

2 **SHB 2389** - H COMM AMD **ADOPTED 2/14/92**

3 By Committee on Revenue

4

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

7 "Sec. 1. RCW 43.21B.110 and 1989 c 175 s 102 are each amended to
8 read as follows:

9 (1) The hearings board shall only have jurisdiction to hear and
10 decide appeals from the following decisions of the department, the
11 director, the administrator of the office of marine safety, and the air
12 pollution control boards or authorities as established pursuant to
13 chapter 70.94 RCW, or local health departments:

14 (a) Civil penalties imposed pursuant to RCW 70.94.431, 70.105.080,
15 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
16 (~~90.48.350~~) 90.56.330.

17 (b) Orders issued pursuant to RCW 43.27A.190, 70.94.211, 70.94.332,
18 70.105.095, 86.16.020, 88.46.070, 90.14.130, and 90.48.120.

19 (c) The issuance, modification, or termination of any permit,
20 certificate, or license by the department or any air authority in the
21 exercise of its jurisdiction, including the issuance or termination of
22 a waste disposal permit, the denial of an application for a waste
23 disposal permit, or the modification of the conditions or the terms of
24 a waste disposal permit.

25 (d) Decisions of local health departments regarding the grant or
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

1 (e) Any other decision by the department, the administrator of the
2 office of marine safety, or an air authority which pursuant to law must
3 be decided as an adjudicative proceeding under chapter 34.05 RCW.

4 (2) The following hearings shall not be conducted by the hearings
5 board:

6 (a) Hearings required by law to be conducted by the shorelines
7 hearings board pursuant to chapter 90.58 RCW.

8 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
9 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

10 (c) Proceedings by the department relating to general adjudications
11 of water rights pursuant to chapter 90.03 or 90.44 RCW.

12 (d) Hearings conducted by the department to adopt, modify, or
13 repeal rules.

14 (3) Review of rules and regulations adopted by the hearings board
15 shall be subject to review in accordance with the provisions of the
16 Administrative Procedure Act, chapter 34.05 RCW."

17 "**Sec. 2.** RCW 43.21B.300 and 1987 c 109 s 5 are each amended to
18 read as follows:

19 (1) Any civil penalty provided in RCW 70.94.431, 70.105.080,
20 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
21 ~~((90.48.350))~~ 90.56.330 shall be imposed by a notice in writing, either
22 by certified mail with return receipt requested or by personal service,
23 to the person incurring the penalty from the department, the
24 administrator of the office of marine safety, or the local air
25 authority, describing the violation with reasonable particularity.
26 Within fifteen days after the notice is received, the person incurring
27 the penalty may apply in writing to the department, the administrator,
28 or the authority for the remission or mitigation of the penalty. Upon
29 receipt of the application, the department, the administrator, or

1 authority may remit or mitigate the penalty upon whatever terms the
2 department, the administrator, or the authority in its discretion deems
3 proper. The department or the authority may ascertain the facts
4 regarding all such applications in such reasonable manner and under
5 such rules as it may deem proper and shall remit or mitigate the
6 penalty only upon a demonstration of extraordinary circumstances such
7 as the presence of information or factors not considered in setting the
8 original penalty.

9 (2) Any penalty imposed under this section may be appealed to the
10 pollution control hearings board in accordance with this chapter if the
11 appeal is filed with the hearings board and served on the department,
12 the administrator, or authority thirty days after receipt by the person
13 penalized of the notice imposing the penalty or thirty days after
14 receipt of the notice of disposition of the application for relief from
15 penalty.

16 (3) A penalty shall become due and payable on the later of:

17 (a) Thirty days after receipt of the notice imposing the penalty;

18 (b) Thirty days after receipt of the notice of disposition on
19 application for relief from penalty, if such an application is made; or

20 (c) Thirty days after receipt of the notice of decision of the
21 hearings board if the penalty is appealed.

22 (4) If the amount of any penalty is not paid to the department or
23 the administrator within thirty days after it becomes due and payable,
24 the attorney general, upon request of the department or the
25 administrator, shall bring an action in the name of the state of
26 Washington in the superior court of Thurston county, or of any county
27 in which the violator does business, to recover the penalty. If the
28 amount of the penalty is not paid to the authority within thirty days
29 after it becomes due and payable, the authority may bring an action to
30 recover the penalty in the superior court of the county of the

1 authority's main office or of any county in which the violator does
2 business. In these actions, the procedures and rules of evidence shall
3 be the same as in an ordinary civil action.

4 (5) All penalties recovered shall be paid into the state treasury
5 and credited to the general fund except those penalties imposed
6 pursuant to RCW 70.94.431, the disposition of which shall be governed
7 by that provision, RCW 70.105.080, which shall be credited to the
8 hazardous waste control and elimination account, created by RCW
9 70.105.180, and RCW ((90.48.350)) 90.56.330, which shall be credited to
10 the coastal protection fund created by RCW 90.48.390."

11 "Sec. 3. RCW 43.21B.310 and 1989 c 2 s 14 are each amended to read
12 as follows:

13 (1) Any order issued by the department, the administrator of the
14 office of marine safety, or authority pursuant to RCW 70.94.211,
15 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or
16 90.48.120(2) or any provision enacted after July 26, 1987, or any
17 permit, certificate, or license issued by the department may be
18 appealed to the pollution control hearings board if the appeal is filed
19 with the board and served on the department or authority within thirty
20 days after receipt of the order. Except as provided under chapter
21 70.105D RCW, this is the exclusive means of appeal of such an order.

22 (2) The department, the administrator, or the authority in its
23 discretion may stay the effectiveness of an order during the pendency
24 of such an appeal.

25 (3) At any time during the pendency of an appeal of such an order
26 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the
27 hearings board for a stay of the order or for the removal thereof.

28 (4) Any appeal must contain the following in accordance with the
29 rules of the hearings board:

1 (a) The appellant's name and address;

2 (b) The date and docket number of the order, permit, or license
3 appealed;

4 (c) A description of the substance of the order, permit, or license
5 that is the subject of the appeal;

6 (d) A clear, separate, and concise statement of every error alleged
7 to have been committed;

8 (e) A clear and concise statement of facts upon which the requester
9 relies to sustain his or her statements of error; and

10 (f) A statement setting forth the relief sought.

11 (5) Upon failure to comply with any final order of the department
12 or the administrator, the attorney general, on request of the
13 department or the administrator, may bring an action in the superior
14 court of the county where the violation occurred or the potential
15 violation is about to occur to obtain such relief as necessary,
16 including injunctive relief, to insure compliance with the order. The
17 air authorities may bring similar actions to enforce their orders.

18 (6) An appealable decision or order shall be identified as such and
19 shall contain a conspicuous notice to the recipient that it may be
20 appealed only by filing an appeal with the hearings board and serving
21 it on the department within thirty days of receipt."

22 "Sec. 4. RCW 43.21I.010 and 1991 c 200 s 402 are each amended to
23 read as follows:

24 (1) There is hereby created an agency of state government to be
25 known as the office of marine safety. The office shall be vested with
26 all powers and duties transferred to it and such other powers and
27 duties as may be authorized by law. The main administrative office of
28 the office shall be located in the city of Olympia. The administrator
29 may establish administrative facilities in other locations, if deemed

1 necessary for the efficient operation of the office, and if consistent
2 with the principles set forth in subsection (2) of this section.

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

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

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

15 (c) Maximum span of control without jeopardizing adequate
16 supervision.

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

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

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

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

27 (d) Working with other federal, state, and local agencies and
28 facilitating their involvement in planning and implementing marine
29 safety measures;

30 (e) Providing information to the public; and

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

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

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

13 (6) The administrator shall appoint such personnel as are necessary
14 to carry out the duties of the office (~~in accordance with chapter~~
15 ~~41.06 RCW~~). In addition to exemptions set forth in RCW 41.06.070(28),
16 the administrator, the administrator's confidential secretary, and up
17 to four professional staff members shall be exempt from the provisions
18 of chapter 41.06 RCW. All other employees of the office shall be
19 subject to the provisions of chapter 41.06 RCW."

20 "Sec. 5. RCW 43.21I.020 and 1991 c 200 s 403 are each amended to
21 read as follows:

22 The executive head and appointing authority of the office shall be
23 the administrator of marine safety. The administrator shall be
24 appointed by, and serve at the pleasure of, the governor (~~in~~
25 ~~accordance with RCW 43.17.020~~). The administrator shall be paid a
26 salary to be fixed by the governor in accordance with RCW 43.03.040."

27 "Sec. 6. RCW 82.23B.010 and 1991 c 200 s 801 are each amended to
28 read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

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

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

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

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

23 (8) "Taxpayer" means the person owning crude oil or petroleum
24 products immediately (~~before the same are off-loaded at~~) after
25 receipt of the same into the storage tanks of a marine terminal in this
26 state from a waterborne vessel or barge and who is liable for the taxes
27 imposed by this chapter.

28 (9) "Waterborne vessel or barge" means any ship, barge, or other
29 watercraft capable of travelling on the navigable waters of this state
30 and capable of transporting any crude oil or petroleum product in

1 quantities of ten thousand gallons or more for purposes other than
2 providing fuel for its motor or engine."

3 "Sec. 7. RCW 82.23B.020 and 1991 c 200 s 802 are each amended to
4 read as follows:

5 (1) An oil spill response tax is imposed on the privilege of (~~off-~~
6 ~~loading~~) receiving crude oil or petroleum products at a marine
7 terminal within this state from a waterborne vessel or barge operating
8 on the navigable waters of this state. The tax imposed in this section
9 is levied upon the owner of the crude oil or petroleum products
10 immediately (~~before off-loading begins~~) after receipt of the same
11 into the storage tanks of a marine terminal from a waterborne vessel or
12 barge at the rate of two cents per barrel of crude oil or petroleum
13 product (~~off-loaded~~) received.

14 (2) In addition to the tax imposed in subsection (1) of this
15 section, an oil spill administration tax is imposed on the privilege of
16 (~~off-loading~~) receiving crude oil or petroleum products at a marine
17 terminal within this state from a waterborne vessel or barge operating
18 on the navigable waters of this state. The tax imposed in this section
19 is levied upon the owner of the crude oil or petroleum products
20 immediately (~~before off-loading begins~~) after receipt of the same
21 into the storage tanks of a marine terminal from a waterborne vessel or
22 barge at the rate of three cents per barrel of crude oil or petroleum
23 product (~~off-loaded~~).

24 (3) The taxes imposed by this chapter shall be collected by the
25 marine terminal operator from the (~~owner of the crude oil or petroleum~~
26 ~~products off-loaded at the marine terminal~~) taxpayer. If any person
27 charged with collecting the taxes fails to bill the taxpayer for the
28 taxes, or in the alternative has not notified the taxpayer in writing
29 of the imposition of the taxes, or having collected the taxes, fails to

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

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

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

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

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

1 (8) Upon prior approval of the department, the (~~owner of crude oil~~
2 ~~or petroleum products off-loaded in this state~~) taxpayer may pay the
3 taxes imposed by this chapter directly to the department. The
4 department shall give its approval for direct payment under this
5 section whenever it appears, in the department's judgment, that direct
6 payment will enhance the administration of the taxes imposed under this
7 chapter. The department shall provide by rule for the issuance of a
8 direct payment certificate to any taxpayer qualifying for direct
9 payment of the taxes. Good faith acceptance of a direct payment
10 certificate by a terminal operator shall relieve the marine terminal
11 operator from any liability for the collection or payment of the taxes
12 imposed under this chapter.

13 (9) All receipts from the tax imposed in subsection (1) of this
14 section shall be deposited into the state oil spill response account.
15 All receipts from the tax imposed in subsection (2) of this section
16 shall be deposited into the state oil spill administration account.

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

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

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

4 (11) The office of marine safety, the department of revenue, and
5 the department of trade and economic development shall study tax
6 credits for taxpayers employing vessels with the best achievable
7 technology and the best available protection to reduce the risk of oil
8 spills to the navigable waters of the state and submit the study to the
9 appropriate standing committees of the legislature by December 1,
10 1992."

11 "NEW SECTION. **Sec. 8.** A new section is added to chapter 82.23B
12 RCW to read as follows:

13 (1) Any person having paid the tax imposed by this chapter who uses
14 petroleum products as a consumer for a purpose other than as a fuel may
15 claim refund or credit against the tax imposed under this chapter. For
16 this purpose, the term consumer shall be defined as provided in RCW
17 82.04.190.

18 (2) Any person having paid the tax imposed by this chapter who uses
19 petroleum products as a component or ingredient in the manufacture of
20 an item which is not a fuel may claim a refund or credit against the
21 tax imposed by this chapter.

22 (3) The amount of refund or credit claimed under this section may
23 not exceed the amount of tax paid by the person making such claim on
24 the petroleum products so consumed or used. The refund or credit
25 allowed by this section shall be claimed on such forms and subject to
26 such requirements as the department may prescribe by rule."

27 "**Sec. 9.** RCW 82.23B.030 and 1991 c 200 s 803 are each amended to
28 read as follows:

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

7 "**Sec. 10.** RCW 82.23B.040 and 1991 c 200 s 804 are each amended to
8 read as follows:

9 Credit shall be allowed against the taxes imposed under this
10 chapter for any crude oil or petroleum products (~~off-loaded~~) received
11 at a marine terminal and subsequently exported from or sold for export
12 from the state."

13 "**Sec. 11.** RCW 43.21I.030 and 1991 c 200 s 405 are each amended to
14 read as follows:

15 In addition to any other powers granted the administrator, the
16 administrator may:

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

19 (2) Appoint such advisory committees as may be necessary to carry
20 out the provisions of this chapter and chapter 88.46 RCW. Members of
21 such advisory committees are authorized to receive travel expenses in
22 accordance with RCW 43.03.050 and 43.03.060. The administrator shall
23 review each advisory committee within the jurisdiction of the office
24 and each statutory advisory committee on a biennial basis to determine
25 if such advisory committee is needed. The criteria specified in RCW
26 43.131.070 shall be used to determine whether or not each advisory
27 committee shall be continued;

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

3 (4) Delegate powers, duties, and functions of the ((department))
4 office to employees of the ((department)) office as the ((secretary))
5 administrator deems necessary to carry out the provisions of this
6 chapter and chapter 88.46 RCW;

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

9 (6) Act for the state in the initiation of, or the participation
10 in, any intergovernmental program for the purposes of this chapter and
11 chapter 88.46 RCW; or

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

13 "Sec. 12. RCW 88.40.011 and 1991 c 200 s 702 are each amended to
14 read as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Administrator" means the administrator of the office of marine
18 safety created in RCW 43.21I.010.

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

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

1 (7)(a) "Facility" means any structure, group of structures,
2 equipment, pipeline, or device, other than a vessel, located on or near
3 the navigable waters of the state that transfers oil in bulk to or from
4 a tank vessel or pipeline, that is used for producing, storing,
5 handling, transferring, processing, or transporting 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; (iv) underground
11 storage tank regulated by the department or a local government under
12 chapter 90.76 RCW; or (v) ((a)) marine fuel outlet that does not
13 dispense more than three thousand gallons of fuel to a ship that is not
14 a covered vessel, in a single transaction.

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

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

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

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

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

1 (11) "Office" means the office of marine safety established by RCW
2 43.21I.010.

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

12 (13) "Offshore facility" means any facility(~~(, as defined in~~
13 ~~subsection (7) of this section,~~) located in, on, or under any of the
14 navigable waters of the state, but does not include a facility any part
15 of which is located in, on, or under any land of the state, other than
16 submerged land.

17 (14) "Onshore facility" means any facility(~~(, as defined in~~
18 ~~subsection (7) of this section,~~) any part of which is located in, on,
19 or under any land of the state, other than submerged land, that because
20 of its location, could reasonably be expected to cause substantial harm
21 to the environment by discharging oil into or on the navigable waters
22 of the state or the adjoining shorelines.

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

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

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

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

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

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

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

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

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

23 **"Sec. 13.** RCW 88.40.020 and 1991 c 200 s 703 are each amended to
24 read as follows:

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

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

4 (b) The administrator by rule may establish a lesser standard of
5 financial responsibility for barges of three hundred 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 administrator shall not set the standard for barges of three
9 (~~thousand~~) hundred gross tons or less below that required under
10 federal law.

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

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

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

25 (5) The office may by rule set a lesser amount of financial
26 responsibility for a tank vessel that meets standards for construction,
27 propulsion, equipment, and personnel established by the office. The
28 office shall require as a minimum level of financial responsibility
29 under this subsection the same level of financial responsibility
30 required under federal law.

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

3 "Sec. 14. RCW 88.40.040 and 1991 c 200 s 706 are each amended to
4 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 United States coast guard.

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

13 ~~((3) Any onshore or offshore facility owner or operator who does
14 not meet the financial responsibility requirements of RCW 88.40.025 and
15 any rules adopted by the department or office shall be reported to the
16 secretary of state. The secretary of state shall suspend the
17 facility's privilege of operating in this state until financial
18 responsibility is demonstrated.))"~~

19 "Sec. 15. RCW 88.44.010 and 1991 c 200 s 901 are each amended to
20 read as follows:

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter.

23 (1) "Administrator" means the administrator of the office of marine
24 safety created by RCW 43.21I.010.

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

27 (3) "Commission" means the Washington state maritime commission.

1 (4) "Fishing vessel" means a vessel (a) on which persons
2 commercially engage in: (i) Catching, taking, or harvesting fish; (ii)
3 preparing fish or fish products; or (b) that supplies, stores,
4 refrigerates, or transports fish, fish products, or materials directly
5 related to fishing or the preparation of fish.

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

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

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

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

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

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

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

6 (12) "Steamship liner company" means a steamship company
7 maintaining a regular schedule of calls at designated ports of the
8 state of Washington.

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

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

15 (15) "Vessel" means every description of watercraft, other than a
16 seaplane on water, used or capable of being used as a means of
17 transportation on water, carrying oil as fuel or cargo, ~~((and over))~~ of
18 three hundred or more gross registered tons, except oceanographic
19 research vessels, public vessels, passenger vessels with a maximum fuel
20 capacity of less than five thousand gallons, vessels being employed
21 exclusively for pleasure, or vessels which, prior to entering
22 Washington waters, have a contingency plan approved pursuant to RCW
23 88.46.060, or have ~~((formerly))~~ arranged for immediate oil spill
24 response with an officially recognized cleanup cooperative or with a
25 private cleanup contractor ~~((for immediate oil spill response))~~.

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

29 (17) "Waters of this state" or "waters of the state of Washington"
30 has the meaning in RCW 90.56.010."

1 **"Sec. 16.** RCW 88.44.100 and 1990 c 117 s 11 are each amended to
2 read as follows:

3 There is levied on and after October 1, 1990, an assessment upon
4 all vessels, or the owners or operators thereof, which transit upon
5 waters of this state, except as exempted herein and not including
6 vessels which transit upon the portion of the Columbia river that runs
7 between the states of Washington and Oregon, an assessment to be set by
8 the commission on each vessel transit, plus annual increases as are
9 imposed pursuant to the provisions of RCW 88.44.110. ~~((Vessels which
10 show proof to the commission or the department of ecology that they
11 have previously and individually arranged with an officially recognized
12 cleanup cooperative or with a private cleanup contractor to provide
13 immediate response capabilities in the event of an oil spill or
14 threatened release, are exempt from assessment under this chapter.))~~
15 Of those vessels assessed, the commission may set the rate. When the
16 fund reaches one million five hundred thousand dollars, the commission
17 shall discontinue the assessment until the fund declines to one million
18 dollars, at which time the assessment must be reinstated. The
19 assessment, at a minimum, must be able to generate the maximum fund
20 level within four years. All moneys collected hereunder shall be
21 expended to effectuate the purpose and objects of this chapter.

22 If the commission establishes an oil spill first response system
23 for the Columbia river, there may be levied on and after ((January))
24 July 1, 1992, an assessment upon all vessels, or the owners or
25 operators thereof, which transit upon the portion of the Columbia river
26 that runs between the states of Washington and Oregon."

27 **"Sec. 17.** RCW 88.44.110 and 1991 c 200 s 906 are each amended to
28 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 increase the assessment to a sum determined by the commission to
5 be necessary for those purposes. The rule adopting the increase shall
6 be filed with the administrator(~~(. An increase shall not take effect~~
7 ~~earlier than ninety days after the rule is adopted and filed with the~~
8 ~~administrator, unless~~)) at least thirty days prior to the date set by
9 the commission for final adoption of the rule. If the administrator
10 determines that the increase is not justified, not later than the date
11 set by the commission for adoption of the final rule, the administrator
12 shall notify the commission that the rule has been disapproved."

13 "**Sec. 18.** RCW 88.46.010 and 1991 c 200 s 414 are each amended to
14 read as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Administrator" means the administrator of the office of marine
18 safety created in RCW 43.21I.010.

19 (2) "Best achievable protection" means the highest level of
20 protection that can be achieved through the use of the best achievable
21 technology and those staffing levels, training procedures, and
22 operational methods that provide the greatest degree of protection
23 achievable. The administrator's determination of best achievable
24 protection shall be guided by the critical need to protect the state's
25 natural resources and waters, while considering (a) the additional
26 protection provided by the measures; (b) the technological
27 achievability of the measures; and (c) the cost of the measures.

28 (3) "Best achievable technology" means the technology that provides
29 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 self-propelled ship in commerce, other
8 than a tank vessel or a passenger vessel, of (~~greater than~~) three
9 hundred or more gross tons, including but not limited to, commercial
10 fish processing vessels and 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, located on or near
22 the navigable waters of the state that transfers oil in bulk to or from
23 a tank vessel or pipeline, that is used for producing, storing,
24 handling, transferring, processing, or transporting oil in bulk.

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

1 chapter 90.76 RCW; or (v) ((a)) marine fuel outlet that does not
2 dispense more than three thousand gallons of fuel to a ship that is not
3 a covered vessel, in a single transaction.

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

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

12 (13) "Office" means the office of marine safety established by RCW
13 43.21I.010.

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

23 (15) "Offshore facility" means any facility(~~(, as defined in~~
24 ~~subsection (10) of this section,~~) located in, on, or under any of the
25 navigable waters of the state, but does not include a facility any part
26 of which is located in, on, or under any land of the state, other than
27 submerged land. "Offshore facility" does not include a marine facility
28 (~~(as defined in subsection (11) of this section)~~).

29 (16) "Onshore facility" means any facility(~~(, as defined in~~
30 ~~subsection (10) of this section,~~) any part of which is located in, on,

1 or under any land of the state, other than submerged land, that because
2 of its location, could reasonably be expected to cause substantial harm
3 to the environment by discharging oil into or on the navigable waters
4 of the state or the adjoining shorelines.

5 (17)(a) "Owner or operator" means (i) in the case of a vessel, any
6 person owning, operating, or chartering by demise, the vessel; (ii) in
7 the case of an onshore or offshore facility, any person owning or
8 operating the facility; and (iii) in the case of an abandoned vessel or
9 onshore or offshore facility, the person who owned or operated the
10 vessel or facility immediately before its abandonment.

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

14 (18) "Passenger vessel" means a ship of (~~greater than~~) three
15 hundred or more gross tons (~~or five hundred or more international~~
16 ~~gross tons~~) with a fuel capacity of at least five thousand gallons
17 carrying passengers for compensation.

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

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

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

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

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

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

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

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

10 **"Sec. 19.** RCW 88.46.050 and 1991 c 200 s 418 are each amended to
11 read as follows:

12 (1) In order to ensure the safety of marine transportation within
13 the navigable waters of the state and to protect the state's natural
14 resources, the administrator shall adopt rules by July 1, 1992, for
15 determining whether cargo vessels and passenger vessels entering the
16 navigable waters of the state pose a substantial risk of harm to the
17 public health and safety and the environment.

18 (2) The rules adopted by the administrator pursuant to this section
19 may include, but are not limited to the following:

20 (a) Examining available information (~~((to examine))~~) sources for
21 evidence that a cargo or passenger vessel may pose a substantial risk
22 to safe marine transportation or the state's natural resources(~~((~~
23 ~~including~~)). Information sources may include: Vessel casualty lists,
24 United States coast guard casualty reports, maritime insurance ratings,
25 the index of contingency plans compiled by the department of ecology,
26 other data gathered by the office or the maritime commission, or any
27 other resources;

1 (b) (~~(A request to)~~) Requesting the United States coast guard to
2 deny a cargo vessel or passenger vessel entry into the navigable waters
3 of the state, if the vessel poses a substantial environmental risk;

4 (c) (~~(A notice to)~~) Notifying the state's spill response system
5 that a cargo or passenger vessel entering the state's navigable waters
6 poses a substantial environmental risk;

7 (d) ((A)) Inspecting a cargo or passenger vessel (~~(inspection for~~
8 ~~vessels)~~) that may pose a substantial environmental risk, to determine
9 whether (~~(a cargo vessel or passenger)~~) the vessel complies with
10 applicable state or federal laws. Any vessel inspection conducted
11 pursuant to this section shall be performed during the vessel's
12 scheduled stay in port; and

13 (e) Enforcement actions."

14 "**Sec. 20.** RCW 88.46.060 and 1991 c 200 s 419 are each amended to
15 read as follows:

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

23 (a) Include full details of the method of response to spills of
24 various sizes from any vessel which is covered 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 office(~~(+,+)~~), removing oil and minimizing any damage
28 to the environment resulting from a worst case spill;

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

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

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

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

14 (g) Describe important features of the surrounding environment,
15 including fish and wildlife habitat, environmentally and
16 archaeologically sensitive areas, and public facilities. The
17 departments of ecology, fisheries, wildlife, and natural resources, and
18 the office of archaeology and historic preservation, upon request,
19 shall provide information that they have available to assist in
20 preparing this description. If the office has adopted rules for
21 contingency plans prior to July 1, 1992, the description of
22 archaeologically sensitive areas shall only be required when the office
23 revises the rules for contingency plans after July 1, 1992. The
24 description of archaeologically sensitive areas shall not be required
25 to be included in a contingency plan until it is reviewed and updated
26 pursuant to subsection (9) of this section;

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

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

5 (j) Provide arrangements for the repositioning of spill
6 containment and cleanup equipment and trained personnel at strategic
7 locations from which they can be deployed to the spill site to promptly
8 and properly remove the spilled oil;

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

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

13 (m) Until a spill prevention plan has been submitted pursuant to
14 RCW 88.46.040, state the measures that have been taken to reduce the
15 likelihood that a spill will occur, including but not limited to,
16 design and operation of a vessel, training of personnel, number of
17 personnel, and backup systems designed to prevent a spill;

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

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

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

29 (b) Contingency plans for all other covered vessels shall be
30 submitted to the office within eighteen months after the office has

1 adopted rules under subsection (1) of this section. The office may
2 adopt a schedule for submission of plans within the eighteen-month
3 period.

4 (3)(a) The owner or operator of a tank vessel or of the facilities
5 at which the vessel will be unloading its cargo shall submit the
6 contingency plan for the tank vessel. Subject to conditions imposed by
7 the office, the owner or operator of a facility may submit a single
8 contingency plan for tank vessels of a particular class that will be
9 unloading cargo at the facility.

10 (b) The contingency plan for a cargo vessel or passenger vessel may
11 be submitted by the owner or operator of the cargo vessel or passenger
12 vessel, by the agent for the vessel resident in this state, or by the
13 Washington state maritime commission pursuant to RCW 88.44.020.
14 Subject to conditions imposed by the office, the owner, operator, or
15 agent may submit a single contingency plan for cargo vessels or
16 passenger vessels of a particular class.

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

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

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

3 (a) The adequacy of containment and cleanup equipment, personnel,
4 communications equipment, notification procedures and call down lists,
5 response time, and logistical arrangements for coordination and
6 implementation of response efforts to remove oil spills promptly and
7 properly and to protect the environment;

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

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

12 (d) The existence of navigational hazards within the area covered
13 by the plan;

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

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

18 (g) Relevant information on previous spills contained in on-scene
19 coordinator reports prepared by the director; and

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

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

28 (7) The approval of the contingency plan shall be valid for five
29 years. Upon approval of a contingency plan, the office shall provide
30 to the person submitting the plan a statement indicating that the plan

1 has been approved, the vessels covered by the plan, and other
2 information the office determines should be included.

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

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

12 (10) Approval of a contingency plan by the office does not
13 constitute an express assurance regarding the adequacy of the plan nor
14 constitute a defense to liability imposed under this chapter or other
15 state law."

16 "Sec. 21. RCW 88.46.070 and 1991 c 200 s 420 are each amended to
17 read as follows:

18 (1) The provisions of prevention plans and contingency plans
19 approved by the office pursuant to this chapter shall be legally
20 binding on those persons submitting them to the office and on their
21 successors, assigns, agents, and employees. The superior court shall
22 have jurisdiction to restrain a violation of, compel specific
23 performance of, or otherwise to enforce such plans upon application by
24 the office. The office may issue an order pursuant to chapter 34.05
25 RCW requiring compliance with a contingency plan or a prevention plan
26 and may impose administrative penalties for failure to comply with a
27 plan.

28 (2) If the administrator believes a person has violated or is
29 violating or creates a substantial potential to violate the provisions

1 of this chapter, the administrator shall notify the person of the
2 administrator's determination by registered mail. The determination
3 shall not constitute an order or directive under RCW 43.21B.310.
4 Within thirty days from the receipt of notice of the determination, the
5 person shall file with the administrator a full report stating what
6 steps have been and are being taken to comply with the determination of
7 the administrator. The administrator shall issue an order or
8 directive, as the administrator deems appropriate under the
9 circumstances, and shall notify the person by registered mail.

10 (3) If the administrator believes immediate action is necessary to
11 accomplish the purposes of this chapter, the administrator may issue an
12 order or directive, as appropriate under the circumstances, without
13 first issuing a notice or determination pursuant to subsection (2) of
14 this section. An order or directive issued pursuant to this subsection
15 shall be served by registered mail or personally upon any person to
16 whom it is directed."

17 **"Sec. 22.** RCW 88.46.080 and 1991 c 200 s 421 are each amended to
18 read as follows:

19 (1) Except as provided in subsection (2) of this section, it shall
20 be unlawful for the owner or operator to knowingly and intentionally
21 operate in this state or on the waters of this state a covered vessel
22 without an approved contingency plan or an approved prevention plan as
23 required by this chapter, or financial responsibility in compliance
24 with chapter 88.40 RCW and the federal oil pollution act of 1990. The
25 first conviction under this section shall be a gross misdemeanor under
26 chapter 9A.20 RCW. A second or subsequent conviction shall be a class
27 C felony under chapter 9A.20 RCW.

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

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

3 (b) All required plans have been submitted to the office as
4 required by this chapter and rules adopted by the office and the office
5 is reviewing the plan and has not denied approval; or

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

8 (3) A person may rely on a copy of the statement issued by the
9 office pursuant to RCW 88.46.060 as evidence that a vessel has an
10 approved contingency plan and the statement issued pursuant to RCW
11 88.46.040 that a vessel has an approved prevention plan.

12 (4) Any person found guilty of willfully violating any of the
13 provisions of this chapter, or any final written orders or directive of
14 the administrator or a court in pursuance thereof shall be deemed
15 guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and
16 upon conviction thereof shall be punished by a fine of up to ten
17 thousand dollars and costs of prosecution, or by imprisonment in the
18 county jail for not more than one year, or by both such fine and
19 imprisonment in the discretion of the court. Each day upon which a
20 willful violation of the provisions of this chapter occurs may be
21 deemed a separate and additional violation."

22 "Sec. 23. RCW 88.46.090 and 1991 c 200 s 422 are each amended to
23 read as follows:

24 (1) Except as provided in subsection (4) of this section, it shall
25 be unlawful for a covered vessel to enter the waters of the state
26 without an approved contingency plan required by RCW 88.46.060, a spill
27 prevention plan required by RCW 88.46.040, or financial responsibility
28 in compliance with chapter 88.40 RCW and the federal oil pollution act
29 of 1990. The office may deny entry onto the waters of the state to any

1 covered vessel that does not have a required contingency or spill
2 prevention plan or financial responsibility.

3 (2) Except as provided in subsection (4) of this section, it shall
4 be unlawful for a covered vessel to transfer oil to or from an onshore
5 or offshore facility that does not have an approved contingency plan
6 required under RCW 90.56.210, a spill prevention plan required by RCW
7 90.56.200, or financial responsibility in compliance with chapter 88.40
8 RCW and the federal oil pollution act of 1990.

9 (3) The administrator may assess a civil penalty of up to one
10 hundred thousand dollars against the owner or operator of a vessel who
11 is in violation of subsection (1) or (2) of this section. Each day
12 that the owner or operator of a covered vessel is in violation of this
13 section shall be considered a separate violation.

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

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

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

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

23 (5) Any person may rely on a copy of the statement issued by the
24 office to RCW 88.46.060 as evidence that the vessel has an approved
25 contingency plan and the statement issued pursuant to RCW 88.46.040 as
26 evidence that the vessel has an approved spill prevention plan.

27 (6) Except for violations of subsection (1) or (2) of this section,
28 any person who violates the provisions of this chapter or rules or
29 orders adopted or issued pursuant thereto, shall incur, in addition to
30 any other penalty as provided by law, a penalty in an amount of up to

1 ten thousand dollars a day for each violation. Each violation is a
2 separate offense, and in case of a continuing violation, every day's
3 continuance is a separate violation. Every act of commission or
4 omission which procures, aids, or abets in the violation shall be
5 considered a violation under the provisions of this subsection and
6 subject to penalty. The penalty amount shall be set in consideration
7 of the previous history of the violator and the severity of the
8 violation's impact on public health and the environment in addition to
9 other relevant factors. The penalty shall be imposed pursuant to the
10 procedures set forth in RCW 43.21B.300."

11 "Sec. 24. RCW 88.46.110 and 1991 c 200 s 424 are each amended to
12 read as follows:

13 (1) The office shall establish regional marine safety committees
14 (~~at least~~) for the Strait of Juan de Fuca/Northern Puget Sound,
15 Southern Puget Sound, and Grays Harbor/Pacific coast. It is the intent
16 of the legislature that the office also establish a regional marine
17 safety committee jointly with the state of Oregon for the Columbia
18 river. The office by rule shall establish the boundaries of the
19 committees. The office may establish additional committees that it
20 determines will be in the public interest.

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

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

1 (4) Each regional committee shall be responsible for planning for
2 the safe navigation and operation of tankers, barges, and other vessels
3 within each region. Each committee shall prepare a regional marine
4 safety plan, encompassing all vessel traffic within the region. The
5 coast guard, the federal environmental protection agency, the army
6 corps of engineers, and the navy shall be invited to attend the
7 meetings of each marine regional safety committee.

8 (5) The administrator shall adopt rules and guidelines for regional
9 marine safety plans in consultation with affected parties. The rules
10 shall require the committees to establish subcommittees to involve all
11 interested parties in the development of the plans and to require the
12 committees to include a summary of public comments and any minority
13 reports with recommendations submitted to the administrator. The rules
14 shall also require the plans to consider all of the following:

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

18 (b) A review and evaluation of the adequacy of and any changes
19 needed in:

20 (i) Anchorage designations and sounding checks;

21 (ii) Communications systems;

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

24 (iv) Placement and effectiveness of navigational aids, channel
25 design plans, and the traffic and routings from port construction and
26 dredging projects;

27 (c) Procedures for routing vessels during emergencies that impact
28 navigation;

29 (d) Management requirements for vessel control bridges;

30 (e) Special protection for environmentally sensitive areas;

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

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

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

14 (7) Upon approval of a plan, the office shall implement those
15 elements of the plan over which the state has authority. If federal
16 authority or action is required, the office shall petition the
17 appropriate agency or congress.

18 (8) Not later than July 1st of each even-numbered year each
19 regional marine safety committee shall report its findings and
20 recommendations to the marine oversight board established in RCW
21 90.56.450 and the office concerning vessel traffic safety in its region
22 and any recommendations for improving tanker, barge, and other vessel
23 safety in the region by amending the regional marine safety plan. The
24 regional committees shall also provide technical assistance to the
25 marine oversight board.

26 (9) The regional safety committees shall recommend to the office
27 the need for, and the structure and design of, an emergency response
28 system for the Strait of Juan de Fuca and the Pacific coast."

1 **"Sec. 25.** RCW 90.48.120 and 1987 c 109 s 131 are each amended to
2 read as follows:

3 (1) Whenever, in the opinion of the department, any person shall
4 violate or creates a substantial potential to violate the provisions of
5 this chapter or chapter 90.56 RCW, or fails to control the polluting
6 content of waste discharged or to be discharged into any waters of the
7 state, the department shall notify such person of its determination by
8 registered mail. Such determination shall not constitute an order or
9 directive under RCW 43.21B.310. Within thirty days from the receipt of
10 notice of such determination, such person shall file with the
11 department a full report stating what steps have been and are being
12 taken to control such waste or pollution or to otherwise comply with
13 the determination of the department. Whereupon the department shall
14 issue such order or directive as it deems appropriate under the
15 circumstances, and shall notify such person thereof by registered mail.

16 (2) Whenever the department deems immediate action is necessary to
17 accomplish the purposes of this chapter (~~((90.48))~~) or chapter 90.56 RCW,
18 it may issue such order or directive, as appropriate under the
19 circumstances, without first issuing a notice or determination pursuant
20 to subsection (1) of this section. An order or directive issued
21 pursuant to this subsection shall be served by registered mail or
22 personally upon any person to whom it is directed."

23 **"Sec. 26.** RCW 90.48.140 and 1973 c 155 s 8 are each amended to
24 read as follows:

25 Any person found guilty of willfully violating any of the
26 provisions of this chapter or chapter 90.56 RCW, or any final written
27 orders or directive of the department or a court in pursuance thereof
28 shall be deemed guilty of a crime, and upon conviction thereof shall be
29 punished by a fine of up to ten thousand dollars and costs of

1 prosecution, or by imprisonment in the county jail for not more than
2 one year, or by both such fine and imprisonment in the discretion of
3 the court. Each day upon which a willful violation of the provisions
4 of this chapter or chapter 90.56 RCW occurs may be deemed a separate
5 and additional violation."

6 "Sec. 27. RCW 90.48.144 and 1987 c 109 s 17 are each amended to
7 read as follows:

8 Every person who:

9 (1) Violates the terms or conditions of a waste discharge permit
10 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

11 (2) Conducts a commercial or industrial operation or other point
12 source discharge operation without a waste discharge permit as required
13 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

14 (3) Violates the provisions of RCW 90.48.080, or other sections of
15 this chapter or chapter 90.56 RCW or (~~regulations~~) rules or orders
16 adopted or issued pursuant (~~thereto~~) to either of those chapters,
17 shall incur, in addition to any other penalty as provided by law, a
18 penalty in an amount of up to ten thousand dollars a day for every such
19 violation. Each and every such violation shall be a separate and
20 distinct offense, and in case of a continuing violation, every day's
21 continuance shall be and be deemed to be a separate and distinct
22 violation. Every act of commission or omission which procures, aids or
23 abets in the violation shall be considered a violation under the
24 provisions of this section and subject to the penalty herein provided
25 for. The penalty amount shall be set in consideration of the previous
26 history of the violator and the severity of the violation's impact on
27 public health and/or the environment in addition to other relevant
28 factors. The penalty herein provided for shall be imposed pursuant to
29 the procedures set forth in RCW 43.21B.300."

1 **"Sec. 28.** RCW 90.48.366 and 1991 c 200 s 812 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 in violation of this
7 chapter and chapter 90.56 RCW. The department shall establish a
8 scientific advisory board to assist in establishing the compensation
9 schedule. The amount of compensation assessed under this schedule
10 shall be no less than one dollar per gallon of oil spilled and no
11 greater than fifty dollars per gallon of oil spilled. The compensation
12 schedule shall reflect adequate compensation for unquantifiable damages
13 or for damages not quantifiable at reasonable cost for any adverse
14 environmental, recreational, aesthetic, or other effects caused by the
15 spill and shall take into account:

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

20 (2) The sensitivity of the affected area as determined by such
21 factors as: (a) The location of the spill; (b) habitat and living
22 resource sensitivity; (c) seasonal distribution or sensitivity of
23 living resources; (d) areas of recreational use or aesthetic
24 importance; (e) the proximity of the spill to important habitats for
25 birds, aquatic mammals, fish, or to species listed as threatened or
26 endangered under state or federal law; (f) significant archaeological
27 resources as determined by the office of archaeology and historic
28 preservation; and ~~((f))~~ (g) other areas of special ecological or
29 recreational importance, as determined by the department. If the
30 department has adopted rules for a compensation table prior to July 1,

1 1992, the sensitivity of significant archaeological resources shall
2 only be included among factors to be used in the compensation table
3 when the department revises the rules for the compensation table after
4 July 1, 1992; and

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

12 "Sec. 29. RCW 90.48.368 and 1991 c 200 s 814 are each amended to
13 read as follows:

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

1 and 90.48.367; or (b) the claims from damage assessment studies
2 authorized under RCW 90.48.142.

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

12 (3) The committee shall consider the following factors when
13 determining whether a damage assessment study authorized under RCW
14 90.48.367 should be conducted: (a) Whether evidence from
15 reconnaissance investigations suggests that injury has occurred or is
16 likely to occur to publicly owned resources; (b) the potential loss in
17 services provided by resources injured or likely to be injured and the
18 expected value of the potential loss; (c) whether a restoration project
19 to return lost services is technically feasible; (d) the accuracy of
20 damage quantification methods that could be used and the anticipated
21 cost-effectiveness of applying each method; (e) the extent to which
22 likely injury to resources can be verified with available
23 quantification methods; and (f) whether the injury, once quantified,
24 can be translated into monetary values with sufficient precision or
25 accuracy.

26 (4) When a resource damage assessment is required for an oil spill
27 in the navigable waters of the state, as defined in RCW 90.56.010, the
28 state trustee agency responsible for the resource and habitat damaged
29 shall conduct the damage assessment and pursue all appropriate remedies
30 with the responsible party.

1 (5) Oil spill damage assessment studies authorized under RCW
2 90.48.367 may only be conducted if the committee, after considering the
3 factors enumerated in subsection (3) of this section, determines that
4 the damages to be investigated are quantifiable at a reasonable cost
5 and that proposed assessment studies are clearly linked to
6 quantification of the damages incurred.

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

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

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

22 "**Sec. 30.** RCW 90.48.400 and 1991 c 200 s 816 are each amended to
23 read as follows:

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

26 (a) Environmental restoration and enhancement projects intended to
27 restore or enhance environmental, recreational, archaeological, or
28 aesthetic resources for the benefit of Washington's citizens;

29 (b) Investigations of the long-term effects of oil spills; and

1 (c) Development and implementation of an aquatic land geographic
2 information system.

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

6 (3) A steering committee consisting of representatives of the
7 department of ecology, fisheries, wildlife, and natural resources, and
8 the parks and recreation commission shall authorize the expenditure of
9 the moneys collected under RCW 90.48.366 through 90.48.368, after
10 consulting impacted local agencies and local and tribal governments.

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

16 **"Sec. 31.** RCW 90.56.010 and 1991 c 200 s 102 are each amended to
17 read as follows:

18 For purposes of this chapter, the following definitions shall apply
19 unless the context indicates otherwise:

20 (1) "Administrator" means the administrator of the office of marine
21 safety created in RCW 43.21I.010.

22 (2) "Best achievable protection" means the highest level of
23 protection that can be achieved through the use of the best achievable
24 technology and those staffing levels, training procedures, and
25 operational methods that provide the greatest degree of protection
26 achievable. The director's determination of best achievable protection
27 shall be guided by the critical need to protect the state's natural
28 resources and waters, while considering (a) the additional protection

1 provided by the measures; (b) the technological achievability of the
2 measures; and (c) the cost of the measures.

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

10 (4) "Board" means the pollution control hearings board.

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

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

18 (7) "Committee" means the preassessment screening committee
19 established under RCW 90.48.368.

20 (8) "Covered vessel" means a tank vessel, cargo vessel, or
21 passenger vessel.

22 (9) "Department" means the department of ecology.

23 (10) "Director" means the director of the department of ecology.

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

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

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

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

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

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

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

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

1 (18) "Oil" or "oils" means naturally occurring liquid hydrocarbons
2 at atmospheric temperature and pressure coming from the earth,
3 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 (19) "Offshore facility" means any facility(~~(, as defined in~~
11 ~~subsection (12) of this section,~~) located in, on, or under any of the
12 navigable waters of the state, but does not include a facility any part
13 of which is located in, on, or under any land of the state, other than
14 submerged land.

15 (20) "Onshore facility" means any facility(~~(, as defined in~~
16 ~~subsection (12) of this section,~~) any part of which is located in, on,
17 or under any land of the state, other than submerged land, that because
18 of its location, could reasonably be expected to cause substantial harm
19 to the environment by discharging oil into or on the navigable waters
20 of the state or the adjoining shorelines.

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

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

1 (22) "Passenger vessel" means a ship of (~~greater than~~) three
2 hundred or more gross tons (~~or five hundred or more international~~
3 ~~gross tons~~) with a fuel capacity of at least five thousand gallons
4 carrying passengers for compensation.

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

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

10 (25) "Spill" means an unauthorized discharge of oil or hazardous
11 substances into the waters of the state.

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

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

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

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

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

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

1 offshore facility, the largest foreseeable spill in adverse weather
2 conditions."

3 "Sec. 32. RCW 90.56.100 and 1990 c 116 s 12 are each amended to
4 read as follows:

5 (1) The Washington wildlife rescue coalition shall be established
6 for the purpose of coordinating the rescue and rehabilitation of
7 wildlife injured or endangered by oil spills or the release of other
8 hazardous substances into the environment.

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

10 (a) A representative of the department of wildlife designated by
11 the director of wildlife. The department of wildlife shall be
12 designated as lead agency in the operations of the coalition. The
13 coalition shall be chaired by the representative from the department of
14 wildlife;

15 (b) A representative of the department of ecology designated by the
16 director;

17 (c) A representative of the department of community development
18 emergency management program designated by the director of community
19 development;

20 (d) A licensed veterinarian, with experience and training in
21 wildlife rehabilitation, appointed by the veterinary board of
22 governors;

23 (e) The director of the Washington conservation corps;

24 (f) A lay person, with training and experience in the rescue and
25 rehabilitation of wildlife appointed by the department; and

26 (g) A person designated by the legislative authority of the county
27 where oil spills or spills of other hazardous substances may occur.
28 This member of the coalition shall serve on the coalition until
29 wildlife rescue and rehabilitation is completed in that county. The

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

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

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

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

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

21 (d) Obtain and maintain equipment and supplies used in emergency
22 rescue efforts;

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

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

29 (b) The ((commission)) coalition is encouraged to seek grants,
30 gifts, or donations from private sources in order to carry out the

1 provisions of this section and RCW 90.56.110. Any private funds
2 donated to the commission shall be deposited into the wildlife rescue
3 account hereby created within the wildlife fund as authorized under
4 Title 77 RCW."

5 "Sec. 33. RCW 90.56.210 and 1991 c 200 s 202 are each amended to
6 read as follows:

7 (1) Each onshore and offshore facility shall have a contingency
8 plan for the containment and cleanup of oil spills from the facility
9 into the waters of the state and for the protection of fisheries and
10 wildlife, natural resources, and public and private property from such
11 spills. The department shall by rule adopt and periodically revise
12 standards for the preparation of contingency plans. The department
13 shall require contingency plans, at a minimum, to meet the following
14 standards:

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

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

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

25 (d) Provide procedures for early detection of oil spills and timely
26 notification of such spills to appropriate federal, state, and local
27 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 and
9 archaeologically sensitive areas, and public facilities. The
10 departments of ecology, fisheries, wildlife, and natural resources, and
11 the office of archaeology and historic preservation, upon request,
12 shall provide information that they have available to assist in
13 preparing this description. If the department has adopted rules for
14 contingency plans prior to July 1, 1992, the description of
15 archaeologically sensitive areas shall only be required when the
16 department revises the rules for contingency plans after July 1, 1992.
17 The description of archaeologically sensitive areas shall not be
18 required to be included in a contingency plan until it is reviewed and
19 updated pursuant to subsection (9) of this section;

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

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

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

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

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

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

11 (n) If the department has adopted rules permitting the use of
12 dispersants, the circumstances, if any, and the manner for the
13 application of the dispersants in conformance with the department's
14 rules.

15 (2)(a) The following shall submit contingency plans to the
16 department within six months after the department adopts rules
17 establishing standards for contingency plans under subsection (1) of
18 this section:

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

21 (ii) Offshore facilities.

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

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

29 (b) A person who has contracted with a facility to provide
30 containment and cleanup services and who meets the standards

1 established pursuant to RCW 90.56.240, may submit the plan for any
2 facility for which the person is contractually obligated to provide
3 services. Subject to conditions imposed by the department, the person
4 may submit a single plan for more than one facility.

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

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

14 (a) The adequacy of containment and cleanup equipment, personnel,
15 communications equipment, notification procedures and call down lists,
16 response time, and logistical arrangements for coordination and
17 implementation of response efforts to remove oil spills promptly and
18 properly and to protect the environment;

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

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

23 (d) The existence of navigational hazards within the area covered
24 by the plan;

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

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

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

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

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

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

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

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

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

28 "Sec. 34. RCW 90.56.300 and 1991 c 200 s 301 are each amended to
29 read as follows:

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

10 (2) It shall not be unlawful for the owner or operator to operate
11 an onshore or offshore facility if:

12 (a) The facility is not required to have a contingency plan, spill
13 prevention plan, or financial responsibility; or

14 (b) All required plans have been submitted to the department as
15 required by RCW 90.56.210 and rules adopted by the department and the
16 department is reviewing the plan and has not denied approval.

17 (3) A person may rely on a copy of the statement issued by the
18 department pursuant to RCW 90.56.210(7) as evidence that a facility has
19 an approved contingency plan and the statement issued pursuant to RCW
20 (~~(90.56.200(5))~~) 90.56.200(4) that a facility has an approved
21 prevention plan."

22 "**Sec. 35.** RCW 90.56.310 and 1991 c 200 s 302 are each amended to
23 read as follows:

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

26 (a) For the owner or operator to operate an onshore or offshore
27 facility without an approved contingency plan as required under RCW
28 90.56.210, a spill prevention plan required by RCW 90.56.200, or

1 financial responsibility in compliance with chapter 88.40 RCW and the
2 federal oil pollution act of 1990; or

3 (b) For the owner or operator of an onshore or offshore facility to
4 (~~accept~~) transfer cargo or passengers to or from a covered vessel
5 that does not have an approved contingency plan or an approved
6 prevention plan required under chapter 88.46 RCW or financial
7 responsibility in compliance with chapter 88.40 RCW and the federal oil
8 pollution act of 1990.

9 (2) (~~The department may notify the secretary of state to suspend~~
10 ~~the business license of any onshore or offshore facility or other~~
11 ~~person that is in violation of this section.)) The department may
12 assess a civil penalty under RCW 43.21B.300 of up to one hundred
13 thousand dollars against any person who is in violation of this
14 section. Each day that a facility or person is in violation of this
15 section shall be considered a separate violation.~~

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

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

20 (b) A contingency and prevention plan has been submitted to the
21 department as required by this chapter and rules adopted by the
22 department and the department is reviewing the plan and has not denied
23 approval.

24 (4) Any person may rely on a copy of the statement issued by the
25 department pursuant to RCW 90.56.210(7) as evidence that the facility
26 has an approved contingency plan and the statement issued pursuant to
27 RCW (~~90.56.200(5)~~) 90.56.200(4) as evidence that the facility has an
28 approved spill prevention plan. Any person may rely on a copy of the
29 statement issued by the office to RCW 88.46.060 as evidence that the
30 vessel has an approved contingency plan and the statement issued

1 pursuant to RCW 88.46.040 as evidence that the vessel has an approved
2 prevention plan."

3 **"Sec. 36.** RCW 90.56.330 and 1990 c 116 s 20 are each amended to
4 read as follows:

5 Except as otherwise provided in RCW (~~(90.48.383)~~) 90.56.390, any
6 person who negligently discharges oil, or causes or permits the entry
7 of the same, shall incur, in addition to any other penalty as provided
8 by law, a penalty in an amount of up to twenty thousand dollars for
9 every such violation, and for each day the spill poses risks to the
10 environment as determined by the director. Any person who
11 intentionally or recklessly discharges or causes or permits the entry
12 of oil into the waters of the state shall incur, in addition to any
13 other penalty authorized by law, a penalty of up to one hundred
14 thousand dollars for every such violation and for each day the spill
15 poses risks to the environment as determined by the director. The
16 amount of the penalty shall be determined by the director after taking
17 into consideration the gravity of the violation, the previous record of
18 the violator in complying, or failing to comply, with the provisions of
19 chapter 90.48 RCW, the speed and thoroughness of the collection and
20 removal of the oil, and such other considerations as the director deems
21 appropriate. Every act of commission or omission which procures, aids
22 or abets in the violation shall be considered a violation under the
23 provisions of this section and subject to the penalty herein provided
24 for. The penalty herein provided for shall be imposed pursuant to RCW
25 43.21B.300."

26 **"Sec. 37.** RCW 90.56.380 and 1990 c 116 s 19 are each amended to
27 read as follows:

1 In addition to any cause of action the state may have to recover
2 necessary expenses for the cleanup of oil pursuant to RCW 90.56.340 and
3 90.56.330, and except as otherwise provided in RCW ~~((90.48.383))~~
4 90.56.390, any other person causing the entry of oil shall be directly
5 liable to the state for the necessary expenses of oil cleanup arising
6 from such entry and the state shall have a cause of action to recover
7 from any or all of said persons. Except as otherwise provided in RCW
8 ~~((90.48.383))~~ 90.56.390, any person liable for cost of oil cleanup as
9 provided in RCW 90.56.340 and 90.56.330 shall have a cause of action to
10 recover for costs of cleanup from any other person causing the entry of
11 oil into the waters of the state including any amount recoverable by
12 the state as necessary expenses under RCW 90.56.330."

13 "Sec. 38. RCW 90.56.390 and 1991 c 200 s 304 are each amended to
14 read as follows:

15 (1)(a) ~~((Notwithstanding any other provision of law,))~~ A person is
16 not liable for removal costs or damages that result from actions taken
17 or omitted to be taken in the course of rendering care, assistance, or
18 advice consistent with the national contingency plan or as otherwise
19 directed by the federal on-scene coordinator or by the official within
20 the department with responsibility for oil spill response. This
21 subsection (1)(a) does not apply:

22 (i) To a responsible party;

23 (ii) With respect to personal injury or wrongful death; or

24 (iii) If the person is grossly negligent or engages in willful
25 misconduct.

26 (b) A responsible party is liable for any removal costs and damages
27 that another person is relieved of under (a) of this subsection.

28 (c) Nothing in this section affects the liability of a responsible
29 party for oil spill response under state law.

1 (2) For the purposes of this section:

2 (a) "Damages" means damages of any kind for which liability may
3 exist under the laws of this state resulting from, arising out of, or
4 related to the discharge or threatened discharge of oil.

5 ~~(b) ("Discharge" means any emission other than natural seepage,~~
6 ~~intentional or unintentional, and includes, but is not limited to,~~
7 ~~spilling, leaking, pumping, pouring, emitting, emptying, or dumping.~~

8 ~~(c))~~ "Federal on-scene coordinator" means the federal official
9 predesignated by the United States environmental protection agency or
10 the United States coast guard to coordinate and direct federal
11 responses under subpart D, or the official designated by the lead
12 agency to coordinate and direct removal under subpart E, of the
13 national contingency plan.

14 ~~((d))~~ (c) "National contingency plan" means the national
15 contingency plan prepared and published under section 311(d) of the
16 federal water pollution control act (33 U.S.C. Sec. 1321(d)), as
17 amended by the oil pollution act of 1990 (P.L. 101-380, 104 Stat. 484
18 (1990)).

19 ~~((e) "Oil" means oil of any kind or in any form, including, but~~
20 ~~not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed~~
21 ~~with wastes other than dredged spoil.~~

22 ~~(f) "Person" means an individual, corporation, partnership,~~
23 ~~association, state, municipality, commission, or political subdivision~~
24 ~~of a state, or any interstate body.~~

25 ~~(g))~~ (d) "Removal costs" means the costs of removal that are
26 incurred after a discharge of oil has occurred or, in any case in which
27 there is a substantial threat of a discharge of oil, the costs to
28 prevent, minimize, or mitigate oil pollution from such an incident.

29 ~~((h))~~ (e) "Responsible party" means a person liable under RCW
30 90.56.370."

1 **"Sec. 39.** RCW 90.56.400 and 1991 c 200 s 305 are each amended to
2 read as follows:

3 The department shall investigate each activity or project conducted
4 under RCW 90.56.350 to determine, if possible, the circumstances
5 surrounding the entry of oil into waters of the state and the person or
6 persons allowing said entry or responsible for the act or acts which
7 result in said entry. Whenever it appears to the department, after
8 investigation, that a specific person or persons are responsible for
9 the necessary expenses incurred by the state pertaining to a project or
10 activity as specified in RCW 90.56.360, the department shall notify
11 said person or persons by appropriate order. The department may not
12 issue an order pertaining to a project or activity which was completed
13 more than five years prior to the date of the proposed issuance of the
14 order. The order shall state the findings of the department, the
15 amount of necessary expenses incurred in conducting the project or
16 activity, and a notice that said amount is due and payable immediately
17 upon receipt of said order. The department may, upon application from
18 the recipient of an order received within thirty days from the receipt
19 of the order, reduce or set aside in its entirety the amount due and
20 payable, when it appears from the application, and from any further
21 investigation the department may desire to undertake, that a reduction
22 or setting aside is just and fair under all the circumstances. If the
23 amount specified in the order issued by the department notifying said
24 person or persons is not paid within thirty days after receipt of
25 notice imposing the same, or if an application has been made within
26 thirty days as herein provided and the amount provided in the order
27 issued by the department subsequent to such application is not paid
28 within fifteen days after receipt thereof, the attorney general, upon
29 request of the department, shall bring an action on behalf of the state
30 in the superior court of Thurston county or any county in which the

1 person to which the order is directed does business, or in any other
2 court of competent jurisdiction, to recover the amount specified in the
3 final order of the department. No order issued under this section
4 shall be construed as an order within the meaning of RCW 43.21B.310 and
5 shall not be appealable to the hearings board. In any action to
6 recover necessary expenses as herein provided said person shall be
7 relieved from liability for necessary expenses if the person can prove
8 that the oil to which the necessary expenses relate entered the waters
9 of the state by causes set forth in RCW (~~(90.56.320(2))~~) 90.56.370(2)."

10 **"Sec. 40.** RCW 90.56.450 and 1991 c 200 s 501 are each amended to
11 read as follows:

12 (1) The (~~(oil)~~) marine oversight board is established to provide
13 independent oversight of the actions of the federal government,
14 industry, the department, the office, and other state agencies with
15 respect to oil spill prevention and response for covered vessels and
16 onshore and offshore facilities.

17 (2)(a) The board may, at its own discretion, study any aspect of
18 oil spill prevention and response for covered vessels and onshore and
19 offshore facilities in the state. The board shall report to the
20 governor and make recommendations to the department and the office on
21 activities of the federal government and industry with respect to oil
22 spill prevention and response for covered vessels and onshore and
23 offshore facilities, including recommendations for the state's response
24 to those actions. The board shall specifically review the need for,
25 and the structure and design of an emergency response system for the
26 Strait of Juan de Fuca and the Pacific coast. The board shall also
27 make recommendations to the legislature and other state agencies on any
28 provision of this chapter, other state laws, and rules, policies, and
29 guidelines adopted by the department, the office, or(~~(7)~~) other state

1 agencies relating to the prevention and cleanup of oil spills into the
2 waters of the state from covered vessels and onshore and offshore
3 facilities.

4 (b) To minimize duplication of effort, reviews conducted by the
5 board shall be coordinated with related activities of the federal
6 government, the department, the office, and other appropriate state and
7 international entities. The Puget Sound water quality authority shall
8 ensure that studies and recommendations by the board shall not be
9 duplicated by any recommendations prepared and adopted pursuant to
10 chapter 90.70 RCW after May 15, 1991.

11 (c) The board shall evaluate and report at least annually to the
12 governor and the appropriate standing committees of the legislature on
13 oil spill prevention, response, and preparedness programs within the
14 state for covered vessels and onshore and offshore facilities.

15 (3) There shall be five members of the board appointed by the
16 governor for terms of five years. Members' terms shall be staggered.
17 The members of the board shall be representative of the public and
18 shall have demonstrable knowledge of environmental protection and the
19 study of marine ecosystems, or have familiarity with marine
20 transportation systems.

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

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

27 **"Sec. 41.** RCW 90.56.510 and 1991 c 200 s 806 are each amended to
28 read as follows:

1 The ((state)) oil spill administration account is created in the
2 state treasury. All receipts from RCW 82.23B.020(2) shall be deposited
3 in the account. Moneys from the account may be spent only after
4 appropriation. The account is subject to allotment procedures under
5 chapter 43.88 RCW. On July 1 of each odd-numbered year, if receipts
6 deposited in the account from the tax imposed by RCW 82.23B.020(2) for
7 the previous fiscal biennium exceed the amount appropriated from the
8 account for the previous fiscal biennium, the state treasurer shall
9 transfer the amount of receipts exceeding the appropriation to the oil
10 spill response account. If, on the first day of any calendar month,
11 the balance of the oil spill response account is greater than twenty-
12 five million dollars and the balance of the oil spill administration
13 account exceeds the unexpended appropriation for the current biennium,
14 then the tax under RCW 82.23B.020(2) shall be suspended on the first
15 day of the next calendar month until the beginning of the following
16 biennium, provided that the tax shall not be suspended during the last
17 six months of the biennium. If the tax imposed under RCW 82.23B.020(2)
18 is suspended during two consecutive biennia, the department shall by
19 November 1st after the end of the second biennium, recommend to the
20 appropriate standing committees an adjustment in the tax rate. For the
21 period 1991-93 the state treasurer may transfer funds from the oil
22 spill response account to the oil spill administration account in
23 amounts necessary to support appropriations made from the oil spill
24 administration account in the omnibus appropriations act. Expenditures
25 from the oil spill administration account shall be used exclusively for
26 the administrative costs related to the purposes of this chapter, and
27 chapters 90.48, 88.40, and 88.46 RCW. Costs of administration include
28 the costs of:

29 (1) Routine responses not covered under RCW 90.56.500;

30 (2) Management and staff development activities;

1 (3) Development of rules and policies and the state-wide plan
2 provided for in RCW 90.56.060;

3 (4) Facility and vessel plan review and approval, drills,
4 inspections, investigations, enforcement, and litigation;

5 (5) Interagency coordination and public outreach and education;

6 (6) Collection and administration of the tax provided for in
7 chapter 82.23B RCW; and

8 (7) Appropriate travel, goods and services, contracts, and
9 equipment."

10 "Sec. 42. RCW 90.56.520 and 1991 c 200 s 807 are each amended to
11 read as follows:

12 The director of the department of ecology shall submit a report to
13 the appropriate standing committees of the legislature by November 1 of
14 each even-numbered year showing detailed information regarding
15 expenditures authorized by the director under RCW 90.56.500. The
16 report shall include, but not be limited to:

17 (1) The total amount spent for each response for which the director
18 has approved expenditures and the amount paid for from the oil spill
19 (~~prevention and~~) response account;

20 (2) The amount recovered from a responsible party for each spill;

21 (3) The amount of time between a spill and the time a responsible
22 party assumes responsibility for the response costs related to a spill;

23 (4) The number of incidents for which the director has determined
24 that the responsible party or another source was available to pay for
25 the response; and

26 (5) A recommendation concerning the need to continue collecting the
27 tax under RCW 82.23B.020(1).

28 This section shall expire December 31, 1996."

1 "NEW SECTION. **Sec. 43.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

5 "NEW SECTION. **Sec. 44.** The amendment of RCW 82.23B.010,
6 82.23B.020, 82.23B.030, and 82.23B.040 by chapter --, Laws of 1992,
7 (this act) shall not be construed as affecting any existing right
8 acquired or liability or obligation incurred under the sections or
9 under any rule or order adopted under the sections, nor as affecting
10 any proceeding instituted under the sections."

11 "NEW SECTION. **Sec. 45.** Section 15 of this act shall apply to
12 vessels beginning May 15, 1991."

13 "NEW SECTION. **Sec. 46.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and shall take
16 effect immediately, except sections 6, 7, 9, and 10 of this act shall
17 take effect October 1, 1992."

18 **SHB 2389** - H COMM AMD
19 By Committee on Revenue

20
21 On page 1, line 2 of the title, after "statutes;" strike the
22 remainder of the title and insert "amending RCW 43.21B.110, 43.21B.300,
23 43.21B.310, 43.21I.010, 43.21I.020, 82.23B.010, 82.23B.020, 82.23B.030,
24 82.23B.040, 43.21I.030, 88.40.011, 88.40.020, 88.40.040, 88.44.010,
25 88.44.100, 88.44.110, 88.46.010, 88.46.050, 88.46.060, 88.46.070,
26 88.46.080, 88.46.090, 88.46.110, 90.48.120, 90.48.140, 90.48.144,

1 90.48.366, 90.48.368, 90.48.400, 90.56.010, 90.56.100, 90.56.210,
2 90.56.300, 90.56.310, 90.56.330, 90.56.380, 90.56.390, 90.56.400,
3 90.56.450, 90.56.510, and 90.56.520; adding a new section to chapter
4 82.23B RCW; creating new sections; prescribing penalties; providing an
5 effective date; and declaring an emergency."