of commission members will be filled by a majority~~
2 ~~of the remaining commission members. The appointed commission members~~
3 ~~shall serve out the remaining term. If a commission member leaves the~~
4 ~~employment of their respective business class for more than one hundred~~
5 ~~twenty days, the commission member must resign from that position. A~~
6 ~~commission member may be removed from the commission for just cause by~~
7 ~~a two-thirds majority vote of commission members.))~~

8 **Sec. 1006.** RCW 88.44.110 and 1990 c 117 s 12 are each amended to
9 read as follows:

10 If it appears from investigation by the commission that the revenue
11 from the assessment levied on vessels under this chapter is inadequate
12 to accomplish the purposes of this chapter, the commission by rule
13 shall (~~adopt a resolution setting forth the necessities of the~~
14 ~~industry, the extent and probable cost of the required research, spill~~
15 ~~cleanup procedures and operations, public and industry education,~~
16 ~~administrative operations, the extent of public convenience, interest,~~
17 ~~and necessity, and probable revenue from the assessment levied. After~~
18 ~~the proper regulatory hearings, the commission may~~)) increase the
19 assessment to a sum determined by the commission to be necessary for
20 those purposes. An increase becomes effective ninety days after the
21 resolution is adopted or on any other date provided for in the
22 resolution.

23 **Sec. 1007.** RCW 88.44.160 and 1990 c 117 s 17 are each amended to
24 read as follows:

25 (~~Rules and orders adopted by the commission shall be filed with~~
26 ~~the director and shall become effective pursuant to the provisions of~~
27 ~~the administrative procedure act~~)) The commission shall adopt rules and
28 orders in accordance with chapter 34.05 RCW.

1 PART XI

2 PILOTAGE

3 Sec. 1101. RCW 88.16.010 and 1987 c 485 s 1 are each amended to
4 read as follows:

5 (1) The board of pilotage commissioners of the state of Washington
6 is hereby created and shall consist of the assistant secretary of
7 marine transportation of the department of transportation of the state
8 of Washington, or the assistant secretary's designee who shall be an
9 employee of the marine division, who shall be chairperson, the
10 administrator of the oil and hazardous substance spill prevention
11 division of the department of ecology, or the administrator's designee,
12 and six members appointed by the governor and confirmed by the senate.
13 Each of ~~((said))~~ the appointed commissioners shall be appointed for a
14 term of four years from the date of ~~((said))~~ the member's commission.
15 No person shall be eligible for appointment to ~~((said))~~ the board
16 unless that person is at the time of appointment eighteen years of age
17 or over and a citizen of the United States and of the state of
18 Washington. Two of ~~((said))~~ the appointed commissioners shall be
19 pilots licensed under this chapter and actively engaged in piloting
20 upon the waters covered by this chapter for at least three years
21 immediately preceding the time of appointment and while serving on the
22 board. No more than one pilot shall be from the ~~((Puget Sound))~~ same
23 pilotage district ~~((and one shall be from the Grays Harbor pilotage~~
24 ~~district))~~. Two of ~~((said))~~ the appointed commissioners shall be
25 actively engaged in the ownership, operation, or management of deep sea
26 cargo and/or passenger carrying vessels for at least three years
27 immediately preceding the time of appointment and while serving on the
28 board. One of said shipping commissioners shall be a representative of
29 American and one of foreign shipping. At least one of the

1 commissioners shall be a representative from a recognized environmental
2 organization concerned with marine waters. The remaining
3 commissioner(~~s~~) shall be (~~persons~~) interested in and concerned with
4 pilotage, maritime safety, and marine affairs, with broad experience
5 related to the maritime industry exclusive of experience as either a
6 state licensed pilot or as a shipping representative.

7 (2) Any vacancy in an appointed position on the board shall be
8 filled by the governor for the remainder of the unfilled term, subject
9 to confirmation by the senate.

10 (3) Four members of the board shall constitute a quorum. At least
11 one pilot, one shipping representative, and one public member must be
12 present at every meeting. All commissioners and the chairperson shall
13 have a vote.

14 **Sec. 1102.** RCW 88.16.050 and 1987 c 485 s 3 are each amended to
15 read as follows:

16 This chapter shall apply to the pilotage districts of this state as
17 defined in this section.

18 (1) "Puget Sound pilotage district", whenever used in this chapter,
19 shall be construed to mean and include all the waters of the state of
20 Washington inside the international boundary line between the state of
21 Washington, the United States and the province of British Columbia,
22 Canada and east of one hundred twenty-three degrees twenty-four minutes
23 west longitude.

24 (2) "Grays Harbor pilotage district" shall include all inland
25 waters, channels, waterways, and navigable tributaries within Grays
26 Harbor and Willapa Harbor. The boundary line between Grays Harbor and
27 Willapa Harbor and the high seas shall be defined by the board.

28 (3) "Columbia river pilotage district" includes the Columbia river
29 from its mouth to the Interstate 5 highway bridge.

1 **Sec. 1103.** RCW 88.16.070 and 1987 c 194 s 2 are each amended to
2 read as follows:

3 (1)(a) Except as otherwise provided in (b) of this subsection, all
4 vessels under enrollment and all United States and Canadian vessels
5 engaged exclusively in the coasting trade on the west coast of the
6 continental United States (including Alaska) and/or British Columbia
7 shall be exempt from the provisions of this chapter unless a pilot
8 licensed under this chapter (~~be~~) is actually employed, in which case
9 the pilotage rates provided for in this chapter shall apply.
10 (~~However,~~)

11 (b) The board shall, upon the written petition of any interested
12 party, and upon notice and hearing, grant an exemption from the
13 provisions of this chapter to any vessel that the board finds is a
14 small passenger vessel or yacht which is not more than five hundred
15 gross tons (international), does not exceed two hundred feet in length,
16 and is operated exclusively in the waters of the Puget Sound pilotage
17 district and lower British Columbia. Such an exemption shall not be
18 detrimental to the public interest in regard to safe operation
19 preventing loss of human lives, loss of property, and protecting the
20 marine environment of the state of Washington. Such petition shall set
21 out the general description of the vessel, the contemplated use of
22 same, the proposed area of operation, and the name and address of the
23 vessel's owner. The board shall annually, or at any other time when in
24 the public interest, review any exemptions granted to this specified
25 class of small vessels to insure that each exempted vessel remains in
26 compliance with the original exemption. The board shall have the
27 authority to revoke such exemption where there is not continued
28 compliance with the requirements for exemption. The board shall
29 maintain a file which shall include all petitions for exemption, a
30 roster of vessels granted exemption, and the board's written decisions

1 which shall set forth the findings for grants of exemption. The board
2 shall report annually to the legislature on such exemptions.

3 (2)(a) except as provided in (b) and (c) of this subsection, every
4 vessel not ((se)) exempt from pilotage requirements under subsection
5 (1) of this section, shall while navigating the Puget Sound ((and)),
6 Grays Harbor and Willapa Bay, and the Columbia river pilotage
7 districts, employ a pilot licensed under the provisions of this chapter
8 and shall be liable for and pay pilotage rates in accordance with the
9 pilotage rates herein established or which may hereafter be established
10 under the provisions of this chapter((:—PROVIDED, That)).

11 (b) Any vessel inbound to or outbound from Canadian ports is exempt
12 from the provisions of this section, if said vessel actually employs a
13 pilot licensed by the Pacific pilotage authority (the pilot licensing
14 authority for the western district of Canada), and if it is
15 communicating with the vessel traffic system and has appropriate
16 navigational charts, and if said vessel uses only those waters east of
17 the international boundary line which are west of a line which begins
18 at the southwestern edge of Point Roberts then to Alden Point (Patos
19 Island), then to Skipjack Island light, then to Turn Point (Stuart
20 Island), then to Kellet Bluff (Henry Island), then to Lime Kiln (San
21 Juan Island) then to the intersection of one hundred twenty-three
22 degrees seven minutes west longitude and forty-eight degrees twenty-
23 five minutes north latitude then to the international boundary. The
24 board shall correspond with the Pacific pilotage authority from time to
25 time to ensure the provisions of this section are enforced. If any
26 exempted vessel does not comply with these provisions it shall be
27 deemed to be in violation of this section and subject to the penalties
28 provided in RCW 88.16.150 as now or hereafter amended and liable to
29 pilotage fees as determined by the board. The board shall investigate

1 any accident on the waters covered by this chapter involving a Canadian
2 pilot and shall include the results in its annual report.

3 (c) A vessel inbound to or outbound from Oregon or Washington ports
4 on the Columbia river is exempt from this section if the vessel
5 actually employs a pilot licensed by the Oregon board of maritime
6 pilots or the Washington board of pilotage commissioners.

7 **Sec. 1104.** RCW 88.16.090 and 1990 c 116 s 27 and 1990 c 112 s 1
8 are each reenacted and amended to read as follows:

9 (1) A person may pilot any vessel subject to the provisions of this
10 chapter on waters covered by this chapter only if appointed and
11 licensed to pilot such vessels on said waters under and pursuant to the
12 provisions of this chapter.

13 (2) A person is eligible to be appointed a pilot if the person is
14 a citizen of the United States, over the age of twenty-five years and
15 under the age of seventy years, a resident of the state of Washington
16 at the time of appointment and only if the pilot applicant holds as a
17 minimum, a United States government license as a master of ocean or
18 near coastal steam or motor vessels of not more than one thousand six
19 hundred gross tons or as a master of inland steam or motor vessels of
20 not more than one thousand six hundred gross tons, such license to have
21 been held by the applicant for a period of at least two years prior
22 such license to have been held by the applicant for a period of at
23 least two years prior to taking the Washington state pilotage
24 examination and a first class United States endorsement without
25 restrictions on that license to pilot in the pilotage districts for
26 which the pilot applicant desires to be licensed, and if the pilot
27 applicant meets such other qualifications as may be required by the
28 board. A person applying for a license under this section shall not
29 have been convicted of an offense involving drugs or the personal

1 consumption of alcohol in the twelve months prior to the date of
2 application. This restriction does not apply to license renewals under
3 this section.

4 (3) Pilots shall be licensed hereunder for a term of five years
5 from and after the date of the issuance of their respective state
6 licenses. Such licenses shall thereafter be renewed as of course,
7 unless the board shall withhold same for good cause. Each pilot shall
8 pay to the state treasurer an annual license fee established by the
9 board of pilotage commissioners pursuant to chapter 34.05 RCW, but not
10 to exceed one thousand five hundred dollars, to be placed in the state
11 treasury to the credit of the pilotage account. The board may assess
12 partially active or inactive pilots a reduced fee.

13 (4) Pilot applicants shall be required to pass a written and oral
14 examination administered and graded by the board which shall test such
15 applicants on this chapter, the rules of the board, local harbor
16 ordinances, and such other matters as may be required to compliment the
17 United States examinations and qualifications. The board shall
18 ~~((conduct the examination on a regular date, as prescribed by rule, at
19 least once every two years))~~ hold examinations at such times as will,
20 in the judgment of the board, ensure the maintenance of an efficient
21 and competent pilotage service. An examination shall be scheduled for
22 the Puget Sound pilotage district if there are three or fewer
23 successful candidates from the previous examination who are waiting to
24 become pilots in that district.

25 (5) The board shall ~~((have developed five examinations and grading
26 sheets for the Puget Sound pilotage district, and two for each other))~~
27 develop an examination and grading sheet for each pilotage district,
28 for the testing and grading of pilot applicants. The examinations
29 shall be administered to pilot applicants ~~((on a random basis))~~ and
30 shall be updated as required to reflect changes in law, rules,

1 policies, or procedures. The board may appoint a special independent
2 examination committee or may contract with a firm knowledgeable and
3 experienced in the development of professional tests for development of
4 said examinations. Active licensed state pilots may be consulted for
5 the general development of examinations but shall have no knowledge of
6 the specific questions. The pilot members of the board may participate
7 in the grading of examinations. If the board does appoint a special
8 examination development committee it is authorized to pay the members
9 of said committee the same compensation and travel expenses as received
10 by members of the board. When grading examinations the board shall
11 carefully follow the grading sheet prepared for that examination. The
12 board shall develop a "sample examination" which would tend to indicate
13 to an applicant the general types of questions on pilot examinations,
14 but such sample questions shall not appear on any actual examinations.
15 Any person who willfully gives advance knowledge of information
16 contained on a pilot examination is guilty of a gross misdemeanor.

17 (6) All pilots and applicants are subject to an annual physical
18 examination by a physician chosen by the board. The physician shall
19 examine the applicant's heart, blood pressure, circulatory system,
20 lungs and respiratory system, eyesight, hearing, and such other items
21 as may be prescribed by the board. After consultation with a physician
22 and the United States coast guard, the board shall establish minimum
23 health standards to ensure that pilots licensed by the state are able
24 to perform their duties. Within ninety days of the date of each annual
25 physical examination, and after review of the physician's report, the
26 board shall make a determination of whether the pilot or candidate is
27 fully able to carry out the duties of a pilot under this chapter. The
28 board may in its discretion check with the appropriate authority for
29 any convictions of offenses involving drugs or the personal consumption
30 of alcohol in the prior twelve months.

1 (7) The board shall prescribe, pursuant to chapter 34.05 RCW, a
2 number of familiarization trips, between a minimum number of twenty-
3 five and a maximum of one hundred, which pilot applicants must make in
4 the pilotage district for which they desire to be licensed.
5 Familiarization trips any particular applicant must make are to be
6 based upon the applicant's vessel handling experience.

7 (8) The board (~~((may prescribe))~~) shall require vessel simulator
8 training for a pilot applicant(~~((, or))~~) and a pilot subject to RCW
9 88.16.105(~~((, as it deems appropriate, taking into consideration the
10 economic cost of such training, to enhance that person's ability to
11 perform pilotage duties under this chapter))~~). The board shall also
12 require vessel simulator training in the first year of active duty for
13 a new pilot and at least once every five years for all active pilots.

14 (9) The board shall prescribe, pursuant to chapter 34.05 RCW, such
15 reporting requirements and review procedures as may be necessary to
16 assure the accuracy and validity of license and service claims, and
17 records of familiarization trips of pilot candidates. Willful
18 misrepresentation of such required information by a pilot candidate
19 shall result in disqualification of the candidate.

20 (10) The board shall adopt rules to establish time periods and
21 procedures for additional training trips and retesting as necessary for
22 pilots who at the time of their licensing are unable to become active
23 pilots.

24 **Sec. 1105.** RCW 88.16.110 and 1935 c 18 s 7 are each amended to
25 read as follows:

26 Every pilot licensed under this chapter shall file with the board
27 not later than the tenth day of January, April, July and October of
28 each year a report for the preceding quarter. Said report shall
29 contain an account of all moneys received for pilotage by him or her or

1 by any other person for ((him)) the pilot or on ((his)) the pilot's
2 account or for his or her benefit. Said report shall state the name of
3 each vessel piloted, the amount charged to and/or collected from each
4 vessel, the port of registry of such vessel, its dead weight tonnage,
5 whether it was inward or outward bound, whether the amount so received,
6 collected or charged is in full payment of pilotage and such other
7 information as the board shall by regulation prescribe. The report
8 shall include information for each vessel that suffers a grounding,
9 collision, or other major marine casualty that occurred while the pilot
10 was on duty during the reporting period. The report shall also include
11 information on near miss incidents under rules adopted by the board.
12 The board shall forward this information to the department of ecology
13 for inclusion in the collision reporting system established under
14 section 207 of this 1991 act.

15 **Sec. 1106.** RCW 88.16.155 and 1977 ex.s. c 337 s 11 are each
16 amended to read as follows:

17 (1) The master of any vessel which employs a Washington licensed
18 pilot shall certify on a form prescribed by the board of pilotage
19 commissioners that the vessel complies with:

20 (a) Such provisions of the United States coast guard regulations
21 governing the safety and navigation of vessels in United States waters,
22 as codified in Title 33 of the code of federal regulations, as the
23 board may prescribe; ((and))

24 (b) The provisions of current international agreements governing
25 the safety, radio equipment, and pollution of vessels and other matters
26 as ratified by the United States Senate and prescribed by the board;
27 and

28 (c) The federal oil pollution act of 1990.

1 (2) The master of any vessel which employs a Washington licensed
2 pilot shall be prepared to produce, and any Washington licensed pilot
3 employed by a vessel shall request to see, certificates of the vessel
4 which certify and indicate that the vessel complies with subsection (1)
5 of this section and the rules of the board (~~promulgated~~) adopted
6 pursuant to subsection (1) of this section.

7 (3) If the master of a vessel which employs a Washington licensed
8 pilot cannot certify that the vessel complies with subsection (1) of
9 this section and the rules of the board adopted pursuant to subsection
10 (1) of this section, the master shall certify that:

11 (a) The vessel will comply with subsection (1) of this section
12 before the time the vessel is scheduled to leave the waters of
13 Washington state; and

14 (b) The coast guard captain of the port was notified of the
15 noncomplying items when they were determined; and

16 (c) The coast guard captain of the port has authorized the vessel
17 to proceed under such conditions as prescribed by the coast guard
18 pursuant to its authority under federal statutes and regulations.

19 (4) After the board has prescribed the form required under
20 subsection (1) of this section, no Washington licensed pilot shall
21 offer pilotage services to any vessel on which the master has failed to
22 make a certification required by this section. If the master fails to
23 make a certification the pilot shall:

24 (a) Disembark from the vessel as soon as practicable; and

25 (b) Immediately inform the port captain of the conditions and
26 circumstances by the best possible means; and

27 (c) Forward a written report to the board no later than twenty-four
28 hours after disembarking from the vessel.

29 (5) Any Washington licensed pilot who offers pilotage services to
30 a vessel on which the master has failed to make a certification

1 required by this section or the rules of the board adopted under this
2 section shall be subject to RCW 88.16.150, as now or hereafter amended,
3 and RCW 88.16.100, as now or hereafter amended.

4 (6) The board shall revise the requirements enumerated in this
5 section as necessary to reflect changes in coast guard regulations,
6 federal statutes, and international agreements. All actions of the
7 board under this section shall comply with chapters 34.05 and 42.30
8 RCW. The board shall prescribe the time of and method for retention of
9 forms which have been signed by the master of a vessel in accordance
10 with the provisions of this section.

11 (7) This section shall not apply to the movement of dead ships.
12 The board shall prescribe pursuant to chapter 34.05 RCW, after
13 consultation with the coast guard and interested persons, for the
14 movement of dead ships and the certification process thereon.

15 **PART XII**

16 **MISCELLANEOUS PROVISIONS**

17 NEW SECTION. **Sec. 1201.** DEPARTMENT OF NATURAL RESOURCES
18 LEASES. After the effective date of this section, the department of
19 natural resources shall include in its leases for land under or
20 adjacent to navigable waters of the state provisions requiring the
21 lessee or any sublessee to provide the best achievable protection to
22 waters of the state. The lease provisions shall also provide that
23 violation by the lessee or sublessee of the provisions of this chapter
24 may be grounds for termination of the lease.

25 **Sec. 1202.** RCW 90.48.037 and 1987 c 109 s 125 are each amended to
26 read as follows:

1 The department, with the assistance of the attorney general, is
2 authorized to bring any appropriate action at law or in equity,
3 including action for injunctive relief, in the name of the people of
4 the state of Washington as may be necessary to carry out the provisions
5 of this chapter or chapter 90.56 RCW.

6 **Sec. 1203.** RCW 90.48.095 and 1987 c 109 s 128 are each amended to
7 read as follows:

8 In carrying out the purposes of this chapter or chapter 90.56 RCW
9 the department shall, in conjunction with either the (~~promulgation~~)
10 adoption of rules (~~and regulations~~), consideration of an application
11 for a waste discharge permit or the termination or modification of such
12 permit, or proceedings in (~~contested cases~~) adjudicative hearings,
13 have the authority to issue process and subpoena witnesses effective
14 throughout the state on its own behalf or that of an interested party,
15 compel their attendance, administer oaths, take the testimony of any
16 person under oath and, in connection therewith require the production
17 for examination of any books or papers relating to the matter under
18 consideration by the department. In case of disobedience on the part
19 of any person to comply with any subpoena issued by the department, or
20 on the refusal of any witness to testify to any matters regarding which
21 he may be lawfully interrogated, it shall be the duty of the superior
22 court of any county, or of the judge thereof, on application of the
23 department, to compel obedience by proceedings for contempt, as in the
24 case of disobedience of the requirements of a subpoena issued from such
25 court or a refusal to testify therein. In connection with the
26 authority granted under this section no witness or other person shall
27 be required to divulge trade secrets or secret processes. Persons
28 responding to a subpoena as provided herein shall be entitled to fees
29 as are witnesses in superior court.

1 **Sec. 1204.** RCW 90.48.100 and 1987 c 109 s 129 are each amended to
2 read as follows:

3 The department shall have the right to request and receive the
4 assistance of any educational institution or state agency when it is
5 deemed necessary by the department to carry out the provisions of this
6 chapter or chapter 90.56 RCW.

7 **Sec. 1205.** RCW 90.48.142 and 1989 c 262 s 2 are each amended to
8 read as follows:

9 (1) Any person who violates any of the provisions of this chapter
10 or chapter 90.56 RCW, or fails to perform any duty imposed by this
11 chapter or chapter 90.56 RCW, or violates an order or other
12 determination of the department or the director made pursuant to the
13 provisions of this chapter or chapter 90.56 RCW, including the
14 conditions of a waste discharge permit issued pursuant to RCW
15 90.48.160, and in the course thereof causes the death of, or injury to,
16 fish, animals, vegetation or other resources of the state, or otherwise
17 causes a reduction in the quality of the state's waters below the
18 standards set by the department or, if no standards have been set,
19 causes significant degradation of water quality, thereby damaging the
20 same, shall be liable to pay the state damages in an amount equal to
21 the sum of money necessary to: (a) Restore any damaged resource to its
22 condition prior to the injury, to the extent technically feasible, and
23 compensate for the lost value incurred during the period between injury
24 and restoration; or (b) compensate for the lost value throughout the
25 duration of the injury that the resource previously provided if
26 restoration is not technically feasible and, when only partial
27 restoration is technically feasible, compensate for the remaining lost
28 value. "Technical feasibility" or "technically feasible" shall mean
29 for the purposes of this subsection, that given available technology,

1 a restoration or enhancement project can be successfully completed at
2 a cost that is not disproportionate to the value of the resource prior
3 to the injury.

4 (2) Restoration shall include the cost to restock such waters,
5 replenish or replace such resources, and otherwise restore the stream,
6 lake or other waters of the state, including any estuary, ocean area,
7 submerged lands, shoreline, bank, or other lands adjoining such waters
8 to its condition prior to the injury, as such condition is determined
9 by the department. The lost value of a damaged resource shall be equal
10 to the sum of consumptive, nonconsumptive, and indirect use values, as
11 well as lost taxation, leasing, and licensing revenues. Indirect use
12 values may include existence, bequest, option, and aesthetic values.
13 Damages shall be determined by generally accepted and cost-effective
14 procedures.

15 (3) Such damages shall be recoverable in an action brought by the
16 attorney general on behalf of the people of the state of Washington in
17 the superior court of Thurston county or the county in which such
18 damages occurred: PROVIDED, That if damages occurred in more than one
19 county the attorney general may bring action in any of the counties
20 where the damages occurred. Any money so recovered by the attorney
21 general shall be transferred to the coastal protection fund established
22 under RCW ((90.48.390)) 90.56.735. A steering committee consisting of
23 representatives of the departments of ecology, fisheries, wildlife,
24 natural resources, and the parks and recreation commission shall
25 authorize the expenditure of the moneys collected under this section
26 after consulting impacted local agencies and local and tribal
27 governments. The department shall chair the steering committee. The
28 moneys collected under this section shall only be used for the
29 following purposes: (a) Environmental restoration and enhancement
30 projects intended to restore or enhance environmental, recreational, or

1 aesthetic resources for the benefit of Washington's citizens; (b)
2 investigations of the long-term effects of discharges, including sewer
3 sludge, on state resources; and (c) reimbursement of agencies for
4 reasonable reconnaissance and damage assessment costs under this
5 chapter. Agencies may not be reimbursed under this section for the
6 salaries and benefits of permanent employees for routine operational
7 support. Agencies may only be reimbursed under this section if money
8 for reconnaissance and damage assessment activities is unavailable from
9 other sources. In authorizing restoration or enhancement projects,
10 preference shall be given to projects within counties where the injury
11 occurred. No action shall be authorized under this section against any
12 person operating in compliance with the conditions of a waste discharge
13 permit issued pursuant to RCW 90.48.160.

14 **Sec. 1206.** RCW 90.48.156 and 1987 c 109 s 134 are each amended to
15 read as follows:

16 The department is authorized to cooperate with appropriate agencies
17 of neighboring states, to enter into contracts, and make contributions
18 toward interstate projects to carry out the purposes of this chapter
19 and chapter 90.56 RCW.

20 **Sec. 1207.** RCW 90.48.240 and 1987 c 109 s 15 are each amended to
21 read as follows:

22 Notwithstanding any other provisions of this chapter or chapter
23 90.56 RCW, whenever it appears to the director that water quality
24 conditions exist which require immediate action to protect the public
25 health or welfare, or that a person required by RCW 90.48.160 to obtain
26 a waste discharge permit prior to discharge is discharging without the
27 same, or that a person conducting an operation which is subject to a
28 permit issued pursuant to RCW 90.48.160 conducts the same in violation

1 of the terms of said permit, causing water quality conditions to exist
2 which require immediate action to protect the public health or welfare,
3 the director may issue a written order to the person or persons
4 responsible without prior notice or hearing, directing and affording
5 the person or persons responsible the alternative of either (1)
6 immediately discontinuing or modifying the discharge into the waters of
7 the state, or (2) appearing before the department at the time and place
8 specified in said written order for the purpose of providing to the
9 department information pertaining to the violations and conditions
10 alleged in said written order. The responsible person or persons shall
11 be afforded not less than twenty-four hours notice of such an
12 information meeting. If following such a meeting the department
13 determines that water quality conditions exist which require immediate
14 action as described herein, the department may issue a written order
15 requiring immediate discontinuance or modification of the discharge
16 into the waters of the state. In the event an order is not immediately
17 complied with the attorney general, upon request of the department,
18 shall seek and obtain an order of the superior court of the county in
19 which the violation took place directing compliance with the order of
20 the department. Such an order is appealable pursuant to RCW 43.21B.310.

21 **Sec. 1208.** RCW 90.48.907 and 1971 ex.s. c 180 s 10 are each
22 amended to read as follows:

23 (~~RCW 90.48.315 through 90.48.365 and this 1971 amendatory act~~)
24 This chapter, being necessary for the general welfare, the public
25 health, and the public safety of the state and its inhabitants, shall
26 be liberally construed to effect their purposes. No rule, regulation,
27 or order of the department shall be stayed pending appeal under (~~the~~
28 ~~provisions of RCW 90.48.315 through 90.48.365 and this 1971 amendatory~~
29 ~~act~~) this chapter.

1 NEW SECTION. **Sec. 1209.** TIMING FOR STATE MASTER PREVENTION AND
2 CONTINGENCY PLANS. The state-wide master plan required by section 10,
3 chapter 116, Laws of 1990 to be completed by July 1, 1991, shall be
4 completed by July 1, 1991. The additional requirements to the state-
5 wide master plan concerning prevention plans, an incident command
6 system, and the emergency vessel response system for the strait of Juan
7 de Fuca shall be added to the first annual update submitted to the
8 legislature not later than November 1, 1992.

9 NEW SECTION. **Sec. 1210.** TIMING OF CONTINGENCY PLAN RULES. The
10 rules required by RCW 90.56.105 for facilities and, except as otherwise
11 provided in this section for covered vessels, shall be adopted not
12 later than July 1, 1991. The department shall exclude from the rules
13 to be adopted by July 1, 1991, standards for tank vessels of less than
14 twenty thousand deadweight tons, cargo vessels, and passenger vessels
15 operating on the portion of the Columbia river for which the department
16 determines that Washington and Oregon should cooperate in the adoption
17 of standards for contingency plans. The department, after consultation
18 with the appropriate state agencies in Oregon, shall adopt the rules
19 for standards for contingency plans for this portion of the Columbia
20 river at the earliest possible time, but not later than July 1, 1992.

21 NEW SECTION. **Sec. 1211.** CAPTIONS NOT LAW. Section headings and
22 part headings as used in this chapter shall constitute no part of the
23 law.

24 NEW SECTION. **Sec. 1212.** A new section is added to chapter 43.131
25 RCW to read as follows:

26 The Washington state maritime commission shall be terminated June
27 30, 1994, as provided in section 1213 of this act.

1 NEW SECTION. **Sec. 1213.** A new section is added to chapter 43.131
2 RCW to read as follows:

3 The following acts or parts of acts, as now existing or hereafter
4 amended, are each repealed, effective June 30, 1995:

5 (1) RCW 88.44.005 and 1990 c 117 s 1;

6 (2) RCW 88.44.010 and 1991 c ... s 1001 (section 1001 of this act)
7 & 1990 c 117 s 2;

8 (3) RCW 88.44.020 and 1991 c ... s 1002 (section 1002 of this act)
9 & 1990 c 117 s 3;

10 (4) RCW 88.44.030 and 1991 c ... s 1003 (section 1003 of this act)
11 & 1990 c 117 s 4;

12 (5) RCW 88.44.040 and 1991 c ... s 1004 (section 1004 of this act)
13 & 1990 c 117 s 5;

14 (6) RCW 88.44.080 and 1991 c ... s 1005 (section 1005 of this act)
15 & 1990 c 117 s 9;

16 (7) RCW 88.44.100 and 1990 c 117 s 11;

17 (8) RCW 88.44.110 and 1991 c ... s 1006 (section 1006 of this act)
18 & 1990 c 117 s 12;

19 (9) RCW 88.44.120 and 1990 c 117 s 13;

20 (10) RCW 88.44.130 and 1990 c 117 s 14;

21 (11) RCW 88.44.140 and 1990 c 117 s 15;

22 (12) RCW 88.44.160 and 1991 c ... s 1007 (section 1007 of this act)
23 & 1990 c 117 s 17;

24 (13) RCW 88.44.190 and 1990 c 117 s 20;

25 (14) RCW 88.44.220 and 1990 c 117 s 23;

26 (15) RCW 88.44.900 and 1990 c 117 s 24; and

27 (16) RCW 88.44.901 and 1990 c 117 s 25.

28 NEW SECTION. **Sec. 1214.** Sections 101, 103, 108 through 110, 201,
29 203, 204, 207, 401, 501, 705 through 709, and 1211 are each added to a

1 new chapter in Title 90 RCW to be codified as provided for in section
2 1213 of this act.

3 NEW SECTION. **Sec. 1215.** CODIFICATION INSTRUCTIONS. Parts I
4 through X and section 1211 of this act shall constitute a new chapter
5 in Title 90 RCW, and shall be codified and recodified as provided for
6 in this section. The code reviser shall correct all statutory
7 references to these sections to reflect this recodification.

8 The following sections shall be codified and recodified as follows:

- 9 Section 101 of this act as RCW 90.56.005;
- 10 RCW 90.48.315 as RCW 90.56.010;
- 11 Section 103 of this act as RCW 90.56.015;
- 12 RCW 90.48.370 as RCW 90.56.020;
- 13 RCW 90.48.365 as RCW 90.56.025;
- 14 RCW 90.48.380 as RCW 90.56.030;
- 15 RCW 90.48.378 as RCW 90.56.035;
- 16 Section 108 of this act as RCW 90.56.040;
- 17 Section 109 of this act as RCW 90.56.045;
- 18 Section 110 of this act as RCW 90.56.050;
- 19 RCW 90.48.387 as RCW 90.56.055;
- 20 RCW 90.48.388 as RCW 90.56.060;
- 21 Section 201 of this act as RCW 90.56.100;
- 22 RCW 90.48.371 as RCW 90.56.105;
- 23 Section 203 of this act as RCW 90.56.110;
- 24 Section 204 of this act as RCW 90.56.115;
- 25 RCW 90.48.372 as RCW 90.56.120;
- 26 RCW 90.48.373 as RCW 90.56.125;
- 27 RCW 90.48.374 as RCW 90.56.130;
- 28 RCW 90.48.375 as RCW 90.56.135;
- 29 RCW 90.48.360 as RCW 90.56.140;

1 Section 207 of this act as RCW 90.56.145;
2 RCW 90.48.376 as RCW 90.56.200;
3 RCW 90.48.377 as RCW 90.56.205;
4 RCW 90.48.320 as RCW 90.56.210;
5 RCW 90.48.350 as RCW 90.56.215;
6 RCW 90.48.325 as RCW 90.56.220;
7 RCW 90.48.330 as RCW 90.56.225;
8 RCW 90.48.335 as RCW 90.56.230;
9 RCW 90.48.336 as RCW 90.56.235;
10 RCW 90.48.338 as RCW 90.56.240;
11 RCW 90.48.383 as RCW 90.56.245;
12 RCW 90.48.340 as RCW 90.56.250;
13 RCW 90.48.355 as RCW 90.56.255;
14 RCW 90.48.343 as RCW 90.56.260;
15 RCW 90.48.366 as RCW 90.56.265;
16 RCW 90.48.367 as RCW 90.56.270;
17 RCW 90.48.368 as RCW 90.56.275;
18 RCW 90.48.369 as RCW 90.56.280;
19 Section 401 of this act as RCW 90.56.350;
20 Section 501 of this act as RCW 90.56.400;
21 RCW 90.48.385 as RCW 90.56.450;
22 RCW 90.48.510 as RCW 90.56.455;
23 RCW 88.16.170 as RCW 90.56.500;
24 RCW 88.16.180 as RCW 90.56.505;
25 RCW 88.16.190 as RCW 90.56.510;
26 RCW 88.16.195 as RCW 90.56.515;
27 RCW 88.16.200 as RCW 90.56.520;
28 Section 705 of this act as RCW 90.56.525;
29 Section 706 of this act as RCW 90.56.530;
30 Section 707 of this act as RCW 90.56.535;

1 Section 708 of this act as RCW 90.56.540;
2 Section 709 of this act as RCW 90.56.545;
3 RCW 88.40.005 as RCW 90.56.600;
4 RCW 88.40.020 as RCW 90.56.605;
5 RCW 88.40.030 as RCW 90.56 610;
6 RCW 88.40.040 as RCW 90.56 615;
7 RCW 88.40.050 as RCW 90.56 620;
8 reserved - 90.56.700;
9 Section 902 of this act as RCW 90.56.705;
10 Section 903 of this act as RCW 90.56.710;
11 Section 904 of this act as RCW 90.56.715;
12 Section 905 of this act as RCW 90.56.720;
13 Section 906 of this act as RCW 90.56.725;
14 Section 907 of this act as RCW 90.56.730;
15 RCW 90.48.390 as RCW 90.56.735;
16 RCW 90.48.400 as RCW 90.56.740;
17 RCW 90.48.907 as RCW 90.56.950;
18 Section 1201 of this act as RCW 90.56.952; and
19 Section 1211 of this act as RCW 90.56.954.

20 NEW SECTION. **Sec. 1216.** REPEALER. The following acts or parts of
21 acts are each repealed:

- 22 (1) RCW 90.48.345 and 1987 c 109 s 150 & 1969 ex.s. c 133 s 6;
- 23 (2) RCW 90.48.381 and 1990 c 116 s 15;
- 24 (3) RCW 90.48.410 and 1971 ex.s. c 180 s 6;
- 25 (4) RCW 88.40.010 and 1990 c 116 s 30 & 1989 1st ex.s. c 2 s 2;
- 26 (5) RCW 88.44.050 and 1990 c 117 s 6;
- 27 (6) RCW 88.44.060 and 1990 c 117 s 7;
- 28 (7) RCW 88.44.070 and 1990 c 117 s 8;
- 29 (8) RCW 88.44.090 and 1990 c 117 s 10;

- 1 (9) RCW 88.44.150 and 1990 c 117 s 16;
2 (10) RCW 88.44.170 and 1990 c 117 s 18;
3 (11) RCW 88.44.180 and 1990 c 117 s 19;
4 (12) RCW 88.44.200 and 1990 c 117 s 21;
5 (13) RCW 88.44.210 and 1990 c 116 s 22; and
6 (14) RCW 90.48.910 and 1967 c 13 s 25.

7 NEW SECTION. **Sec. 1217.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 1218.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and shall take
14 effect immediately.