

4

5 Strike everything after the enacting clause and insert the  
6 following:

7

"PART I

8

GENERAL PROVISIONS"

9 "Sec. 101. 1990 c 116 s 1 (uncodified) is amended to read as  
10 follows:

11 (1) The legislature ((finds)) declares that the increasing reliance  
12 on water borne transportation as a source of supply for oil and  
13 hazardous substances poses special concern for the state of Washington.  
14 Each year billions of gallons of crude oil and refined petroleum  
15 products and millions of pounds of hazardous substances are transported  
16 by vessel on the navigable waters of the state. These shipments are  
17 expected to increase in the coming years. Vessels transporting oil and  
18 hazardous substances into Washington travel on some of the most unique  
19 and special marine environments in the United States. These marine  
20 environments are a source of natural beauty, recreation, and economic  
21 livelihood for many residents of this state. As a result, the state  
22 has an obligation to assure the citizens of the state that the waters  
23 of the state ((used for water borne transportation)) will be protected  
24 from oil and hazardous substance spills. ((The legislature declares  
25 that this act is the first step in developing a comprehensive approach  
26 to protecting this important and unique resource by developing a set of

1 ~~procedures to respond to spills of oil and hazardous substances into~~  
2 ~~the state's waters.))~~

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

14 (3) The legislature also finds that:

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

19 (b) Even with the best efforts, it is nearly impossible to remove  
20 all oil or hazardous substances that are spilled into the water;

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

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

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

1 (a) To establish state agency expertise in marine safety and to  
2 centralize state activities in spill prevention and response  
3 activities;

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

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

9 (d) To provide for state spill response and wildlife rescue  
10 planning and implementation;

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

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

20 (g) To provide for an independent oversight board to review the  
21 adequacy of spill prevention and response activities in this state; and

22 (h) To provide an adequate funding source for state response and  
23 prevention programs."

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

26 For purposes of (~~RCW 90.48.315 through 90.48.410, 78.52.020,~~  
27 ~~78.52.125, 82.36.330, 90.48.903, 90.48.906, and 90.48.907~~)) this  
28 chapter, the following definitions shall apply unless the context  
29 indicates otherwise:

1       (1) "Administrator" means the administrator of the office of marine  
2 safety created in section 402 of this 1991 act.

3       (2) "Best achievable protection" means the highest level of  
4 protection that can be achieved through the use of the best achievable  
5 technology and those staffing levels, training procedures, and  
6 operational methods that provide the greatest degree of protection  
7 achievable. The director's determination of best achievable protection  
8 shall be guided by the critical need to protect the state's natural  
9 resources and waters, while considering (a) the additional protection  
10 provided by the measures; (b) the technological achievability of the  
11 measures; and (c) the cost of the measures. It is not the intent of  
12 the legislature that the director use a cost-benefit or  
13 cost-effectiveness analysis or any particular method of analysis in  
14 determining which measures to require.

15       (3) "Best achievable technology" means the technology that provides  
16 the greatest degree of protection taking into consideration (a)  
17 processes that are being developed, or could feasibly be developed,  
18 given overall reasonable expenditures on research and development, and  
19 (b) processes that are currently in use. In determining what is best  
20 achievable technology, the director shall consider the effectiveness,  
21 engineering feasibility, and commercial availability of the technology.

22       (4) "Board" (~~shall~~) means the pollution control hearings board.

23       (~~(2)~~) (5) "Cargo vessel" means a ship in commerce, other than a  
24 tank vessel or a passenger vessel, of three hundred gross tons or more,  
25 including but not limited to, commercial fish processing vessels and  
26 freighters.

27       (~~(3)~~) (6) "Bulk" means material that is stored or transported in  
28 a loose, unpackaged liquid, powder, or granular form capable of being  
29 conveyed by a pipe, bucket, chute, or belt system.

1        ~~(7)~~ "Committee" ~~((shall))~~ means the preassessment screening  
2 committee established under RCW 90.48.368.

3        ~~((4))~~ (8) "Covered vessel" means a tank vessel, cargo vessel, or  
4 passenger vessel.

5        ~~((5))~~ (9) "Department" ~~((shall))~~ means the department of ecology.

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

8        ~~((7))~~ (11) "Discharge" ~~((shall))~~ means any spilling, leaking,  
9 pumping, pouring, emitting, emptying, or dumping.

10       ~~((8))~~ (12)(a) "Facility" means any structure, group of  
11 structures, equipment, pipeline, or device, other than a vessel,  
12 ~~((located on or near the navigable waters of the state that receives~~  
13 ~~oil in bulk from a tank vessel,))~~ that is used for producing, storing,  
14 handling, transferring, processing, or transporting oil in bulk~~((and~~  
15 ~~is capable of storing ten thousand or more gallons of oil))~~.

16       (b) A facility does not include any: (i) Railroad car, motor  
17 vehicle, or other rolling stock ~~((used to transport))~~ while  
18 transporting oil over the highways or rail lines of this state; (ii)  
19 underground storage tank regulated by the department or a local  
20 government under chapter 90.76 RCW; (iii) a motor vehicle motor fuel  
21 outlet; or (iv) a facility that is operated as part of an exempt  
22 agricultural activity as provided in RCW 82.04.330.

23       ~~((9))~~ (13) "Fund" ~~((shall))~~ means the state coastal protection  
24 fund as provided in RCW 90.48.390 and 90.48.400 as recodified by this  
25 1991 act.

26       ~~((10))~~ (14) "Having control over oil" shall include but not be  
27 limited to any person using, storing, or transporting oil immediately  
28 prior to entry of such oil into the waters of the state, and shall  
29 specifically include carriers and bailees of such oil.

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

5       (~~(12)~~) (15) "Navigable waters of the state" means those waters of  
6 the state, and their adjoining shorelines, that are subject to the ebb  
7 and flow of the tide and/or are presently used, have been used in the  
8 past, or may be susceptible for use to transport intrastate,  
9 interstate, or foreign commerce.

10       (~~(13)~~) (16) "Necessary expenses" means the expenses incurred by  
11 the department and assisting state agencies for (a) investigating the  
12 source of the discharge; (b) investigating the extent of the  
13 environmental damage caused by the discharge; (c) conducting actions  
14 necessary to clean up the discharge; (d) conducting predamage and  
15 damage assessment studies; and (e) enforcing the provisions of this  
16 chapter and collecting for damages caused by a discharge.

17       (~~(14)~~) (17) "Oil" or "oils" (~~(shall)~~) means (~~(oil)~~) naturally  
18 occurring liquid hydrocarbons at atmospheric temperature and pressure  
19 coming from the earth, including condensate and natural gasoline, and  
20 any fractionation thereof, including (~~(gasoline)~~), but not limited to,  
21 crude oil, petroleum, gasoline, fuel oil, diesel oil, (~~(lubricating~~  
22 oil,) oil sludge, oil refuse, (~~(liquid natural gas, propane, butane,~~  
23 oils distilled from coal, and other liquid hydrocarbons regardless of  
24 specific gravity, or any other petroleum related product) and oil  
25 mixed with wastes other than dredged spoil. Oil does not include any  
26 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August  
27 14, 1989, under section 101(14) of the federal comprehensive  
28 environmental response, compensation, and liability act of 1980, as  
29 amended by P.L. 99-499.

1        ~~((15))~~ (18) "Offshore facility" means any facility located in,  
2 on, or under any of the navigable waters of the state, but does not  
3 include a facility any part of which is located in, on, or under any  
4 land of the state, other than submerged land.

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

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

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

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

21        ~~((16))~~ (22) "Person" ~~((shall))~~ means any political subdivision,  
22 government agency, municipality, industry, public or private  
23 corporation, copartnership, association, firm, individual, or any other  
24 entity whatsoever ~~((and any owner, operator, master, officer, or~~  
25 employee of a ship)).

26        ~~((17))~~ (23) "Ship" ~~((shall))~~ means any boat, ship, vessel, barge,  
27 or other floating craft of any kind.

28        ~~((18))~~ (24) "Spill" means ~~((a))~~ an unauthorized discharge of oil  
29 or hazardous substances into the waters of the state.

1       (~~(19)~~) (25) "Tank vessel" means a ship that is constructed or  
2 adapted to carry, or that carries, oil in bulk as cargo or cargo  
3 residue, and that:

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

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

7       (~~(20)~~) (26) "Technical feasibility" or "technically feasible"  
8 shall mean that given available technology, a restoration or  
9 enhancement project can be successfully completed at a cost that is not  
10 disproportionate to the value of the resource prior to the injury.

11       (~~(21)~~) (27) "Waters of the state" (~~(shall)~~) includes lakes,  
12 rivers, ponds, streams, inland waters, underground water, salt waters,  
13 estuaries, tidal flats, beaches and lands adjoining the seacoast of the  
14 state, sewers, and all other surface waters and watercourses within the  
15 jurisdiction of the state of Washington.

16       (~~(22)~~) (28) "Worst case spill" means: (a) In the case of a  
17 vessel, a spill of the entire cargo and fuel of ((a tank)) the vessel  
18 complicated by adverse weather conditions; and (b) in the case of an  
19 onshore or offshore facility, the largest foreseeable spill in adverse  
20 weather conditions."

21       "NEW SECTION. Sec. 103. DIRECTOR RESPONSIBLE FOR SPILL RESPONSE.  
22 Except as otherwise specifically provided in this chapter or other law,  
23 the director has the primary authority, in conformance with the state-  
24 wide master oil and hazardous substance spill prevention and  
25 contingency plan adopted pursuant to RCW 90.48.378 as recodified by  
26 this act and any applicable contingency plans prepared pursuant to this  
27 chapter and chapter 88.-- RCW (sections 413 through 424 of this act),  
28 to oversee prevention, abatement, response, containment, and cleanup  
29 efforts with regard to any oil or hazardous substance spill in the



1 navigable waters of the state. The director is the head of the state  
2 incident command system in response to a spill of oil or hazardous  
3 substances and shall coordinate the response efforts of all state  
4 agencies and local emergency response personnel. If a discharge of oil  
5 or hazardous substances is subject to the national contingency plan, in  
6 responding to the discharge, the director shall to the greatest extent  
7 practicable act in accordance with the national contingency plan and  
8 cooperate with the federal on-scene coordinator or other federal agency  
9 or official exercising authority under the national contingency plan."

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

12 The powers, duties, and functions conferred by ((RCW 78.52.020,  
13 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410,  
14 90.48.903, 90.48.906 and 90.48.907)) this chapter shall be exercised by  
15 the department of ecology and shall be deemed an essential government  
16 function in the exercise of the police power of the state. Such  
17 powers, duties, and functions of the department ((and those conferred  
18 by RCW 90.48.315 through 90.48.365)) shall extend to all waters  
19 ((within the boundaries)) under the jurisdiction of the state."

20 "Sec. 105. RCW 90.48.365 and 1987 c 109 s 153 are each amended to  
21 read as follows:

22 ((RCW 90.48.315 through 90.48.365 shall)) This chapter grants  
23 authority to the department which is supplemental to and in no way  
24 reduces or otherwise modifies the powers ((heretofore)) granted to the  
25 department((, except as it may directly conflict therewith)) by other  
26 statutes."

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

3       The department may adopt rules (~~((and regulations))~~) including but  
4 not limited to the following matters:

5       (1) Procedures and methods of reporting discharges and other  
6 occurrences prohibited by (~~((RCW 90.48.315 through 90.48.365 and RCW  
7 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through  
8 90.48.410, 90.48.903, 90.48.906 and 90.48.907))~~) this chapter;

9       (2) Procedures, methods, means, and equipment to be used by persons  
10 subject to regulation by (~~((RCW 90.48.315 through 90.48.365 and RCW  
11 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through  
12 90.48.410, 90.48.903, 90.48.906 and 90.48.907))~~) this chapter and such  
13 rules (~~((and regulations))~~) may prescribe the times, places, and methods  
14 of transfer of oil;

15       (3) Coordination of procedures, methods, means, and equipment to be  
16 used in the removal of oil (~~((pollutants))~~);

17       (4) Development and implementation of criteria and plans to meet  
18 oil (~~((pollution occurrences))~~) spills of various kinds and degrees;

19       (5) The establishment (~~((from time to time of control districts  
20 comprising sections of the state coast and the establishment of rules  
21 and regulations to meet the particular requirements of each such  
22 district~~;

23       ~~(6))~~) of standards for spill response equipment to be maintained on  
24 tank vessels;

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

28       (7) The disposal of oil recovered from a spill; and

29       (8) Such other rules and regulations as the exigencies of any  
30 condition may require or such as may be reasonably necessary to carry

1 out the intent of (~~RCW 90.48.315 through 90.48.365 and RCW 78.52.020,~~  
2 ~~78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410,~~  
3 ~~90.48.903, 90.48.906 and 90.48.907~~) this chapter."

4 "Sec. 107. RCW 90.48.378 and 1990 c 116 s 10 are each amended to  
5 read as follows:

6 (1) (~~Not later than July 1, 1991,~~) The department shall prepare  
7 and (~~thereafter~~) annually update a state-wide master oil and  
8 hazardous substance spill prevention and contingency plan. In  
9 preparing the plan, the department shall consult with an advisory  
10 committee representing diverse interests concerned with oil and  
11 hazardous substance spills, including the office of marine safety, the  
12 United States coast guard, the federal environmental protection agency,  
13 state agencies, local governments, port districts, private facilities,  
14 environmental organizations, oil companies, shipping companies,  
15 containment and cleanup contractors, tow companies, and hazardous  
16 substance manufacturers.

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

19 (a) Take into consideration the elements of oil spill prevention  
20 and contingency plans approved or submitted for approval pursuant to  
21 (~~RCW 90.48.371~~) this chapter and chapter 88.-- RCW (sections 413  
22 through 424 of this act) and oil and hazardous substance spill  
23 contingency plans prepared pursuant to other state or federal law or  
24 prepared by federal agencies and regional entities;

25 (b) State the respective responsibilities as established by  
26 relevant statutes and rules of each of the following in the prevention  
27 of and the assessment, containment, and cleanup of a (~~catastrophic~~  
28 ~~oil~~) worst case spill (~~or of a significant spill~~) of ((a)) oil or  
29 hazardous substances into the environment of the state: (i) State

1 agencies; (ii) local governments; (iii) appropriate federal agencies;  
2 (iv) facility operators; (v) property owners whose land or other  
3 property may be affected by the oil or hazardous substance spill; and  
4 (vi) other parties identified by the department as having an interest  
5 in or the resources to assist in the containment and cleanup of an oil  
6 or hazardous substance spill;

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

9 (d) Identify actions necessary to reduce the likelihood of  
10 ~~((catastrophic oil))~~ spills ~~((and significant spills))~~ of oil and  
11 hazardous substances; ((and))

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

14 (f) Establish an incident command system for responding to oil and  
15 hazardous substance spills.

16 (3) In preparing and updating the state master plan, the department  
17 shall:

18 (a) Consult with federal, provincial, municipal, and community  
19 officials, other state agencies, the state of Oregon, and with  
20 representatives of affected regional organizations;

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

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

25 (d) Require or schedule unannounced oil spill drills as required by  
26 RCW 90.48.374 as recodified by this 1991 act to test the sufficiency of  
27 oil spill contingency plans approved under RCW 90.48.371 as recodified  
28 by this 1991 act."

1        "NEW SECTION.   **Sec. 108.**   COORDINATION WITH FEDERAL LAW.   In  
2 carrying out the purposes of this chapter, including the adoption of  
3 rules for contingency plans, the department shall to the greatest  
4 extent practicable implement this chapter in a manner consistent with  
5 federal law."

6        "NEW SECTION.   **Sec. 109.**   HAZARDOUS SUBSTANCES INCIDENT RESPONSE  
7 TRAINING AND EDUCATION PROGRAM.   Not later than twelve months after the  
8 effective date of this section, the division of emergency management  
9 shall establish and manage the Washington oil and hazardous substances  
10 incident response training and education program to provide approved  
11 classes in hazardous substance response, taught by trained instructors,  
12 and to certify students who have completed these classes.   To carry out  
13 this program, the division of emergency management shall:

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

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

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

20        (4) Provide training to local oil and hazardous materials emergency  
21 response personnel; and

22        (5) Establish and collect admission fees and other fees that may be  
23 necessary to the program."

24        "NEW SECTION.   **Sec. 110.**   SMALL SPILL PREVENTION EDUCATION PROGRAM.

25 (1) The Washington sea grant program, in consultation with the  
26 department, shall develop and conduct a voluntary spill prevention  
27 education program that targets small spills from commercial fishing  
28 vessels, ferries, cruise ships, ports, and marinas.   Washington sea

1 grant shall coordinate the spill prevention education program with  
2 recreational boater education performed by the state parks and  
3 recreation commission.

4 (2) The spill prevention education program shall illustrate ways to  
5 reduce oil contamination of bilge water, accidental spills of hydraulic  
6 fluid and other hazardous substances during routine maintenance, and  
7 reduce spillage during refueling. The program shall illustrate proper  
8 disposal of oil and hazardous substances and promote strategies to meet  
9 shoreside oil and hazardous substance handling, and disposal needs of  
10 the targeted groups. The program shall include a series of training  
11 workshops and the development of educational materials."

12 "PART II

13 FACILITY AND VESSEL PLANS"

14 NEW SECTION. **Sec. 201.** PREVENTION PLANS. (1) The owner or  
15 operator for each onshore and offshore facility shall prepare and  
16 submit to the department an oil spill prevention plan in conformance  
17 with the requirements of this chapter. The plans shall be submitted to  
18 the department in the time and manner directed by the department, but  
19 not later than January 1, 1993. The spill prevention plan may be  
20 consolidated with a spill contingency plan submitted pursuant to RCW  
21 90.48.371 as recodified by this act. The department may accept plans  
22 prepared to comply with other state or federal law as spill prevention  
23 plans to the extent those plans comply with the requirements of this  
24 chapter. The department, by rule, shall establish standards for spill  
25 prevention plans. The rules shall be adopted not later than July 1,  
26 1992.

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

1 (a) Establish compliance with the federal oil pollution act of  
2 1990, if applicable, and financial responsibility requirements under  
3 federal and state law;

4 (b) Certify that supervisory and other key personnel in charge of  
5 transfer, storage, and handling of oil have received certification  
6 pursuant to section 203 of this act;

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

9 (d) Certify the implementation of alcohol and drug use awareness  
10 programs;

11 (e) Describe the facility's maintenance and inspection program and  
12 contain a current maintenance and inspection record of the storage and  
13 transfer facilities and related equipment;

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

15 (g) Describe spill prevention technology that has been installed,  
16 including overflow alarms, automatic overflow cut-off switches,  
17 secondary containment facilities, and storm water retention, treatment,  
18 and discharge systems;

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

22 (i) Describe spill prevention technologies that are commercially  
23 available but have not been installed and the reasons for the decision;

24 (j) Describe the procedures followed by the facility to contain and  
25 recover any oil that spills during the transfer of oil to or from the  
26 facility;

27 (k) Provide for the incorporation into the facility during the  
28 period covered by the plan of those measures that will provide the best  
29 achievable protection for the public health and the environment; and

1 (1) Include any other information reasonably necessary to carry out  
2 the purposes of this chapter required by rules adopted by the  
3 department.

4 (3) The department shall only approve a prevention plan if it  
5 provides the best achievable protection from damages caused by the  
6 discharge of oil into the waters of the state and if it determines that  
7 the plan meets the requirements of this section and rules adopted by  
8 the department.

9 (4) Upon approval of a prevention plan, the department shall  
10 provide to the person submitting the plan a statement indicating that  
11 the plan has been approved, the facilities covered by the plan, and  
12 other information the department determines should be included.

13 (5) The approval of a prevention plan shall be valid for five  
14 years. An owner or operator of a facility shall notify the department  
15 in writing immediately of any significant change of which it is aware  
16 affecting its prevention plan, including changes in any factor set  
17 forth in this section or in rules adopted by the department. The  
18 department may require the owner or operator to update a prevention  
19 plan as a result of these changes.

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

23 (7) Approval of a prevention plan by the department does not  
24 constitute an express assurance regarding the adequacy of the plan nor  
25 constitute a defense to liability imposed under this chapter or other  
26 state law.

27 (8) This section does not authorize the department to modify the  
28 terms of a collective bargaining agreement."



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

3       (1) Each onshore and offshore facility (~~((and covered vessel))~~) shall  
4 have a contingency plan for the containment and cleanup of oil spills  
5 from the facility (~~((or covered vessel))~~) into the waters of the state  
6 and for the protection of fisheries and wildlife, natural resources,  
7 and public and private property from such spills. The department shall  
8 by rule adopt and periodically revise standards for the preparation of  
9 contingency plans. (~~((The rules for facilities and, except as otherwise  
10 provided in this subsection, for covered vessels shall be adopted not  
11 later than July 1, 1991. The department shall exclude from the rules  
12 to be adopted by July 1, 1991, standards for tank vessels of less than  
13 twenty thousand deadweight tons, cargo vessels, and passenger vessels  
14 operating on the portion of the Columbia river for which the department  
15 determines that Washington and Oregon should cooperate in the adoption  
16 of standards for contingency plans. The department, after consultation  
17 with the appropriate state agencies in Oregon, shall adopt the rules  
18 for standards for contingency plans for this portion of the Columbia  
19 river at the earliest possible time, but not later than July 1, 1992.))~~)  
20 The department shall require contingency plans, at a minimum, to meet  
21 the following standards:

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

25       (b) Be designed to be capable in terms of personnel, materials, and  
26 equipment, of promptly and properly, to the maximum extent practicable,  
27 as defined by the department(~~((÷~~

28       ~~((i) Removing oil and minimizing any damage to the environment  
29 resulting from a maximum probable spill; and~~

1       ~~(ii))~~ removing oil and minimizing any damage to the environment  
2 resulting from a worst case spill;

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

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

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

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

16       (g) Describe important features of the surrounding environment,  
17 including fish and wildlife habitat, environmentally sensitive areas,  
18 and public facilities. The departments of ecology, fisheries,  
19 wildlife, and natural resources, upon request, shall provide  
20 information that they have available to assist in preparing this  
21 description;

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

26       ~~((h) Provide a detailed description of equipment and procedures to  
27 be used by the crew of a vessel to minimize vessel damage, stop or  
28 reduce any spilling from the vessel, and, only when appropriate and the  
29 vessel/safety is assured, contain and clean up the spilled oil;))~~

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

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

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

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

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

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

22 (2)(a) ~~((Contingency plans for facilities capable of storing one~~  
23 ~~million gallons or more of oil and for tank vessels of twenty thousand~~  
24 ~~deadweight tons or more shall be submitted to the department)) The  
25 following shall submit contingency plans to the department within six  
26 months after the department adopts rules establishing standards for  
27 contingency plans under subsection (1) of this section:~~

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

1        (ii) Onshore facilities capable of storing or handling hazardous  
2 substances in bulk in quantities determined by the department to pose  
3 a significant risk of harm to the public health or the environment; and

4        (iii) Offshore facilities.

5        ~~((Except as otherwise provided in (c) of this subsection,))~~  
6 Contingency plans for all other facilities ((and covered vessels))  
7 shall be submitted to the department within eighteen months after the  
8 department has adopted rules under subsection (1) of this section. The  
9 department may adopt a schedule for submission of plans within the  
10 eighteen-month period.

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

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

18        ~~((The owner or operator of a tank vessel or of the facilities~~  
19 ~~at which the vessel will be unloading its cargo shall submit the~~  
20 ~~contingency plan for the tank vessel. Subject to conditions imposed by~~  
21 ~~the department, the owner or operator of a facility may submit a single~~  
22 ~~contingency plan for tank vessels of a particular class that will be~~  
23 ~~unloading cargo at the facility.~~

24        ~~(c) The contingency plan for a cargo vessel or passenger vessel may~~  
25 ~~be submitted by the owner or operator of the cargo vessel or passenger~~  
26 ~~vessel or by the agent for the vessel resident in this state. Subject~~  
27 ~~to conditions imposed by the department, the owner, operator, or agent~~  
28 ~~may submit a single contingency plan for cargo vessels or passenger~~  
29 ~~vessels of a particular class.~~

1       (~~d~~)) A person who has contracted with a facility (~~(or covered~~  
2 ~~vessel)~~) to provide containment and cleanup services and who meets the  
3 standards established pursuant to RCW 90.48.372 as recodified by this  
4 1991 act, may submit the plan for any facility (~~(or covered vessel)~~)  
5 for which the person is contractually obligated to provide services.  
6 Subject to conditions imposed by the department, the person may submit  
7 a single plan for more than one facility (~~(or covered vessel)~~).

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

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

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

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

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

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

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

1 (f) The sensitivity of fisheries and wildlife and other natural  
2 resources within the area covered by the plan;

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

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

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

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

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

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

28 (10) Approval of a contingency plan by the department does not  
29 constitute an express assurance regarding the adequacy of the plan nor

1 constitute a defense to liability imposed under this chapter or other  
2 state law."

3 "NEW SECTION. Sec. 203. FACILITY OPERATION STANDARDS. (1) The  
4 department by rule shall adopt standards for onshore and offshore  
5 facilities regarding the equipment and operation of the facilities with  
6 respect to the transfer, storage, and handling of oil to ensure that  
7 the best achievable protection of the public health and the environment  
8 is employed at all times. The department shall implement a program to  
9 provide for the inspection of all onshore and offshore facilities on a  
10 regular schedule to ensure that each facility is in compliance with the  
11 standards.

12 (2) The department shall adopt rules for certification of  
13 supervisory and other key personnel in charge of the transfer, storage,  
14 and handling of oil at onshore and offshore facilities. The rules  
15 shall include, but are not limited to:

16 (a) Minimum training requirements for all facility workers involved  
17 in the transfer, storage, and handling of oil at a facility;

18 (b) Provisions for periodic renewal of certificates for supervisory  
19 and other key personnel involved in the transfer, storage, and handling  
20 of oil at the facility; and

21 (c) Continuing education requirements.

22 (3) The rules adopted by the department shall not conflict with or  
23 modify standards imposed pursuant to federal or state laws regulating  
24 worker safety."

25 "NEW SECTION. Sec. 204. OPERATIONS MANUALS. (1) Each owner or  
26 operator of an onshore or offshore facility shall prepare an operations  
27 manual describing equipment and procedures involving the transfer,  
28 storage, and handling of oil that the operator employs or will employ

1 for best achievable protection for the public health and the  
2 environment and to prevent oil spills in the navigable waters. The  
3 operations manual shall also describe equipment and procedures required  
4 for all vessels to or from which oil is transferred through use of the  
5 facility. The operations manual shall be submitted to the department  
6 for approval.

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

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

18 (4) The approval of an operations manual shall be valid for five  
19 years. The owner or operator of the facility shall notify the  
20 department in writing immediately of any significant change in its  
21 operations affecting its operations manual. The department may require  
22 the owner or operator to modify its operations manual as a result of  
23 these changes.

24 (5) All equipment and operations of an operator's onshore or  
25 offshore facility shall be maintained and carried out in accordance  
26 with the facility's operations manual. The owner or operator of the  
27 facility shall ensure that all ships docked at an onshore or offshore  
28 facility comply with the terms of the operations manual for the  
29 facility."



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

3       The department shall annually publish an index of available, up-to-  
4 date descriptions of prevention plans and contingency plans for oil  
5 spills submitted and approved pursuant to section 201 of this 1991 act,  
6 RCW 90.48.371 as recodified by this 1991 act, and sections 416 and 417  
7 of this 1991 act and an inventory of equipment available for responding  
8 to such spills."

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

11       (1) The provisions of contingency plans approved by the department  
12 under RCW 90.48.371 as recodified by this 1991 act and prevention plans  
13 approved by the department pursuant to section 201 of this 1991 act  
14 shall be legally binding on those persons submitting them to the  
15 department and on their successors, assigns, agents, and employees.  
16 The superior court shall have jurisdiction to restrain a violation of,  
17 compel specific performance of, or otherwise to enforce such plans upon  
18 application by the department. The department may issue an order  
19 pursuant to chapter 34.05 RCW requiring compliance with a contingency  
20 plan or a prevention plan and may impose administrative penalties under  
21 RCW 43.21B.300 for failure to comply with a plan. An order under this  
22 section is not subject to review by the pollution control hearings  
23 board as provided in RCW 43.21B.110.

24       (2)(a) Any person responsible or potentially responsible for a  
25 discharge, all of the agents and employees of that person, the  
26 operators of all vessels docked at an onshore or offshore facility that  
27 is a source of a discharge, and all state and local agencies shall  
28 carry out response and cleanup operations in accordance with applicable  
29 contingency plans, unless directed otherwise by the director or the

1 coast guard. Except as provided in (b) of this subsection, the  
2 responsible party, potentially responsible parties, their agents and  
3 employees, the operators of all vessels docked at an onshore or  
4 offshore facility that is the source of the discharge, and all state  
5 and local agencies shall carry out whatever direction is given by the  
6 administrator in connection with the response, containment, and cleanup  
7 of the spill, if the directions are not in direct conflict with the  
8 directions of the coast guard.

9 (b) If a responsible party or potentially responsible party  
10 reasonably, and in good faith, believes that the directions or orders  
11 given by the director pursuant to (a) of this subsection will  
12 substantially endanger the public safety or the environment, the party  
13 may refuse to act in compliance with the orders or directions of the  
14 administrator. The responsible party or potentially responsible party  
15 shall state, at the time of the refusal, the reasons why the party  
16 refuses to follow the orders or directions of the director. The  
17 responsible party or potentially responsible party shall give the  
18 director written notice of the reasons for the refusal within forty-  
19 eight hours of refusing to follow the orders or directions of the  
20 director. In any civil or criminal proceeding commenced pursuant to  
21 this section, the burden of proof shall be on the responsible party or  
22 potentially responsible party to demonstrate, by clear and convincing  
23 evidence, why the refusal to follow the orders or directions of the  
24 director was justified under the circumstances."

1 "PART III  
2 ENFORCEMENT"

3 "Sec. 301. RCW 90.48.376 and 1990 c 116 s 8 are each amended to  
4 read as follows:

5 (1) Except as provided in subsection (2) of this section, it shall  
6 be unlawful for ~~((any person))~~ the owner or operator to knowingly and  
7 intentionally operate in this state or on the waters of this state  
8 ~~((a))~~ an onshore or offshore facility ~~((or covered vessel))~~ without an  
9 approved contingency plan or an approved prevention plan as required by  
10 ~~((RCW 90.48.371))~~ this chapter, or financial responsibility in  
11 compliance with chapter 88.40 RCW and the federal oil pollution act of  
12 1990. The first conviction under this section shall be a gross  
13 misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction  
14 shall be a class C felony under chapter 9A.20 RCW.

15 (2) It shall not be unlawful for ~~((a person))~~ the owner or operator  
16 to operate ~~((a))~~ an onshore or offshore facility ~~((or covered vessel))~~  
17 if:

18 (a) The facility ~~((or covered vessel))~~ is not required to have a  
19 contingency plan, spill prevention plan, or financial responsibility;  
20 or

21 (b) ~~((A))~~ All required plans ~~((has))~~ have been submitted to the  
22 department as required by RCW 90.48.371 as recodified by this 1991 act  
23 and rules adopted by the department and the department is reviewing the  
24 plan and has not denied approval ~~((; or~~

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

27 (3) A ~~((facility))~~ person may rely on a copy of the statement  
28 issued by the department pursuant to RCW 90.48.371(7) as recodified by  
29 this 1991 act as evidence that ~~((the vessel))~~ a facility has an

1 approved contingency plan and the statement issued pursuant to section  
2 201(5) of this 1991 act that a facility has an approved prevention  
3 plan."

4 "Sec. 302. RCW 90.48.377 and 1990 c 116 s 9 are each amended to  
5 read as follows:

6 (1) (~~Except as provided in subsection (4) of this section, it~~  
7 ~~shall be unlawful for a covered vessel to enter the waters of the state~~  
8 ~~without an approved contingency plan as provided in RCW 90.48.371. The~~  
9 ~~department may deny entry onto the waters of the state to any covered~~  
10 ~~vessel that does not have a contingency plan and is so required.~~

11 ~~(2))~~ Except as provided in subsection ~~((4))~~ (3) of this section,  
12 it shall be unlawful:

13 (a) For ~~((a))~~ the owner or operator to operate an onshore or  
14 offshore facility ((to operate)) without an approved contingency plan  
15 as required under RCW 90.48.371 as recodified by this 1991 act, a spill  
16 prevention plan required by section 201 of this 1991 act, or financial  
17 responsibility in compliance with chapter 88.40 RCW and the federal oil  
18 pollution act of 1990; or

19 (b) For ~~((a))~~ the owner or operator of an onshore or offshore  
20 facility or any other person to accept cargo or passengers from a  
21 covered vessel that does not have an approved contingency plan or an  
22 approved prevention plan required under ((RCW 90.48.371)) chapter 88.--  
23 RCW (sections 413 through 424 of this 1991 act) or financial  
24 responsibility in compliance with chapter 88.40 RCW and the federal oil  
25 pollution act of 1990.

26 ~~((3))~~ (2) The department may notify the ~~((department of~~  
27 ~~licensing))~~ secretary of state to suspend the business license of any  
28 onshore or offshore facility or other person that is in violation of  
29 this section. The department may assess a civil penalty under RCW

1 43.21B.300 of up to one hundred thousand dollars against any person who  
2 is in violation of this section. Each day that a facility(~~(7)~~) or  
3 ~~person(~~(7)~~ or covered vessel)~~ is in violation of this section shall be  
4 considered a separate violation.

5 ~~((4))~~ (3) It shall not be unlawful for a (~~covered vessel to~~  
6 ~~operate on the waters of the state or a~~) facility or other person to  
7 operate or accept cargo or passengers from a covered vessel if:

8 (a) A contingency plan, a prevention plan, or financial  
9 responsibility is not required for the facility (~~or covered vessel~~);  
10 or

11 (b) A contingency and prevention plan has been submitted to the  
12 department as required by (~~RCW 90.48.371~~) this chapter and rules  
13 adopted by the department and the department is reviewing the plan and  
14 has not denied approval(~~(7)~~ or

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

17 ~~((5))~~ (4) Any person may rely on a copy of the statement issued  
18 by the department pursuant to RCW 90.48.371(7) as recodified by this  
19 1991 act as evidence that the (~~vessel~~) facility has an approved  
20 contingency plan and the statement issued pursuant to section 201(5) of  
21 this 1991 act as evidence that the facility has an approved spill  
22 prevention plan."

23 "**Sec. 303.** 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 as recodified by  
26 this 1991 act, any person who, in violation of RCW 90.48.320 as  
27 recodified by this 1991 act, negligently discharges oil, or causes or  
28 permits the entry of the same into the waters of the state, shall  
29 incur, in addition to any other penalty as provided by law, a penalty

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

4 (2) Any person who intentionally or recklessly discharges or causes  
5 or permits the entry of oil into the waters of the state shall incur,  
6 in addition to any other penalty authorized by law, a penalty of up to  
7 (~~one~~) five hundred thousand dollars for every such violation and for  
8 each day the spill poses risks to the environment as determined by the  
9 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, and such other considerations as the director deems  
16 appropriate. Every act of commission or omission which procures, aids  
17 or abets in the violation shall be considered a violation under the  
18 provisions of this section and subject to the penalty herein provided  
19 for. The penalty herein provided for shall be imposed pursuant to RCW  
20 43.21B.300."

21 **"Sec. 304.** 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 entering waters of the state in violation of RCW 90.48.320 as  
25 recodified by this 1991 act to immediately collect and remove the same.  
26 If it is not feasible to collect and remove, said person shall take all  
27 practicable actions to contain, treat and disperse the same. The  
28 director shall prohibit or restrict the use of any chemicals or other  
29 dispersant or treatment materials proposed for use under this section

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

3 "Sec. 305. RCW 90.48.383 and 1990 c 116 s 25 are each amended to  
4 read as follows:

5 (1) The following persons shall not be liable for necessary  
6 expenses, removal costs, or ((property)) damages of any kind, other  
7 than personal injury or wrongful death, caused by an act or omission of  
8 that person during the ((cleanup)) response to a spill or threatened  
9 spill of oil ((spilled)) into the navigable waters of the state, unless  
10 the act or omission was performed in bad faith or with gross  
11 negligence:

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

13 (b) A person who volunteers to assist in the cleanup of the spilled  
14 oil; and

15 (c) A person ((meeting the standards of RCW 90.48.372)) rendering  
16 care, assistance, or advice consistent with the national contingency  
17 plan, or as otherwise directed by the federal on-scene coordinator or  
18 by the state official with responsibility for oil spill response.

19 (2) This section shall not affect the liability of any person  
20 responsible for the spilled oil or responsible for the facility or  
21 covered vessel from which the oil was spilled."

22 "Sec. 306. RCW 90.48.340 and 1987 c 109 s 148 are each amended to  
23 read as follows:

24 The department shall investigate each activity or project conducted  
25 under RCW 90.48.330 as recodified by this 1991 act to determine, if  
26 possible, the circumstances surrounding the entry of oil into waters of  
27 the state and the person or persons allowing said entry or responsible  
28 for the act or acts which result in said entry. Whenever it appears to

1 the department, after investigation, that a specific person or persons  
2 are responsible for the necessary expenses incurred by the state  
3 pertaining to a project or activity as specified in RCW 90.48.335 as  
4 recodified by this 1991 act, the department shall notify said person or  
5 persons by appropriate order(~~(:—PROVIDED, That no order may be~~  
6 ~~issued)~~). The department may not issue an order pertaining to a  
7 project or activity which was completed more than five years prior to  
8 the date of the proposed issuance of the order. (~~(Said)~~) The order  
9 shall state the findings of the department, the amount of necessary  
10 expenses incurred (~~(by the department)~~) in conducting the project or  
11 activity, and a notice that said amount is due and payable immediately  
12 upon receipt of said order. The department may, upon application from  
13 the recipient of an order received within thirty days from the receipt  
14 of the order, reduce or set aside in its entirety the amount due and  
15 payable, when it appears from the application, and from any further  
16 investigation the department may desire to undertake, that a reduction  
17 or setting aside is just and fair under all the circumstances. If the  
18 amount specified in the order issued by the department notifying said  
19 person or persons is not paid within thirty days after receipt of  
20 notice imposing the same, or if an application has been made within  
21 thirty days as herein provided and the amount provided in the order  
22 issued by the department subsequent to such application is not paid  
23 within fifteen days after receipt thereof, the attorney general, upon  
24 request of the department, shall bring an action on behalf of the state  
25 in the superior court of Thurston county or any county in which the  
26 person to which the order is directed does business, or in any other  
27 court of competent jurisdiction, to recover the amount specified in the  
28 final order of the department. No order issued under this section  
29 shall be construed as an order within the meaning of RCW 43.21B.310 and  
30 shall not be appealable to the hearings board. In any action to



1 recover necessary expenses as herein provided said person shall be  
2 relieved from liability for necessary expenses if ((he)) the person can  
3 prove that the oil to which the necessary expenses relate entered the  
4 waters of the state by causes set forth in RCW ((90.48.320(3)))  
5 90.48.320(2) as recodified by this 1991 act."

6 "PART IV

7 OFFICE OF MARINE SAFETY"

8 "NEW SECTION. **Sec. 401.** The legislature declares that  
9 Washington's waters have irreplaceable value for the citizens of the  
10 state. These waters are vital habitat for numerous and diverse marine  
11 life and wildlife and the source of recreation, aesthetic pleasure, and  
12 pride for Washington's citizens. These waters are also vital for much  
13 of Washington's economic vitality.

14 The legislature finds that the transportation of oil and hazardous  
15 substances on these waters creates a great potential hazard to these  
16 important natural resources. The legislature also finds that there is  
17 no state agency responsible for maritime safety to ensure this state's  
18 interest in preserving these resources.

19 The legislature therefore finds that in order to protect these  
20 waters it is necessary to establish an office of marine safety which  
21 will have the responsibility to promote the safety of marine  
22 transportation in Washington."

23 "NEW SECTION. **Sec. 402.** (1) There is hereby created an agency of  
24 state government to be known as the office of marine safety. The  
25 office shall be vested with all powers and duties transferred to it and  
26 such other powers and duties as may be authorized by law. The main  
27 administrative office of the office shall be located in the city of

1 Olympia. The administrator may establish administrative facilities in  
2 other locations, if deemed necessary for the efficient operation of the  
3 office, and if consistent with the principles set forth in subsection  
4 (2) of this section.

5 (2) The office of marine safety shall be organized consistent with  
6 the goals of providing state government with a focus in marine  
7 transportation and serving the people of this state. The legislature  
8 recognizes that the administrator needs sufficient organizational  
9 flexibility to carry out the office's various duties. To the extent  
10 practical, the administrator shall consider the following  
11 organizational principles:

12 (a) Clear lines of authority which avoid functional duplication  
13 within and between subelements of the office;

14 (b) A clear and simplified organizational design promoting  
15 accessibility, responsiveness, and accountability to the legislature,  
16 the consumer, and the general public; and

17 (c) Maximum span of control without jeopardizing adequate  
18 supervision.

19 (3) The office shall provide leadership and coordination in  
20 identifying and resolving threats to the safety of marine  
21 transportation and the impact of marine transportation on the  
22 environment:

23 (a) Working with other state agencies and local governments to  
24 strengthen the state and local governmental partnership in providing  
25 public protection;

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

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

1 (d) Working with other federal, state, and local agencies and  
2 facilitating their involvement in planning and implementing marine  
3 safety measures;

4 (e) Providing information to the public; and

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

7 (4) In accordance with the administrative procedure act, chapter  
8 34.05 RCW, the office shall ensure an opportunity for consultation,  
9 review, and comment before the adoption of standards, guidelines, and  
10 rules.

11 (5) Consistent with the principles set forth in subsection (2) of  
12 this section, the administrator may create such administrative  
13 divisions, offices, bureaus, and programs within the office as the  
14 administrator deems necessary. The administrator shall have complete  
15 charge of and supervisory powers over the office, except where the  
16 administrator's authority is specifically limited by law.

17 (6) The administrator shall appoint such personnel as are necessary  
18 to carry out the duties of the office in accordance with chapter 41.06  
19 RCW."

20 "NEW SECTION. **Sec. 403.** The executive head and appointing  
21 authority of the office shall be the administrator of marine safety.  
22 The administrator shall be appointed by, and serve at the pleasure of,  
23 the governor in accordance with RCW 43.17.020. The administrator  
24 shall be paid a salary to be fixed by the governor in accordance with  
25 RCW 43.03.040."

26 "NEW SECTION. **Sec. 404.** In addition to any other powers granted  
27 the administrator, the administrator may:

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

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

12 (3) Undertake studies, research, and analysis necessary to carry  
13 out the provisions of this chapter;

14 (4) Delegate powers, duties, and functions of the department to  
15 employees of the department as the secretary deems necessary to carry  
16 out the provisions of this chapter;

17 (5) Enter into contracts on behalf of the department to carry out  
18 the purposes of this chapter;

19 (6) Act for the state in the initiation of, or the participation  
20 in, any intergovernmental program for the purposes of this chapter; or

21 (7) Accept gifts, grants, or other funds."

22 "NEW SECTION. **Sec. 405.** The powers and duties of the department  
23 of ecology and the director of ecology under chapter 90.48 RCW relating  
24 to adoption of rules and approval of contingency plans for vessels and  
25 adoption of model tow cable standards for tug boats and barges are  
26 hereby transferred to the office of marine safety and the administrator  
27 of the office of marine safety."

1        "NEW SECTION. Sec. 406. (1) The administrator shall have full  
2 authority to administer oaths and take testimony thereunder, to issue  
3 subpoenas requiring the attendance of witnesses before the  
4 administrator together with all books, memoranda, papers, and other  
5 documents, articles or instruments, and to compel the disclosure by  
6 such witnesses of all facts known to them relative to the matters under  
7 investigation.

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

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

14       "NEW SECTION. Sec. 407. All reports, documents, surveys, books,  
15 records, files, papers, or written material in the possession of the  
16 department of ecology pertaining to the powers, functions, and duties  
17 transferred shall be delivered to the custody of the office of marine  
18 safety. All cabinets, furniture, office equipment, motor vehicles, and  
19 other tangible property employed by the department of ecology in  
20 carrying out the powers, functions, and duties transferred shall be  
21 made available to the office of marine safety. All funds, credits, or  
22 other assets held in connection with the powers, functions, and duties  
23 transferred shall be assigned to the office of marine safety.

24       Any appropriations made to the department of ecology for carrying  
25 out the powers, functions, and duties transferred shall, on the  
26 effective date of this section, be transferred and credited to the  
27 office of marine safety.

28       Whenever any question arises as to the transfer of any personnel,  
29 funds, books, documents, records, papers, files, equipment, or other

1 tangible property used or held in the exercise of the powers and the  
2 performance of the duties and functions transferred, the director of  
3 financial management shall make a determination as to the proper  
4 allocation and certify the same to the state agencies concerned."

5 "NEW SECTION. **Sec. 408.** All employees of the department of  
6 ecology engaged in performing the powers, functions, and duties  
7 transferred are transferred to the jurisdiction of the office of marine  
8 safety. All employees classified under chapter 41.06 RCW, the state  
9 civil service law, are assigned to the office of marine safety to  
10 perform their usual duties upon the same terms as formerly, without any  
11 loss of rights, subject to any action that may be appropriate  
12 thereafter in accordance with the laws and rules governing state civil  
13 service."

14 "NEW SECTION. **Sec. 409.** All rules and all pending business before  
15 the department of ecology pertaining to the powers, functions, and  
16 duties transferred shall be continued and acted upon by the office of  
17 marine safety. All existing contracts and obligations shall remain in  
18 full force and shall be performed by the office of marine safety."

19 "NEW SECTION. **Sec. 410.** The transfer of the powers, duties,  
20 functions, and personnel of the department of ecology shall not affect  
21 the validity of any act performed prior to the effective date of this  
22 section."

23 "NEW SECTION. **Sec. 411.** If apportionments of budgeted funds are  
24 required because of the transfers directed by sections 407 through 410  
25 of this act, the director of financial management shall certify the  
26 apportionments to the agencies affected, the state auditor, and the

1 state treasurer. Each of these shall make the appropriate transfer and  
2 adjustments in funds and appropriation accounts and equipment records  
3 in accordance with the certification."

4 "NEW SECTION. Sec. 412. Nothing contained in sections 405 and 407  
5 through 411 of this act may be construed to alter any existing  
6 collective bargaining unit or the provisions of any existing collective  
7 bargaining agreement until the agreement has expired or until the  
8 bargaining unit has been modified by action of the personnel board as  
9 provided by law."

10 "NEW SECTION. Sec. 413. DEFINITIONS. Unless the context clearly  
11 requires otherwise, the definitions in this section apply throughout  
12 this chapter.

13 (1) "Administrator" means the administrator of the office of marine  
14 safety created in section 402 of this act.

15 (2) "Best achievable protection" means the highest level of  
16 protection that can be achieved through the use of the best achievable  
17 technology and those staffing levels, training procedures, and  
18 operational methods that provide the greatest degree of protection  
19 achievable. The administrator's determination of best achievable  
20 protection shall be guided by the critical need to protect the state's  
21 natural resources and waters, while considering (a) the additional  
22 protection provided by the measures; (b) the technological  
23 achievability of the measures; and (c) the cost of the measures. It is  
24 not the intent of the legislature that the administrator use a cost-  
25 benefit or cost-effectiveness analysis or any particular method of  
26 analysis in determining which measures to require.

27 (3) "Best achievable technology" means the technology that provides  
28 the greatest degree of protection taking into consideration (a)

1 processes that are being developed, or could feasibly be developed,  
2 given overall reasonable expenditures on research and development, and  
3 (b) processes that are currently in use. In determining what is best  
4 achievable technology, the administrator shall consider the  
5 effectiveness, engineering feasibility, and commercial availability of  
6 the technology.

7 (4) "Cargo vessel" means a ship in commerce, other than a tank  
8 vessel or a passenger vessel, of three hundred gross tons or more,  
9 including but not limited to, commercial fish processing vessels and  
10 freighters.

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

14 (6) "Covered vessel" means a tank vessel, cargo vessel, or  
15 passenger vessel.

16 (7) "Department" means the department of ecology.

17 (8) "Director" means the director of the department of ecology.

18 (9) "Discharge" means any spilling, leaking, pumping, pouring,  
19 emitting, emptying, or dumping.

20 (10)(a) "Facility" means any structure, group of structures,  
21 equipment, pipeline, or device, other than a vessel that is used for  
22 producing, storing, handling, transferring, processing, or transporting  
23 oil in bulk.

24 (b) A facility does not include any: (i) Railroad car, motor  
25 vehicle, or other rolling stock while transporting oil over the  
26 highways or rail lines of this state; (ii) retail motor vehicle motor  
27 fuel outlet; (iii) facility that is operated as part of an exempt  
28 agricultural activity as provided in RCW 82.04.330; or (iv) underground  
29 storage tank regulated by the department or a local government under  
30 chapter 90.76 RCW.



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

6 (12) "Office" means the office of marine safety established by  
7 section 402 of this act.

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

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

21 (15) "Onshore facility" means any facility any part of which is  
22 located in, on, or under any land of the state, other than submerged  
23 land, that because of its location, could reasonably be expected to  
24 cause substantial harm to the environment by discharging oil into or on  
25 the navigable waters of the state or the adjoining shorelines.

26 (16)(a) "Owner or operator" means (i) in the case of a vessel, any  
27 person owning, operating, or chartering by devise, the vessel; (ii) in  
28 the case of an onshore or offshore facility, any person owning or  
29 operating the facility; and (iii) in the case of an abandoned vessel or

1 onshore or offshore facility, the person who owned or operated the  
2 vessel or facility immediately before its abandonment.

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

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

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

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

13 (20) "Spill" means an unauthorized discharge of oil or hazardous  
14 substances into the waters of the state.

15 (21) "Tank vessel" means a ship that is constructed or adapted to  
16 carry, or that carries, oil in bulk as cargo or cargo residue, and  
17 that:

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

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

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

26 (23) "Worst case spill" means: (a) In the case of a vessel, a  
27 spill of the entire cargo and fuel of the vessel complicated by adverse  
28 weather conditions; and (b) in the case of an onshore or offshore  
29 facility, the largest foreseeable spill in adverse weather conditions."

1        "NEW SECTION.   **Sec. 414.**   COORDINATION WITH FEDERAL LAW.    In  
2 carrying out the purposes of this chapter, including the adoption of  
3 rules for contingency plans, the administrator shall to the greatest  
4 extent practicable implement this chapter in a manner consistent with  
5 federal law."

6        "NEW SECTION.   **Sec. 415.**   TANK VESSEL INSPECTIONS.   (1) All tank  
7 vessels entering the navigable waters of the state shall be subject to  
8 inspection to assure that they comply with all applicable federal and  
9 state standards.

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

23       (3) The state tank vessel inspection program shall ensure that all  
24 tank vessels entering state waters are inspected at least annually.  To  
25 the maximum extent feasible, the state program shall consist of the  
26 monitoring of existing tank vessel inspection programs conducted by the  
27 federal government.  The office shall consult with the coast guard  
28 regarding the tank vessel inspection program.  Any tank vessel

1 inspection conducted pursuant to this section shall be performed during  
2 the vessel's scheduled stay in port.

3 (4) Any violation of coast guard or other federal regulations  
4 uncovered during a state tank vessel inspection shall be immediately  
5 reported to the appropriate agency."

6 "NEW SECTION. **Sec. 416.** PREVENTION PLANS. (1) The owner or  
7 operator for each covered vessel shall prepare and submit to the office  
8 an oil spill prevention plan in conformance with the requirements of  
9 this chapter. The plans shall be submitted to the office in the time  
10 and manner directed by the office, but not later than January 1, 1993.  
11 The spill prevention plan may be consolidated with a spill contingency  
12 plan submitted pursuant to section 417 of this act. The office may  
13 accept plans prepared to comply with other state or federal law as  
14 spill prevention plans to the extent those plans comply with the  
15 requirements of this chapter. The office, by rule, shall establish  
16 standards for spill prevention plans. The rules shall be adopted not  
17 later than July 1, 1992.

18 (2) The spill prevention plan for a covered vessel or a fleet of  
19 covered vessels operated by the same operator shall:

20 (a) Establish compliance with the federal oil pollution act of 1990  
21 and state and federal financial responsibility requirements, if  
22 applicable;

23 (b) State all discharges of oil of more than twenty-five barrels  
24 from the vessel within the prior five years and what measures have been  
25 taken to prevent a reoccurrence;

26 (c) Describe all accidents, collisions, groundings, and near miss  
27 incidents in which the vessel has been involved in the prior five  
28 years, analyze the causes, and state the measures that have been taken  
29 to prevent a reoccurrence;

1 (d) Describe the vessel operations with respect to staffing  
2 standards;

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

5 (f) Describe the training given to vessel crews with respect to  
6 spill prevention;

7 (g) Establish compliance with federal drug and alcohol programs;

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

10 (i) Describe the procedures used by the vessel owner or operator to  
11 ensure English language proficiency of at least one bridge officer  
12 while on duty in waters of the state;

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

16 (k) Include any other information reasonably necessary to carry out  
17 the purposes of this chapter required by rules adopted by the office.

18 (3)(a) The administrator by rule may specify those cargo vessels  
19 and passenger vessels which may be exempt from the provisions of  
20 subsection (2) of this section. In determining which vessels shall not  
21 be required to prepare prevention plans, the administrator shall  
22 consider the length of time the vessel has been under the current  
23 ownership, the number of visits the vessel makes to Washington ports  
24 within a two-year period, and any other information deemed relevant by  
25 the administrator.

26 (b) In addition to the certification made pursuant to RCW  
27 88.16.155(1) (a) through (c), the master of any cargo vessel or  
28 passenger vessel not required to have a prevention plan pursuant to (a)  
29 of this subsection which employs a Washington licensed pilot shall  
30 certify that the:

1 (i) Vessel complies with safety of life at sea certificate  
2 requirements;

3 (ii) Vessel complies with current international agreements  
4 concerning safety and radio equipment;

5 (iii) Engine is able to maneuver and all related equipment is in  
6 good order;

7 (iv) Vessel is not leaking oil;

8 (v) Vessel is not experiencing propulsion or maneuvering  
9 difficulties;

10 (vi) The master has notified the United States coast guard captain  
11 for the port of any deficiencies and has received authorization for the  
12 vessel to proceed, and that any deficiencies will be corrected before  
13 the vessel is scheduled to leave the waters of the state.

14 (4) The office shall only approve a prevention plan if it provides  
15 the best achievable protection from damages caused by the discharge of  
16 oil into the waters of the state and if it determines that the plan  
17 meets the requirements of this section and rules adopted by the office.

18 (5) Upon approval of a prevention plan, the office shall provide to  
19 the person submitting the plan a statement indicating that the plan has  
20 been approved, the vessels covered by the plan, and other information  
21 the office determines should be included.

22 (6) The approval of a prevention plan shall be valid for five  
23 years. An owner or operator of a covered vessel shall notify the  
24 office in writing immediately of any significant change of which it is  
25 aware affecting its prevention plan, including changes in any factor  
26 set forth in this section or in rules adopted by the office. The  
27 office may require the owner or operator to update a prevention plan as  
28 a result of these changes.

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

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

7 (9) This section does not authorize the office to modify the terms  
8 of a collective bargaining agreement."

9 "NEW SECTION. **Sec. 417.** CONTINGENCY PLANS. (1) Each covered  
10 vessel shall have a contingency plan for the containment and cleanup of  
11 oil spills from the covered vessel into the waters of the state and for  
12 the protection of fisheries and wildlife, natural resources, and public  
13 and private property from such spills. The office shall by rule adopt  
14 and periodically revise standards for the preparation of contingency  
15 plans. The office shall require contingency plans, at a minimum, to  
16 meet the following standards:

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

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

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

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

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

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

7 (g) Describe important features of the surrounding environment,  
8 including fish and wildlife habitat, environmentally sensitive areas,  
9 and public facilities. The departments of ecology, fisheries,  
10 wildlife, and natural resources, upon request, shall provide  
11 information that they have available to assist in preparing this  
12 description;

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

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

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

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

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

29 (m) Until a spill prevention plan has been submitted pursuant to  
30 section 416 of this act, state the measures that have been taken to



1 reduce the likelihood that a spill will occur, including but not  
2 limited to, design and operation of a vessel, training of personnel,  
3 number of personnel, and backup systems designed to prevent a spill;

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

7 (o) If the department of ecology has adopted rules permitting the  
8 use of dispersants, the circumstances, if any, and the manner for the  
9 application of the dispersants in conformance with the department's  
10 rules.

11 (2)(a) The owner or operator of a tank vessel of three thousand  
12 gross tons or more shall submit a contingency plan to the office within  
13 six months after the office adopts rules establishing standards for  
14 contingency plans under subsection (1) of this section.

15 (b) Contingency plans for all other covered vessels shall be  
16 submitted to the office within eighteen months after the office has  
17 adopted rules under subsection (1) of this section. The office may  
18 adopt a schedule for submission of plans within the eighteen-month  
19 period.

20 (3)(a) The owner or operator of a tank vessel or of the facilities  
21 at which the vessel will be unloading its cargo shall submit the  
22 contingency plan for the tank vessel. Subject to conditions imposed by  
23 the office, the owner or operator of a facility may submit a single  
24 contingency plan for tank vessels of a particular class that will be  
25 unloading cargo at the facility.

26 (b) The contingency plan for a cargo vessel or passenger vessel may  
27 be submitted by the owner or operator of the cargo vessel or passenger  
28 vessel or by the agent for the vessel resident in this state. Subject  
29 to conditions imposed by the office, the owner, operator, or agent may

1 submit a single contingency plan for cargo vessels or passenger vessels  
2 of a particular class.

3 (c) A person who has contracted with a covered vessel to provide  
4 containment and cleanup services and who meets the standards  
5 established pursuant to RCW 90.48.372 as recodified by this act, may  
6 submit the plan for any covered vessel for which the person is  
7 contractually obligated to provide services. Subject to conditions  
8 imposed by the office, the person may submit a single plan for more  
9 than one covered vessel.

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

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

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

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

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

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

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

3 (f) The sensitivity of fisheries and wildlife and other natural  
4 resources within the area covered by the plan;

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

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

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

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

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

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

29 (10) Approval of a contingency plan by the office does not  
30 constitute an express assurance regarding the adequacy of the plan nor

1 constitute a defense to liability imposed under this chapter or other  
2 state law."

3       "NEW SECTION.   **Sec. 418.** The provisions of prevention plans and  
4 contingency plans approved by the office pursuant to this chapter shall  
5 be legally binding on those persons submitting them to the office and  
6 on their successors, assigns, agents, and employees. The superior  
7 court shall have jurisdiction to restrain a violation of, compel  
8 specific performance of, or otherwise to enforce such plans upon  
9 application by the office. The office may issue an order pursuant to  
10 chapter 34.05 RCW requiring compliance with a contingency plan or a  
11 prevention plan and may impose administrative penalties for failure to  
12 comply with a plan."

13       "NEW SECTION.   **Sec. 419.** (1) Except as provided in subsection (2)  
14 of this section, it shall be unlawful for the owner or operator to  
15 knowingly and intentionally operate in this state or on the waters of  
16 this state a covered vessel without an approved contingency plan or an  
17 approved prevention plan as required by this chapter, or financial  
18 responsibility in compliance with this chapter and the federal oil  
19 pollution act of 1990. The first conviction under this section shall  
20 be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent  
21 conviction shall be a class C felony under chapter 9A.20 RCW.

22       (2) It shall not be unlawful for the owner or operator to operate  
23 a covered vessel if:

24       (a) The covered vessel is not required to have a contingency plan,  
25 spill prevention plan, or financial responsibility;

26       (b) All required plans have been submitted to the office as  
27 required by this chapter and rules adopted by the office and the office  
28 is reviewing the plan and 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 (3) A person may rely on a copy of the statement issued by the  
4 department pursuant to section 417 of this act as evidence that a  
5 vessel has an approved contingency plan and the statement issued  
6 pursuant to section 416 of this act that a vessel has an approved  
7 prevention plan."

8 "NEW SECTION. Sec. 420. (1) Except as provided in subsection (4)  
9 of this section, it shall be unlawful for a covered vessel to enter the  
10 waters of the state without an approved contingency plan required by  
11 section 417 of this act, a spill prevention plan required by section  
12 416 of this act, or financial responsibility in compliance with chapter  
13 88.40 RCW and the federal oil pollution act of 1990. The office may  
14 deny entry onto the waters of the state to any covered vessel that does  
15 not have a required contingency or spill prevention plan or financial  
16 responsibility.

17 (2) Except as provided in subsection (4) of this section, it shall  
18 be unlawful for a covered vessel to transfer oil to an onshore or  
19 offshore facility that does not have an approved contingency plan  
20 required under RCW 90.48.371 as recodified by this act, a spill  
21 prevention plan required by section 201 of this act, or financial  
22 responsibility in compliance with chapter 88.40 RCW and the federal oil  
23 pollution act of 1990.

24 (3) The administrator may assess a civil penalty of up to one  
25 hundred thousand dollars against the owner or operator of a vessel who  
26 is in violation of this section. Each day that the owner or operator  
27 of a covered vessel is in violation of this section shall be considered  
28 a separate violation.

1 (4) It shall not be unlawful for a covered vessel to operate on the  
2 waters of the state if:

3 (a) A contingency plan, a prevention plan, or financial  
4 responsibility is not required for the covered vessel;

5 (b) A contingency plan and prevention plan has been submitted to  
6 the office as required by this chapter and rules adopted by the office  
7 and the office is reviewing the plan and has not denied approval; or

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

10 (5) Any person may rely on a copy of the statement issued by the  
11 office to section 417 of this act as evidence that the vessel has an  
12 approved contingency plan and the statement issued pursuant to section  
13 416 of this act as evidence that the vessel has an approved spill  
14 prevention plan."

15 "NEW SECTION. Sec. 421. NOTIFICATION OF ACCIDENTS AND NEAR MISS  
16 INCIDENTS. (1) In order to assist the state in identifying areas of  
17 the navigable waters of the state needing special attention, the owner  
18 or operator of a covered vessel shall notify the coast guard within one  
19 hour:

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

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

24 (2) The division of emergency management of the department of  
25 community development and the office shall request the coast guard to  
26 notify the division of emergency management as soon as possible after  
27 the coast guard receives notice of a disabled covered vessel or of a  
28 collision or near miss incident within twelve miles of the shore of the  
29 state. The office shall negotiate an agreement with the coast guard

1 governing procedures for coast guard notification to the state  
2 regarding disabled covered vessels and collisions and near miss  
3 incidents.

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

8 (4) For the purposes of this section:

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

11 (i) Any accidental or intentional grounding;

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

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

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

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

22 (i) The towing mechanism becomes disabled;

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

25 (c) A near miss incident is an incident that requires the pilot or  
26 master of a covered vessel to take evasive actions or make significant  
27 course corrections in order to avoid a collision with another ship or  
28 to avoid a grounding as required by the international rules of the  
29 road.

1 (5) Failure of any person to make a report under this section shall  
2 not be used as the basis for the imposition of any fine or penalty."

3 "NEW SECTION. Sec. 422. REGIONAL MARINE SAFETY COMMITTEES. (1)  
4 The office shall establish regional marine safety committees at least  
5 for the Strait of Juan de Fuca/Puget Sound and Grays Harbor/Pacific  
6 coast. It is the intent of the legislature that the office also  
7 establish a regional marine safety committee jointly with the state of  
8 Oregon for the Columbia river. The office by rule shall establish the  
9 boundaries of the committees.

10 (2) The administrator shall appoint to each regional committee for  
11 a term of three years six persons representing a cross section of  
12 interests and the public with an interest in maritime transportation  
13 and environmental issues.

14 (3) The administrator or his or her designee shall chair each of  
15 the regional committees. Each member of the committee shall be  
16 reimbursed for actual and necessary expenses incurred in the  
17 performance of committee duties in accordance with RCW 43.03.250.

18 (4) Each regional committee shall be responsible for planning for  
19 the safe navigation and operation of tankers, barges, and other vessels  
20 within each region. Each committee shall prepare a regional marine  
21 safety plan, encompassing all vessel traffic within the region. The  
22 coast guard, the federal environmental protection agency, the army  
23 corps of engineers, and the navy shall be invited to attend the  
24 meetings of each marine regional safety committee.

25 (5) The administrator shall adopt rules and guidelines for regional  
26 marine safety plans in consultation with affected parties. The rules  
27 shall require the committees to establish subcommittees to involve all  
28 interested parties in the development of the plans and to require the  
29 committees to include a summary of public comments and any minority



1 reports with recommendations submitted to the administrator. The rules  
2 shall also require the plans to consider all of the following:

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

6 (b) A review and evaluation of the adequacy of and any changes  
7 needed in:

8 (i) Anchorage designations and sounding checks;

9 (ii) Communications systems;

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

12 (iv) Placement and effectiveness of navigational aids, channel  
13 design plans, and the traffic and routings from port construction and  
14 dredging projects;

15 (c) Procedures for routing vessels during emergencies that impact  
16 navigation;

17 (d) Management requirements for control bridges;

18 (e) Special protection for environmentally sensitive areas;

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

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

23 (6) Each regional marine safety plan shall be submitted to the  
24 office for approval within one year after the regional marine safety  
25 committee is established. The office shall review the plans for  
26 consistency with the rules and guidelines and shall approve the plans  
27 or give reasons for their disapproval. If a regional marine safety  
28 committee does not submit a regional marine safety plan to the office  
29 within one year after the committee is established, the office, after

1 consulting with affected interests, may adopt a plan for the region  
2 that meets the requirements of subsection (5) of this section.

3 (7) Upon approval of a plan, the office shall implement those  
4 elements of the plan over which the state has authority. If federal  
5 authority or action is required, the office shall petition the  
6 appropriate agency or congress.

7 (8) Not later than July 1st of each even-numbered year each  
8 regional marine safety committee shall report its findings and  
9 recommendations to the marine oversight board established in section  
10 501 of this act and the office concerning vessel traffic safety in its  
11 region and any recommendations for improving tanker, barge, and other  
12 vessel safety in the region by amending the regional marine safety  
13 plan. The regional committees shall also provide technical assistance  
14 to the marine oversight board."

15 "NEW SECTION. **Sec. 423.** EMERGENCY RESPONSE SYSTEM. An emergency  
16 response system for the Strait of Juan de Fuca shall be established by  
17 July 1, 1992. In establishing the emergency response system, the  
18 administrator shall consider the recommendations of the regional marine  
19 safety committees. The administrator shall also consult with the  
20 province of British Columbia regarding its participation in the  
21 emergency response system."

22 "NEW SECTION. **Sec. 424.** CAPTIONS NOT LAW. Section headings as  
23 used in this chapter do not constitute any part of the law."

24 "**Sec. 425.** RCW 90.48.385 and 1990 c 116 s 16 are each amended to  
25 read as follows:

26 (~~The department of ecology shall study standards for the manner in~~  
27 ~~which, and the equipment with which, tow boats may tow barges carrying~~

1 ~~oil or hazardous substances as cargo or cargo residue.))~~ The regional  
2 marine safety committees established pursuant to section 422 of this  
3 1991 act shall study federal requirements for tow equipment for barges  
4 carrying oil in bulk. The committees shall review standards ((shall  
5 ~~address but are not limited to))~~ for: Wire rope specifications,  
6 catenary, the design of related on-board equipment, number of cables,  
7 ~~((and))~~ back-up or barge retrieval systems in case of cable break, and  
8 the operation, maintenance, and inspection of cables and other tow  
9 equipment.

10 ~~((The department shall seek voluntary compliance with such~~  
11 ~~standards.~~

12 ~~Finally, the department shall study state jurisdiction over and~~  
13 ~~liability of mandatory compliance with such standards. The department~~  
14 ~~shall report to the appropriate standing committees of the legislature~~  
15 ~~by July 1, 1991, recommendations regarding mandatory compliance with~~  
16 ~~such standards.))~~

17 The committees shall submit their report to the office within one  
18 year after the committees are established. The report shall include a  
19 recommendation on whether the office should adopt standards for tow  
20 equipment and its maintenance, operation, and inspection. If there is  
21 a recommendation that the office adopt standards, the recommended  
22 standards shall also be included in the report."

23 **"Sec. 426.** RCW 90.48.510 and 1987 c 479 s 2 are each amended to  
24 read as follows:

25 ~~((After June 30, 1988,))~~ Any person or facility conducting ship  
26 refueling and bunkering operations, or the lightering of petroleum  
27 products, and any person or facility transferring oil between an  
28 onshore or offshore facility and a tank vessel shall have containment  
29 and recovery equipment readily available for deployment in the event of

1 the discharge of oil into the waters of the state and shall deploy the  
2 containment and recovery equipment in accordance with standards adopted  
3 by the office. All persons conducting refueling, bunkering, or  
4 lightering operations, or oil transfer operations shall be trained in  
5 the use and deployment of oil spill containment and recovery equipment.  
6 ~~((After examining existing equipment locations, the methods and~~  
7 ~~conditions of deployment, and accessibility of any federal or other~~  
8 ~~publicly or privately owned and operated containment and recovery~~  
9 ~~equipment or systems, and reviewing federal, state, or local laws,~~  
10 ~~rules, or regulations and ordinances governing refueling, bunkering, or~~  
11 ~~lightering of petroleum products,)).~~ The ((department of ecology may))  
12 office shall adopt rules as necessary to carry out the provisions of  
13 this section. The rules shall include standards for the circumstances  
14 under which containment equipment should be deployed. An onshore or  
15 offshore facility shall include the procedures used to contain and  
16 recover discharges in the facility's contingency plan. It is the  
17 responsibility of the person providing bunkering, refueling, or  
18 lightering services to provide any containment or recovery equipment  
19 required under this section."

20 "PART V

21 "MARINE OVERSIGHT BOARD"

22 "NEW SECTION. Sec. 501. MARINE OVERSIGHT BOARD. (1) The oil and  
23 hazardous substance marine oversight board is established to provide  
24 independent oversight of the actions of the federal government,  
25 industry, the department, the office, and other state agencies with  
26 respect to oil and hazardous substance spill prevention and response.

27 (2)(a) The board may, at its own discretion, study any aspect of  
28 oil and hazardous substance spill prevention and response in the state.

1 The board shall report to the governor and make recommendations to the  
2 department and the office on activities of the federal government and  
3 industry with respect to oil and hazardous substance spill prevention  
4 and response, including recommendations for the state's response to  
5 those actions. The board shall specifically review the need for, and  
6 the structure and design of an emergency response system for the Strait  
7 of Juan de Fuca and the Pacific coast. The board shall also make  
8 recommendations to the legislature and other state agencies on any  
9 provision of this chapter, other state laws, and rules, policies, and  
10 guidelines adopted by the department, the office, or, other state  
11 agencies relating to the prevention and cleanup of oil and hazardous  
12 substance spills into the waters of the state.

13 (b) To minimize duplication of effort, reviews conducted by the  
14 board shall be coordinated with related activities of the federal  
15 government, the department, the office, and other appropriate state and  
16 international entities.

17 (c) The board shall evaluate and report at least annually to the  
18 governor and the appropriate standing committees of the legislature on  
19 oil and hazardous substance spill prevention, response, and  
20 preparedness programs within the state.

21 (3) There shall be five members of the board appointed by the  
22 governor for terms of five years. Members' terms shall be staggered.  
23 The members of the board shall be representative of the public and  
24 shall have demonstrable knowledge of environmental protection and the  
25 study of marine ecosystems, or have familiarity with marine  
26 transportation systems. No member of the board may be in the business  
27 of, or be employed by, or under contract with, any person or entity  
28 that is in the business of transporting, storing, or handling oil or  
29 hazardous substances or be employed by a recognized environmental  
30 organization.

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

5 (5) The chair may hire staff as necessary for the board to fulfill  
6 its responsibilities."

7 "PART VI

8 "TANKER REQUIREMENTS"

9 "Sec. 601. RCW 88.16.170 and 1975 1st ex.s. c 125 s 1 are each  
10 amended to read as follows:

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

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

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

27 For these reasons, it is important that large oil tankers be  
28 piloted by highly skilled persons who are familiar with local waters

1 and that such tankers have sufficient capability for rapid maneuvering  
2 responses.

3 It is therefore the intent and purpose of RCW 88.16.180 as  
4 recodified by this 1991 act and 88.16.190 as recodified by this 1991  
5 act to decrease the likelihood of oil spills on the Columbia river and  
6 on Puget Sound and its shorelines by requiring all oil tankers above a  
7 certain size to employ ((~~Washington state~~)) licensed pilots and((~~, if~~  
8 ~~lacking certain safety and maneuvering capability requirements,~~)) to be  
9 escorted by a tug or tugs while navigating on certain areas of Puget  
10 Sound and adjacent waters."

11 "Sec. 602. RCW 88.16.180 and 1983 c 3 s 231 are each amended to  
12 read as follows:

13 Notwithstanding the provisions of RCW 88.16.070, any registered oil  
14 tanker((~~, whether enrolled or registered,~~)) of ((~~fifty~~)) five thousand  
15 ((~~deadweight~~)) gross tons or greater, shall be required:

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

19 (2) To take a licensed pilot while navigating the Columbia river."

20 "Sec. 603. RCW 88.16.200 and 1977 ex.s. c 337 s 16 are each  
21 amended 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) as recodified by this 1991 act as though it ((~~was~~)) were  
25 an oil tanker."

26 "NEW SECTION. Sec. 604. RECKLESS OPERATION OF A VESSEL. (1) A  
27 person commits the crime of reckless operation of a tank vessel if,

1 while operating, navigating, or piloting a tank vessel, the person,  
2 with recklessness as defined in RCW 9A.08.010, causes a release of oil.

3 (2) Reckless operation of a vessel is a class C felony under  
4 chapter 9A.20 RCW."

5 "NEW SECTION. **Sec. 605.** NEGLIGENT OPERATION OF A VESSEL. (1) A  
6 person commits the crime of negligent operation of a tank vessel if,  
7 while operating, navigating, or piloting a tank vessel, the person,  
8 with criminal negligence, as defined in RCW 9A.08.010, causes a release  
9 of oil.

10 (2) Negligent operation of a vessel is a gross misdemeanor under  
11 chapter 9A.20 RCW."

12 "NEW SECTION. **Sec. 606.** OPERATION OF A VESSEL WHILE UNDER  
13 INFLUENCE OF LIQUOR OR DRUGS. (1) A person is guilty of operating a  
14 vessel while under the influence of intoxicating liquor or drugs if the  
15 person operates a covered vessel within this state while:

16 (a) The person has 0.06 grams or more of alcohol per two hundred  
17 ten liters of breath, as shown by analysis of the person's breath made  
18 under section 607 of this act; or

19 (b) The person has 0.06 percent or more by weight of alcohol in the  
20 person's blood as shown by analysis of the person's blood made under  
21 section 607 of this act; or

22 (c) The person is under the influence of or affected by  
23 intoxicating liquor or drugs; or

24 (d) The person is under the combined influence of or affected by  
25 intoxicating liquor or drugs.

26 (2) The fact that any person charged with a violation of this  
27 section is or has been entitled to use such drug under the laws of this



1 state shall not constitute a defense against any charge of violating  
2 this section.

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

5 "NEW SECTION. Sec. 607. BREATH OR BLOOD ANALYSIS. (1) Upon the  
6 trial of any civil or criminal action or proceeding arising out of acts  
7 alleged to have been committed by a person while operating a vessel  
8 while under the influence of intoxicating liquor or drugs, if the  
9 amount of alcohol in the person's blood or breath at the time alleged  
10 as shown by analysis of his blood or breath is less than 0.06 percent  
11 by weight of alcohol in his blood or 0.06 grams of alcohol per two  
12 hundred ten liters of the person's breath, it is evidence that may be  
13 considered with other competent evidence in determining whether the  
14 person was under the influence of intoxicating liquor or drugs.

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

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

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

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

13 (6) Upon the request of the person who submits to a test or tests  
14 at the request of a law enforcement officer, full information  
15 concerning the test or tests shall be made available to the person or  
16 his or her attorney."

17 "NEW SECTION. Sec. 608. LIMITED IMMUNITY FOR BLOOD WITHDRAWAL. No  
18 physician, registered nurse, qualified technician, or hospital, or duly  
19 licensed clinical laboratory employing or using services of the  
20 physician, registered nurse, or qualified technician, may incur any  
21 civil or criminal liability as a result of the act of withdrawing blood  
22 from any person when directed by a law enforcement officer to do so for  
23 the purpose of a blood test under section 607 of this act. This  
24 section shall not relieve any physician, registered nurse, qualified  
25 technician, or hospital or duly licensed clinical laboratory from civil  
26 liability arising from the use of improper procedures or failing to  
27 exercise the required standard of care."

1 "PART VII

2 "FINANCIAL RESPONSIBILITY"

3 "Sec. 701. RCW 88.40.005 and 1990 c 116 s 29 are each amended to  
4 read as follows:

5 The legislature recognizes that oil and hazardous substance spills  
6 and other forms of incremental pollution present serious danger to the  
7 fragile marine environment of Washington state. It is the intent and  
8 purpose of this chapter to define and prescribe financial  
9 responsibility requirements for vessels that transport petroleum  
10 products and hazardous substances as cargo or as fuel across the waters  
11 of the state of Washington and for facilities that store, handle, or  
12 transfer oil or hazardous substances in bulk on or near the navigable  
13 waters."

14 "NEW SECTION. **Sec. 702.** DEFINITIONS. Unless the context clearly  
15 requires otherwise, the definitions in this section apply throughout  
16 this chapter.

17 (1) "Administrator" means the administrator of the office of marine  
18 safety created in section 402 of this act.

19 (2) "Cargo vessel" means a ship in commerce, other than a tank  
20 vessel or a passenger vessel, of three hundred gross tons or more,  
21 including but not limited to, commercial fish processing vessels and  
22 freighters.

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

26 (4) "Covered vessel" means a tank vessel, cargo vessel, or  
27 passenger vessel.

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

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

2 (7)(a) "Facility" means any structure, group of structures,  
3 equipment, pipeline, or device, other than a vessel that is used for  
4 producing, storing, handling, transferring, processing, or transporting  
5 oil in bulk.

6 (b) A facility does not include any: (i) Railroad car, motor  
7 vehicle, or other rolling stock while transporting oil over the  
8 highways or rail lines of this state; (ii) retail motor vehicle motor  
9 fuel outlet; (iii) facility that is operated as part of an exempt  
10 agricultural activity as provided in RCW 82.04.330; or (iv) underground  
11 storage tank regulated by the department or a local government under  
12 chapter 90.76 RCW.

13 (8) "Hazardous substances" means any substance listed in Table  
14 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section  
15 101(14) of the federal comprehensive environmental response,  
16 compensation, and liability act of 1980, as amended by P.L. 99-499.  
17 The following are not hazardous substances for purposes of this  
18 chapter:

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

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

21 (9) "Inland barge" means any barge operating on the waters of the  
22 state and certified by the coast guard as an inland barge.

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

28 (11) "Office" means the office of marine safety established by  
29 section 402 of this act.

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

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

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

19 (15)(a) "Owner or operator" means (i) in the case of a vessel, any  
20 person owning, operating, or chartering by devise, the vessel; (ii) in  
21 the case of an onshore or offshore facility, any person owning or  
22 operating the facility; and (iii) in the case of an abandoned vessel or  
23 onshore or offshore facility, the person who owned or operated the  
24 vessel or facility immediately before its abandonment.

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

28 (16) "Passenger vessel" means a ship of three hundred or more gross  
29 tons carrying passengers for compensation.

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

3 (18) "Spill" means an unauthorized discharge of oil or hazardous  
4 substances into the waters of the state.

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

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

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

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

16 **"Sec. 703.** RCW 88.40.020 and 1990 c 116 s 31 are each amended to  
17 read as follows:

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

1       (2)(a) A tank vessel that carries oil as cargo in bulk shall  
2 demonstrate financial responsibility to pay at least five hundred  
3 million dollars.

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

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

14       (4) The certificate of financial responsibility shall meet the  
15 liability of the certificate holder for the actual costs for removal of  
16 spills of oil and necessary expenses.

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

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

25       "NEW SECTION. Sec. 704. An onshore or offshore facility shall  
26 demonstrate financial responsibility in an amount determined by the  
27 department as necessary to compensate the state and affected counties  
28 and cities for damages that might occur during a reasonable worst case  
29 spill of oil from that facility into the navigable waters of the state.

1 The department shall consider such matters as the amount of oil that  
2 could be spilled into the navigable waters from the facility, the cost  
3 of cleaning up the spilled oil, the frequency of operations at the  
4 facility, the damages that could result from the spill and the  
5 commercial availability and affordability of financial responsibility.  
6 This section shall not apply to an onshore or offshore facility owned  
7 or operated by the federal government or by the state or local  
8 government."

9 "Sec. 705. RCW 88.40.030 and 1990 c 116 s 32 are each amended to  
10 read as follows:

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



1 government requires a level of financial responsibility at least as  
2 high as that required under this chapter."

3 "Sec. 706. RCW 88.40.040 and 1989 1st ex.s. c 2 s 5 are each  
4 amended to read as follows:

5 (1) The office shall deny entry to the waters of the state to any  
6 vessel that does not meet the financial responsibility requirements of  
7 this chapter. Any vessel owner or operator that does not meet the  
8 financial responsibility requirements of this chapter and any rules  
9 prescribed thereunder or the federal oil pollution act of 1990 shall be  
10 reported by the office to the ((secretary of transportation who shall  
11 suspend the privilege of operating said vessel until financial  
12 responsibility is demonstrated)) United States coast guard.

13 (2) The office shall enforce section 1016 of the federal oil  
14 pollution act of 1990 as authorized by section 1019 of the federal act.

15 (3) Any onshore or offshore facility owner or operator who does not  
16 meet the financial responsibility requirements of section 704 of this  
17 1991 act and any rules adopted by the department shall be reported to  
18 the secretary of state. The secretary of state shall suspend the  
19 facility's privilege of operating in this state until financial  
20 responsibility is demonstrated."

21 "PART VIII

22 "FUNDS"

23 "NEW SECTION. Sec. 801. DEFINITIONS. Unless the context clearly  
24 requires otherwise, the definitions in this section apply throughout  
25 this chapter.

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

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

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

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

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

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

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

22 (8) "Taxpayer" means the person owning crude oil or petroleum  
23 products at the time the same are off-loaded at a marine terminal in  
24 this state and who is liable for the tax imposed by this chapter. The  
25 term shall also include any affiliated entity which may pay tax under  
26 section 802(7) of this act.

27 (9) "Waterborne vessel or barge" means any ship, barge, or other  
28 watercraft capable of travelling on the navigable waters of this state  
29 and capable of transporting any crude oil or petroleum product for  
30 purposes other than providing fuel for its motor or engine."

1        "NEW SECTION. Sec. 802. (1) An oil spill response tax is imposed  
2 on the privilege of off-loading crude oil or petroleum products at a  
3 marine terminal within this state from a waterborne vessel or barge  
4 operating on the navigable waters of this state. The tax imposed in  
5 this section is levied upon the owner of the crude oil or petroleum  
6 products at the time such off-loading occurs at the rate of five cents  
7 per barrel of crude oil or petroleum product off-loaded.

8        (2) The taxes imposed by this chapter shall be collected by the  
9 marine terminal operator from the owner of the crude oil or petroleum  
10 products off-loaded at the marine terminal. If any person charged with  
11 collecting the tax fails to bill the taxpayer for the tax, or in the  
12 alternative has not notified the taxpayer in writing of the imposition  
13 of the tax, or having collected the tax, fails to pay it to the  
14 department in the manner prescribed by this chapter, whether such  
15 failure is the result of the person's own acts or the result of acts or  
16 conditions beyond the person's control, he or she shall, nevertheless,  
17 be personally liable to the state for the amount of the tax. Payment  
18 of the tax by the owner to a marine terminal operator shall relieve the  
19 owner from further liability for the tax.

20        (3) Taxes collected under this chapter shall be held in trust until  
21 paid to the department. Any person collecting the tax who appropriates  
22 or converts the tax collected shall be guilty of a gross misdemeanor if  
23 the money required to be collected is not available for payment on the  
24 date payment is due. The tax required by this chapter to be collected  
25 shall be stated separately from other charges made by the marine  
26 terminal operator in any invoice or other statement of account provided  
27 to the taxpayer.

28        (4) If a taxpayer fails to pay the tax imposed by this chapter to  
29 the person charged with collection of the tax and the person charged  
30 with collection fails to pay the tax to the department, the department

1 may, in its discretion, proceed directly against the taxpayer for  
2 collection of the tax.

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

7 (6) The amount of tax, until paid by the taxpayer to the marine  
8 terminal operator or to the department, shall constitute a debt from  
9 the taxpayer to the marine terminal operator and any person required to  
10 collect the tax who fails or refuses to do so as required with intent  
11 to violate the provisions of this chapter, and any taxpayer who refuses  
12 to pay any tax due under this chapter shall be guilty of a misdemeanor.

13 (7) Upon prior approval of the department, the owner of crude oil  
14 or petroleum products off-loaded in this state may appoint an  
15 affiliated entity located in this state to pay the taxes imposed by  
16 this chapter directly to the department. For this purpose an  
17 affiliated entity is any entity which is majority owned or controlled  
18 by a common parent or owner. The department shall give its approval  
19 for direct payment under this section whenever it appears, in the  
20 department's judgment, that direct payment will enhance the  
21 administration of the taxes imposed under this chapter. The department  
22 shall provide by rule for the issuance of a direct payment certificate  
23 to any taxpayer qualifying for direct payment of the tax through an  
24 affiliated entity. Good faith acceptance of a direct payment  
25 certificate by a terminal operator shall relieve the marine terminal  
26 operator from any liability for the collection or payment of the taxes  
27 imposed under this chapter.

28 (8) The taxes collected under this chapter shall be deposited into  
29 the state oil spill response and prevention account."

1        "NEW SECTION.   **Sec. 803.**  The tax imposed under this chapter shall  
2 only apply to the first off-loading of crude oil or petroleum products  
3 at a marine terminal in this state and not to the later transporting  
4 and subsequent off-loading of the same oil or petroleum product,  
5 whether in the form originally off-loaded in this state or after  
6 refining or other processing."

7        "NEW SECTION.   **Sec. 804.**  The tax imposed under this chapter shall  
8 not apply to any crude oil or petroleum products off-loaded at a marine  
9 terminal and subsequently exported from or sold for export from the  
10 state."

11        "NEW SECTION.   **Sec. 805.**  (1) The state oil spill administration  
12 and response account is hereby created in the state treasury.  All  
13 taxes collected under this chapter shall be deposited in the account.  
14 Expenditures from the account shall be used exclusively for the  
15 purposes of this chapter.  The account is subject to allotment  
16 procedures under chapter 43.88 RCW.  Expenditures for payment of the  
17 costs of administration of the provisions of this chapter may be made  
18 only after appropriation by statute.  No appropriation is required for  
19 payment of the costs associated with the response to spills of crude  
20 oil or petroleum products.

21        (2) Costs of administration of the provisions of this chapter  
22 include the costs of:

23        (a) Routine responses not covered under subsection (3) of this  
24 section;

25        (b) Management and staff development activities;

26        (c) Development of rules and policies and the state-wide plan  
27 provided for in RCW 90.48.378 as recodified by this act;

1 (d) Facility and vessel plan review and approval, drills,  
2 inspections, investigations, enforcement, and litigation;

3 (e) Interagency coordination and public outreach and education;

4 (f) Collection and administration of the fee provided for in this  
5 chapter; and

6 (g) Appropriate travel, goods and services, contracts, and  
7 equipment consistent with activities provided for in chapters 90.56 and  
8 88.-- RCW (sections 413 through 424 of this act).

9 (3) Costs associated with the response to spills of crude oil or  
10 petroleum products include:

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

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

14 (c) Interagency coordination and public outreach and education;

15 (d) Collection and administration of the tax provided for in this  
16 chapter; and

17 (e) Appropriate travel, goods and services, contracts, and  
18 equipment consistent with activities provided for in chapters 90.56 and  
19 88.-- RCW (sections 413 through 424 of this act).

20 (4) Within forty-five days after the end of each calendar quarter,  
21 the office of financial management shall determine the balance of the  
22 oil spill administration and response account as of the last day of the  
23 immediately preceding quarter. Balance determinations by the office of  
24 financial management under this section are final and shall not be used  
25 to challenge the validity of any tax imposed under this chapter. The  
26 office of financial management shall promptly notify the departments of  
27 revenue and ecology of the account balance once a determination is  
28 made. For each subsequent calendar quarter, tax shall be imposed under  
29 this chapter during the entire calendar quarter unless:

1 (a) Tax was imposed under this chapter during the immediately  
2 preceding calendar quarter, and the most recent quarterly balance is  
3 more than thirty-three million dollars; or

4 (b) Tax was not imposed under this chapter during the immediately  
5 preceding calendar quarter, and the most recent quarterly balance is  
6 more than seventeen million dollars."

7 "NEW SECTION. **Sec. 806.** The following amounts are appropriated  
8 from the oil spill administration and response account for the biennium  
9 ending June 30, 1993, for the purposes of this act.

10 Department of Ecology	\$ 3,044,000
11 Marine Safety Office	\$ 3,196,000
12 Department of Wildlife	\$ 565,000
13 Department of Community Development	\$ 500,000
14 Department of Fisheries	\$ 410,000
15 State Parks and Recreation Commission	\$ 61,000
16 University of Washington	\$ 229,000
17 Department of Natural Resources	\$ 35,000
18 Department of Revenue	\$ <u>120,000</u>

19 Total Appropriation..... \$ 8,160,000

20 The appropriations in this section are subject to the following  
21 conditions and limitations: The entire appropriation to the University  
22 of Washington is provided solely for the Washington sea grant program  
23 to develop and conduct a spill prevention education program in  
24 accordance with section 110 of this act."

1        "NEW SECTION. Sec. 807. The department shall adopt such rules as  
2 may be necessary to enforce and administer the provisions of this  
3 chapter."

4        "NEW SECTION. Sec. 808. The taxes imposed in this chapter shall  
5 take effect October 1, 1991."

6        "Sec. 809. RCW 90.48.142 and 1989 c 262 s 2 are each amended to  
7 read as follows:

8        (1) Any person who:

9        (a)(i) Violates any of the provisions of this chapter((~~7~~)) or  
10 chapter 90.56 RCW;

11        (ii) Fails to perform any duty imposed by this chapter((~~7~~)) or  
12 chapter 90.56 RCW;

13        (iii) Violates an order or other determination of the department or  
14 the director made pursuant to the provisions of this chapter((~~7~~  
15 including)) or chapter 90.56 RCW;

16        (iv) Violates the conditions of a waste discharge permit issued  
17 pursuant to RCW 90.48.160((~~7~~ and in the course thereof causes the death  
18 of, or injury to, fish, animals, vegetation or other resources of the  
19 state,~~7~~))i or

20        (v) Otherwise causes a reduction in the quality of the state's  
21 waters below the standards set by the department or, if no standards  
22 have been set, causes significant degradation of water quality, thereby  
23 damaging the same((~~7~~))i and

24        (b) Causes the death of, or injury to, fish, animals, vegetation,  
25 or other resources of the state;

26 shall be liable to pay the state and affected counties and cities  
27 damages in an amount ((equal to the sum of money necessary to:—(a)  
28 Restore any damaged resource to its condition prior to the injury, to



1 the extent technically feasible, and compensate for the lost value  
2 incurred during the period between injury and restoration; or (b)  
3 compensate for the lost value throughout the duration of the injury  
4 that the resource previously provided if restoration is not technically  
5 feasible and, when only partial restoration is technically feasible,  
6 compensate for the remaining lost value. "Technical feasibility" or  
7 "technically feasible" shall mean for the purposes of this subsection,  
8 that given available technology, a restoration or enhancement project  
9 can be successfully completed at a cost that is not disproportionate to  
10 the value of the resource prior to the injury.

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

22 (3) Such damages shall be recoverable in an action brought by the  
23 attorney general on behalf of the people of the state of Washington in  
24 the superior court of Thurston county or the county in which such  
25 damages occurred: PROVIDED, That if damages occurred in more than one  
26 county the attorney general may bring action in any of the counties  
27 where the damages occurred. Any money so recovered by the attorney  
28 general shall be transferred to the coastal protection fund established  
29 under RCW 90.48.390. A steering committee consisting of  
30 representatives of the departments of ecology, fisheries, wildlife,

1 natural resources, and the parks and recreation commission shall  
2 authorize the expenditure of the moneys collected under this section  
3 after consulting impacted local agencies and local and tribal  
4 governments. The department shall chair the steering committee. The  
5 moneys collected under this section shall only be used for the  
6 following purposes: (a) Environmental restoration and enhancement  
7 projects intended to restore or enhance environmental, recreational, or  
8 aesthetic resources for the benefit of Washington's citizens; (b)  
9 investigations of the long term effects of discharges, including sewer  
10 sludge, on state resources; and (c) reimbursement of agencies for  
11 reasonable reconnaissance and damage assessment costs under this  
12 chapter. Agencies may not be reimbursed under this section for the  
13 salaries and benefits of permanent employees for routine operational  
14 support. Agencies may only be reimbursed under this section if money  
15 for reconnaissance and damage assessment activities is unavailable from  
16 other sources. In authorizing restoration or enhancement projects,  
17 preference shall be given to projects within counties where the injury  
18 occurred)) determined pursuant to RCW 90.48.367.

19 (2) No action shall be authorized under this section against any  
20 person operating in compliance with the conditions of a waste discharge  
21 permit issued pursuant to RCW 90.48.160."

22 "NEW SECTION. Sec. 810. A new section is added to chapter 90.48  
23 RCW to read as follows:

24 For the purposes of this chapter, "technical feasibility" or  
25 "technically feasible" means that given available technology, a  
26 restoration or enhancement project can be successfully completed at a  
27 cost that is not disproportionate to the value of the resource before  
28 the injury."

1       **"Sec. 811.** RCW 90.48.366 and 1989 c 388 s 2 are each amended to  
2 read as follows:

3       By July 1, 1991, the department, in consultation with the  
4 departments of fisheries, wildlife, and natural resources, and the  
5 parks and recreation commission, shall adopt rules establishing a  
6 compensation schedule for the discharge of oil or hazardous substances  
7 in violation of ((RCW 90.48.320, by persons liable under RCW  
8 90.48.336)) this chapter and chapter 90.56 RCW. The department shall  
9 establish a scientific advisory board to assist in establishing the  
10 compensation schedule. The amount of compensation assessed under this  
11 schedule shall be no less than one dollar per gallon of oil spilled and  
12 no greater than fifty dollars per gallon of oil spilled. The  
13 compensation schedule shall reflect adequate compensation for  
14 unquantifiable damages or for damages not quantifiable at reasonable  
15 cost for any adverse environmental, recreational, aesthetic, or other  
16 effects caused by the ((oil)) spill and shall take into account:

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

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

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

10 "Sec. 812. RCW 90.48.367 and 1989 c 388 s 3 are each amended to  
11 read as follows:

12 (1) (~~Prior to assessing compensation under RCW 90.48.366~~) After  
13 a spill or other incident causing damages to the natural resources of  
14 the state, the department shall conduct a formal preassessment  
15 screening as provided in RCW 90.48.368.

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

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

27 (3) If the preassessment screening committee determines that the  
28 compensation schedule should not be used, compensation shall be  
29 assessed for the amount of money necessary to restore any damaged

1 resource to its condition before the injury, to the extent technically  
2 feasible, and compensate for the lost value incurred during the period  
3 between injury and restoration.

4 (4) 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 before the injury, as such condition is determined by  
9 the department. The lost value of a damaged resource shall be equal to  
10 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, including, but not limited to, contingent valuation method  
15 studies.

16 (5) Compensation assessed under this section shall be recoverable  
17 in an action brought by the attorney general on behalf of the people of  
18 the state of Washington and affected counties and cities in the  
19 superior court of Thurston county or any county in which damages  
20 occurred. Moneys recovered by the attorney general under this section  
21 shall be deposited in the coastal protection fund established under RCW  
22 90.48.390, and shall only be used for the purposes stated in RCW  
23 90.48.400.

24 ~~((4))~~ (6) Compensation assessed under this section ((for a  
25 particular oil spill)) shall preclude claims under this chapter by  
26 local governments for compensation for damages to publicly owned  
27 resources resulting from the same ((spill)) incident."

28 **"Sec. 813.** RCW 90.48.368 and 1989 c 388 s 4 are each amended to  
29 read as follows:

1 (1) The department shall adopt rules establishing a formal process for  
2 preassessment screening of damages resulting from ~~((oil))~~ spills to the  
3 waters of the state causing the death of, or injury to, fish, animals,  
4 vegetation, or other resources of the state. The rules shall specify  
5 the conditions under which the department shall convene a preassessment  
6 screening committee. The preassessment screening process shall occur  
7 concurrently with reconnaissance activities. The committee shall use  
8 information obtained from ~~((oil-spill))~~ reconnaissance activities as  
9 well as any other relevant resource and resource use information. For  
10 each ~~((oil-spill))~~ incident, the committee shall determine whether a  
11 damage assessment investigation should be conducted ~~((under—RCW~~  
12 ~~90.48.142))~~, or ~~((alternatively))~~, whether the compensation schedule  
13 authorized under RCW 90.48.366 and 90.48.367 should be used to assess  
14 damages. The committee may accept restoration or enhancement projects  
15 or studies proposed by the liable parties in lieu of some or all of:  
16 (a) The compensation schedule authorized under ~~((this chapter))~~ RCW  
17 90.48.366 and 90.48.367; or (b) the claims from damage assessment  
18 studies authorized under RCW 90.48.142 as recodified by this 1991 act.

19 (2) A preassessment screening committee may consist of  
20 representatives of the departments of ecology, fisheries, wildlife,  
21 natural resources, social and health services, and emergency  
22 management, the parks and recreation commission, as well as other  
23 federal, state, and local agencies, and tribal and local governments  
24 whose presence would enhance the reconnaissance or damage assessment  
25 aspects of ~~((oil))~~ spill response. The department shall chair the  
26 committee and determine which representatives will be needed on a  
27 spill-by-spill basis.

28 (3) The committee shall consider the following factors when  
29 determining whether a damage assessment study authorized under RCW  
30 ~~((90.48.142))~~ 90.48.367 should be conducted: (a) Whether evidence from

1 reconnaissance investigations suggests that injury has occurred or is  
2 likely to occur to publicly owned resources; (b) the potential loss in  
3 services provided by resources injured or likely to be injured and the  
4 expected value of the potential loss; (c) whether a restoration project  
5 to return lost services is technically feasible; (d) the accuracy of  
6 damage quantification methods that could be used and the anticipated  
7 cost-effectiveness of applying each method; (e) the extent to which  
8 likely injury to resources can be verified with available  
9 quantification methods; and (f) whether the injury, once quantified,  
10 can be translated into monetary values with sufficient precision or  
11 accuracy.

12 (4) When a resource damage assessment is required for an oil spill  
13 in the navigable waters of the state, as defined in RCW 90.48.315 as  
14 recodified by this 1991 act, the state trustee agency responsible for  
15 the resource and habitat damaged shall conduct the damage assessment  
16 and pursue all appropriate remedies with the responsible party.

17 (5) Oil and hazardous substance spill damage assessment studies  
18 authorized under RCW (~~(90.48.142)~~) 90.48.367 may only be conducted if  
19 the committee, after considering the factors enumerated in subsection  
20 (3) of this section, determines that the damages to be investigated are  
21 quantifiable at a reasonable cost and that proposed assessment studies  
22 are clearly linked to quantification of the damages incurred.

23 (~~((5))~~) (6) As new information becomes available, the committee may  
24 reevaluate the scope of damage assessment using the factors listed in  
25 subsection (3) of this section and may reduce or expand the scope of  
26 damage assessment as appropriate.

27 (~~((6))~~) (7) The preassessment screening process shall provide for  
28 the ongoing involvement of persons who may be liable for damages  
29 resulting from an oil or hazardous substance spill. The department may  
30 negotiate with a potentially liable party to perform restoration and

1 enhancement projects or studies which may substitute for all or part of  
2 the compensation authorized under RCW 90.48.366 and 90.48.367 or the  
3 damage assessment studies authorized under RCW (~~(90.48.142)~~) 90.48.367.

4 (~~((7))~~) (8) For the purposes of this section and RCW 90.48.367, the  
5 cost of a damage assessment shall be considered "reasonable" when the  
6 anticipated cost of the damage assessment is expected to be less than  
7 the anticipated damage that may have occurred or may occur."

8 "Sec. 814. RCW 90.48.390 and 1989 c 388 s 7 and 1989 c 262 s 3 are  
9 each reenacted and amended to read as follows:

10 The coastal protection fund is established to be used by the  
11 department as a revolving fund for carrying out the purposes of  
12 restoration of natural resources under this chapter and chapter 90.56  
13 RCW (~~(90.48.315 through 90.48.365, 78.52.020, 78.52.125, 82.36.330,~~  
14 ~~90.48.142, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906~~  
15 ~~and 90.48.907, and 90.48.366 through 90.48.368))~~. To this fund there  
16 shall be credited penalties, fees, damages, (~~(and)~~) charges received  
17 pursuant to the provisions of this chapter and chapter 90.56 RCW  
18 (~~(90.48.142 and 90.48.315 through 90.48.365)~~), compensation for damages  
19 received under this chapter and chapter 90.56 RCW (~~(90.48.366 through~~  
20 ~~90.48.368)~~), and an amount equivalent to one cent per gallon from each  
21 marine use refund claim under RCW 82.36.330.

22 Moneys in the fund not needed currently to meet the obligations of  
23 the department in the exercise of its powers, duties, and functions  
24 under RCW (~~(90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125,~~  
25 ~~82.36.330,)~~ 90.48.142, (~~(90.48.315, 90.48.370 through 90.48.410,~~  
26 ~~90.48.903, 90.48.906 and 90.48.907)~~ 90.48.366, 90.48.367, and  
27 90.48.368 shall be deposited with the state treasurer to the credit of  
28 the fund and may be invested in such manner as is provided for by law.  
29 Interest received on such investment shall be credited to the fund."



1       **"Sec. 815.** 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 the  
4 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 including but  
9 not limited to equipment rental and contracting costs.~~

10       ~~(b) All costs involved in the abatement of pollution related to the  
11 discharge of oil and other hazardous substances))~~ Environmental  
12 restoration and enhancement projects intended to restore or enhance  
13 environmental, recreational, or aesthetic resources for the benefit of  
14 Washington's citizens; and

15       (b) Investigations of the long-term effects of oil spills and the  
16 release of other hazardous substances on state resources.

17       ~~((e))~~ (2) The director may allocate a portion of the fund to be  
18 devoted to research and development in the causes, effects, and removal  
19 of pollution caused by the discharge of oil or other hazardous  
20 substances.

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

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

25       ~~(b) Moneys are available from a recovery made by the department  
26 from the person liable for the discharge of oil or other hazardous  
27 substances.~~

28       ~~(3) Moneys collected under RCW 90.48.142 shall only be used for the  
29 purposes enumerated in that section, subject to the approval of the  
30 steering committee.~~

1       ~~(4))~~ (3) A steering committee consisting of representatives of the  
2 department of ecology, fisheries, wildlife, and natural resources, and  
3 the parks and recreation commission shall authorize the expenditure of  
4 the moneys collected under RCW 90.48.366 through 90.48.368, after  
5 consulting impacted local agencies and local and tribal governments.  
6 ~~((The moneys collected under RCW 90.48.366 through 90.48.368 shall only  
7 be used for the following purposes: (a) Environmental restoration and  
8 enhancement projects intended to restore or enhance environmental,  
9 recreational, or aesthetic resources for the benefit of Washington's  
10 citizens; (b) investigations of the long term effects of oil spills and  
11 the release of other hazardous substances on state resources; (c)  
12 reimbursement of agencies for reasonable reconnaissance and damage  
13 assessment costs; and (d) wildlife rescue and rehabilitation.))~~

14       (4) Agencies may not be reimbursed ~~((under this section))~~ from the  
15 coastal protection fund for the salaries and benefits of permanent  
16 employees for routine operational support. Agencies may only be  
17 reimbursed under this section if money for reconnaissance and damage  
18 assessment activities is unavailable from other sources."

19       "**Sec. 816.** RCW 90.48.369 and 1989 c 388 s 5 are each amended to  
20 read as follows:

21 The department shall submit an annual report to the appropriate  
22 standing committees of the legislature for the next five years  
23 beginning January 1, 1990. The annual report shall cover the  
24 implementation of ~~((this act))~~ RCW 90.48.366, 90.48.367, 90.48.368, and  
25 90.48.369 and shall include information on each ~~((oil))~~ spill for which  
26 a preassessment screening committee was convened, the outcome of each  
27 process, any compensation claims imposed or damage assessment studies  
28 conducted, and the revenues to and expenditures from the coastal  
29 protection fund."

1 "PART IX

2 "MARINE SPILL RESPONSE COMMISSION"

3 "Sec. 901. RCW 88.44.010 and 1990 c 117 s 2 are each amended to  
4 read as follows:

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

7 (1) "Administrator" means the administrator of the office of marine  
8 safety created by section 402 of this 1991 act.

9 (2) "Business class" means a recognized trade segment of the  
10 maritime industry.

11 ~~((2))~~ (3) "Commission" means the Washington state ~~((maritime))~~  
12 marine spill response commission.

13 ~~((3) "Director" means the director of the department of ecology or  
14 their duly authorized representative.)~~

15 (4) "Fishing vessel" means a vessel ~~((that))~~ (a) on which persons  
16 commercially engage~~((s))~~ in: ~~((a))~~ (i) Catching, taking, or  
17 harvesting fish; ~~((b))~~ (ii) preparing fish or fish products; or  
18 ~~((e))~~ (b) that supplies, stores, refrigerates, or transports fish,  
19 fish products, or materials directly related to fishing or the  
20 preparation of fish.

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

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

28 (7) "Oceanographic research vessel" means a vessel that is employed  
29 only in instruction in oceanography or limnology, or both, or only in

1 oceanographic or limnological research, including those studies about  
2 the sea such as seismic, gravity meter, and magnetic exploration and  
3 other marine geophysical or geological surveys, atmospheric research,  
4 and biological research.

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

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

13 (10) "State" means a state of the United States, Guam, Puerto Rico,  
14 the Virgin Islands, American Samoa, the District of Columbia, the  
15 Northern Mariana Islands, and any other territory or possession of the  
16 United States.

17 (11) "Steamship agent or agency" means an agent or agency appointed  
18 by a vessel owner or operator to enter or clear vessels at ports within  
19 the state of Washington and to conduct onshore activities, or contract  
20 on behalf of the owner or operator for whatever is required for the  
21 efficient operation of the vessel.

22 (12) "Steamship liner company" means a steamship company  
23 maintaining a regular schedule of calls at designated ports of the  
24 state of Washington.

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

28 (14) "United States flag vessel" means a vessel documented under  
29 the laws of the United States or registered under the laws of any state  
30 of the United States.

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

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

12 (17) "Waters of this state" or "waters of the state of Washington"  
13 (~~shall mean all navigable waters within the state of Washington as~~  
14 ~~defined in Article 24, section 1 of the state Constitution~~) has the  
15 meaning in RCW 90.48.315 as recodified by this 1991 act."

16 "Sec. 902. RCW 88.44.020 and 1990 c 117 s 3 are each amended to  
17 read as follows:

18 There is created ((a)) the Washington ((~~state maritime~~)) marine  
19 spill response commission to be known and designated and declared a  
20 corporate body. The powers and duties of the commission shall include  
21 the following:

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

26 (2) To administer and enforce the provisions of this chapter, and  
27 do all things reasonably necessary to effectuate the purposes of this  
28 chapter;

1           (3) To employ, and at its pleasure discharge, a manager, secretary,  
2 agents, attorneys, consultants, companies, organizations, and employees  
3 as it deems necessary, and to prescribe their duties and powers and fix  
4 their compensation;

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

8           (5) To assess vessels transiting the waters of this state, to  
9 collect such assessments, investigate violations, and enforce the  
10 provisions of this chapter, except for vessels which transit upon the  
11 portion of the Columbia river that runs between the states of  
12 Washington and Oregon;

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

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

17           (8) To expend funds for commission-related education and training  
18 programs as the commission deems appropriate;

19           (9) To borrow money and incur indebtedness;

20           (10) To establish an oil spill first response system, except for  
21 vessels which transit upon the portion of the Columbia river that runs  
22 between the states of Washington and Oregon. This system will provide  
23 a mandatory emergency response communications network for vessels  
24 involved in commerce in Washington waters, and provide an immediate  
25 response to such vessels which, for whatever reason, discharge oil into  
26 the state's waters. In the event of an oil spill or threatened oil  
27 spill, the system must be able to provide a complete response for the  
28 first twenty-four hours after the initial report, which may include,  
29 but not be limited to, as needed, response vessel or vessels, boom  
30 equipment, skimmers, qualified personnel, and wildlife care centers.

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

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

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

11 (13) To hold response readiness drills with state and federal  
12 agencies;

13 (14) To work with other states' and countries' maritime  
14 organizations, cleanup cooperatives, and governmental response  
15 agencies; ((and))

16 (15) To develop an oil spill contingency plan to comply with state  
17 statutes and rules for those vessels covered by the commission, except  
18 for vessels operating on the portion of the Columbia river that runs  
19 between the states of Washington and Oregon. The commission shall  
20 develop an oil spill contingency plan for vessels which transit upon  
21 the portion of the Columbia river that runs between the states of  
22 Washington and Oregon, not later than January 1, 1993; and

23 (16) To report annually to the governor, the office of marine  
24 safety, and the appropriate standing committees of the legislature on  
25 the commission's work and the number of incidents to which the  
26 commission's first response system has responded, and make  
27 recommendations to improve the safety of maritime transportation."

28 "Sec. 903. RCW 88.44.030 and 1990 c 117 s 4 are each amended to  
29 read as follows:

1       The commission shall be comprised of nine voting members. ~~((Six))~~  
2 Seven persons ~~((, each representing a))~~ shall be appointed by the  
3 governor to represent specific business classes ~~((, shall be elected to~~  
4 ~~membership in the commission and one person shall be appointed by the~~  
5 ~~commission members))~~. Two of the members shall represent steamship  
6 liner companies, one American flag and one foreign flag. One member  
7 shall represent towboat companies. One member shall represent fishing  
8 vessels. One member shall represent steamship agencies serving tramp  
9 vessels. One member shall represent protection and indemnity clubs or  
10 other marine brokers or insurers of oil spill cleanup costs for vessels  
11 operating in Washington waters. One member shall represent steamship  
12 agencies serving tramp vessels on the Columbia river. The governor  
13 shall also appoint one member with maritime, marine labor, or marine  
14 spill cleanup experience and one member from the environmental  
15 community with marine experience ~~((shall be appointed from the public~~  
16 ~~by the governor))~~. In addition, the ~~((director, the United States~~  
17 ~~coast guard captain of the port for Puget Sound, the United States~~  
18 ~~coast guard captain of the port for that portion of the Columbia river~~  
19 ~~that runs between Washington and Oregon,))~~ administrator and a state  
20 pilot licensed under chapter 88.16 RCW ~~((,))~~ who pilots in the waters of  
21 the state of Washington, or their designees, will serve as nonvoting  
22 ~~((ex officio))~~ members. The United States coast guard captain of the  
23 port for Puget Sound and the United States coast guard captain of the  
24 port for that portion of the Columbia river that runs between  
25 Washington and Oregon shall be invited to attend meetings of the  
26 commission. The state-licensed pilot shall be selected by the  
27 Washington state board of pilotage commissioners.

28       Members of the commission must have had a minimum of five years'  
29 experience in their business class and be actively employed by or on  
30 behalf of a company within the business class for whom they shall



1 represent. However, the protection and indemnity or insurance member  
2 may be a designee of the international group of protection and  
3 indemnity clubs, or any such marine insurers engaged in business within  
4 the state.

5 The commission shall meet at least (~~quarterly every~~) twice each  
6 year."

7 "**Sec. 904.** RCW 88.44.040 and 1990 c 117 s 5 are each amended to  
8 read as follows:

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

15 Commission members shall be first nominated and elected in 1990 in  
16 the manner set forth in RCW 88.44.050 and shall take office as soon as  
17 they are qualified. However, expiration of the term of the respective  
18 commission members first elected in 1990 shall be as follows:

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

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

22 (3) ~~All other members on July 1, 1993.~~) The governor shall  
23 appoint members of the commission for three-year terms. The governor  
24 shall appoint the chairperson. The members of the commission elected  
25 before the effective date of this section shall continue as members  
26 until their terms would have expired under section 5, chapter 117, Laws  
27 of 1990.

28 The respective terms shall end on June 30 of each third year  
29 thereafter. Any vacancies that occur on the commission shall be filled

1 by (~~appointment of an eligible person by the other members of the~~  
2 ~~commission, and such appointee shall hold office for the remainder of~~  
3 ~~the term for which they are appointed to fill, so that commission~~  
4 ~~memberships shall be on a uniform staggered basis~~) the governor to  
5 serve out the remainder of the unexpired term. The members of the  
6 commission are subject to the public disclosure act, chapter 42.17  
7 RCW."

8 "Sec. 905. RCW 88.44.080 and 1990 c 117 s 9 are each amended to  
9 read as follows:

10 A majority of the voting members of the commission shall constitute  
11 a quorum for the transaction of all business and the carrying out of  
12 the duties of the commission.

13 Each member of the commission shall be compensated in accordance  
14 with RCW 43.03.240 and shall be reimbursed for actual travel expenses  
15 incurred in carrying out the provisions of this chapter. Employees of  
16 the commission may also be reimbursed for actual travel expenses when  
17 out-of-state on official commission business. Compensation and  
18 reimbursement shall be from commission funds only.

19 (~~Resignations of commission members will be filled by a majority~~  
20 ~~of the remaining commission members. The appointed commission members~~  
21 ~~shall serve out the remaining term. If a commission member leaves the~~  
22 ~~employment of their respective business class for more than one hundred~~  
23 ~~twenty days, the commission member must resign from that position. A~~  
24 ~~commission member may be removed from the commission for just cause by~~  
25 ~~a two-thirds majority vote of commission members.))"~~

26 "Sec. 906. RCW 88.44.110 and 1990 c 117 s 12 are each amended to  
27 read as follows:

1 If it appears from investigation by the commission that the revenue  
2 from the assessment levied on vessels under this chapter is inadequate  
3 to accomplish the purposes of this chapter, the commission by rule  
4 shall ~~((adopt a resolution setting forth the necessities of the~~  
5 ~~industry, the extent and probable cost of the required research, spill~~  
6 ~~cleanup procedures and operations, public and industry education,~~  
7 ~~administrative operations, the extent of public convenience, interest,~~  
8 ~~and necessity, and probable revenue from the assessment levied. After~~  
9 ~~the proper regulatory hearings, the commission may))~~ increase the  
10 assessment to a sum determined by the commission to be necessary for  
11 those purposes. The rule adopting the increase shall be filed with the  
12 administrator. An increase ((becomes effective)) shall not take effect  
13 earlier than ninety days after the ((resolution)) rule is adopted ((or  
14 on any other date provided for in the resolution)) and filed with the  
15 administrator, unless the administrator determines that the increase is  
16 not justified."

17 "Sec. 907. RCW 88.44.160 and 1990 c 117 s 17 are each amended to  
18 read as follows:

19 Rules and orders adopted by the commission shall be filed with the  
20 ~~((director))~~ administrator and shall become effective pursuant to the  
21 provisions of the administrative procedure act."

22 "PART X  
23 PILOTAGE"

24 "Sec. 1001. RCW 88.16.010 and 1987 c 485 s 1 are each amended to  
25 read as follows:

26 (1) The board of pilotage commissioners of the state of Washington  
27 is hereby created and shall consist of the assistant secretary of

1 marine transportation of the department of transportation of the state  
2 of Washington, or the assistant secretary's designee who shall be an  
3 employee of the marine division, who shall be chairperson, the  
4 administrator of the office of marine safety, or the administrator's  
5 designee, and six members appointed by the governor and confirmed by  
6 the senate. Each of ((said)) the appointed commissioners shall be  
7 appointed for a term of four years from the date of ((said)) the  
8 member's commission. No person shall be eligible for appointment to  
9 ((said)) the board unless that person is at the time of appointment  
10 eighteen years of age or over and a citizen of the United States and of  
11 the state of Washington. Two of ((said)) the appointed commissioners  
12 shall be pilots licensed under this chapter and actively engaged in  
13 piloting upon the waters covered by this chapter for at least three  
14 years immediately preceding the time of appointment and while serving  
15 on the board. One pilot shall be from the Puget Sound pilotage  
16 district and one shall be from the Grays Harbor pilotage district. Two  
17 of ((said)) the appointed commissioners shall be actively engaged in  
18 the ownership, operation, or management of deep sea cargo and/or  
19 passenger carrying vessels for at least three years immediately  
20 preceding the time of appointment and while serving on the board. One  
21 of said shipping commissioners shall be a representative of American  
22 and one of foreign shipping. At least one of the commissioners shall  
23 be a representative from a recognized environmental organization  
24 concerned with marine waters. The remaining commissioner((s)) shall be  
25 ((persons)) interested in and concerned with pilotage, maritime safety,  
26 and marine affairs, with broad experience related to the maritime  
27 industry exclusive of experience as either a state licensed pilot or as  
28 a shipping representative.

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

4 (3) Four members of the board shall constitute a quorum. At least  
5 one pilot, one shipping representative, and one public member must be  
6 present at every meeting. All commissioners and the chairperson shall  
7 have a vote."

8 "Sec. 1002. RCW 88.16.090 and 1990 c 116 s 27 and 1990 c 112 s 1  
9 are each reenacted and amended to read as follows:

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

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

1 have been convicted of an offense involving drugs or the personal  
2 consumption of alcohol in the twelve months prior to the date of  
3 application. This restriction does not apply to license renewals under  
4 this section.

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

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

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

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

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

1 any convictions of offenses involving drugs or the personal consumption  
2 of alcohol in the prior twelve months.

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

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

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

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

27 "Sec. 1003. RCW 88.16.105 and 1987 c 264 s 3 are each amended to  
28 read as follows:



1       The board shall prescribe, pursuant to chapter 34.05 RCW, rules  
2 governing the size and type of vessels which a newly licensed pilot may  
3 be assigned to pilot on the waters of this state and whether the  
4 assignment involves docking or undocking a vessel. The rules shall  
5 also prescribe required familiarization trips before a newly licensed  
6 pilot may pilot a larger or different type of vessel. Such rules shall  
7 be for the first ((three)) five-year period in which pilots are  
8 actually employed."

9       "**Sec. 1004.** RCW 88.16.110 and 1935 c 18 s 7 are each amended to  
10 read as follows:

11       (1) Every pilot licensed under this chapter shall file with the  
12 board not later than the tenth day of January, April, July and October  
13 of each year a report for the preceding quarter. Said report shall  
14 contain an account of all moneys received for pilotage by him or her or  
15 by any other person for ((him)) the pilot or on ((his)) the pilot's  
16 account or for his or her benefit. Said report shall state the name of  
17 each vessel piloted, the amount charged to and/or collected from each  
18 vessel, the port of registry of such vessel, its dead weight tonnage,  
19 whether it was inward or outward bound, whether the amount so received,  
20 collected or charged is in full payment of pilotage and such other  
21 information as the board shall by regulation prescribe.

22       (2) The report shall include information for each vessel that  
23 suffers a grounding, collision, or other major marine casualty that  
24 occurred while the pilot was on duty during the reporting period. The  
25 report shall also include information on near miss incidents as defined  
26 in section 421 of this 1991 act. Information concerning near miss  
27 incidents provided pursuant to this section shall not be used for  
28 imposing any sanctions or penalties. The board shall forward  
29 information provided under this subsection to the office of marine

1 safety for inclusion in the collision reporting system established  
2 under section 421 of this 1991 act."

3 "Sec. 1005. RCW 88.16.155 and 1977 ex.s. c 337 s 11 are each  
4 amended to read as follows:

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

8 (a) Such provisions of the United States coast guard regulations  
9 governing the safety and navigation of vessels in United States waters,  
10 as codified in Title 33 of the code of federal regulations, as the  
11 board may prescribe; (~~and~~)

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

15 (c) The federal oil pollution act of 1990; and

16 (d) If applicable, the certification provided for in section 416(4)  
17 of this 1991 act.

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

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

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

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

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

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

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

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

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

19 (5) Any Washington licensed pilot who offers pilotage services to  
20 a vessel on which the master has failed to make a certification  
21 required by this section or the rules of the board adopted under this  
22 section shall be subject to RCW 88.16.150, as now or hereafter amended,  
23 and RCW 88.16.100, as now or hereafter amended.

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

1 (7) This section shall not apply to the movement of dead ships.  
2 The board shall prescribe pursuant to chapter 34.05 RCW, after  
3 consultation with the coast guard and interested persons, for the  
4 movement of dead ships and the certification process thereon."

5 "PART XI

6 MISCELLANEOUS PROVISIONS"

7 "NEW SECTION. **Sec. 1101.** DEPARTMENT OF NATURAL RESOURCES LEASES.  
8 After the effective date of this section, the department of natural  
9 resources shall include in its leases for onshore and offshore  
10 facilities the following provisions:

11 (1) Require those wishing to lease, sublease, or re-lease state-  
12 owned aquatic lands to comply with the provisions of this chapter;

13 (2) Require lessees and sublessees to operate according to the plan  
14 of operations and to keep the plan current in compliance with this  
15 chapter; and

16 (3) Include in its leases provisions that a violation by the lessee  
17 or sublessee of the provisions of this chapter may be grounds for  
18 termination of the lease."

19 "**Sec. 1102.** RCW 90.48.037 and 1987 c 109 s 125 are each amended to  
20 read as follows:

21 The department, with the assistance of the attorney general, is  
22 authorized to bring any appropriate action at law or in equity,  
23 including action for injunctive relief, in the name of the people of  
24 the state of Washington as may be necessary to carry out the provisions  
25 of this chapter or chapter 90.56 RCW."

1       **"Sec. 1103.** RCW 90.48.095 and 1987 c 109 s 128 are each amended to  
2 read as follows:

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

25       **"Sec. 1104.** RCW 90.48.100 and 1987 c 109 s 129 are each amended to  
26 read as follows:

27 The department shall have the right to request and receive the  
28 assistance of any educational institution or state agency when it is

1 deemed necessary by the department to carry out the provisions of this  
2 chapter or chapter 90.56 RCW."

3 "Sec. 1105. RCW 90.48.156 and 1987 c 109 s 134 are each amended to  
4 read as follows:

5 The department is authorized to cooperate with appropriate agencies  
6 of neighboring states and neighboring provinces, to enter into  
7 contracts, and make contributions toward interstate and state-  
8 provincial projects to carry out the purposes of this chapter and  
9 chapter 90.56 RCW."

10 "Sec. 1106. RCW 90.48.240 and 1987 c 109 s 15 are each amended to  
11 read as follows:

12 Notwithstanding any other provisions of this chapter or chapter  
13 90.56 RCW, whenever it appears to the director that water quality  
14 conditions exist which require immediate action to protect the public  
15 health or welfare, or that a person required by RCW 90.48.160 to obtain  
16 a waste discharge permit prior to discharge is discharging without the  
17 same, or that a person conducting an operation which is subject to a  
18 permit issued pursuant to RCW 90.48.160 conducts the same in violation  
19 of the terms of said permit, causing water quality conditions to exist  
20 which require immediate action to protect the public health or welfare,  
21 the director may issue a written order to the person or persons  
22 responsible without prior notice or hearing, directing and affording  
23 the person or persons responsible the alternative of either (1)  
24 immediately discontinuing or modifying the discharge into the waters of  
25 the state, or (2) appearing before the department at the time and place  
26 specified in said written order for the purpose of providing to the  
27 department information pertaining to the violations and conditions  
28 alleged in said written order. The responsible person or persons shall

1 be afforded not less than twenty-four hours notice of such an  
2 information meeting. If following such a meeting the department  
3 determines that water quality conditions exist which require immediate  
4 action as described herein, the department may issue a written order  
5 requiring immediate discontinuance or modification of the discharge  
6 into the waters of the state. In the event an order is not immediately  
7 complied with the attorney general, upon request of the department,  
8 shall seek and obtain an order of the superior court of the county in  
9 which the violation took place directing compliance with the order of  
10 the department. Such an order is appealable pursuant to RCW  
11 43.21B.310."

12 "Sec. 1107. RCW 90.48.907 and 1971 ex.s. c 180 s 10 are each  
13 amended to read as follows:

14 (~~RCW 90.48.315 through 90.48.365 and this 1971 amendatory act~~)  
15 This chapter, being necessary for the general welfare, the public  
16 health, and the public safety of the state and its inhabitants, shall  
17 be liberally construed to effect their purposes. No rule, regulation,  
18 or order of the department shall be stayed pending appeal under (~~the~~  
19 ~~provisions of RCW 90.48.315 through 90.48.365 and this 1971 amendatory~~  
20 ~~act~~) this chapter."

21 "NEW SECTION. Sec. 1108. The department of ecology, the office of  
22 marine safety, and the marine oversight board shall study issues  
23 related to the transportation and storage of bulk hazardous substances  
24 on or near the navigable waters of the state. The study shall develop  
25 information on the types, hazards, and quantity of bulk hazardous  
26 substances shipped on or stored near the navigable waters, the types of  
27 vessels used to transport the substances, the types of facilities at  
28 which the substances are transferred or stored, the methods for

1 responding to spills of the substances. The study shall also examine  
2 existing regulation of the transporters and facilities, including an  
3 examination of requirements for prevention and response planning. The  
4 study shall incorporate any recommendations for changes in state laws  
5 which the department, office, and board determine are necessary to  
6 protect the navigable waters of the state. An interim report shall be  
7 completed not later than December 1, 1991, and the final study shall be  
8 completed and a report made to the appropriate standing committees of  
9 the legislature not later than November 1, 1992."

10       "NEW SECTION.   **Sec. 1109.** The department of ecology shall report  
11 to the appropriate standing committees on the effectiveness of chapter  
12 90.56 RCW, and in particular as to how the chapter has been implemented  
13 to complement federal law. A report shall be submitted not later than  
14 December 1, 1992, and a second report not later than December 1, 1994."

15       "NEW SECTION.   **Sec. 1110.** TIMING FOR STATE MASTER PREVENTION AND  
16 CONTINGENCY PLANS. The state-wide master plan required by section 10,  
17 chapter 116, Laws of 1990 to be completed by July 1, 1991, shall be  
18 completed by July 1, 1991. The additional requirements to the state-  
19 wide master plan concerning prevention plans, and an incident command  
20 system shall be added to the first annual update submitted to the  
21 legislature not later than November 1, 1992."

22       "NEW SECTION.   **Sec. 1111.** TIMING OF CONTINGENCY PLAN RULES. The  
23 rules required by RCW 90.48.371 as recodified by this act for  
24 facilities and, except as otherwise provided in this section for  
25 covered vessels, shall be adopted not later than July 1, 1991. The  
26 department shall exclude from the rules to be adopted by July 1, 1991,  
27 standards for tank vessels of less than twenty thousand deadweight



1 tons, cargo vessels, and passenger vessels operating on the portion of  
2 the Columbia river for which the department determines that Washington  
3 and Oregon should cooperate in the adoption of standards for  
4 contingency plans. The department, after consultation with the  
5 appropriate state agencies in Oregon, shall adopt the rules for  
6 standards for contingency plans for this portion of the Columbia river  
7 at the earliest possible time, but not later than July 1, 1992."

8 "NEW SECTION. Sec. 1112. CAPTIONS NOT LAW. Section headings and  
9 part headings as used in this chapter shall constitute no part of the  
10 law."

11 "NEW SECTION. Sec. 1113. Sections 101, 103, 108 through 110, 201,  
12 203, 204, 501, 805, and 1111 of this act are each added to a new  
13 chapter in Title 90 RCW to be codified as provided for in section 1114  
14 of this act."

15 "NEW SECTION. Sec. 1114. CODIFICATION INSTRUCTIONS. (1) Parts  
16 I through III and V, and sections 805 and 1111 of this act shall  
17 constitute a new chapter in Title 90 RCW to be codified as chapter  
18 90.56 RCW, and shall be codified and recodified as provided for in this  
19 section. The code reviser shall correct all statutory references to  
20 these sections to reflect this recodification.

21 The following sections shall be codified and recodified in the  
22 following order:

23 Section 101 of this act

24 RCW 90.48.315

25 Section 103 of this act

26 RCW 90.48.370

27 RCW 90.48.365

1 RCW 90.48.380  
2 RCW 90.48.378  
3 Section 108 of this act  
4 Section 109 of this act  
5 Section 110 of this act  
6 RCW 90.48.387  
7 RCW 90.48.388  
8 Section 201 of this act  
9 RCW 90.48.371  
10 Section 203 of this act  
11 Section 204 of this act  
12 RCW 90.48.372  
13 RCW 90.48.373  
14 RCW 90.48.374  
15 RCW 90.48.375  
16 RCW 90.48.360  
17 RCW 90.48.376  
18 RCW 90.48.377  
19 RCW 90.48.320  
20 RCW 90.48.350  
21 RCW 90.48.325  
22 RCW 90.48.330  
23 RCW 90.48.335  
24 RCW 90.48.336  
25 RCW 90.48.338  
26 RCW 90.48.383  
27 RCW 90.48.340  
28 RCW 90.48.355  
29 RCW 90.48.343  
30 Section 501 of this act

1 RCW 90.48.907

2 Section 1201 of this act

3 Section 1212 of this act.

4 (2) Sections 801 through 805, 807, and 808 of this act shall  
5 constitute a new chapter in Title 82 RCW.

6 (3) Sections 402 through 404 and 406 of this act shall constitute  
7 a new chapter in Title 43 RCW.

8 (4)(a) Sections 413 through 424 of this act shall constitute a new  
9 chapter in Title 88 RCW.

10 (b) RCW 90.48.385 and 90.48.510 are recodified as sections in the  
11 new chapter created in (a) of this subsection.

12 (5) Sections 604 through 608 of this act are each added to chapter  
13 88.16 RCW. "

14 "NEW SECTION. **Sec. 1115.** REPEALER. The following acts or parts  
15 of acts are each repealed:

16 (1) RCW 90.48.345 and 1987 c 109 s 150 & 1969 ex.s. c 133 s 6;

17 (2) RCW 90.48.381 and 1990 c 116 s 15;

18 (3) RCW 90.48.410 and 1971 ex.s. c 180 s 6;

19 (4) RCW 88.40.010 and 1990 c 116 s 30 & 1989 1st ex.s. c 2 s 2;

20 (5) RCW 88.40.050 and 1989 1st ex.s. c 2 s 6;

21 (6) RCW 90.48.910 and 1967 c 13 s 25;

22 (7) RCW 88.44.040 and 1990 c 117 s 5;

23 (8) RCW 88.44.050 and 1990 c 117 s 6;

24 (9) RCW 88.44.060 and 1990 c 117 s 7; and

25 (10) RCW 88.44.070 and 1990 c 117 s 8."

26 "NEW SECTION. **Sec. 1116.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected."

3 "NEW SECTION. Sec. 1117. This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and shall take  
6 effect immediately."

7 **SHB 1027** - H COMM AMD  
8 By Committee on Revenue

9

10 On page 1, line 1 of the title, after "substances;" strike the  
11 remainder of the title and insert "amending RCW 90.48.315, 90.48.370,  
12 90.48.365, 90.48.380, 90.48.378, 90.48.371, 90.48.373, 90.48.375,  
13 90.48.376, 90.48.377, 90.48.350, 90.48.325, 90.48.383, 90.48.340,  
14 90.48.385, 90.48.510, 88.16.170, 88.16.180, 88.16.200, 88.40.005,  
15 88.40.020, 88.40.030, 88.40.040, 90.48.142, 90.48.366, 90.48.367,  
16 90.48.368, 90.48.400, 90.48.369, 88.44.010, 88.44.020, 88.44.030,  
17 88.44.040, 88.44.080, 88.44.110, 88.44.160, 88.16.010, 88.16.105,  
18 88.16.110, 88.16.155, 90.48.037, 90.48.095, 90.48.100, 90.48.156,  
19 90.48.240, and 90.48.907; amending 1990 c 116 s 1 (uncodified);  
20 reenacting and amending RCW 90.48.390 and 88.16.090; adding a new  
21 section to chapter 90.48 RCW; adding new sections to chapter 88.16 RCW;  
22 adding a new chapter to Title 90 RCW; adding a new chapter to Title 82  
23 RCW; adding a new chapter to Title 43 RCW; adding a new chapter to  
24 Title 88 RCW; creating new sections; recodifying RCW 90.48.315,  
25 90.48.370, 90.48.365, 90.48.380, 90.48.378, 90.48.387, 90.48.388,  
26 90.48.371, 90.48.372, 90.48.373, 90.48.374, 90.48.375, 90.48.360,  
27 90.48.376, 90.48.377, 90.48.320, 90.48.350, 90.48.325, 90.48.330,  
28 90.48.335, 90.48.336, 90.48.338, 90.48.383, 90.48.340, 90.48.355,

1 90.48.343, 90.48.907, 90.48.385, and 90.48.510; repealing RCW  
2 90.48.345, 90.48.381, 90.48.410, 88.40.010, 88.40.050, 90.48.910,  
3 84.44.040, 88.44.050, 88.44.060, and 88.44.070; prescribing penalties;  
4 making an appropriation; and declaring an emergency."