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ENGROSSED SUBSTITUTE HOUSE BILL 1027

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State of Washington

52nd Legislature

1991 Regular Session

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

Read first time March 6, 1991.

1 AN ACT Relating to oil and hazardous substances; amending RCW  
2 90.48.315, 90.48.370, 90.48.365, 90.48.380, 90.48.378, 90.48.371,  
3 90.48.373, 90.48.375, 90.48.376, 90.48.377, 90.48.325, 90.48.383,  
4 90.48.340, 90.48.385, 90.48.510, 88.16.170, 88.16.180, 88.16.200,  
5 88.40.005, 88.40.020, 88.40.030, 88.40.040, 90.48.142, 90.48.366,  
6 90.48.367, 90.48.368, 90.48.400, 90.48.369, 88.44.010, 88.44.020,  
7 88.44.030, 88.44.040, 88.44.080, 88.44.110, 88.44.160, 88.16.010,  
8 88.16.105, 88.16.110, 88.16.155, 90.48.037, 90.48.095, 90.48.100,  
9 90.48.156, 90.48.240, and 90.48.907; amending 1990 c 116 s 1  
10 (uncodified); reenacting and amending RCW 90.48.390 and 88.16.090;  
11 adding a new section to chapter 90.48 RCW; adding new sections to  
12 chapter 88.16 RCW; adding a new chapter to Title 90 RCW; adding a new  
13 chapter to Title 82 RCW; adding a new chapter to Title 43 RCW; adding  
14 a new chapter to Title 88 RCW; creating new sections; recodifying RCW  
15 90.48.315, 90.48.370, 90.48.365, 90.48.380, 90.48.378, 90.48.387,  
16 90.48.388, 90.48.371, 90.48.372, 90.48.373, 90.48.374, 90.48.375,  
17 90.48.360, 90.48.376, 90.48.377, 90.48.320, 90.48.350, 90.48.325,

1 90.48.330, 90.48.335, 90.48.336, 90.48.338, 90.48.383, 90.48.340,  
2 90.48.355, 90.48.343, 90.48.907, 90.48.385, and 90.48.510; repealing  
3 RCW 90.48.345, 90.48.381, 90.48.410, 88.40.010, 88.40.050, 90.48.910,  
4 84.44.040, 88.44.050, 88.44.060, and 88.44.070; prescribing penalties;  
5 making an appropriation; providing an effective date; and declaring an  
6 emergency.

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

8

## PART I

9

### GENERAL PROVISIONS

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

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

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

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

14 (3) The legislature also finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3       (2) "Best achievable protection" means the highest level of  
4 protection that can be achieved through the use of the best achievable  
5 technology and those staffing levels, training procedures, and  
6 operational methods that provide the greatest degree of protection  
7 achievable. The director's determination of best achievable protection  
8 shall be guided by the critical need to protect the state's natural  
9 resources and waters, while considering (a) the additional protection  
10 provided by the measures; (b) the technological achievability of the  
11 measures; and (c) the cost of the measures.

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

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

20       ((+2)) (5) "Cargo vessel" means a ship in commerce, other than a  
21 tank vessel or a passenger vessel, of three hundred gross tons or more,  
22 including but not limited to, commercial fish processing vessels and  
23 freighters.

24       ((+3)) (6) "Bulk" means material that is stored or transported in  
25 a loose, unpackaged liquid, powder, or granular form capable of being  
26 conveyed by a pipe, bucket, chute, or belt system.

27       (7) "Committee" ((shall)) means the preassessment screening  
28 committee established under RCW 90.48.368.

29       ((+4)) (8) "Covered vessel" means a tank vessel, cargo vessel, or  
30 passenger vessel.

1       ~~((5))~~ (9) "Department" ~~((shall))~~ means the department of ecology.

2       ~~((6))~~ (10) "Director" ~~((shall))~~ means the director of the  
3 department of ecology.

4       ~~((7))~~ (11) "Discharge" ~~((shall))~~ means any spilling, leaking,  
5 pumping, pouring, emitting, emptying, or dumping.

6       ~~((8))~~ (12)(a) "Facility" means any structure, group of  
7 structures, equipment, pipeline, or device, other than a vessel,  
8 ~~((located on or near the navigable waters of the state that receives~~  
9 ~~oil in bulk from a tank vessel,))~~ that is used for producing, storing,  
10 handling, transferring, processing, or transporting oil in bulk~~((, and~~  
11 ~~is capable of storing ten thousand or more gallons of oil))~~.

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

19       ~~((9))~~ (13) "Fund" ~~((shall))~~ means the state coastal protection  
20 fund as provided in RCW 90.48.390 and 90.48.400.

21       ~~((10))~~ (14) "Having control over oil" shall include but not be  
22 limited to any person using, storing, or transporting oil immediately  
23 prior to entry of such oil into the waters of the state, and shall  
24 specifically include carriers and bailees of such oil.

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

29       ~~((12))~~ (15) "Navigable waters of the state" means those waters of  
30 the state, and their adjoining shorelines, that are subject to the ebb

1 and flow of the tide and/or are presently used, have been used in the  
2 past, or may be susceptible for use to transport intrastate,  
3 interstate, or foreign commerce.

4 ~~((13))~~ (16) "Necessary expenses" means the expenses incurred by  
5 the department and assisting state agencies for (a) investigating the  
6 source of the discharge; (b) investigating the extent of the  
7 environmental damage caused by the discharge; (c) conducting actions  
8 necessary to clean up the discharge; (d) conducting predamage and  
9 damage assessment studies; and (e) enforcing the provisions of this  
10 chapter and collecting for damages caused by a discharge.

11 ~~((14))~~ (17) "Oil" or "oils" ~~((shall))~~ means ~~((oil))~~ naturally  
12 occurring liquid hydrocarbons at atmospheric temperature and pressure  
13 coming from the earth, including condensate and natural gasoline, and  
14 any fractionation thereof, including ((gasoline)), but not limited to,  
15 crude oil, petroleum, gasoline, fuel oil, diesel oil, ((lubricating  
16 oil,)) oil sludge, oil refuse, ((liquid natural gas, propane, butane,  
17 oils distilled from coal, and other liquid hydrocarbons regardless of  
18 specific gravity, or any other petroleum related product)) and oil  
19 mixed with wastes other than dredged spoil. Oil does not include any  
20 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August  
21 14, 1989, under section 101(14) of the federal comprehensive  
22 environmental response, compensation, and liability act of 1980, as  
23 amended by P.L. 99-499.

24 ~~((15))~~ (18) "Offshore facility" means any facility located in,  
25 on, or under any of the navigable waters of the state, but does not  
26 include a facility any part of which is located in, on, or under any  
27 land of the state, other than submerged land.

28 (19) "Onshore facility" means any facility any part of which is  
29 located in, on, or under any land of the state, other than submerged  
30 land, that because of its location, could reasonably be expected to

1 cause substantial harm to the environment by discharging oil into or on  
2 the navigable waters of the state or the adjoining shorelines.

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

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

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

14 ~~((16))~~ (22) "Person" ((shall)) means any political subdivision,  
15 government agency, municipality, industry, public or private  
16 corporation, copartnership, association, firm, individual, or any other  
17 entity whatsoever ((and any owner, operator, master, officer, or  
18 employee of a ship)).

19 ~~((17))~~ (23) "Ship" ((shall)) means any boat, ship, vessel, barge,  
20 or other floating craft of any kind.

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

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

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

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

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



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

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

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

13 NEW SECTION. Sec. 103. DIRECTOR RESPONSIBLE FOR SPILL RESPONSE.  
14 Except as otherwise specifically provided in this chapter or other law,  
15 the director has the primary authority, in conformance with the state-  
16 wide master oil and hazardous substance spill prevention and  
17 contingency plan adopted pursuant to RCW 90.48.378 as recodified by  
18 this act and any applicable contingency plans prepared pursuant to this  
19 chapter and chapter 88.-- RCW (sections 413 through 425 of this act),  
20 to oversee prevention, abatement, response, containment, and cleanup  
21 efforts with regard to any oil or hazardous substance spill in the  
22 navigable waters of the state. The director is the head of the state  
23 incident command system in response to a spill of oil or hazardous  
24 substances and shall coordinate the response efforts of all state  
25 agencies and local emergency response personnel. If a discharge of oil  
26 or hazardous substances is subject to the national contingency plan, in  
27 responding to the discharge, the director shall to the greatest extent  
28 practicable act in accordance with the national contingency plan and

1 cooperate with the federal on-scene coordinator or other federal agency  
2 or official exercising authority under the national contingency plan.

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

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

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

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

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

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

24 (1) Procedures and methods of reporting discharges and other  
25 occurrences prohibited by ((RCW 90.48.315 through 90.48.365 and RCW  
26 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through  
27 90.48.410, 90.48.903, 90.48.906 and 90.48.907)) this chapter;

1 (2) Procedures, methods, means, and equipment to be used by persons  
2 subject to regulation by (~~RCW 90.48.315 through 90.48.365 and RCW~~  
3 ~~78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through~~  
4 ~~90.48.410, 90.48.903, 90.48.906 and 90.48.907~~) this chapter and such  
5 rules (~~and regulations~~) may prescribe the times, places, and methods  
6 of transfer of oil;

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

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

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

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

18 (6) The disposal of oil recovered from a spill; and

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

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

26 (1) (~~Not later than July 1, 1991,~~) The department shall prepare  
27 and (~~thereafter~~) annually update a state-wide master oil and  
28 hazardous substance spill prevention and contingency plan. In  
29 preparing the plan, the department shall consult with an advisory

1 committee representing diverse interests concerned with oil and  
2 hazardous substance spills, including the office of marine safety, the  
3 United States coast guard, the federal environmental protection agency,  
4 state agencies, local governments, port districts, private facilities,  
5 environmental organizations, oil companies, shipping companies,  
6 containment and cleanup contractors, tow companies, and hazardous  
7 substance manufacturers.

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

10 (a) Take into consideration the elements of oil spill prevention  
11 and contingency plans approved or submitted for approval pursuant to  
12 ~~((RCW 90.48.371))~~ this chapter and chapter 88.-- RCW (sections 413  
13 through 425 of this 1991 act) and oil and hazardous substance spill  
14 contingency plans prepared pursuant to other state or federal law or  
15 prepared by federal agencies and regional entities;

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

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

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

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

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

8 (3) In preparing and updating the state master plan, the department  
9 shall:

10 (a) Consult with federal, provincial, municipal, and community  
11 officials, other state agencies, the state of Oregon, and with  
12 representatives of affected regional organizations;

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

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

17 (d) Require or schedule unannounced oil spill drills as required by  
18 RCW 90.48.374 as recodified by this 1991 act to test the sufficiency of  
19 oil spill contingency plans approved under RCW 90.48.371 as recodified  
20 by this 1991 act.

21 NEW SECTION. Sec. 108. COORDINATION WITH FEDERAL LAW. In  
22 carrying out the purposes of this chapter, including the adoption of  
23 rules for contingency plans, the department shall to the greatest  
24 extent practicable implement this chapter in a manner consistent with  
25 federal law.

26 NEW SECTION. Sec. 109. HAZARDOUS SUBSTANCES INCIDENT RESPONSE  
27 TRAINING AND EDUCATION PROGRAM. Not later than twelve months after the  
28 effective date of this section, the division of emergency management

1 shall establish and manage the Washington oil and hazardous substances  
2 incident response training and education program to provide approved  
3 classes in hazardous substance response, taught by trained instructors,  
4 and to certify students who have completed these classes. To carry out  
5 this program, the division of emergency management shall:

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

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

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

12 (4) Provide training to local oil and hazardous materials emergency  
13 response personnel; and

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

16 NEW SECTION. **Sec. 110.** SMALL SPILL PREVENTION EDUCATION PROGRAM.

17 (1) The Washington sea grant program, in consultation with the  
18 department, shall develop and conduct a voluntary spill prevention  
19 education program that targets small spills from commercial fishing  
20 vessels, ferries, cruise ships, ports, and marinas. Washington sea  
21 grant shall coordinate the spill prevention education program with  
22 recreational boater education performed by the state parks and  
23 recreation commission.

24 (2) The spill prevention education program shall illustrate ways to  
25 reduce oil contamination of bilge water, accidental spills of hydraulic  
26 fluid and other hazardous substances during routine maintenance, and  
27 reduce spillage during refueling. The program shall illustrate proper  
28 disposal of oil and hazardous substances and promote strategies to meet  
29 shoreside oil and hazardous substance handling, and disposal needs of

1 the targeted groups. The program shall include a series of training  
2 workshops and the development of educational materials.

3 **PART II**

4 **FACILITY PLANS**

5 NEW SECTION. **Sec. 201.** PREVENTION PLANS. (1) The owner or  
6 operator for each onshore and offshore facility shall prepare and  
7 submit to the department an oil spill prevention plan in conformance  
8 with the requirements of this chapter. The plans shall be submitted to  
9 the department in the time and manner directed by the department, but  
10 not later than January 1, 1993. The spill prevention plan may be  
11 consolidated with a spill contingency plan submitted pursuant to RCW  
12 90.48.371 as recodified by this act. The department may accept plans  
13 prepared to comply with other state or federal law as spill prevention  
14 plans to the extent those plans comply with the requirements of this  
15 chapter. The department, by rule, shall establish standards for spill  
16 prevention plans. The rules shall be adopted not later than July 1,  
17 1992.

18 (2) The spill prevention plan for an onshore or offshore facility  
19 shall:

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

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

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

1 (d) Certify the implementation of alcohol and drug use awareness  
2 programs;

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

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

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

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

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

16 (j) Describe the procedures followed by the facility to contain and  
17 recover any oil that spills during the transfer of oil to or from the  
18 facility;

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

22 (l) Include any other information reasonably necessary to carry out  
23 the purposes of this chapter required by rules adopted by the  
24 department.

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



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

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

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

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

19 (8) This section does not authorize the department to modify the  
20 terms of a collective bargaining agreement.

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

23 (1) Each onshore and offshore facility (~~((and covered vessel))~~) shall  
24 have a contingency plan for the containment and cleanup of oil spills  
25 from the facility (~~((or covered vessel))~~) into the waters of the state  
26 and for the protection of fisheries and wildlife, natural resources,  
27 and public and private property from such spills. The department shall  
28 by rule adopt and periodically revise standards for the preparation of  
29 contingency plans. (~~((The rules for facilities and, except as otherwise~~

1 provided in this subsection, for covered vessels shall be adopted not  
2 later than July 1, 1991. The department shall exclude from the rules  
3 to be adopted by July 1, 1991, standards for tank vessels of less than  
4 twenty thousand deadweight tons, cargo vessels, and passenger vessels  
5 operating on the portion of the Columbia river for which the department  
6 determines that Washington and Oregon should cooperate in the adoption  
7 of standards for contingency plans. The department, after consultation  
8 with the appropriate state agencies in Oregon, shall adopt the rules  
9 for standards for contingency plans for this portion of the Columbia  
10 river at the earliest possible time, but not later than July 1, 1992.)

11 The department shall require contingency plans, at a minimum, to meet  
12 the following standards:

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

16 (b) Be designed to be capable in terms of personnel, materials, and  
17 equipment, of promptly and properly, to the maximum extent practicable,  
18 as defined by the department((÷

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

21 ((ii))) removing oil and minimizing any damage to the environment  
22 resulting from a worst case spill;

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

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

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

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

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

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

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

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

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

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

29 (l) Until a spill prevention plan has been submitted pursuant to  
30 section 201 of this 1991 act, state the measures that have been taken

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

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

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

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

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

20 (ii) Offshore facilities.

21 (~~Except as otherwise provided in (c) of this subsection,~~)  
22 Contingency plans for all other facilities ((and covered vessels))  
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 (~~(c) Contingency plans for covered vessels which are not required~~  
28 ~~to submit plans within the six month period prescribed in (a) of this~~  
29 ~~subsection and which operate on the portion of the Columbia river for~~

1 ~~which the department must adopt rules not later than July 1, 1992,~~  
2 ~~shall be submitted to the department not later than January 1, 1993.)~~)

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

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

11 (c) ~~The contingency plan for a cargo vessel or passenger vessel may~~  
12 ~~be submitted by the owner or operator of the cargo vessel or passenger~~  
13 ~~vessel or by the agent for the vessel resident in this state. Subject~~  
14 ~~to conditions imposed by the department, the owner, operator, or agent~~  
15 ~~may submit a single contingency plan for cargo vessels or passenger~~  
16 ~~vessels of a particular class.~~

17 (d)) A person who has contracted with a facility ~~((or covered~~  
18 ~~vessel))~~ to provide containment and cleanup services and who meets the  
19 standards established pursuant to RCW 90.48.372 as recodified by this  
20 1991 act, may submit the plan for any facility ~~((or covered vessel))~~  
21 for which the person is contractually obligated to provide services.  
22 Subject to conditions imposed by the department, the person may submit  
23 a single plan for more than one facility ~~((or covered vessel))~~.

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

1 (5) In reviewing the contingency plans required by this section,  
2 the department 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 (~~and hazardous~~  
7 ~~substance~~)) spills promptly and properly and to protect the  
8 environment;

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

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

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

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

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

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

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

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

29 (7) The approval of the contingency plan shall be valid for five  
30 years. Upon approval of a contingency plan, the department shall

1 provide to the person submitting the plan a statement indicating that  
2 the plan has been approved, the facilities or vessels covered by the  
3 plan, and other information the department determines should be  
4 included.

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

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

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

18 NEW SECTION. **Sec. 203.** FACILITY OPERATION STANDARDS. (1) The  
19 department by rule shall adopt standards for onshore and offshore  
20 facilities regarding the equipment and operation of the facilities with  
21 respect to the transfer, storage, and handling of oil to ensure that  
22 the best achievable protection of the public health and the environment  
23 is employed at all times. The department shall implement a program to  
24 provide for the inspection of all onshore and offshore facilities on a  
25 regular schedule to ensure that each facility is in compliance with the  
26 standards.

27 (2) The department shall adopt rules for certification of  
28 supervisory and other key personnel in charge of the transfer, storage,

1 and handling of oil at onshore and offshore facilities. The rules  
2 shall include, but are not limited to:

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

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

8 (c) Continuing education requirements.

9 (3) The rules adopted by the department shall not conflict with or  
10 modify standards imposed pursuant to federal or state laws regulating  
11 worker safety.

12 NEW SECTION. **Sec. 204.** OPERATIONS MANUALS. (1) Each owner or  
13 operator of an onshore or offshore facility shall prepare an operations  
14 manual describing equipment and procedures involving the transfer,  
15 storage, and handling of oil that the operator employs or will employ  
16 for best achievable protection for the public health and the  
17 environment and to prevent oil spills in the navigable waters. The  
18 operations manual shall also describe equipment and procedures required  
19 for all vessels to or from which oil is transferred through use of the  
20 facility. The operations manual shall be submitted to the department  
21 for approval.

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

25 (3) The department shall approve an operations manual for an  
26 onshore or offshore facility if the manual complies with the rules  
27 adopted by the department. If the department determines a manual does  
28 not comply with the rules, it shall provide written reasons for the  
29 decision. The owner or operator shall resubmit the manual within



1 ninety days of notification of the reasons for noncompliance,  
2 responding to the reasons and incorporating any suggested  
3 modifications.

4 (4) The approval of an operations manual shall be valid for five  
5 years. The owner or operator of the facility shall notify the  
6 department in writing immediately of any significant change in its  
7 operations affecting its operations manual. The department may require  
8 the owner or operator to modify its operations manual as a result of  
9 these changes.

10 (5) All equipment and operations of an operator's onshore or  
11 offshore facility shall be maintained and carried out in accordance  
12 with the facility's operations manual. The owner or operator of the  
13 facility shall ensure that all ships docked at an onshore or offshore  
14 facility comply with the terms of the operations manual for the  
15 facility.

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

18 The department shall annually publish an index of available, up-to-  
19 date descriptions of prevention plans and contingency plans for oil  
20 spills submitted and approved pursuant to section 201 of this 1991 act,  
21 RCW 90.48.371 as recodified by this 1991 act, and sections 416 and 417  
22 of this 1991 act and an inventory of equipment available for responding  
23 to such spills.

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

26 (1) The provisions of contingency plans approved by the department  
27 under RCW 90.48.371 as recodified by this 1991 act and prevention plans  
28 approved by the department pursuant to section 201 of this 1991 act

1 shall be legally binding on those persons submitting them to the  
2 department and on their successors, assigns, agents, and employees.  
3 The superior court shall have jurisdiction to restrain a violation of,  
4 compel specific performance of, or otherwise to enforce such plans upon  
5 application by the department. The department may issue an order  
6 pursuant to chapter 34.05 RCW requiring compliance with a contingency  
7 plan or a prevention plan and may impose administrative penalties under  
8 RCW 43.21B.300 for failure to comply with a plan. An order under this  
9 section is not subject to review by the pollution control hearings  
10 board as provided in RCW 43.21B.110.

11 (2)(a) Any person responsible or potentially responsible for a  
12 discharge, all of the agents and employees of that person, the  
13 operators of all vessels docked at an onshore or offshore facility that  
14 is a source of a discharge, and all state and local agencies shall  
15 carry out response and cleanup operations in accordance with applicable  
16 contingency plans, unless directed otherwise by the director or the  
17 coast guard. Except as provided in (b) of this subsection, the  
18 responsible party, potentially responsible parties, their agents and  
19 employees, the operators of all vessels docked at an onshore or  
20 offshore facility that is the source of the discharge, and all state  
21 and local agencies shall carry out whatever direction is given by the  
22 director in connection with the response, containment, and cleanup of  
23 the spill, if the directions are not in direct conflict with the  
24 directions of the coast guard.

25 (b) If a responsible party or potentially responsible party  
26 reasonably, and in good faith, believes that the directions or orders  
27 given by the director pursuant to (a) of this subsection will  
28 substantially endanger the public safety or the environment, the party  
29 may refuse to act in compliance with the orders or directions of the  
30 director. The responsible party or potentially responsible party shall

1 state, at the time of the refusal, the reasons why the party refuses to  
2 follow the orders or directions of the director. The responsible party  
3 or potentially responsible party shall give the director written notice  
4 of the reasons for the refusal within forty-eight hours of refusing to  
5 follow the orders or directions of the director. In any civil or  
6 criminal proceeding commenced pursuant to this section, the burden of  
7 proof shall be on the responsible party or potentially responsible  
8 party to demonstrate, by clear and convincing evidence, why the refusal  
9 to follow the orders or directions of the director was justified under  
10 the circumstances.

11 **PART III**

12 **ENFORCEMENT**

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

15 (1) Except as provided in subsection (2) of this section, it shall  
16 be unlawful for ~~((any person))~~ the owner or operator to knowingly and  
17 intentionally operate in this state or on the waters of this state  
18 ~~((a))~~ an onshore or offshore facility ~~((or covered vessel))~~ without an  
19 approved contingency plan or an approved prevention plan as required by  
20 ~~((RCW 90.48.371))~~ this chapter, or financial responsibility in  
21 compliance with chapter 88.40 RCW and the federal oil pollution act of  
22 1990. The first conviction under this section shall be a gross  
23 misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction  
24 shall be a class C felony under chapter 9A.20 RCW.

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

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

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

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

10 (3) A ~~((facility))~~ person may rely on a copy of the statement  
11 issued by the department pursuant to RCW 90.48.371(7) as recodified by  
12 this 1991 act as evidence that ~~((the vessel))~~ a facility has an  
13 approved contingency plan and the statement issued pursuant to section  
14 201(5) of this 1991 act that a facility has an approved prevention  
15 plan.

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

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

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

25 (a) For ~~((a))~~ the owner or operator to operate an onshore or  
26 offshore facility (~~(to operate)~~) without an approved contingency plan  
27 as required under RCW 90.48.371 as recodified by this 1991 act, a spill  
28 prevention plan required by section 201 of this 1991 act, or financial

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

3 (b) For ~~((a))~~ the owner or operator of an onshore or offshore  
4 facility or any other person to accept cargo or passengers from a  
5 covered vessel that does not have an approved contingency plan or an  
6 approved prevention plan required under ((RCW 90.48.371)) chapter 88.--  
7 RCW (sections 413 through 425 of this 1991 act) or financial  
8 responsibility in compliance with chapter 88.40 RCW and the federal oil  
9 pollution act of 1990.

10 ~~((3))~~ (2) The department may notify the ~~((department of~~  
11 ~~licensing))~~ secretary of state to suspend the business license of any  
12 onshore or offshore facility or other person that is in violation of  
13 this section. The department may assess a civil penalty under RCW  
14 43.21B.300 of up to one hundred thousand dollars against any person who  
15 is in violation of this section. Each day that a facility~~((r))~~ or  
16 ~~person((, or covered vessel))~~ is in violation of this section shall be  
17 considered a separate violation.

18 ~~((4))~~ (3) It shall not be unlawful for a ~~((covered vessel to~~  
19 ~~operate on the waters of the state or a))~~ facility or other person to  
20 operate or accept cargo or passengers from a covered vessel if:

21 (a) A contingency plan, a prevention plan, or financial  
22 responsibility is not required for the facility ((or covered vessel));  
23 or

24 (b) A contingency and prevention plan has been submitted to the  
25 department as required by ~~((RCW 90.48.371))~~ this chapter and rules  
26 adopted by the department and the department is reviewing the plan and  
27 has not denied approval~~((r or~~

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

1       (~~(5)~~) (4) Any person may rely on a copy of the statement issued  
2 by the department pursuant to RCW 90.48.371(7) as recodified by this  
3 1991 act as evidence that the (~~vessel~~) facility has an approved  
4 contingency plan and the statement issued pursuant to section 201(5) of  
5 this 1991 act as evidence that the facility has an approved spill  
6 prevention plan.

7       **Sec. 303.** RCW 90.48.325 and 1970 ex.s. c 88 s 3 are each amended  
8 to read as follows:

9       It shall be the obligation of any person owning or having control  
10 over oil entering waters of the state in violation of RCW 90.48.320 as  
11 recodified by this 1991 act to immediately collect and remove the same.  
12 If it is not feasible to collect and remove, said person shall take all  
13 practicable actions to contain, treat and disperse the same. The  
14 director shall prohibit or restrict the use of any chemicals or other  
15 dispersant or treatment materials proposed for use under this section  
16 whenever it appears to (~~him~~) the director that use thereof would be  
17 detrimental to the public interest.

18       **Sec. 304.** RCW 90.48.383 and 1990 c 116 s 25 are each amended to  
19 read as follows:

20       (1) The following persons shall not be liable for necessary  
21 expenses, removal costs, or (~~property~~) damages of any kind, other  
22 than personal injury or wrongful death, caused by an act or omission of  
23 that person during the (~~cleanup~~) response to a spill or threatened  
24 spill of oil (~~spilled~~) into the navigable waters of the state, unless  
25 the act or omission was performed in bad faith or with gross  
26 negligence:

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

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

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

7 (2) This section shall not affect the liability of any person  
8 responsible for the spilled oil or responsible for the facility or  
9 covered vessel from which the oil was spilled.

10 **Sec. 305.** RCW 90.48.340 and 1987 c 109 s 148 are each amended to  
11 read as follows:

12 The department shall investigate each activity or project conducted  
13 under RCW 90.48.330 as recodified by this 1991 act to determine, if  
14 possible, the circumstances surrounding the entry of oil into waters of  
15 the state and the person or persons allowing said entry or responsible  
16 for the act or acts which result in said entry. Whenever it appears to  
17 the department, after investigation, that a specific person or persons  
18 are responsible for the necessary expenses incurred by the state  
19 pertaining to a project or activity as specified in RCW 90.48.335 as  
20 recodified by this 1991 act, the department shall notify said person or  
21 persons by appropriate order(~~(:—PROVIDED, That no order may be~~  
22 ~~issued)).~~ The department may not issue an order pertaining to a  
23 project or activity which was completed more than five years prior to  
24 the date of the proposed issuance of the order. (~~Said~~) The order  
25 shall state the findings of the department, the amount of necessary  
26 expenses incurred (~~by the department~~) in conducting the project or  
27 activity, and a notice that said amount is due and payable immediately  
28 upon receipt of said order. The department may, upon application from  
29 the recipient of an order received within thirty days from the receipt

1 of the order, reduce or set aside in its entirety the amount due and  
2 payable, when it appears from the application, and from any further  
3 investigation the department may desire to undertake, that a reduction  
4 or setting aside is just and fair under all the circumstances. If the  
5 amount specified in the order issued by the department notifying said  
6 person or persons is not paid within thirty days after receipt of  
7 notice imposing the same, or if an application has been made within  
8 thirty days as herein provided and the amount provided in the order  
9 issued by the department subsequent to such application is not paid  
10 within fifteen days after receipt thereof, the attorney general, upon  
11 request of the department, shall bring an action on behalf of the state  
12 in the superior court of Thurston county or any county in which the  
13 person to which the order is directed does business, or in any other  
14 court of competent jurisdiction, to recover the amount specified in the  
15 final order of the department. No order issued under this section  
16 shall be construed as an order within the meaning of RCW 43.21B.310 and  
17 shall not be appealable to the hearings board. In any action to  
18 recover necessary expenses as herein provided said person shall be  
19 relieved from liability for necessary expenses if ((he)) the person can  
20 prove that the oil to which the necessary expenses relate entered the  
21 waters of the state by causes set forth in RCW ((90.48.320(3)))  
22 90.48.320(2) as recodified by this 1991 act.

23 **PART IV**

24 **OFFICE OF MARINE SAFETY**

25 NEW SECTION. **Sec. 401.** The legislature declares that Washington's  
26 waters have irreplaceable value for the citizens of the state. These  
27 waters are vital habitat for numerous and diverse marine life and  
28 wildlife and the source of recreation, aesthetic pleasure, and pride



1 for Washington's citizens. These waters are also vital for much of  
2 Washington's economic vitality.

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

8 The legislature therefore finds that in order to protect these  
9 waters it is necessary to establish an office of marine safety which  
10 will have the responsibility to promote the safety of marine  
11 transportation in Washington.

12 NEW SECTION. **Sec. 402.** (1) There is hereby created an agency of  
13 state government to be known as the office of marine safety. The  
14 office shall be vested with all powers and duties transferred to it and  
15 such other powers and duties as may be authorized by law. The main  
16 administrative office of the office shall be located in the city of  
17 Olympia. The administrator may establish administrative facilities in  
18 other locations, if deemed necessary for the efficient operation of the  
19 office, and if consistent with the principles set forth in subsection  
20 (2) of this section.

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

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

1 (b) A clear and simplified organizational design promoting  
2 accessibility, responsiveness, and accountability to the legislature,  
3 the consumer, and the general public; and

4 (c) Maximum span of control without jeopardizing adequate  
5 supervision.

6 (3) The office shall provide leadership and coordination in  
7 identifying and resolving threats to the safety of marine  
8 transportation and the impact of marine transportation on the  
9 environment:

10 (a) Working with other state agencies and local governments to  
11 strengthen the state and local governmental partnership in providing  
12 public protection;

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

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

16 (d) Working with other federal, state, and local agencies and  
17 facilitating their involvement in planning and implementing marine  
18 safety measures;

19 (e) Providing information to the public; and

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

22 (4) In accordance with the administrative procedure act, chapter  
23 34.05 RCW, the office shall ensure an opportunity for consultation,  
24 review, and comment before the adoption of standards, guidelines, and  
25 rules.

26 (5) Consistent with the principles set forth in subsection (2) of  
27 this section, the administrator may create such administrative  
28 divisions, offices, bureaus, and programs within the office as the  
29 administrator deems necessary. The administrator shall have complete

1 charge of and supervisory powers over the office, except where the  
2 administrator's authority is specifically limited by law.

3 (6) The administrator shall appoint such personnel as are necessary  
4 to carry out the duties of the office in accordance with chapter 41.06  
5 RCW.

6 NEW SECTION. **Sec. 403.** The executive head and appointing  
7 authority of the office shall be the administrator of marine safety.  
8 The administrator shall be appointed by, and serve at the pleasure of,  
9 the governor in accordance with RCW 43.17.020. The administrator  
10 shall be paid a salary to be fixed by the governor in accordance with  
11 RCW 43.03.040.

12 NEW SECTION. **Sec. 404.** In addition to any other powers granted  
13 the administrator, the administrator may:

14 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to  
15 carry out the provisions of this chapter and chapter 88.-- RCW  
16 (sections 413 through 425 of this act);

17 (2) Appoint such advisory committees as may be necessary to carry  
18 out the provisions of this chapter and chapter 88.-- RCW (sections 413  
19 through 425 of this act). Members of such advisory committees are  
20 authorized to receive travel expenses in accordance with RCW 43.03.050  
21 and 43.03.060. The administrator shall review each advisory committee  
22 within the jurisdiction of the office and each statutory advisory  
23 committee on a biennial basis to determine if such advisory committee  
24 is needed. The criteria specified in RCW 43.131.070 shall be used to  
25 determine whether or not each advisory committee shall be continued;

26 (3) Undertake studies, research, and analysis necessary to carry  
27 out the provisions of this chapter and chapter 88.-- RCW (sections 413  
28 through 425 of this act);

1 (4) Delegate powers, duties, and functions of the department to  
2 employees of the department as the secretary deems necessary to carry  
3 out the provisions of this chapter and chapter 88.-- RCW (sections 413  
4 through 425 of this act);

5 (5) Enter into contracts on behalf of the department to carry out  
6 the purposes of this chapter and chapter 88.-- RCW (sections 413  
7 through 425 of this act);

8 (6) Act for the state in the initiation of, or the participation  
9 in, any intergovernmental program for the purposes of this chapter and  
10 chapter 88.-- RCW (sections 413 through 425 of this act); or

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

12 NEW SECTION. **Sec. 405.** The powers and duties of the department of  
13 ecology and the director of ecology under chapter 90.48 RCW relating to  
14 adoption of rules and approval of contingency plans for vessels and  
15 adoption of model tow cable standards for tug boats and barges are  
16 hereby transferred to the office of marine safety and the administrator  
17 of the office of marine safety.

18 NEW SECTION. **Sec. 406.** (1) The administrator shall have full  
19 authority to administer oaths and take testimony thereunder, to issue  
20 subpoenas requiring the attendance of witnesses before the  
21 administrator together with all books, memoranda, papers, and other  
22 documents, articles or instruments, and to compel the disclosure by  
23 such witnesses of all facts known to them relative to the matters under  
24 investigation.

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

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

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

3 NEW SECTION. **Sec. 407.** All reports, documents, surveys, books,  
4 records, files, papers, or written material in the possession of the  
5 department of ecology pertaining to the powers, functions, and duties  
6 transferred shall be delivered to the custody of the office of marine  
7 safety. All cabinets, furniture, office equipment, motor vehicles, and  
8 other tangible property employed by the department of ecology in  
9 carrying out the powers, functions, and duties transferred shall be  
10 made available to the office of marine safety. All funds, credits, or  
11 other assets held in connection with the powers, functions, and duties  
12 transferred shall be assigned to the office of marine safety.

13 Any appropriations made to the department of ecology for carrying  
14 out the powers, functions, and duties transferred shall, on the  
15 effective date of this section, be transferred and credited to the  
16 office of marine safety.

17 Whenever any question arises as to the transfer of any personnel,  
18 funds, books, documents, records, papers, files, equipment, or other  
19 tangible property used or held in the exercise of the powers and the  
20 performance of the duties and functions transferred, the director of  
21 financial management shall make a determination as to the proper  
22 allocation and certify the same to the state agencies concerned.

23 NEW SECTION. **Sec. 408.** All employees of the department of ecology  
24 engaged in performing the powers, functions, and duties transferred are  
25 transferred to the jurisdiction of the office of marine safety. All  
26 employees classified under chapter 41.06 RCW, the state civil service  
27 law, are assigned to the office of marine safety to perform their usual  
28 duties upon the same terms as formerly, without any loss of rights,

1 subject to any action that may be appropriate thereafter in accordance  
2 with the laws and rules governing state civil service.

3 NEW SECTION. **Sec. 409.** All rules and all pending business before  
4 the department of ecology pertaining to the powers, functions, and  
5 duties transferred shall be continued and acted upon by the office of  
6 marine safety. All existing contracts and obligations shall remain in  
7 full force and shall be performed by the office of marine safety.

8 NEW SECTION. **Sec. 410.** The transfer of the powers, duties,  
9 functions, and personnel of the department of ecology shall not affect  
10 the validity of any act performed prior to the effective date of this  
11 section.

12 NEW SECTION. **Sec. 411.** If apportionments of budgeted funds are  
13 required because of the transfers directed by sections 407 through 410  
14 of this act, the director of financial management shall certify the  
15 apportionments to the agencies affected, the state auditor, and the  
16 state treasurer. Each of these shall make the appropriate transfer and  
17 adjustments in funds and appropriation accounts and equipment records  
18 in accordance with the certification.

19 NEW SECTION. **Sec. 412.** Nothing contained in sections 405 and 407  
20 through 411 of this act may be construed to alter any existing  
21 collective bargaining unit or the provisions of any existing collective  
22 bargaining agreement until the agreement has expired or until the  
23 bargaining unit has been modified by action of the personnel board as  
24 provided by law.

1        NEW SECTION.    **Sec. 413.**    DEFINITIONS.    Unless the context clearly  
2 requires otherwise, the definitions in this section apply throughout  
3 this chapter.

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

6        (2) "Best achievable protection" means the highest level of  
7 protection that can be achieved through the use of the best achievable  
8 technology and those staffing levels, training procedures, and  
9 operational methods that provide the greatest degree of protection  
10 achievable.    The administrator's determination of best achievable  
11 protection shall be guided by the critical need to protect the state's  
12 natural resources and waters, while considering (a) the additional  
13 protection provided by the measures; (b) the technological  
14 achievability of the measures; and (c) the cost of the measures.

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

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

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

1 (6) "Covered vessel" means a tank vessel, cargo vessel, or  
2 passenger vessel.

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

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

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

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

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

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

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

25 (13) "Oil" or "oils" means any naturally occurring liquid  
26 hydrocarbons at atmospheric temperature and pressure coming from the  
27 earth, including condensate and natural gasoline, and any fractionation  
28 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
29 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes  
30 other than dredged spoil. Oil does not include any substance listed in



1 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
2 section 101(14) of the federal comprehensive environmental response,  
3 compensation, and liability act of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 NEW SECTION. **Sec. 414.** COORDINATION WITH FEDERAL LAW. In  
17 carrying out the purposes of this chapter, including the adoption of  
18 rules for contingency plans, the administrator shall to the greatest  
19 extent practicable implement this chapter in a manner consistent with  
20 federal law.

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

25 (2) The office shall review the tank vessel inspection programs  
26 conducted by the United States coast guard and other federal agencies  
27 to determine if the programs as actually operated by those agencies  
28 provide the best achievable protection to the waters of the state. If

1 the office determines that the tank vessel inspection programs  
2 conducted by these agencies are not adequate to protect the state's  
3 waters, it shall adopt rules for a state tank vessel inspection  
4 program. The office shall adopt rules providing for a random review of  
5 individual tank vessel inspections conducted by federal agencies. The  
6 office may accept a tank vessel inspection report issued by another  
7 state if that state's tank vessel inspection program is determined by  
8 the office to be at least as protective of the public health and the  
9 environment as the program adopted by the office.

10 (3) The state tank vessel inspection program shall ensure that all  
11 tank vessels entering state waters are inspected at least annually. To  
12 the maximum extent feasible, the state program shall consist of the  
13 monitoring of existing tank vessel inspection programs conducted by the  
14 federal government. The office shall consult with the coast guard  
15 regarding the tank vessel inspection program. Any tank vessel  
16 inspection conducted pursuant to this section shall be performed during  
17 the vessel's scheduled stay in port.

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

21 NEW SECTION. **Sec. 416.** PREVENTION PLANS. (1) The owner or  
22 operator for each covered vessel shall prepare and submit to the office  
23 an oil spill prevention plan in conformance with the requirements of  
24 this chapter. The plans shall be submitted to the office in the time  
25 and manner directed by the office, but not later than January 1, 1993.  
26 The spill prevention plan may be consolidated with a spill contingency  
27 plan submitted pursuant to section 417 of this act. The office may  
28 accept plans prepared to comply with other state or federal law as  
29 spill prevention plans to the extent those plans comply with the

1 requirements of this chapter. The office, by rule, shall establish  
2 standards for spill prevention plans. The rules shall be adopted not  
3 later than July 1, 1992.

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

6 (a) Establish compliance with the federal oil pollution act of 1990  
7 and state and federal financial responsibility requirements, if  
8 applicable;

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

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

16 (d) Describe the vessel operations with respect to staffing  
17 standards;

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

20 (f) Describe the training given to vessel crews with respect to  
21 spill prevention;

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

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

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

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

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

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

11 (b) In addition to the certification made pursuant to RCW  
12 88.16.155(1) (a) through (c), the master of any cargo vessel or  
13 passenger vessel not required to have a prevention plan pursuant to (a)  
14 of this subsection which employs a Washington licensed pilot shall  
15 certify that the:

16 (i) Vessel complies with safety of life at sea certificate  
17 requirements;

18 (ii) Vessel complies with current international agreements  
19 concerning safety and radio equipment;

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

22 (iv) Vessel is not leaking oil;

23 (v) Vessel is not experiencing propulsion or maneuvering  
24 difficulties;

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

29 (4) The office shall only approve a prevention plan if it provides  
30 the best achievable protection from damages caused by the discharge of

1 oil into the waters of the state and if it determines that the plan  
2 meets the requirements of this section and rules adopted by the office.

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

7 (6) The approval of a prevention plan shall be valid for five  
8 years. An owner or operator of a covered vessel shall notify the  
9 office in writing immediately of any significant change of which it is  
10 aware affecting its prevention plan, including changes in any factor  
11 set forth in this section or in rules adopted by the office. The  
12 office may require the owner or operator to update a prevention plan as  
13 a result of these changes.

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

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

20 (9) This section does not authorize the office to modify the terms  
21 of a collective bargaining agreement.

22 NEW SECTION. **Sec. 417.** CONTINGENCY PLANS. (1) Each covered  
23 vessel shall have a contingency plan for the containment and cleanup of  
24 oil spills from the covered vessel into the waters of the state and for  
25 the protection of fisheries and wildlife, natural resources, and public  
26 and private property from such spills. The office shall by rule adopt  
27 and periodically revise standards for the preparation of contingency  
28 plans. The office shall require contingency plans, at a minimum, to  
29 meet the following standards:

- 1 (a) Include full details of the method of response to spills of  
2 various sizes from any vessel which is covered by the plan;
- 3 (b) Be designed to be capable in terms of personnel, materials, and  
4 equipment, of promptly and properly, to the maximum extent practicable,  
5 as defined by the office removing oil and minimizing any damage to the  
6 environment resulting from a worst case spill;
- 7 (c) Provide a clear, precise, and detailed description of how the  
8 plan relates to and is integrated into relevant contingency plans which  
9 have been prepared by cooperatives, ports, regional entities, the  
10 state, and the federal government;
- 11 (d) Provide procedures for early detection of spills and timely  
12 notification of such spills to appropriate federal, state, and local  
13 authorities under applicable state and federal law;
- 14 (e) State the number, training preparedness, and fitness of all  
15 dedicated, prepositioned personnel assigned to direct and implement the  
16 plan;
- 17 (f) Incorporate periodic training and drill programs to evaluate  
18 whether personnel and equipment provided under the plan are in a state  
19 of operational readiness at all times;
- 20 (g) Describe important features of the surrounding environment,  
21 including fish and wildlife habitat, environmentally sensitive areas,  
22 and public facilities. The departments of ecology, fisheries,  
23 wildlife, and natural resources, upon request, shall provide  
24 information that they have available to assist in preparing this  
25 description;
- 26 (h) State the means of protecting and mitigating effects on the  
27 environment, including fish, marine mammals, and other wildlife, and  
28 ensure that implementation of the plan does not pose unacceptable risks  
29 to the public or the environment;

1 (i) Establish guidelines for the use of equipment by the crew of  
2 a vessel to minimize vessel damage, stop or reduce any spilling from  
3 the 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 section 416 of this act, state the measures that have been taken to  
15 reduce the likelihood that a spill will occur, including but not  
16 limited to, design and operation of a vessel, training of personnel,  
17 number of 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 or by the agent for the vessel resident in this state. Subject  
13 to conditions imposed by the office, the owner, operator, or agent may  
14 submit a single contingency plan for cargo vessels or passenger vessels  
15 of a particular class.

16 (c) A person who has contracted with a covered vessel to provide  
17 containment and cleanup services and who meets the standards  
18 established pursuant to RCW 90.48.372 as recodified by this act, may  
19 submit the plan for any covered vessel for which the person is  
20 contractually obligated to provide services. Subject to conditions  
21 imposed by the office, the person may submit a single plan for more  
22 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 NEW SECTION. **Sec. 418.** The provisions of prevention plans and  
17 contingency plans approved by the office pursuant to this chapter shall  
18 be legally binding on those persons submitting them to the office and  
19 on their successors, assigns, agents, and employees. The superior  
20 court shall have jurisdiction to restrain a violation of, compel  
21 specific performance of, or otherwise to enforce such plans upon  
22 application by the office. The office may issue an order pursuant to  
23 chapter 34.05 RCW requiring compliance with a contingency plan or a  
24 prevention plan and may impose administrative penalties for failure to  
25 comply with a plan.

26 NEW SECTION. **Sec. 419.** (1) Except as provided in subsection (2)  
27 of this section, it shall be unlawful for the owner or operator to  
28 knowingly and intentionally operate in this state or on the waters of

1 this state a covered vessel without an approved contingency plan or an  
2 approved prevention plan as required by this chapter, or financial  
3 responsibility in compliance with chapter 88.40 RCW and the federal oil  
4 pollution act of 1990. The first conviction under this section shall  
5 be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent  
6 conviction shall be a class C felony under chapter 9A.20 RCW.

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

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

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

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

16 (3) A person may rely on a copy of the statement issued by the  
17 office pursuant to section 417 of this act as evidence that a vessel  
18 has an approved contingency plan and the statement issued pursuant to  
19 section 416 of this act that a vessel has an approved prevention plan.

20 NEW SECTION. **Sec. 420.** (1) Except as provided in subsection (4)  
21 of this section, it shall be unlawful for a covered vessel to enter the  
22 waters of the state without an approved contingency plan required by  
23 section 417 of this act, a spill prevention plan required by section  
24 416 of this act, or financial responsibility in compliance with chapter  
25 88.40 RCW and the federal oil pollution act of 1990. The office may  
26 deny entry onto the waters of the state to any covered vessel that does  
27 not have a required contingency or spill prevention plan or financial  
28 responsibility.

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

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

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

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

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

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

22 (5) Any person may rely on a copy of the statement issued by the  
23 office to section 417 of this act as evidence that the vessel has an  
24 approved contingency plan and the statement issued pursuant to section  
25 416 of this act as evidence that the vessel has an approved spill  
26 prevention plan.

27 NEW SECTION. **Sec. 421.** NOTIFICATION OF ACCIDENTS AND NEAR MISS  
28 INCIDENTS. (1) In order to assist the state in identifying areas of  
29 the navigable waters of the state needing special attention, the owner

1 or operator of a covered vessel shall notify the coast guard within one  
2 hour:

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

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

7 (2) The division of emergency management of the department of  
8 community development and the office shall request the coast guard to  
9 notify the division of emergency management as soon as possible after  
10 the coast guard receives notice of a disabled covered vessel or of a  
11 collision or near miss incident within twelve miles of the shore of the  
12 state. The office shall negotiate an agreement with the coast guard  
13 governing procedures for coast guard notification to the state  
14 regarding disabled covered vessels and collisions and near miss  
15 incidents.

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

20 (4) For the purposes of this section:

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

23 (i) Any accidental or intentional grounding;

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

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

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

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

5 (i) The towing mechanism becomes disabled;

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

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

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

15 NEW SECTION. **Sec. 422.** REGIONAL MARINE SAFETY COMMITTEES. (1)  
16 The office shall establish regional marine safety committees at least  
17 for the Strait of Juan de Fuca/Puget Sound and Grays Harbor/Pacific  
18 coast. It is the intent of the legislature that the office also  
19 establish a regional marine safety committee jointly with the state of  
20 Oregon for the Columbia river. The office by rule shall establish the  
21 boundaries of the committees.

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

26 (3) The administrator or his or her designee shall chair each of  
27 the regional committees. Each member of the committee shall be  
28 reimbursed for actual and necessary expenses incurred in the  
29 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 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 section  
21 501 of this act and the office concerning vessel traffic safety in its  
22 region and any recommendations for improving tanker, barge, and other  
23 vessel safety in the region by amending the regional marine safety  
24 plan. The regional committees shall also provide technical assistance  
25 to the marine oversight board.

26 NEW SECTION. **Sec. 423.** TANK VESSEL RESPONSE EQUIPMENT STANDARDS.

27 The office may adopt rules including but not limited to standards for  
28 spill response equipment to be maintained on tank vessels.

1        NEW SECTION.    **Sec. 424.**    EMERGENCY RESPONSE SYSTEM.    An emergency  
2 response system for the Strait of Juan de Fuca shall be established by  
3 July 1, 1992.    In establishing the emergency response system, the  
4 administrator shall consider the recommendations of the regional marine  
5 safety committees.    The administrator shall also consult with the  
6 province of British Columbia regarding its participation in the  
7 emergency response system.

8        NEW SECTION.    **Sec. 425.**    CAPTIONS NOT LAW.    Section headings as  
9 used in this chapter do not constitute any part of the law.

10        **Sec. 426.**    RCW 90.48.385 and 1990 c 116 s 16 are each amended to  
11 read as follows:

12        (~~The department of ecology shall study standards for the manner in~~  
13 ~~which, and the equipment with which, tow boats may tow barges carrying~~  
14 ~~oil or hazardous substances as cargo or cargo residue.))    The regional  
15 marine safety committees established pursuant to section 422 of this  
16 1991 act shall study federal requirements for tow equipment for barges  
17 carrying oil in bulk.    The committees shall review standards (~~shall~~  
18 ~~address but are not limited to~~) for:    Wire rope specifications,  
19 catenary, the design of related on-board equipment, number of cables,  
20 (~~and~~) back-up or barge retrieval systems in case of cable break, and  
21 the operation, maintenance, and inspection of cables and other tow  
22 equipment.~~

23        (~~The department shall seek voluntary compliance with such~~  
24 ~~standards.~~

25        ~~Finally, the department shall study state jurisdiction over and~~  
26 ~~liability of mandatory compliance with such standards. The department~~  
27 ~~shall report to the appropriate standing committees of the legislature~~

1 by July 1, 1991, recommendations regarding mandatory compliance with  
2 such standards.))

3 The committees shall submit their report to the office within one  
4 year after the committees are established. The report shall include a  
5 recommendation on whether the office should adopt standards for tow  
6 equipment and its maintenance, operation, and inspection. If there is  
7 a recommendation that the office adopt standards, the recommended  
8 standards shall also be included in the report.

9 **Sec. 427.** RCW 90.48.510 and 1987 c 479 s 2 are each amended to  
10 read as follows:

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

1 offshore facility shall include the procedures used to contain and  
2 recover discharges in the facility's contingency plan. It is the  
3 responsibility of the person providing bunkering, refueling, or  
4 lightering services to provide any containment or recovery equipment  
5 required under this section.

6 **PART V**

7 **MARINE OVERSIGHT BOARD**

8 NEW SECTION. **Sec. 501.** MARINE OVERSIGHT BOARD. (1) The oil and  
9 hazardous substance marine oversight board is established to provide  
10 independent oversight of the actions of the federal government,  
11 industry, the department, the office, and other state agencies with  
12 respect to oil and hazardous substance spill prevention and response.

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

27 (b) To minimize duplication of effort, reviews conducted by the  
28 board shall be coordinated with related activities of the federal

1 government, the department, the office, and other appropriate state and  
2 international entities.

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

7 (3) There shall be five members of the board appointed by the  
8 governor for terms of five years. Members' terms shall be staggered.  
9 The members of the board shall be representative of the public and  
10 shall have demonstrable knowledge of environmental protection and the  
11 study of marine ecosystems, or have familiarity with marine  
12 transportation systems. No member of the board may be in the business  
13 of, or be employed by, or under contract with, any person or entity  
14 that is in the business of transporting, storing, or handling oil or  
15 hazardous substances or be employed by a recognized environmental  
16 organization.

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

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

## 23 PART VI

### 24 TANKER REQUIREMENTS

25 **Sec. 601.** RCW 88.16.170 and 1975 1st ex.s. c 125 s 1 are each  
26 amended to read as follows:

27 Because of the danger of spills, the legislature finds that the  
28 transportation of crude oil and refined petroleum products by tankers

1 on the Columbia river and on Puget Sound and adjacent waters creates a  
2 great potential hazard to important natural resources of the state and  
3 to jobs and incomes dependent on these resources.

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

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

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

19 It is therefore the intent and purpose of RCW 88.16.180 and  
20 88.16.190 to decrease the likelihood of oil spills on the Columbia  
21 river and on Puget Sound and its shorelines by requiring all oil  
22 tankers above a certain size to employ ((~~Washington state~~)) licensed  
23 pilots and(~~(, if lacking certain safety and maneuvering capability~~  
24 ~~requirements,)) to be escorted by a tug or tugs while navigating on  
25 certain areas of Puget Sound and adjacent waters.~~

26 **Sec. 602.** RCW 88.16.180 and 1983 c 3 s 231 are each amended to  
27 read as follows:

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

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

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

8 **Sec. 603.** RCW 88.16.200 and 1977 ex.s. c 337 s 16 are each amended  
9 to read as follows:

10 Any vessel designed for the purpose of carrying as its cargo  
11 liquefied natural or propane gas shall adhere to the provisions of RCW  
12 88.16.190(2) as though it ~~((was))~~ were an oil tanker.

13 NEW SECTION. **Sec. 604.** RECKLESS OPERATION OF A VESSEL. (1) A  
14 person commits the crime of reckless operation of a tank vessel if,  
15 while operating, navigating, or piloting a tank vessel, the person,  
16 with recklessness as defined in RCW 9A.08.010, causes a release of oil.

17 (2) Reckless operation of a tank vessel is a class C felony under  
18 chapter 9A.20 RCW.

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

24 (2) Negligent operation of a tank vessel is a gross misdemeanor  
25 under chapter 9A.20 RCW.

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

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

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

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

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

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

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

21        NEW SECTION.     **Sec. 607.**     BREATH OR BLOOD ANALYSIS. (1) Upon the  
22 trial of any civil or criminal action or proceeding arising out of acts  
23 alleged to have been committed by a person while operating a vessel  
24 while under the influence of intoxicating liquor or drugs, if the  
25 amount of alcohol in the person's blood or breath at the time alleged  
26 as shown by analysis of his blood or breath is less than 0.06 percent  
27 by weight of alcohol in his blood or 0.06 grams of alcohol per two  
28 hundred ten liters of the person's breath, it is evidence that may be



1 considered with other competent evidence in determining whether the  
2 person was under the influence of intoxicating liquor or drugs.

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

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

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

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

29 (6) Upon the request of the person who submits to a test or tests  
30 at the request of a law enforcement officer, full information

1 concerning the test or tests shall be made available to the person or  
2 his or her attorney.

3 NEW SECTION. **Sec. 608.** LIMITED IMMUNITY FOR BLOOD WITHDRAWAL. No  
4 physician, registered nurse, qualified technician, or hospital, or duly  
5 licensed clinical laboratory employing or using services of the  
6 physician, registered nurse, or qualified technician, may incur any  
7 civil or criminal liability as a result of the act of withdrawing blood  
8 from any person when directed by a law enforcement officer to do so for  
9 the purpose of a blood test under section 607 of this act. This  
10 section shall not relieve any physician, registered nurse, qualified  
11 technician, or hospital or duly licensed clinical laboratory from civil  
12 liability arising from the use of improper procedures or failing to  
13 exercise the required standard of care.

14 PART VII

15 FINANCIAL RESPONSIBILITY

16 **Sec. 701.** RCW 88.40.005 and 1990 c 116 s 29 are each amended to  
17 read as follows:

18 The legislature recognizes that oil and hazardous substance spills  
19 and other forms of incremental pollution present serious danger to the  
20 fragile marine environment of Washington state. It is the intent and  
21 purpose of this chapter to define and prescribe financial  
22 responsibility requirements for vessels that transport petroleum  
23 products and hazardous substances as cargo or as fuel across the waters  
24 of the state of Washington and for facilities that store, handle, or  
25 transfer oil or hazardous substances in bulk on or near the navigable  
26 waters.

1        NEW SECTION.    **Sec. 702.**    DEFINITIONS.    Unless the context clearly  
2 requires otherwise, the definitions in this section apply throughout  
3 this chapter.

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

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

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

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

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

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

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

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

28       (8) "Hazardous substances" means any substance listed in Table  
29 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section  
30 101(14) of the federal comprehensive environmental response,

1 compensation, and liability act of 1980, as amended by P.L. 99-499.  
2 The following are not hazardous substances for purposes of this  
3 chapter:

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

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

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

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

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

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

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

28 (14) "Onshore facility" means any facility any part of which is  
29 located in, on, or under any land of the state, other than submerged  
30 land, that because of its location, could reasonably be expected to

1 cause substantial harm to the environment by discharging oil into or on  
2 the navigable waters of the state or the adjoining shorelines.

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

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

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

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

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

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

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

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

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

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

3       ~~(1) Any ((vessel over three hundred gross tons, that transports~~  
4 ~~petroleum products as cargo, and any)) inland barge that transports~~  
5 ~~((oil or)) hazardous substances as cargo, using any port or place in~~  
6 ~~the state of Washington or the navigable waters of the state shall~~  
7 ~~establish((, under rules prescribed by the director of the department~~  
8 ~~of ecology,)) evidence of financial responsibility in the amount of the~~  
9 ~~greater of one million dollars, or one hundred fifty dollars per gross~~  
10 ~~ton of such vessel((, to meet the liability to the state of Washington~~  
11 ~~for the following:—(1) The actual costs for removal of spills of~~  
12 ~~petroleum products or hazardous substances; (2) civil penalties and~~  
13 ~~finest; and (3) natural resource damages)).~~

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

17       (b) The department by rule may establish a lesser standard of  
18 financial responsibility for barges of three thousand gross tons or  
19 less. The standard shall set the level of financial responsibility  
20 based on the quantity of cargo the barge is capable of carrying. The  
21 department shall not set the standard for barges of three thousand  
22 gross tons or less below that required under federal law.

23       (c) The owner or operator of a tank vessel who is a member of an  
24 international protection and indemnity mutual organization and is  
25 covered for oil pollution risks up to the amounts required under this  
26 section is not required to demonstrate financial responsibility under  
27 this chapter.

28       (3) A cargo vessel or passenger vessel that carries oil as fuel  
29 shall demonstrate financial responsibility to pay the greater of at

1 least six hundred dollars per gross ton or five hundred thousand  
2 dollars.

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

6 (5) The office may by rule set a lesser amount of financial  
7 responsibility for a tank vessel that meets standards for construction,  
8 propulsion, equipment, and personnel established by the office. The  
9 office shall require as a minimum level of financial responsibility  
10 under this subsection the same level of financial responsibility  
11 required under federal law.

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

14 NEW SECTION. Sec. 704. An onshore or offshore facility shall  
15 demonstrate financial responsibility in an amount determined by the  
16 department as necessary to compensate the state and affected counties  
17 and cities for damages that might occur during a reasonable worst case  
18 spill of oil from that facility into the navigable waters of the state.  
19 The department shall consider such matters as the amount of oil that  
20 could be spilled into the navigable waters from the facility, the cost  
21 of cleaning up the spilled oil, the frequency of operations at the  
22 facility, the damages that could result from the spill and the  
23 commercial availability and affordability of financial responsibility.  
24 This section shall not apply to an onshore or offshore facility owned  
25 or operated by the federal government or by the state or local  
26 government.

27 **Sec. 705.** RCW 88.40.030 and 1990 c 116 s 32 are each amended to  
28 read as follows:

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

21 **Sec. 706.** RCW 88.40.040 and 1989 1st ex.s. c 2 s 5 are each  
22 amended to read as follows:

23 (1) The office shall deny entry to the waters of the state to any  
24 vessel that does not meet the financial responsibility requirements of  
25 this chapter. Any vessel owner or operator that does not meet the  
26 financial responsibility requirements of this chapter and any rules  
27 prescribed thereunder or the federal oil pollution act of 1990 shall be  
28 reported by the office to the ~~((secretary of transportation who shall~~



1 ~~suspend the privilege of operating said vessel until financial~~  
2 ~~responsibility is demonstrated)) United States coast guard.~~

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

5 (3) Any onshore or offshore facility owner or operator who does not  
6 meet the financial responsibility requirements of section 704 of this  
7 1991 act and any rules adopted by the department shall be reported to  
8 the secretary of state. The secretary of state shall suspend the  
9 facility's privilege of operating in this state until financial  
10 responsibility is demonstrated.

11 **PART VIII**

12 **FUNDS**

13 NEW SECTION. **Sec. 801.** Unless the context clearly requires  
14 otherwise, the definitions in this section apply throughout this  
15 chapter.

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

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

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

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

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

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

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

8 (8) "Taxpayer" means the person owning crude oil or petroleum  
9 products at the time the same are off-loaded at a marine terminal in  
10 this state and who is liable for the taxes imposed by this chapter.

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

16 NEW SECTION. **Sec. 802.** (1) An oil spill response tax is imposed  
17 on the privilege of off-loading crude oil or petroleum products at a  
18 marine terminal within this state from a waterborne vessel or barge  
19 operating on the navigable waters of this state. The tax imposed in  
20 this section is levied upon the owner of the crude oil or petroleum  
21 products at the time such off-loading occurs at the rate of two cents  
22 per barrel of crude oil or petroleum product off-loaded.

23 (2) In addition to the tax imposed in subsection (1) of this  
24 section, an oil spill administration tax is imposed on the privilege of  
25 off-loading crude oil or petroleum products at a marine terminal within  
26 this state from a waterborne vessel or barge operating on the navigable  
27 waters of this state. The tax imposed in this section is levied upon  
28 the owner of the crude oil or petroleum products at the time such off-

1 loading occurs at the rate of three cents per barrel of crude oil or  
2 petroleum product off-loaded.

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

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

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

28 (6) The taxes shall be due from the marine terminal operator, along  
29 with reports and returns on forms prescribed by the department, within

1 twenty-five days after the end of the month in which the taxable  
2 activity occurs.

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

10 (8) Upon prior approval of the department, the owner of crude oil  
11 or petroleum products off-loaded in this state may pay the taxes  
12 imposed by this chapter directly to the department. The department  
13 shall give its approval for direct payment under this section whenever  
14 it appears, in the department's judgment, that direct payment will  
15 enhance the administration of the taxes imposed under this chapter.  
16 The department shall provide by rule for the issuance of a direct  
17 payment certificate to any taxpayer qualifying for direct payment of  
18 the taxes. Good faith acceptance of a direct payment certificate by a  
19 terminal operator shall relieve the marine terminal operator from any  
20 liability for the collection or payment of the taxes imposed under this  
21 chapter.

22 (9) All receipts from the tax imposed in subsection (1) of this  
23 section shall be deposited into the state oil spill response account.  
24 All receipts from the tax imposed in subsection (2) of this section  
25 shall be deposited into the state oil spill administration account.

26 (10) Within forty-five days after the end of each calendar quarter,  
27 the office of financial management shall determine the balance of the  
28 oil spill response account as of the last day of that calendar quarter.  
29 Balance determinations by the office of financial management under this  
30 section are final and shall not be used to challenge the validity of

1 any tax imposed under this chapter. The office of financial management  
2 shall promptly notify the departments of revenue and ecology of the  
3 account balance once a determination is made. For each subsequent  
4 calendar quarter, the tax imposed by subsection (1) of this section  
5 shall be imposed during the entire calendar quarter unless:

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

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

12 NEW SECTION. **Sec. 803.** The taxes imposed under this chapter shall  
13 only apply to the first off-loading of crude oil or petroleum products  
14 at a marine terminal in this state and not to the later transporting  
15 and subsequent off-loading of the same oil or petroleum product,  
16 whether in the form originally off-loaded in this state or after  
17 refining or other processing.

18 NEW SECTION. **Sec. 804.** Credit shall be allowed against the taxes  
19 imposed under this chapter for any crude oil or petroleum products off-  
20 loaded at a marine terminal and subsequently exported from or sold for  
21 export from the state.

22 NEW SECTION. **Sec. 805.** The state oil spill response account is  
23 created in the custody of the state treasurer. All receipts from  
24 section 802(1) of this act shall be deposited in the account. The  
25 account is subject to allotment procedures under chapter 43.88 RCW.  
26 Only the director of the department of ecology or the director's  
27 designee may authorize expenditures from the account. Expenditures

1 from the account shall be used exclusively for the costs associated  
2 with the response to spills of crude oil or petroleum products into the  
3 navigable waters of the state. Payment of response costs under this  
4 section shall be limited to spills which the director has determined  
5 are likely to exceed fifty thousand dollars. Prior to approving an  
6 expenditure under this section, the director shall make reasonable  
7 efforts to obtain funding for response costs from the person  
8 responsible for the spill and from other sources, including the federal  
9 government. Reimbursement for response costs shall be allowed only for  
10 costs which are not covered by funds appropriated to the agencies  
11 responsible for response activities. Costs associated with the  
12 response to spills of crude oil or petroleum products shall include:

- 13 (1) Natural resource damage assessment and related activities;
- 14 (2) Spill related response, containment, wildlife rescue, cleanup,  
15 disposal, and associated costs;
- 16 (3) Interagency coordination and public information related to a  
17 response; and
- 18 (4) Appropriate travel, goods and services, contracts, and  
19 equipment.

20 NEW SECTION. **Sec. 806.** The state oil spill administration account  
21 is created in the state treasury. All receipts from section 802(2) of  
22 this act shall be deposited in the account. Moneys from the account  
23 may be spent only after appropriation. The account is subject to  
24 allotment procedures under chapter 43.88 RCW. On July 1 of each odd-  
25 numbered year, if receipts from the tax imposed by section 802(2) of  
26 this act for the previous fiscal biennium exceed the amount  
27 appropriated from the account for the previous fiscal biennium, the  
28 state treasurer shall transfer the amount of receipts exceeding the  
29 appropriation to the oil spill response account. Expenditures from the

1 oil spill administration account shall be used exclusively for the  
2 administrative costs related to the purposes of this chapter, and  
3 chapters 90.48, 88.40, and 88.-- (sections 413 through 425 of this act)  
4 RCW. Costs of administration include the costs of:

5 (1) Routine responses not covered under section 805 of this act;

6 (2) Management and staff development activities;

7 (3) Development of rules and policies and the state-wide plan  
8 provided for in RCW 90.48.378 as recodified by this act;

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

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

12 (6) Collection and administration of the tax provided for in  
13 chapter 82.-- RCW (sections 801 through 804, 809, and 810 of this act);  
14 and

15 (7) Appropriate travel, goods and services, contracts, and  
16 equipment.

17 NEW SECTION. **Sec. 807.** The following amounts are appropriated  
18 from the oil spill administration account for the biennium ending June  
19 30, 1993, for the purposes of this act and chapters 90.48, 90.56,  
20 88.40, and 88.-- (sections 413 through 425 of this act) RCW.

21 Department of Ecology	\$ 2,844,000
22 Marine Safety Office	\$ 2,996,000
23 Department of Wildlife	\$ 965,000
24 Department of Community Development	\$ 500,000
25 Department of Fisheries	\$ 410,000
26 State Parks and Recreation Commission	\$ 61,000
27 University of Washington	\$ 229,000
28 Department of Natural Resources	\$ 35,000

1 Department of Revenue \$ 120,000

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

3 The appropriations in this section are subject to the following  
4 conditions and limitations:

5 (1) The entire appropriation to the University of Washington is  
6 provided solely for the Washington sea grant program to develop and  
7 conduct a spill prevention education program in accordance with section  
8 110 of this act; and

9 (2) \$450,000 of the appropriation to the department of wildlife is  
10 provided solely for a marine mammal and bird rehabilitation center, of  
11 which \$400,000 is for one-time capital costs and \$50,000 is for  
12 biennial contract staffing costs for the center.

13 NEW SECTION. Sec. 808. The director of the department of ecology  
14 shall submit a report to the appropriate standing committees of the  
15 legislature by November 1 of each even-numbered year showing detailed  
16 information regarding expenditures authorized by the director under  
17 section 805 of this act. The report shall include, but not be limited  
18 to:

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

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

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

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



1 (5) A recommendation concerning the need to continue collecting the  
2 tax under section 802(1) of this act.

3 This section shall expire December 31, 1996.

4 NEW SECTION. **Sec. 809.** The department shall adopt such rules as  
5 may be necessary to enforce and administer the provisions of this  
6 chapter.

7 NEW SECTION. **Sec. 810.** The taxes imposed in this chapter shall  
8 take effect October 1, 1991.

9 **Sec. 811.** RCW 90.48.142 and 1989 c 262 s 2 are each amended to  
10 read as follows:

11 (1) Any person who:

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

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

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

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

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

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

3 shall be liable to pay the state and affected counties and cities  
4 damages in an amount ~~((equal to the sum of money necessary to:—(a)~~  
5 ~~Restore any damaged resource to its condition prior to the injury, to~~  
6 ~~the extent technically feasible, and compensate for the lost value~~  
7 ~~incurred during the period between injury and restoration; or (b)~~  
8 ~~compensate for the lost value throughout the duration of the injury~~  
9 ~~that the resource previously provided if restoration is not technically~~  
10 ~~feasible and, when only partial restoration is technically feasible,~~  
11 ~~compensate for the remaining lost value.—"Technical feasibility" or~~  
12 ~~"technically feasible" shall mean for the purposes of this subsection,~~  
13 ~~that given available technology, a restoration or enhancement project~~  
14 ~~can be successfully completed at a cost that is not disproportionate to~~  
15 ~~the value of the resource prior to the injury.~~

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

27        ~~(3) Such damages shall be recoverable in an action brought by the~~  
28 ~~attorney general on behalf of the people of the state of Washington in~~  
29 ~~the superior court of Thurston county or the county in which such~~  
30 ~~damages occurred: PROVIDED, That if damages occurred in more than one~~

1 county the attorney general may bring action in any of the counties  
2 where the damages occurred. Any money so recovered by the attorney  
3 general shall be transferred to the coastal protection fund established  
4 under RCW 90.48.390. A steering committee consisting of  
5 representatives of the departments of ecology, fisheries, wildlife,  
6 natural resources, and the parks and recreation commission shall  
7 authorize the expenditure of the moneys collected under this section  
8 after consulting impacted local agencies and local and tribal  
9 governments. The department shall chair the steering committee. The  
10 moneys collected under this section shall only be used for the  
11 following purposes: (a) Environmental restoration and enhancement  
12 projects intended to restore or enhance environmental, recreational, or  
13 aesthetic resources for the benefit of Washington's citizens; (b)  
14 investigations of the long term effects of discharges, including sewer  
15 sludge, on state resources; and (c) reimbursement of agencies for  
16 reasonable reconnaissance and damage assessment costs under this  
17 chapter. Agencies may not be reimbursed under this section for the  
18 salaries and benefits of permanent employees for routine operational  
19 support. Agencies may only be reimbursed under this section if money  
20 for reconnaissance and damage assessment activities is unavailable from  
21 other sources. In authorizing restoration or enhancement projects,  
22 preference shall be given to projects within counties where the injury  
23 occurred)) determined pursuant to RCW 90.48.367.

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

27 NEW SECTION. **Sec. 812.** A new section is added to chapter 90.48  
28 RCW to read as follows:

1 For the purposes of this chapter, "technical feasibility" or  
2 "technically feasible" means that given available technology, a  
3 restoration or enhancement project can be successfully completed at a  
4 cost that is not disproportionate to the value of the resource before  
5 the injury.

6 **Sec. 813.** RCW 90.48.366 and 1989 c 388 s 2 are each amended to  
7 read as follows:

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

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

27 (2) The sensitivity of the affected area as determined by such  
28 factors as: (a) The location of the spill; (b) habitat and living  
29 resource sensitivity; (c) seasonal distribution or sensitivity of

1 living resources; (d) areas of recreational use or aesthetic  
2 importance; (e) the proximity of the spill to important habitats for  
3 birds, aquatic mammals, fish, or to species listed as threatened or  
4 endangered under state or federal law; and (f) other areas of special  
5 ecological or recreational importance, as determined by the department;  
6 and

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

16 **Sec. 814.** RCW 90.48.367 and 1989 c 388 s 3 are each amended to  
17 read as follows:

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

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

1       ~~(2) Compensation shall not be assessed under this section for oil~~  
2 ~~spills for which damages have been or will be assessed under RCW~~  
3 ~~90.48.142)).~~

4       (3) If the preassessment screening committee determines that the  
5 compensation schedule should not be used, compensation shall be  
6 assessed for the amount of money necessary to restore any damaged  
7 resource to its condition before the injury, to the extent technically  
8 feasible, and compensate for the lost value incurred during the period  
9 between injury and restoration.

10       (4) Restoration shall include the cost to restock such waters,  
11 replenish or replace such resources, and otherwise restore the stream,  
12 lake, or other waters of the state, including any estuary, ocean area,  
13 submerged lands, shoreline, bank, or other lands adjoining such waters  
14 to its condition before the injury, as such condition is determined by  
15 the department. The lost value of a damaged resource shall be equal to  
16 the sum of consumptive, nonconsumptive, and indirect use values, as  
17 well as lost taxation, leasing, and licensing revenues. Indirect use  
18 values may include existence, bequest, option, and aesthetic values.  
19 Damages shall be determined by generally accepted and cost-effective  
20 procedures, including, but not limited to, contingent valuation method  
21 studies.

22       (5) Compensation assessed under this section shall be recoverable  
23 in an action brought by the attorney general on behalf of the people of  
24 the state of Washington and affected counties and cities in the  
25 superior court of Thurston county or any county in which damages  
26 occurred. Moneys recovered by the attorney general under this section  
27 shall be deposited in the coastal protection fund established under RCW  
28 90.48.390, and shall only be used for the purposes stated in RCW  
29 90.48.400.

1       (~~(4)~~) (6) Compensation assessed under this section (~~(for a~~  
2 ~~particular oil spill)~~) shall preclude claims under this chapter by  
3 local governments for compensation for damages to publicly owned  
4 resources resulting from the same (~~(spill)~~) incident.

5       **Sec. 815.** RCW 90.48.368 and 1989 c 388 s 4 are each amended to  
6 read as follows:

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

25       (2) A preassessment screening committee may consist of  
26 representatives of the departments of ecology, fisheries, wildlife,  
27 natural resources, social and health services, and emergency  
28 management, the parks and recreation commission, as well as other  
29 federal, state, and local agencies, and tribal and local governments

1 whose presence would enhance the reconnaissance or damage assessment  
2 aspects of ((oil)) spill response. The department shall chair the  
3 committee and determine which representatives will be needed on a  
4 spill-by-spill basis.

5 (3) The committee shall consider the following factors when  
6 determining whether a damage assessment study authorized under RCW  
7 ((90.48.142)) 90.48.367 should be conducted: (a) Whether evidence from  
8 reconnaissance investigations suggests that injury has occurred or is  
9 likely to occur to publicly owned resources; (b) the potential loss in  
10 services provided by resources injured or likely to be injured and the  
11 expected value of the potential loss; (c) whether a restoration project  
12 to return lost services is technically feasible; (d) the accuracy of  
13 damage quantification methods that could be used and the anticipated  
14 cost-effectiveness of applying each method; (e) the extent to which  
15 likely injury to resources can be verified with available  
16 quantification methods; and (f) whether the injury, once quantified,  
17 can be translated into monetary values with sufficient precision or  
18 accuracy.

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

24 (5) Oil and hazardous substance spill damage assessment studies  
25 authorized under RCW ((90.48.142)) 90.48.367 may only be conducted if  
26 the committee, after considering the factors enumerated in subsection  
27 (3) of this section, determines that the damages to be investigated are  
28 quantifiable at a reasonable cost and that proposed assessment studies  
29 are clearly linked to quantification of the damages incurred.



1       (~~(5)~~) (6) As new information becomes available, the committee may  
2 reevaluate the scope of damage assessment using the factors listed in  
3 subsection (3) of this section and may reduce or expand the scope of  
4 damage assessment as appropriate.

5       (~~(6)~~) (7) The preassessment screening process shall provide for  
6 the ongoing involvement of persons who may be liable for damages  
7 resulting from an oil or hazardous substance spill. The department may  
8 negotiate with a potentially liable party to perform restoration and  
9 enhancement projects or studies which may substitute for all or part of  
10 the compensation authorized under RCW 90.48.366 and 90.48.367 or the  
11 damage assessment studies authorized under RCW (~~(90.48.142)~~) 90.48.367.

12       (~~(7)~~) (8) For the purposes of this section and RCW 90.48.367, the  
13 cost of a damage assessment shall be considered "reasonable" when the  
14 anticipated cost of the damage assessment is expected to be less than  
15 the anticipated damage that may have occurred or may occur.

16       **Sec. 816.** RCW 90.48.390 and 1989 c 388 s 7 and 1989 c 262 s 3 are  
17 each reenacted and amended to read as follows:

18       The coastal protection fund is established to be used by the  
19 department as a revolving fund for carrying out the purposes of  
20 restoration of natural resources under this chapter and chapter 90.56  
21 RCW (~~(90.48.315 through 90.48.365, 78.52.020, 78.52.125, 82.36.330,~~  
22 90.48.142, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906  
23 and 90.48.907, and 90.48.366 through 90.48.368)). To this fund there  
24 shall be credited penalties, fees, damages, (~~and~~) charges received  
25 pursuant to the provisions of this chapter and chapter 90.56 RCW  
26 (~~(90.48.142 and 90.48.315 through 90.48.365)~~), compensation for damages  
27 received under this chapter and chapter 90.56 RCW (~~(90.48.366 through~~  
28 ~~90.48.368)~~), and an amount equivalent to one cent per gallon from each  
29 marine use refund claim under RCW 82.36.330.

1 Moneys in the fund not needed currently to meet the obligations of  
2 the department in the exercise of its powers, duties, and functions  
3 under RCW (~~((90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125,~~  
4 ~~82.36.330,))~~ 90.48.142, (~~((90.48.315, 90.48.370 through 90.48.410,~~  
5 ~~90.48.903, 90.48.906 and 90.48.907))~~) 90.48.366, 90.48.367, and  
6 90.48.368 shall be deposited with the state treasurer to the credit of  
7 the fund and may be invested in such manner as is provided for by law.  
8 Interest received on such investment shall be credited to the fund.

9 **Sec. 817.** RCW 90.48.400 and 1990 c 116 s 14 are each amended to  
10 read as follows:

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

13 (a) (~~((All costs of the department related to the enforcement of RCW~~  
14 ~~90.48.315 through 90.48.365, 90.48.371 through 90.48.378, 90.48.381,~~  
15 ~~90.48.383, 90.48.385, 90.48.387, 90.48.388, 78.52.020, 78.52.125,~~  
16 ~~82.36.330, 90.48.142, 90.48.903, 90.48.906, and 90.48.907 including but~~  
17 ~~not limited to equipment rental and contracting costs.~~

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

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

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

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

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

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

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

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

24       (4) Agencies may not be reimbursed ~~((under this section))~~ from the  
25 coastal protection fund for the salaries and benefits of permanent  
26 employees for routine operational support. Agencies may only be  
27 reimbursed under this section if money for reconnaissance and damage  
28 assessment activities is unavailable from other sources.



1 ((+e)) (b) that supplies, stores, refrigerates, or transports fish,  
2 fish products, or materials directly related to fishing or the  
3 preparation of fish.

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

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

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

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

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

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

29 (11) "Steamship agent or agency" means an agent or agency appointed  
30 by a vessel owner or operator to enter or clear vessels at ports within

1 the state of Washington and to conduct onshore activities, or contract  
2 on behalf of the owner or operator for whatever is required for the  
3 efficient operation of the vessel.

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

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

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

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

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

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

28 **Sec. 902.** RCW 88.44.020 and 1990 c 117 s 3 are each amended to  
29 read as follows:

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

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

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

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

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

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

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

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

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

30        (9) To borrow money and incur indebtedness;

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

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

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

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

22           (13) To hold response readiness drills with state and federal  
23 agencies;

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

27           (15) To develop an oil spill contingency plan to comply with state  
28 statutes and rules for those vessels covered by the commission, except  
29 for vessels operating on the portion of the Columbia river that runs  
30 between the states of Washington and Oregon. The commission shall



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

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

9 **Sec. 903.** RCW 88.44.030 and 1990 c 117 s 4 are each amended to  
10 read as follows:

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

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

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

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

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

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

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

1       ~~(1) Foreign flag liner and fishing vessel members on July 1, 1991;~~  
2       ~~(2) Protection and indemnity club or marine member, and public~~  
3 ~~member on July 1, 1992; and~~  
4       ~~(3) All other members on July 1, 1993.)~~) The governor shall  
5 appoint members of the commission for three-year terms. The governor  
6 shall appoint the chairperson. The members of the commission elected  
7 before the effective date of this section shall continue as members  
8 until their terms would have expired under section 5, chapter 117, Laws  
9 of 1990.

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

18       **Sec. 905.** RCW 88.44.080 and 1990 c 117 s 9 are each amended to  
19 read as follows:

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

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

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

8       **Sec. 906.** RCW 88.44.110 and 1990 c 117 s 12 are each amended to  
9 read as follows:

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

26       **Sec. 907.** RCW 88.44.160 and 1990 c 117 s 17 are each amended to  
27 read as follows:

1 Rules and orders adopted by the commission shall be filed with the  
2 ((director)) administrator and shall become effective pursuant to the  
3 provisions of the administrative procedure act.

4 **PART X**

5 **PILOTAGE**

6 **Sec. 1001.** RCW 88.16.010 and 1987 c 485 s 1 are each amended to  
7 read as follows:

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

1 preceding the time of appointment and while serving on the board. One  
2 of said shipping commissioners shall be a representative of American  
3 and one of foreign shipping. At least one of the commissioners shall  
4 be a representative from a recognized environmental organization  
5 concerned with marine waters. The remaining commissioner(~~s~~) shall be  
6 (~~persons~~) interested in and concerned with pilotage, maritime safety,  
7 and marine affairs, with broad experience related to the maritime  
8 industry exclusive of experience as either a state licensed pilot or as  
9 a shipping representative.

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

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

17 **Sec. 1002.** RCW 88.16.090 and 1990 c 116 s 27 and 1990 c 112 s 1  
18 are each reenacted and amended to read as follows:

19 (1) A person may pilot any vessel subject to the provisions of this  
20 chapter on waters covered by this chapter only if appointed and  
21 licensed to pilot such vessels on said waters under and pursuant to the  
22 provisions of this chapter.

23 (2) A person is eligible to be appointed a pilot if the person is  
24 a citizen of the United States, over the age of twenty-five years and  
25 under the age of seventy years, a resident of the state of Washington  
26 at the time of appointment and only if the pilot applicant holds as a  
27 minimum, a United States government license as a master of ocean or  
28 near coastal steam or motor vessels of not more than one thousand six  
29 hundred gross tons or as a master of inland steam or motor vessels of

1 not more than one thousand six hundred gross tons, such license to have  
2 been held by the applicant for a period of at least two years prior  
3 such license to have been held by the applicant for a period of at  
4 least two years prior to taking the Washington state pilotage  
5 examination and a first class United States endorsement without  
6 restrictions on that license to pilot in the pilotage districts for  
7 which the pilot applicant desires to be licensed, and if the pilot  
8 applicant meets such other qualifications as may be required by the  
9 board. A person applying for a license under this section shall not  
10 have been convicted of an offense involving drugs or the personal  
11 consumption of alcohol in the twelve months prior to the date of  
12 application. This restriction does not apply to license renewals under  
13 this section.

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

23 (4) Pilot applicants shall be required to pass a written and oral  
24 examination administered and graded by the board which shall test such  
25 applicants on this chapter, the rules of the board, local harbor  
26 ordinances, and such other matters as may be required to compliment the  
27 United States examinations and qualifications. The board shall  
28 ~~((conduct the examination on a regular date, as prescribed by rule, at  
29 least once every two years))~~ hold examinations at such times as will,  
30 in the judgment of the board, ensure the maintenance of an efficient

1 and competent pilotage service. An examination shall be scheduled for  
2 the Puget Sound pilotage district if there are three or fewer  
3 successful candidates from the previous examination who are waiting to  
4 become pilots in that district.

5 (5) The board shall ~~((have developed five examinations and grading~~  
6 ~~sheets for the Puget Sound pilotage district, and two for each other))~~  
7 develop an examination and grading sheet for each pilotage district,  
8 for the testing and grading of pilot applicants. The examinations  
9 shall be administered to pilot applicants ~~((on a random basis))~~ and  
10 shall be updated as required to reflect changes in law, rules,  
11 policies, or procedures. The board may appoint a special independent  
12 examination committee or may contract with a firm knowledgeable and  
13 experienced in the development of professional tests for development of  
14 said examinations. Active licensed state pilots may be consulted for  
15 the general development of examinations but shall have no knowledge of  
16 the specific questions. The pilot members of the board may participate  
17 in the grading of examinations. If the board does appoint a special  
18 examination development committee it is authorized to pay the members  
19 of said committee the same compensation and travel expenses as received  
20 by members of the board. When grading examinations the board shall  
21 carefully follow the grading sheet prepared for that examination. The  
22 board shall develop a "sample examination" which would tend to indicate  
23 to an applicant the general types of questions on pilot examinations,  
24 but such sample questions shall not appear on any actual examinations.  
25 Any person who willfully gives advance knowledge of information  
26 contained on a pilot examination is guilty of a gross misdemeanor.

27 (6) All pilots and applicants are subject to an annual physical  
28 examination by a physician chosen by the board. The physician shall  
29 examine the applicant's heart, blood pressure, circulatory system,  
30 lungs and respiratory system, eyesight, hearing, and such other items



1 as may be prescribed by the board. After consultation with a physician  
2 and the United States coast guard, the board shall establish minimum  
3 health standards to ensure that pilots licensed by the state are able  
4 to perform their duties. Within ninety days of the date of each annual  
5 physical examination, and after review of the physician's report, the  
6 board shall make a determination of whether the pilot or candidate is  
7 fully able to carry out the duties of a pilot under this chapter. The  
8 board may in its discretion check with the appropriate authority for  
9 any convictions of offenses involving drugs or the personal consumption  
10 of alcohol in the prior twelve months.

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

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

25 (9) The board shall prescribe, pursuant to chapter 34.05 RCW, such  
26 reporting requirements and review procedures as may be necessary to  
27 assure the accuracy and validity of license and service claims, and  
28 records of familiarization trips of pilot candidates. Willful  
29 misrepresentation of such required information by a pilot candidate  
30 shall result in disqualification of the candidate.

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

5       **Sec. 1003.** RCW 88.16.105 and 1987 c 264 s 3 are each amended to  
6 read as follows:

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

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

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

1       (2) The report shall include information for each vessel that  
2 suffers a grounding, collision, or other major marine casualty that  
3 occurred while the pilot was on duty during the reporting period. The  
4 report shall also include information on near miss incidents as defined  
5 in section 421 of this 1991 act. Information concerning near miss  
6 incidents provided pursuant to this section shall not be used for  
7 imposing any sanctions or penalties. The board shall forward  
8 information provided under this subsection to the office of marine  
9 safety for inclusion in the collision reporting system established  
10 under section 421 of this 1991 act.

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

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

16       (a) Such provisions of the United States coast guard regulations  
17 governing the safety and navigation of vessels in United States waters,  
18 as codified in Title 33 of the code of federal regulations, as the  
19 board may prescribe; ~~((and))~~

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

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

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

26       (2) The master of any vessel which employs a Washington licensed  
27 pilot shall be prepared to produce, and any Washington licensed pilot  
28 employed by a vessel shall request to see, certificates of the vessel  
29 which certify and indicate that the vessel complies with subsection (1)

1 of this section and the rules of the board (~~promulgated~~) adopted  
2 pursuant to subsection (1) of this section.

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

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

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

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

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

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

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

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

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

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

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

12 **PART XI**

13 **MISCELLANEOUS PROVISIONS**

14 NEW SECTION. **Sec. 1101.** DEPARTMENT OF NATURAL RESOURCES LEASES.  
15 After the effective date of this section, the department of natural  
16 resources shall include in its leases for onshore and offshore  
17 facilities the following provisions:

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

20 (2) Require lessees and sublessees to operate according to the plan  
21 of operations and to keep the plan current in compliance with this  
22 chapter; and

23 (3) Include in its leases provisions that a violation by the lessee  
24 or sublessee of the provisions of this chapter may be grounds for  
25 termination of the lease.

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

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

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

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

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

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

7       **Sec. 1105.** RCW 90.48.156 and 1987 c 109 s 134 are each amended to  
8 read as follows:

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

14       **Sec. 1106.** RCW 90.48.240 and 1987 c 109 s 15 are each amended to  
15 read as follows:

16       Notwithstanding any other provisions of this chapter or chapter  
17 90.56 RCW, whenever it appears to the director that water quality  
18 conditions exist which require immediate action to protect the public  
19 health or welfare, or that a person required by RCW 90.48.160 to obtain  
20 a waste discharge permit prior to discharge is discharging without the  
21 same, or that a person conducting an operation which is subject to a  
22 permit issued pursuant to RCW 90.48.160 conducts the same in violation  
23 of the terms of said permit, causing water quality conditions to exist  
24 which require immediate action to protect the public health or welfare,  
25 the director may issue a written order to the person or persons  
26 responsible without prior notice or hearing, directing and affording  
27 the person or persons responsible the alternative of either (1)  
28 immediately discontinuing or modifying the discharge into the waters of

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

15 **Sec. 1107.** RCW 90.48.907 and 1971 ex.s. c 180 s 10 are each  
16 amended to read as follows:

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

24 NEW SECTION. **Sec. 1108.** The department of ecology, the office of  
25 marine safety, and the marine oversight board shall study issues  
26 related to the transportation and storage of bulk hazardous substances  
27 on or near the navigable waters of the state. The study shall develop  
28 information on the types, hazards, and quantity of bulk hazardous



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

13 NEW SECTION. **Sec. 1109.** The department of ecology shall report to  
14 the appropriate standing committees on the effectiveness of chapter  
15 90.56 RCW, and in particular as to how the chapter has been implemented  
16 to complement federal law. A report shall be submitted not later than  
17 December 1, 1992, and a second report not later than December 1, 1994.

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

25 NEW SECTION. **Sec. 1111.** TIMING OF CONTINGENCY PLAN RULES. The  
26 rules required by RCW 90.48.371 as recodified by this act for  
27 facilities and, except as otherwise provided in this section for

1 covered vessels, shall be adopted not later than July 1, 1991. The  
2 department shall exclude from the rules to be adopted by July 1, 1991,  
3 standards for tank vessels of less than twenty thousand deadweight  
4 tons, cargo vessels, and passenger vessels operating on the portion of  
5 the Columbia river for which the department determines that Washington  
6 and Oregon should cooperate in the adoption of standards for  
7 contingency plans. The department, after consultation with the  
8 appropriate state agencies in Oregon, shall adopt the rules for  
9 standards for contingency plans for this portion of the Columbia river  
10 at the earliest possible time, but not later than July 1, 1992.

11 NEW SECTION. **Sec. 1112.** CAPTIONS NOT LAW. Section headings and  
12 part headings as used in this chapter shall constitute no part of the  
13 law.

14 NEW SECTION. **Sec. 1113.** Sections 101, 103, 108 through 110, 201,  
15 203, 204, 501, 805, 806, and 1111 of this act are each added to a new  
16 chapter in Title 90 RCW to be codified as provided for in section 1114  
17 of this act.

18 NEW SECTION. **Sec. 1114.** CODIFICATION INSTRUCTIONS. (1) Parts I  
19 through III and V, and sections 805, 806, and 1111 of this act shall  
20 constitute a new chapter in Title 90 RCW to be codified as chapter  
21 90.56 RCW, and shall be codified and recodified as provided for in this  
22 section. The code reviser shall correct all statutory references to  
23 these sections to reflect this recodification.

24 The following sections shall be codified and recodified in the  
25 following order:

26 Section 101 of this act

27 RCW 90.48.315

1 Section 103 of this act  
2 RCW 90.48.370  
3 RCW 90.48.365  
4 RCW 90.48.380  
5 RCW 90.48.378  
6 Section 108 of this act  
7 Section 109 of this act  
8 Section 110 of this act  
9 RCW 90.48.387  
10 RCW 90.48.388  
11 Section 201 of this act  
12 RCW 90.48.371  
13 Section 203 of this act  
14 Section 204 of this act  
15 RCW 90.48.372  
16 RCW 90.48.373  
17 RCW 90.48.374  
18 RCW 90.48.375  
19 RCW 90.48.360  
20 RCW 90.48.376  
21 RCW 90.48.377  
22 RCW 90.48.320  
23 RCW 90.48.350  
24 RCW 90.48.325  
25 RCW 90.48.330  
26 RCW 90.48.335  
27 RCW 90.48.336  
28 RCW 90.48.338  
29 RCW 90.48.383  
30 RCW 90.48.340

1 RCW 90.48.355

2 RCW 90.48.343

3 Section 501 of this act

4 Section 805 of this act

5 Section 806 of this act

6 RCW 90.48.907.

7 (2) Sections 801 through 804, 809, and 810 of this act shall  
8 constitute a new chapter in Title 82 RCW.

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

11 (4)(a) Sections 413 through 425 of this act shall constitute a new  
12 chapter in Title 88 RCW.

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

15 (5) Sections 604 through 608 of this act are each added to chapter  
16 88.16 RCW.

17 NEW SECTION. **Sec. 1115.** REPEALER. The following acts or parts of  
18 acts are each repealed:

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

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

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

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 1116.**    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. 1117.**    This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and shall take  
8 effect immediately, except for sections 801 through 804, 809, and 810  
9 of this act, which shall take effect October 1, 1991.