

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1027

Chapter 200, Laws of 1991
(partial veto)

52nd Legislature
1991 Regular Session

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

EFFECTIVE DATE: 7/28/91 - Except Sections 101 through 429, 501 through 706, 805 through 807, 810 through 817, & 901 through 1118 which take effect on 5/15/91; Sections 801 through 804, 808, & 809 which take effect on 10/1/91; & Sections 430 through 436 which take effect on 7/1/97.

Passed by the House March 15, 1991
Yeas 86 Nays 12

JOE KING
Speaker of the
House of Representatives

Passed by the Senate April 19, 1991
Yeas 40 Nays 7

JOEL PRITCHARD
President of the Senate

Approved May 15, 1991, with the exception of sections 306, 1005, and 1117, which are vetoed.

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1027** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 15, 1991 - 2:22 p.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 1027

AS AMENDED BY THE SENATE

Passed Legislature - 1991 Regular Session

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, 90.48.340,
4 90.48.350, 42.17.2401, 90.48.385, 90.48.510, 88.16.170, 88.16.180,
5 88.16.200, 88.40.005, 88.40.020, 88.40.030, 88.40.040, 90.48.142,
6 90.48.366, 90.48.367, 90.48.368, 90.48.400, 90.48.369, 88.44.010,
7 88.44.020, 88.44.030, 88.44.040, 88.44.080, 88.44.110, 88.44.160,
8 88.16.010, 88.16.105, 88.16.110, 88.16.155, 90.48.037, 90.48.095,
9 90.48.100, 90.48.156, 90.48.240, and 90.48.907; amending 1990 c 116 s
10 1 (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 section to chapter 90.70 RCW; adding a
13 new section to chapter 80.50 RCW; adding a new chapter to Title 90 RCW;
14 adding a new chapter to Title 82 RCW; adding a new chapter to Title 43
15 RCW; adding a new chapter to Title 88 RCW; creating new sections;
16 recodifying RCW 90.48.315, 90.48.370, 90.48.365, 90.48.380, 90.48.378,
17 90.48.387, 90.48.388, 90.48.371, 90.48.372, 90.48.373, 90.48.374,

1 90.48.375, 90.48.360, 90.48.376, 90.48.377, 90.48.320, 90.48.350,
2 90.48.325, 90.48.330, 90.48.335, 90.48.336, 90.48.338, 90.48.340,
3 90.48.355, 90.48.343, 90.48.907, 90.48.385, and 90.48.510; repealing
4 RCW 90.48.345, 90.48.381, 90.48.410, 88.40.010, 88.40.050, 90.48.910,
5 88.44.050, 88.44.060, 88.44.070, 90.48.383; prescribing penalties;
6 providing effective dates; and declaring an 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 are transported by vessel on the navigable waters of the
17 state. These shipments are expected to increase in the coming years.
18 Vessels transporting oil into Washington travel on some of the most
19 unique and special marine environments in the United States. These
20 marine environments are a source of natural beauty, recreation, and
21 economic livelihood for many residents of this state. As a result, the
22 state has an obligation to assure the citizens of the state that the
23 waters of the state (~~((used for water borne transportation))~~) will be
24 protected from oil spills. (~~((The legislature declares that this act is~~
25 ~~the first step in developing a comprehensive approach to protecting~~
26 ~~this important and unique resource by developing a set of procedures to~~

1 ~~respond to spills of oil and hazardous substances into the state's~~
2 ~~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 have caused significant
18 damage to the marine environment;

19 (b) Even with the best efforts, it is nearly impossible to remove
20 all oil that is 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 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.

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 spills and discharges,
14 including provisions relating to the responsibilities of state agencies
15 designated as natural resource trustees. The legislature intends this
16 chapter to be interpreted and implemented in a manner consistent with
17 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 self-propelled ship in commerce,
21 other than a tank vessel or a passenger vessel, (~~of~~) greater than
22 three hundred or more gross tons (~~or more~~) , including but not
23 limited to, commercial fish processing vessels and 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 transfers oil in bulk to or from a tank vessel or pipeline, that is
10 used for producing, storing, handling, transferring, processing, or
11 transporting oil in bulk ~~((, and is capable of storing ten thousand or
12 more gallons of oil))~~.

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

22 ~~((9))~~ (13) "Fund" ~~((shall))~~ means the state coastal protection
23 fund as provided in RCW 90.48.390 and 90.48.400.

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

28 ~~((11))~~ ~~"Maximum probable spill" means the maximum probable spill~~
29 ~~for a vessel operating in state waters considering the history of~~

1 ~~spills of vessels of the same class operating on the west coast of the~~
2 ~~United States, Alaska, and British Columbia.~~

3 ~~(12))~~ (15) "Marine facility" means any facility used for tank
4 vessel wharfage or anchorage, including any equipment used for the
5 purpose of handling or transferring oil in bulk to or from a tank
6 vessel.

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

12 ~~((13))~~ (17) "Necessary expenses" means the expenses incurred by
13 the department and assisting state agencies for (a) investigating the
14 source of the discharge; (b) investigating the extent of the
15 environmental damage caused by the discharge; (c) conducting actions
16 necessary to clean up the discharge; (d) conducting predamage and
17 damage assessment studies; and (e) enforcing the provisions of this
18 chapter and collecting for damages caused by a discharge.

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

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

3 ~~((15))~~ (19) "Offshore facility" means any facility, as defined in
4 subsection (12) of this section, located in, on, or under any of the
5 navigable waters of the state, but does not include a facility any part
6 of which is located in, on, or under any land of the state, other than
7 submerged land.

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

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

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

23 (22) "Passenger vessel" means a ship of greater than three hundred
24 or more gross tons or five hundred or more international gross tons
25 carrying passengers for compensation.

26 ~~((16))~~ (23) "Person" ((shall)) means any political subdivision,
27 government agency, municipality, industry, public or private
28 corporation, copartnership, association, firm, individual, or any other
29 entity whatsoever ((and any owner, operator, master, officer, or
30 employee of a ship)).

1 (~~(17)~~) (24) "Ship" (~~(shall)~~) means any boat, ship, vessel, barge,
2 or other floating craft of any kind.

3 (~~(18)~~) (25) "Spill" means (~~(a)~~) an unauthorized discharge of oil
4 or hazardous substances into the waters of the state.

5 (~~(19)~~) (26) "Tank vessel" means a ship that is constructed or
6 adapted to carry, or that carries, oil in bulk as cargo or cargo
7 residue, and that:

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

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

11 (~~(20)~~) (27) "Technical feasibility" or "technically feasible"
12 shall mean that given available technology, a restoration or
13 enhancement project can be successfully completed at a cost that is not
14 disproportionate to the value of the resource prior to the injury.

15 (~~(21)~~) (28) "Waters of the state" (~~(shall)~~) includes lakes,
16 rivers, ponds, streams, inland waters, underground water, salt waters,
17 estuaries, tidal flats, beaches and lands adjoining the seacoast of the
18 state, sewers, and all other surface waters and watercourses within the
19 jurisdiction of the state of Washington.

20 (~~(22)~~) (29) "Worst case spill" means: (a) In the case of a
21 vessel, a spill of the entire cargo and fuel of (~~(a tank)~~) the vessel
22 complicated by adverse weather conditions; and (b) in the case of an
23 onshore or offshore facility, the largest foreseeable spill in adverse
24 weather conditions.

25 NEW SECTION. Sec. 103. DIRECTOR RESPONSIBLE FOR SPILL RESPONSE.
26 Except as otherwise specifically provided in this chapter or other law,
27 the director has the primary authority, in conformance with the state-
28 wide master oil and hazardous substance spill prevention and
29 contingency plan adopted pursuant to RCW 90.48.378 as recodified by

1 this act and any applicable contingency plans prepared pursuant to this
2 chapter and chapter 88.-- RCW (sections 414 through 436 of this act),
3 to oversee prevention, abatement, response, containment, and cleanup
4 efforts with regard to any oil or hazardous substance spill in the
5 navigable waters of the state. The director is the head of the state
6 incident command system in response to a spill of oil or hazardous
7 substances and shall coordinate the response efforts of all state
8 agencies and local emergency response personnel. If a discharge of oil
9 or hazardous substances is subject to the national contingency plan, in
10 responding to the discharge, the director shall to the greatest extent
11 practicable act in accordance with the national contingency plan and
12 cooperate with the federal on-scene coordinator or other federal agency
13 or official exercising authority under the national contingency plan.

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

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

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

26 ((RCW 90.48.315 through 90.48.365 shall)) This chapter grants
27 authority to the department which is supplemental to and in no way
28 reduces or otherwise modifies the powers ((heretofore)) granted to the

1 department(~~(, except as it may directly conflict therewith)~~) by other
2 statutes.

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

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

7 (1) Procedures and methods of reporting discharges and other
8 occurrences prohibited by (~~(RCW 90.48.315 through 90.48.365 and RCW~~
9 ~~78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through~~
10 ~~90.48.410, 90.48.903, 90.48.906 and 90.48.907)~~) this chapter;

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

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

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

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

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

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

1 (7) Such other rules and regulations as the exigencies of any
2 condition may require or such as may be reasonably necessary to carry
3 out the intent of ((~~RCW 90.48.315 through 90.48.365 and RCW 78.52.020,~~
4 ~~78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410,~~
5 ~~90.48.903, 90.48.906 and 90.48.907~~)) this chapter.

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

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

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

21 (a) Take into consideration the elements of oil spill prevention
22 and contingency plans approved or submitted for approval pursuant to
23 ((~~RCW 90.48.371~~)) this chapter and chapter 88.-- RCW (sections 414
24 through 436 of this 1991 act) and oil and hazardous substance spill
25 contingency plans prepared pursuant to other state or federal law or
26 prepared by federal agencies and regional entities;

27 (b) State the respective responsibilities as established by
28 relevant statutes and rules of each of the following in the prevention
29 of and the assessment, containment, and cleanup of a ((catastrophic

1 ~~oil~~) worst case spill (~~(or of a significant spill)~~) of ((a)) oil or
2 hazardous substances into the environment of the state: (i) State
3 agencies; (ii) local governments; (iii) appropriate federal agencies;
4 (iv) facility operators; (v) property owners whose land or other
5 property may be affected by the oil or hazardous substance spill; and
6 (vi) other parties identified by the department as having an interest
7 in or the resources to assist in the containment and cleanup of an oil
8 or hazardous substance spill;

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

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

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

16 (f) Establish an incident command system for responding to oil and
17 hazardous substances spills.

18 (3) In preparing and updating the state master plan, the department
19 shall:

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

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

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

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

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

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

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

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

18 (3) Provide training to local oil and hazardous materials emergency
19 response personnel; and

20 (4) Establish and collect admission fees and other fees that may be
21 necessary to the program.

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

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

1 recreational boater education performed by the state parks and
2 recreation commission.

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

11 **PART II**

12 **FACILITY PLANS**

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

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

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

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

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

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

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

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

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

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

22 (i) Describe the procedures followed by the facility to contain and
23 recover any oil that spills during the transfer of oil to or from the
24 facility;

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

28 (k) Include any other information reasonably necessary to carry out
29 the purposes of this chapter required by rules adopted by the
30 department.

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

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

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

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

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

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

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

28 (1) Each onshore and offshore facility (~~(and covered vessel)~~) shall
29 have a contingency plan for the containment and cleanup of oil spills

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

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

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

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

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

28 (c) Provide a clear, precise, and detailed description of how the
29 plan relates to and is integrated into relevant contingency plans which

1 have been prepared by cooperatives, ports, regional entities, the
2 state, and the federal government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (ii) Offshore facilities.

27 (b) ~~((Except as otherwise provided in (c) of this subsection,))~~
28 Contingency plans for all other onshore and offshore facilities ((and
29 covered vessels)) shall be submitted to the department within eighteen
30 months after the department has adopted rules under subsection (1) of

1 this section. The department may adopt a schedule for submission of
2 plans within the eighteen-month period.

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

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

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

16 ~~(c) The contingency plan for a cargo vessel or passenger vessel may
17 be submitted by the owner or operator of the cargo vessel or passenger
18 vessel or by the agent for the vessel resident in this state. Subject
19 to conditions imposed by the department, the owner, operator, or agent
20 may submit a single contingency plan for cargo vessels or passenger
21 vessels of a particular class.~~

22 ~~(d))~~ A person who has contracted with a facility ~~((or covered
23 vessel))~~ to provide containment and cleanup services and who meets the
24 standards established pursuant to RCW 90.48.372 as recodified by this
25 1991 act, may submit the plan for any facility ~~((or covered vessel))~~
26 for which the person is contractually obligated to provide services.
27 Subject to conditions imposed by the department, the person may submit
28 a single plan for more than one facility ~~((or covered vessel))~~.

29 (4) A contingency plan prepared for an agency of the federal
30 government or another state that satisfies the requirements of this

1 section and rules adopted by the department may be accepted by the
2 department as a contingency plan under this section. The department
3 shall assure that to the greatest extent possible, requirements for
4 contingency plans under this section are consistent with the
5 requirements for contingency plans under federal law.

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

8 (a) The adequacy of containment and cleanup equipment, personnel,
9 communications equipment, notification procedures and call down lists,
10 response time, and logistical arrangements for coordination and
11 implementation of response efforts to remove oil (~~and hazardous~~
12 ~~substance~~)) spills promptly and properly and to protect the
13 environment;

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

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

18 (d) The existence of navigational hazards within the area covered
19 by the plan;

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

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

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

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

29 (6) The department shall approve a contingency plan only if it
30 determines that the plan meets the requirements of this section and

1 that, if implemented, the plan is capable, in terms of personnel,
2 materials, and equipment, of removing oil ((~~or hazardous substances~~))
3 promptly and properly and minimizing any damage to the environment.

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

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

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

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

23 NEW SECTION. Sec. 203. FACILITY OPERATION STANDARDS. (1) The
24 department by rule shall adopt standards for onshore and offshore
25 facilities regarding the equipment and operation of the facilities with
26 respect to the transfer, storage, and handling of oil to ensure that
27 the best achievable protection of the public health and the environment
28 is employed at all times. The department shall implement a program to
29 provide for the inspection of all onshore and offshore facilities on a

1 regular schedule to ensure that each facility is in compliance with the
2 standards.

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

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

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

12 (c) Continuing education requirements.

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

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

26 (2) Every existing onshore and offshore facility shall prepare and
27 submit to the department its operations manual within eighteen months
28 after the department has adopted rules governing the content of the
29 manual.

1 (3) The department shall approve an operations manual for an
2 onshore or offshore facility if the manual complies with the rules
3 adopted by the department. If the department determines a manual does
4 not comply with the rules, it shall provide written reasons for the
5 decision. The owner or operator shall resubmit the manual within
6 ninety days of notification of the reasons for noncompliance,
7 responding to the reasons and incorporating any suggested
8 modifications.

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

15 (5) All equipment and operations of an operator's onshore or
16 offshore facility shall be maintained and carried out in accordance
17 with the facility's operations manual. The owner or operator of the
18 facility shall ensure that all covered vessels docked at an onshore or
19 offshore facility comply with the terms of the operations manual for
20 the facility.

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

23 The department shall annually publish an index of available, up-to-
24 date descriptions of prevention plans and contingency plans for oil
25 spills submitted and approved pursuant to section 201 of this 1991 act,
26 RCW 90.48.371 as recodified by this 1991 act, and sections 417 and 419
27 of this 1991 act and an inventory of equipment available for responding
28 to such spills.

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

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

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

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

17 **PART III**

18 **ENFORCEMENT**

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

21 (1) Except as provided in subsection (2) of this section, it shall
22 be unlawful for ~~((any person))~~ the owner or operator to knowingly and
23 intentionally operate in this state or on the waters of this state
24 ~~((a))~~ an onshore or offshore facility ~~((or covered vessel))~~ without an
25 approved contingency plan or an approved prevention plan as required by
26 ~~((RCW 90.48.371))~~ this chapter, or financial responsibility in
27 compliance with chapter 88.40 RCW and the federal oil pollution act of
28 1990. The first conviction under this section shall be a gross

1 misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction
2 shall be a class C felony under chapter 9A.20 RCW.

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

6 (a) The facility ~~((or covered vessel))~~ is not required to have a
7 contingency plan, spill prevention plan, or financial responsibility;
8 or

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

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

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

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

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

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

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

7 (b) For ~~((a))~~ the owner or operator of an onshore or offshore
8 facility ~~((or any other person))~~ to accept cargo or passengers from a
9 covered vessel that does not have an approved contingency plan or an
10 approved prevention plan required under ~~((RCW 90.48.371))~~ chapter 88.--
11 RCW (sections 414 through 436 of this 1991 act) or financial
12 responsibility in compliance with chapter 88.40 RCW and the federal oil
13 pollution act of 1990.

14 ~~((3))~~ (2) The department may notify the ~~((department of~~
15 ~~licensing))~~ secretary of state to suspend the business license of any
16 onshore or offshore facility or other person that is in violation of
17 this section. The department may assess a civil penalty under RCW
18 43.21B.300 of up to one hundred thousand dollars against any person who
19 is in violation of this section. Each day that a facility~~((7))~~ or
20 person~~((, or covered vessel))~~ is in violation of this section shall be
21 considered a separate violation.

22 ~~((4))~~ (3) It shall not be unlawful for a ~~((covered vessel to~~
23 ~~operate on the waters of the state or a))~~ facility or other person to
24 operate or accept cargo or passengers from a covered vessel if:

25 (a) A contingency plan, a prevention plan, or financial
26 responsibility is not required for the facility ~~((or covered vessel));~~
27 or

28 (b) A contingency and prevention plan has been submitted to the
29 department as required by ~~((RCW 90.48.371))~~ this chapter and rules

1 adopted by the department and the department is reviewing the plan and
2 has not denied approval(~~(i) or~~

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

5 ~~((5))~~ (4) Any person may rely on a copy of the statement issued
6 by the department pursuant to RCW 90.48.371(7) as recodified by this
7 1991 act as evidence that the ~~((vessel))~~ facility has an approved
8 contingency plan and the statement issued pursuant to section 201(5) of
9 this 1991 act as evidence that the facility has an approved spill
10 prevention plan. Any person may rely on a copy of the statement issued
11 by the office to section 419 of this 1991 act as evidence that the
12 vessel has an approved contingency plan and the statement issued
13 pursuant to section 417 of this 1991 act as evidence that the vessel
14 has an approved prevention plan.

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

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

26 NEW SECTION. **Sec. 304.** (1)(a) Notwithstanding any other
27 provision of law, a person is not liable for removal costs or damages
28 that result from actions taken or omitted to be taken in the course of

1 rendering care, assistance, or advice consistent with the national
2 contingency plan or as otherwise directed by the federal on-scene
3 coordinator or by the official within the department with
4 responsibility for oil spill response. This subsection (1)(a) does not
5 apply:

6 (i) To a responsible party;

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

8 (iii) If the person is grossly negligent or engages in willful
9 misconduct.

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

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

14 (2) For the purposes of this section:

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

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

21 (c) "Federal on-scene coordinator" means the federal official
22 predesignated by the United States environmental protection agency or
23 the United States coast guard to coordinate and direct federal
24 responses under subpart D, or the official designated by the lead
25 agency to coordinate and direct removal under subpart E, of the
26 national contingency plan.

27 (d) "National contingency plan" means the national contingency plan
28 prepared and published under section 311(d) of the federal water
29 pollution control act (33 U.S.C. Sec. 1321(d)), as amended by the oil
30 pollution act of 1990 (P.L. 101-380, 104 Stat. 484 (1990)).

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

4 (f) "Person" means an individual, corporation, partnership,
5 association, state, municipality, commission, or political subdivision
6 of a state, or any interstate body.

7 (g) "Removal costs" means the costs of removal that are incurred
8 after a discharge of oil has occurred or, in any case in which there is
9 a substantial threat of a discharge of oil, the costs to prevent,
10 minimize, or mitigate oil pollution from such an incident.

11 (h) "Responsible party" means a person liable under RCW 90.48.336
12 as recodified by this act.

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

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

1 activity, and a notice that said amount is due and payable immediately
2 upon receipt of said order. The department may, upon application from
3 the recipient of an order received within thirty days from the receipt
4 of the order, reduce or set aside in its entirety the amount due and
5 payable, when it appears from the application, and from any further
6 investigation the department may desire to undertake, that a reduction
7 or setting aside is just and fair under all the circumstances. If the
8 amount specified in the order issued by the department notifying said
9 person or persons is not paid within thirty days after receipt of
10 notice imposing the same, or if an application has been made within
11 thirty days as herein provided and the amount provided in the order
12 issued by the department subsequent to such application is not paid
13 within fifteen days after receipt thereof, the attorney general, upon
14 request of the department, shall bring an action on behalf of the state
15 in the superior court of Thurston county or any county in which the
16 person to which the order is directed does business, or in any other
17 court of competent jurisdiction, to recover the amount specified in the
18 final order of the department. No order issued under this section
19 shall be construed as an order within the meaning of RCW 43.21B.310 and
20 shall not be appealable to the hearings board. In any action to
21 recover necessary expenses as herein provided said person shall be
22 relieved from liability for necessary expenses if ((he)) the person can
23 prove that the oil to which the necessary expenses relate entered the
24 waters of the state by causes set forth in RCW ((90.48.320(3)))
25 90.48.320(2) as recodified by this 1991 act.

26 **Sec. 306. RCW 90.48.350 and 1990 c 116 s 20 are each amended to*
27 *read as follows:*

28 *(1) Except as otherwise provided in RCW 90.48.383, any person who*
29 *negligently discharges oil, or causes or permits the entry of the same,*
30

1 shall incur, in addition to any other penalty as provided by law, a
2 penalty in an amount of up to twenty thousand dollars for every such
3 violation, and for each day the spill poses risks to the environment as
4 determined by the director.

5 (2) An employee of the owner or operator of an offshore or onshore
6 facility or covered vessel shall be indemnified by the owner or
7 operator of an offshore or onshore facility or covered vessel for any
8 liability and costs of defense for any action brought under subsection
9 (1) of this section where the employee was acting in the course of
10 employment, and in such case the owner or operator of the offshore or
11 onshore facility or covered vessel shall be liable for the actions of
12 such employee.

13 (3) Any person who intentionally or recklessly discharges or causes
14 or permits the entry of oil into the waters of the state shall incur,
15 in addition to any other penalty authorized by law, a penalty of up to
16 one hundred thousand dollars for every such violation and for each day
17 the spill poses risks to the environment as determined by the director.

18 (4) The amount of the penalty shall be determined by the director
19 after taking into consideration the gravity of the violation, the
20 previous record of the violator in complying, or failing to comply,
21 with the provisions of chapter 90.48 RCW, the speed and thoroughness of
22 the collection and removal of the oil, and such other considerations as
23 the director deems appropriate. Every act of commission or omission
24 which procures, aids or abets in the violation shall be considered a
25 violation under the provisions of this section and subject to the
26 penalty herein provided for. The penalty herein provided for shall be
27 imposed pursuant to RCW 43.21B.300.

28 *Sec. 306 was vetoed, see message at end of chapter.

1 PART IV

2 OFFICE OF MARINE SAFETY

3 NEW SECTION. **Sec. 401.** The legislature declares that
4 Washington's waters have irreplaceable value for the citizens of the
5 state. These waters are vital habitat for numerous and diverse marine
6 life and wildlife and the source of recreation, aesthetic pleasure, and
7 pride for Washington's citizens. These waters are also vital for much
8 of Washington's economic vitality.

9 The legislature finds that the transportation of oil on these
10 waters creates a great potential hazard to these important natural
11 resources. The legislature also finds that there is no state agency
12 responsible for maritime safety to ensure this state's interest in
13 preserving these resources.

14 The legislature therefore finds that in order to protect these
15 waters it is necessary to establish an office of marine safety which
16 will have the responsibility to promote the safety of marine
17 transportation in Washington.

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

27 (2) The office of marine safety shall be organized consistent with
28 the goals of providing state government with a focus in marine

1 transportation and serving the people of this state. The legislature
2 recognizes that the administrator needs sufficient organizational
3 flexibility to carry out the office's various duties. To the extent
4 practical, the administrator shall consider the following
5 organizational principles:

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

8 (b) A clear and simplified organizational design promoting
9 accessibility, responsiveness, and accountability to the legislature,
10 the consumer, and the general public; and

11 (c) Maximum span of control without jeopardizing adequate
12 supervision.

13 (3) The office shall provide leadership and coordination in
14 identifying and resolving threats to the safety of marine
15 transportation and the impact of marine transportation on the
16 environment:

17 (a) Working with other state agencies and local governments to
18 strengthen the state and local governmental partnership in providing
19 public protection;

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

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

23 (d) Working with other federal, state, and local agencies and
24 facilitating their involvement in planning and implementing marine
25 safety measures;

26 (e) Providing information to the public; and

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

29 (4) In accordance with the administrative procedure act, chapter
30 34.05 RCW, the office shall ensure an opportunity for consultation,

1 review, and comment before the adoption of standards, guidelines, and
2 rules.

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

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

12 NEW SECTION. **Sec. 403.** The executive head and appointing
13 authority of the office shall be the administrator of marine safety.
14 The administrator shall be appointed by, and serve at the pleasure of,
15 the governor in accordance with RCW 43.17.020. The administrator
16 shall be paid a salary to be fixed by the governor in accordance with
17 RCW 43.03.040.

18 **Sec. 404.** RCW 42.17.2401 and 1991 c 3 s 293 are each amended to
19 read as follows:

20 For the purposes of RCW 42.17.240, the term "executive state
21 officer" includes:

22 (1) The chief administrative law judge, the director of
23 agriculture, the administrator of the office of marine safety, the
24 administrator of the Washington basic health plan, the director of the
25 department of services for the blind, the director of the state system
26 of community colleges, the director of community development, the
27 secretary of corrections, the director of ecology, the commissioner of
28 employment security, the chairman of the energy facility site

1 evaluation council, the director of the energy office, the secretary of
2 the state finance committee, the director of financial management, the
3 director of fisheries, the executive secretary of the forest practices
4 appeals board, the director of the gambling commission, the director of
5 general administration, the secretary of health, the administrator of
6 the Washington state health care authority, the executive secretary of
7 the health care facilities authority, the executive secretary of the
8 higher education facilities authority, the director of the higher
9 education personnel board, the executive secretary of the horse racing
10 commission, the executive secretary of the human rights commission, the
11 executive secretary of the indeterminate sentence review board, the
12 director of the department of information services, the director of the
13 interagency committee for outdoor recreation, the executive director of
14 the state investment board, the director of labor and industries, the
15 director of licensing, the director of the lottery commission, the
16 director of the office of minority and women's business enterprises,
17 the director of parks and recreation, the director of personnel, the
18 executive director of the public disclosure commission, the director of
19 retirement systems, the director of revenue, the secretary of social
20 and health services, the chief of the Washington state patrol, the
21 executive secretary of the board of tax appeals, the director of trade
22 and economic development, the secretary of transportation, the
23 secretary of the utilities and transportation commission, the director
24 of veterans affairs, the director of wildlife, the president of each of
25 the regional and state universities and the president of The Evergreen
26 State College, each district and each campus president of each state
27 community college;

28 (2) Each professional staff member of the office of the governor;

29 (3) Each professional staff member of the legislature; and

1 (4) Central Washington University board of trustees, board of
2 trustees of each community college, each member of the state board for
3 community college education, state convention and trade center board of
4 directors, board of pilotage, committee for deferred compensation,
5 Eastern Washington University board of trustees, Washington economic
6 development finance authority, The Evergreen State College board of
7 trustees, forest practices appeals board, forest practices board,
8 gambling commission, Washington health care facilities authority,
9 higher education coordinating board, higher education facilities
10 authority, higher education personnel board, horse racing commission,
11 state housing finance commission, human rights commission,
12 indeterminate sentence review board, board of industrial insurance
13 appeals, information services board, interagency committee for outdoor
14 recreation, state investment board, liquor control board, lottery
15 commission, marine oversight board, oil and gas conservation committee,
16 Pacific Northwest electric power and conservation planning council,
17 parks and recreation commission, personnel appeals board, personnel
18 board, pollution control hearings board, public disclosure commission,
19 public pension commission, shorelines hearing board, state employees'
20 benefits board, board of tax appeals, transportation commission,
21 University of Washington board of regents, utilities and transportation
22 commission, Washington state maritime commission, Washington public
23 power supply system executive board, Washington State University board
24 of regents, Western Washington University board of trustees, and
25 wildlife commission.

26 NEW SECTION. **Sec. 405.** In addition to any other powers granted
27 the administrator, the administrator may:

1 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to
2 carry out the provisions of this chapter and chapter 88.-- RCW
3 (sections 414 through 436 of this act);

4 (2) Appoint such advisory committees as may be necessary to carry
5 out the provisions of this chapter and chapter 88.-- RCW (sections 414
6 through 436 of this act). Members of such advisory committees are
7 authorized to receive travel expenses in accordance with RCW 43.03.050
8 and 43.03.060. The administrator shall review each advisory committee
9 within the jurisdiction of the office and each statutory advisory
10 committee on a biennial basis to determine if such advisory committee
11 is needed. The criteria specified in RCW 43.131.070 shall be used to
12 determine whether or not each advisory committee shall be continued;

13 (3) Undertake studies, research, and analysis necessary to carry
14 out the provisions of this chapter and chapter 88.-- RCW (sections 414
15 through 436 of this act);

16 (4) Delegate powers, duties, and functions of the department to
17 employees of the department as the secretary deems necessary to carry
18 out the provisions of this chapter and chapter 88.-- RCW (sections 414
19 through 436 of this act);

20 (5) Enter into contracts on behalf of the department to carry out
21 the purposes of this chapter and chapter 88.-- RCW (sections 414
22 through 436 of this act);

23 (6) Act for the state in the initiation of, or the participation
24 in, any intergovernmental program for the purposes of this chapter and
25 chapter 88.-- RCW (sections 414 through 436 of this act); or

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

27 NEW SECTION. **Sec. 406.** The powers and duties of the department
28 of ecology and the director of ecology under chapter 90.48 RCW relating
29 to adoption of rules and approval of contingency plans for covered

1 vessels and adoption of model tow cable standards for tug boats and
2 barges are hereby transferred to the office of marine safety and the
3 administrator of the office of marine safety.

4 NEW SECTION. **Sec. 407.** (1) The administrator shall have full
5 authority to administer oaths and take testimony thereunder, to issue
6 subpoenas requiring the attendance of witnesses before the
7 administrator together with all books, memoranda, papers, and other
8 documents, articles or instruments, and to compel the disclosure by
9 such witnesses of all facts known to them relative to the matters under
10 investigation.

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

13 (3) Subpoenas issued in the conduct of investigations required or
14 authorized by other statutory provisions or necessary in the
15 enforcement of other statutory provisions shall be governed by chapter
16 34.05 RCW.

17 NEW SECTION. **Sec. 408.** All reports, documents, surveys, books,
18 records, files, papers, or written material in the possession of the
19 department of ecology pertaining to the powers, functions, and duties
20 transferred shall be delivered to the custody of the office of marine
21 safety. All cabinets, furniture, office equipment, motor vehicles, and
22 other tangible property employed by the department of ecology in
23 carrying out the powers, functions, and duties transferred shall be
24 made available to the office of marine safety. All funds, credits, or
25 other assets held in connection with the powers, functions, and duties
26 transferred shall be assigned to the office of marine safety.

27 Any appropriations made to the department of ecology for carrying
28 out the powers, functions, and duties transferred shall, on the

1 effective date of this section, be transferred and credited to the
2 office of marine safety.

3 Whenever any question arises as to the transfer of any personnel,
4 funds, books, documents, records, papers, files, equipment, or other
5 tangible property used or held in the exercise of the powers and the
6 performance of the duties and functions transferred, the director of
7 financial management shall make a determination as to the proper
8 allocation and certify the same to the state agencies concerned.

9 NEW SECTION. **Sec. 409.** All employees of the department of
10 ecology engaged in performing the powers, functions, and duties
11 transferred are transferred to the jurisdiction of the office of marine
12 safety. All employees classified under chapter 41.06 RCW, the state
13 civil service law, are assigned to the office of marine safety to
14 perform their usual duties upon the same terms as formerly, without any
15 loss of rights, subject to any action that may be appropriate
16 thereafter in accordance with the laws and rules governing state civil
17 service.

18 NEW SECTION. **Sec. 410.** All rules and all pending business
19 before the department of ecology pertaining to the powers, functions,
20 and duties transferred shall be continued and acted upon by the office
21 of marine safety. All existing contracts and obligations shall remain
22 in full force and shall be performed by the office of marine safety.

23 NEW SECTION. **Sec. 411.** The transfer of the powers, duties,
24 functions, and personnel of the department of ecology shall not affect
25 the validity of any act performed prior to the effective date of this
26 section.

1 NEW SECTION. **Sec. 412.** If apportionments of budgeted funds are
2 required because of the transfers directed by sections 408 through 411
3 of this act, the director of financial management shall certify the
4 apportionments to the agencies affected, the state auditor, and the
5 state treasurer. Each of these shall make the appropriate transfer and
6 adjustments in funds and appropriation accounts and equipment records
7 in accordance with the certification.

8 NEW SECTION. **Sec. 413.** Nothing contained in sections 406 and
9 408 through 412 of this act may be construed to alter any existing
10 collective bargaining unit or the provisions of any existing collective
11 bargaining agreement until the agreement has expired or until the
12 bargaining unit has been modified by action of the personnel board as
13 provided by law.

14 NEW SECTION. **Sec. 414.** DEFINITIONS. Unless the context clearly
15 requires otherwise, the definitions in this section apply throughout
16 this chapter.

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

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

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

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

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

16 (6) "Covered vessel" means a tank vessel, cargo vessel, or
17 passenger vessel.

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

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

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

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

27 (b) A facility does not include any: (i) Railroad car, motor
28 vehicle, or other rolling stock while transporting oil over the
29 highways or rail lines of this state; (ii) retail motor vehicle motor
30 fuel outlet; (iii) facility that is operated as part of an exempt

1 agricultural activity as provided in RCW 82.04.330; (iv) underground
2 storage tank regulated by the department or a local government under
3 chapter 90.76 RCW; or (v) a marine fuel outlet that does not dispense
4 more than three thousand gallons of fuel to a ship that is not a
5 covered vessel, in a single transaction.

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

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

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

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

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

1 (16) "Onshore facility" means any facility, as defined in
2 subsection (10) of this section, any part of which is located in, on,
3 or under any land of the state, other than submerged land, that because
4 of its location, could reasonably be expected to cause substantial harm
5 to the environment by discharging oil into or on the navigable waters
6 of the state or the adjoining shorelines.

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

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

16 (18) "Passenger vessel" means a ship of greater than three hundred
17 or more gross tons or five hundred or more international gross tons
18 carrying passengers for compensation.

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

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

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

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

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

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

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

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

12 NEW SECTION. **Sec. 415.** COORDINATION WITH FEDERAL LAW. In
13 carrying out the purposes of this chapter, including the adoption of
14 rules for contingency plans, the administrator shall to the greatest
15 extent practicable implement this chapter in a manner consistent with
16 federal law.

17 NEW SECTION. **Sec. 416.** TANK VESSEL INSPECTIONS. (1) All tank
18 vessels entering the navigable waters of the state shall be subject to
19 inspection to assure that they comply with all applicable federal and
20 state standards.

21 (2) The office shall review the tank vessel inspection programs
22 conducted by the United States coast guard and other federal agencies
23 to determine if the programs as actually operated by those agencies
24 provide the best achievable protection to the waters of the state. If
25 the office determines that the tank vessel inspection programs
26 conducted by these agencies are not adequate to protect the state's
27 waters, it shall adopt rules for a state tank vessel inspection
28 program. The office shall adopt rules providing for a random review of

1 individual tank vessel inspections conducted by federal agencies. The
2 office may accept a tank vessel inspection report issued by another
3 state if that state's tank vessel inspection program is determined by
4 the office to be at least as protective of the public health and the
5 environment as the program adopted by the office.

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

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

17 NEW SECTION. **Sec. 417.** PREVENTION PLANS. (1) The owner or
18 operator for each tank vessel shall prepare and submit to the office an
19 oil spill prevention plan in conformance with the requirements of this
20 chapter. The plans shall be submitted to the office in the time and
21 manner directed by the office, but not later than January 1, 1993. The
22 spill prevention plan may be consolidated with a spill contingency plan
23 submitted pursuant to section 419 of this act. The office may accept
24 plans prepared to comply with other state or federal law as spill
25 prevention plans to the extent those plans comply with the requirements
26 of this chapter. The office, by rule, shall establish standards for
27 spill prevention plans. The rules shall be adopted not later than July
28 1, 1992.

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

3 (a) Establish compliance with the federal oil pollution act of 1990
4 and state and federal financial responsibility requirements, if
5 applicable;

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

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

13 (d) Describe the vessel operations with respect to staffing
14 standards;

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

17 (f) Describe the training given to vessel crews with respect to
18 spill prevention;

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

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

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

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

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

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

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

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

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

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

22 (8) This section does not authorize the office to modify the terms
23 of a collective bargaining agreement.

24 NEW SECTION. **Sec. 418.** VESSEL SCREENING. (1) In order to ensure
25 the safety of marine transportation within the navigable waters of the
26 state and to protect the state's natural resources, the administrator
27 shall adopt rules by July 1, 1992, for determining whether cargo
28 vessels and passenger vessels entering the navigable waters of the

1 state pose a substantial risk of harm to the public health and safety
2 and the environment.

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

5 (a) Available information to examine for evidence that a cargo or
6 passenger vessel may pose a substantial risk to safe marine
7 transportation or the state's natural resources, including, vessel
8 casualty lists, United States coast guard casualty reports, maritime
9 insurance ratings, the index of contingency plans compiled by the
10 department of ecology, other data gathered by the office or the
11 maritime commission, or any other resources;

12 (b) A request to the United States coast guard to deny a cargo
13 vessel or passenger vessel entry into the navigable waters of the
14 state, if the vessel poses a substantial environmental risk;

15 (c) A notice to the state's spill response system that a cargo or
16 passenger vessel entering the state's navigable waters poses a
17 substantial environmental risk;

18 (d) A vessel inspection for vessels that may pose a substantial
19 environmental risk, to determine whether a cargo vessel or passenger
20 vessel complies with applicable state or federal laws. Any vessel
21 inspection conducted pursuant to this section shall be performed during
22 the vessel's scheduled stay in port; and

23 (e) Enforcement actions.

24 NEW SECTION. **Sec. 419.** CONTINGENCY PLANS. (1) Each covered
25 vessel shall have a contingency plan for the containment and cleanup of
26 oil spills from the covered vessel into the waters of the state and for
27 the protection of fisheries and wildlife, natural resources, and public
28 and private property from such spills. The office shall by rule adopt
29 and periodically revise standards for the preparation of contingency

1 plans. The office shall require contingency plans, at a minimum, to
2 meet the following standards:

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

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

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

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

16 (e) State the number, training preparedness, and fitness of all
17 dedicated, prepositioned personnel assigned to direct and implement the
18 plan;

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

22 (g) Describe important features of the surrounding environment,
23 including fish and wildlife habitat, environmentally sensitive areas,
24 and public facilities. The departments of ecology, fisheries,
25 wildlife, and natural resources, upon request, shall provide
26 information that they have available to assist in preparing this
27 description;

28 (h) State the means of protecting and mitigating effects on the
29 environment, including fish, marine mammals, and other wildlife, and

1 ensure that implementation of the plan does not pose unacceptable risks
2 to the public or the environment;

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

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

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

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

15 (m) Until a spill prevention plan has been submitted pursuant to
16 section 417 of this act, state the measures that have been taken to
17 reduce the likelihood that a spill will occur, including but not
18 limited to, design and operation of a vessel, training of personnel,
19 number of personnel, and backup systems designed to prevent a spill;

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

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

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

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

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

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

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

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

1 under this section are consistent with the requirements for contingency
2 plans under federal law.

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

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

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

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

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

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

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

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

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

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

1 (7) The approval of the contingency plan shall be valid for five
2 years. Upon approval of a contingency plan, the office shall provide
3 to the person submitting the plan a statement indicating that the plan
4 has been approved, the vessels covered by the plan, and other
5 information the office determines should be included.

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

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

15 (10) Approval of a contingency plan by the office 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 NEW SECTION. **Sec. 420.** The provisions of prevention plans and
20 contingency plans approved by the office pursuant to this chapter shall
21 be legally binding on those persons submitting them to the office and
22 on their successors, assigns, agents, and employees. The superior
23 court shall have jurisdiction to restrain a violation of, compel
24 specific performance of, or otherwise to enforce such plans upon
25 application by the office. The office may issue an order pursuant to
26 chapter 34.05 RCW requiring compliance with a contingency plan or a
27 prevention plan and may impose administrative penalties for failure to
28 comply with a plan.

1 NEW SECTION. **Sec. 421.** (1) Except as provided in subsection (2)
2 of this section, it shall be unlawful for the owner or operator to
3 knowingly and intentionally operate in this state or on the waters of
4 this state a covered vessel without an approved contingency plan or an
5 approved prevention plan as required by this chapter, or financial
6 responsibility in compliance with chapter 88.40 RCW and the federal oil
7 pollution act of 1990. The first conviction under this section shall
8 be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent
9 conviction shall be a class C felony under chapter 9A.20 RCW.

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

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

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

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

19 (3) A person may rely on a copy of the statement issued by the
20 office pursuant to section 419 of this act as evidence that a vessel
21 has an approved contingency plan and the statement issued pursuant to
22 section 417 of this act that a vessel has an approved prevention plan.

23 NEW SECTION. **Sec. 422.** (1) Except as provided in subsection (4)
24 of this section, it shall be unlawful for a covered vessel to enter the
25 waters of the state without an approved contingency plan required by
26 section 419 of this act, a spill prevention plan required by section
27 417 of this act, or financial responsibility in compliance with chapter
28 88.40 RCW and the federal oil pollution act of 1990. The office may
29 deny entry onto the waters of the state to any covered vessel that does

1 not have a required contingency or spill prevention plan or financial
2 responsibility.

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

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

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

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

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

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

24 (5) Any person may rely on a copy of the statement issued by the
25 office to section 419 of this act as evidence that the vessel has an
26 approved contingency plan and the statement issued pursuant to section
27 417 of this act as evidence that the vessel has an approved spill
28 prevention plan.

1 NEW SECTION. **Sec. 423.** NOTIFICATION OF ACCIDENTS AND NEAR MISS
2 INCIDENTS. (1) In order to assist the state in identifying areas of
3 the navigable waters of the state needing special attention, the owner
4 or operator of a covered vessel shall notify the coast guard within one
5 hour:

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

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

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

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

23 (4) For the purposes of this section:

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

26 (i) Any accidental or intentional grounding;

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

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

4 (iv) Any other occurrence that creates the serious possibility of
5 an oil spill or an occurrence that may result in such a spill.

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

7 (i) The towing mechanism becomes disabled;

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

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

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

17 NEW SECTION. **Sec. 424.** REGIONAL MARINE SAFETY COMMITTEES. (1)
18 The office shall establish regional marine safety committees at least
19 for the Strait of Juan de Fuca/Northern Puget Sound, Southern Puget
20 Sound, and Grays Harbor/Pacific coast. It is the intent of the
21 legislature that the office also establish a regional marine safety
22 committee jointly with the state of Oregon for the Columbia river. The
23 office by rule shall establish the boundaries of the committees.

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

28 (3) The administrator or his or her designee shall chair each of
29 the regional committees. Each member of the committee shall be

1 reimbursed for actual and necessary expenses incurred in the
2 performance of committee duties in accordance with RCW 43.03.250.

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

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

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

20 (b) A review and evaluation of the adequacy of and any changes
21 needed in:

22 (i) Anchorage designations and sounding checks;

23 (ii) Communications systems;

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

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

29 (c) Procedures for routing vessels during emergencies that impact
30 navigation;

1 (d) Management requirements for control bridges;
2 (e) Special protection for environmentally sensitive areas;
3 (f) Suggested mechanisms to ensure that the provisions of the plan
4 are fully and regularly enforced; and

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

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

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

20 (8) Not later than July 1st of each even-numbered year each
21 regional marine safety committee shall report its findings and
22 recommendations to the marine oversight board established in section
23 501 of this act and the office concerning vessel traffic safety in its
24 region and any recommendations for improving tanker, barge, and other
25 vessel safety in the region by amending the regional marine safety
26 plan. The regional committees shall also provide technical assistance
27 to the marine oversight board.

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

1 NEW SECTION. **Sec. 425.** TANK VESSEL RESPONSE EQUIPMENT STANDARDS.

2 The office may adopt rules including but not limited to standards for
3 spill response equipment to be maintained on tank vessels. The
4 standards adopted under this section shall be consistent with spill
5 response equipment standards adopted by the United States coast guard.

6 NEW SECTION. **Sec. 426.** EMERGENCY RESPONSE SYSTEM. An emergency

7 response system for the Strait of Juan de Fuca shall be established by
8 July 1, 1992. In establishing the emergency response system, the
9 administrator shall consider the recommendations of the regional marine
10 safety committees. The administrator shall also consult with the
11 province of British Columbia regarding its participation in the
12 emergency response system.

13 NEW SECTION. **Sec. 427.** CAPTIONS NOT LAW. Section headings as

14 used in this chapter do not constitute any part of the law.

15 NEW SECTION. **Sec. 428.** UNIFIED AND CONSISTENT PLANNING. The

16 office and the department shall adopt an interagency agreement in
17 accordance with chapter 39.34 RCW to divide responsibilities for the
18 regulation of marine facilities to ensure that no duplication of
19 regulatory responsibilities occurs.

20 NEW SECTION. **Sec. 429.** On or before November 15, 1996, the

21 legislative budget committee shall prepare a report to the legislature
22 on the means for future implementation of the provisions in chapter
23 88.-- RCW (sections 414 through 436 of this act).

24 NEW SECTION. **Sec. 430.** The office of marine safety is hereby

25 abolished and its powers, duties, and functions are hereby transferred

1 to the department of ecology. All references to the administrator or
2 office of marine safety in the Revised Code of Washington shall be
3 construed to mean the director or department of ecology.

4 NEW SECTION. **Sec. 431.** All reports, documents, surveys, books,
5 records, files, papers, or written material in the possession of the
6 office of marine safety shall be delivered to the custody of the
7 department of ecology. All cabinets, furniture, office equipment,
8 motor vehicles, and other tangible property employed by the office of
9 marine safety shall be made available to the department of ecology.
10 All funds, credits, or other assets held by the office of marine safety
11 shall be assigned to the department of ecology.

12 Any appropriations made to the office of marine safety shall, on
13 the effective date of this section, be transferred and credited to the
14 department of ecology.

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

21 NEW SECTION. **Sec. 432.** All employees of the office of marine
22 safety are transferred to the jurisdiction of the department of
23 ecology. All employees classified under chapter 41.06 RCW, the state
24 civil service law, are assigned to the department of ecology to perform
25 their usual duties upon the same terms as formerly, without any loss of
26 rights, subject to any action that may be appropriate thereafter in
27 accordance with the laws and rules governing state civil service.

1 NEW SECTION. **Sec. 433.** All rules and all pending business
2 before the office of marine safety shall be continued and acted upon by
3 the department of ecology. All existing contracts and obligations
4 shall remain in full force and shall be performed by the department of
5 ecology.

6 NEW SECTION. **Sec. 434.** The transfer of the powers, duties,
7 functions, and personnel of the office of marine safety shall not
8 affect the validity of any act performed prior to the effective date of
9 this section.

10 NEW SECTION. **Sec. 435.** If apportionments of budgeted funds are
11 required because of the transfers directed by sections 431 through 434
12 of this act, the director of financial management shall certify the
13 apportionments to the agencies affected, the state auditor, and the
14 state treasurer. Each of these shall make the appropriate transfer and
15 adjustments in funds and appropriation accounts and equipment records
16 in accordance with the certification.

17 NEW SECTION. **Sec. 436.** Nothing contained in sections 430
18 through 435 of this act may be construed to alter any existing
19 collective bargaining unit or the provisions of any existing collective
20 bargaining agreement until the agreement has expired or until the
21 bargaining unit has been modified by action of the personnel board as
22 provided by law.

23 **Sec. 437.** RCW 90.48.385 and 1990 c 116 s 16 are each amended to
24 read as follows:

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

1 ~~oil or hazardous substances as cargo or cargo residue.))~~ The regional
2 marine safety committees established pursuant to section 424 of this
3 1991 act shall study federal requirements for tow equipment for barges
4 carrying oil in bulk. The committees shall review standards ((shall
5 ~~address but are not limited to))~~ for: Wire rope specifications,
6 catenary, the design of related on-board equipment, number of cables,
7 ~~((and))~~ back-up or barge retrieval systems in case of cable break, and
8 the operation, maintenance, and inspection of cables and other tow
9 equipment.

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

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

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

23 **Sec. 438.** RCW 90.48.510 and 1987 c 479 s 2 are each amended to
24 read as follows:

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

1 the discharge of oil into the waters of the state and shall deploy the
2 containment and recovery equipment in accordance with standards adopted
3 by the office. All persons conducting refueling, bunkering, or
4 lightering operations, or oil transfer operations shall be trained in
5 the use and deployment of oil spill containment and recovery equipment.
6 ~~((After examining existing equipment locations, the methods and~~
7 ~~conditions of deployment, and accessibility of any federal or other~~
8 ~~publicly or privately owned and operated containment and recovery~~
9 ~~equipment or systems, and reviewing federal, state, or local laws,~~
10 ~~rules, or regulations and ordinances governing refueling, bunkering, or~~
11 ~~lightering of petroleum products,)).~~ The ((department of ecology may))
12 office shall adopt rules as necessary to carry out the provisions of
13 this section. The rules shall include standards for the circumstances
14 under which containment equipment should be deployed. An onshore or
15 offshore facility shall include the procedures used to contain and
16 recover discharges in the facility's contingency plan. It is the
17 responsibility of the person providing bunkering, refueling, or
18 lightering services to provide any containment or recovery equipment
19 required under this section. This section does not apply to a person
20 operating a ship for personal pleasure or for recreational purposes.

21 **PART V**

22 **MARINE OVERSIGHT BOARD**

23 NEW SECTION. Sec. 501. MARINE OVERSIGHT BOARD. (1) The oil
24 marine oversight board is established to provide independent oversight
25 of the actions of the federal government, industry, the department, the
26 office, and other state agencies with respect to oil spill prevention
27 and response for covered vessels and onshore and offshore facilities.

1 (2)(a) The board may, at its own discretion, study any aspect of
2 oil spill prevention and response for covered vessels and onshore and
3 offshore facilities in the state. The board shall report to the
4 governor and make recommendations to the department and the office on
5 activities of the federal government and industry with respect to oil
6 spill prevention and response for covered vessels and onshore and
7 offshore facilities, including recommendations for the state's response
8 to those actions. The board shall specifically review the need for,
9 and the structure and design of an emergency response system for the
10 Strait of Juan de Fuca and the Pacific coast. The board shall also
11 make recommendations to the legislature and other state agencies on any
12 provision of this chapter, other state laws, and rules, policies, and
13 guidelines adopted by the department, the office, or, other state
14 agencies relating to the prevention and cleanup of oil spills into the
15 waters of the state from covered vessels and onshore and offshore
16 facilities.

17 (b) To minimize duplication of effort, reviews conducted by the
18 board shall be coordinated with related activities of the federal
19 government, the department, the office, and other appropriate state and
20 international entities. The Puget Sound water quality authority shall
21 ensure that studies and recommendations by the board shall not be
22 duplicated by any recommendations prepared and adopted pursuant to
23 chapter 90.70 RCW after the effective date of this section.

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

28 (3) There shall be five members of the board appointed by the
29 governor for terms of five years. Members' terms shall be staggered.
30 The members of the board shall be representative of the public and

1 shall have demonstrable knowledge of environmental protection and the
2 study of marine ecosystems, or have familiarity with marine
3 transportation systems.

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

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

10 NEW SECTION. **Sec. 502.** A new section is added to chapter 90.70
11 RCW to read as follows:

12 Authority recommendations for oil spill prevention and response
13 shall not be duplicative of those responsibilities given to the marine
14 oversight board under section 501 of this act. The authority may
15 incorporate the findings and recommendations of the marine oversight
16 board into the plan or revisions of the plan submitted to the United
17 States environmental protection agency pursuant to the federal clean
18 water act, 33 U.S.C. Sec. 1330.

19 **PART VI**

20 **TANKER REQUIREMENTS**

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

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

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

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

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

16 It is therefore the intent and purpose of RCW 88.16.180 and
17 88.16.190 to decrease the likelihood of oil spills on the Columbia
18 river and on Puget Sound and its shorelines by requiring all oil
19 tankers above a certain size to employ ((Washington state)) licensed
20 pilots and((, ~~if lacking certain safety and maneuvering capability~~
21 ~~requirements,~~)) to be escorted by a tug or tugs while navigating on
22 certain areas of Puget Sound and adjacent waters.

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

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

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

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

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

7 Any vessel designed for the purpose of carrying as its cargo
8 liquefied natural or propane gas shall adhere to the provisions of RCW
9 88.16.190(2) as though it ((was)) were an oil tanker.

10 NEW SECTION. **Sec. 604.** RECKLESS OPERATION OF A VESSEL. (1) A
11 person commits the crime of reckless operation of a tank vessel if,
12 while (a) navigating a tank vessel, (b) piloting a tank vessel, or (c)
13 on the vessel control bridge and in control of the motion, direction,
14 or speed of a tank vessel, the person, with recklessness as defined in
15 RCW 9A.08.010, causes a release of oil.

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

18 NEW SECTION. **Sec. 605.** OPERATION OF A VESSEL WHILE UNDER
19 INFLUENCE OF LIQUOR OR DRUGS. (1) A person is guilty of operating a
20 vessel while under the influence of intoxicating liquor or drugs if the
21 person operates a covered vessel within this state while:

22 (a) The person has 0.06 grams or more of alcohol per two hundred
23 ten liters of breath, as shown by analysis of the person's breath made
24 under section 606 of this act; or

25 (b) The person has 0.06 percent or more by weight of alcohol in the
26 person's blood as shown by analysis of the person's blood made under
27 section 606 of this act; or

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

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

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

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

11 NEW SECTION. **Sec. 606.** BREATH OR BLOOD ANALYSIS. (1) Upon the
12 trial of any civil or criminal action or proceeding arising out of acts
13 alleged to have been committed by a person while operating a vessel
14 while under the influence of intoxicating liquor or drugs, if the
15 amount of alcohol in the person's blood or breath at the time alleged
16 as shown by analysis of his blood or breath is less than 0.06 percent
17 by weight of alcohol in his blood or 0.06 grams of alcohol per two
18 hundred ten liters of the person's breath, it is evidence that may be
19 considered with other competent evidence in determining whether the
20 person was under the influence of intoxicating liquor or drugs.

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

26 (3) Analysis of the person's blood or breath to be considered valid
27 under this section shall have been performed according to methods
28 approved by the state toxicologist and by an individual possessing a
29 valid permit issued by the state toxicologist for this purpose. The

1 state toxicologist shall approve satisfactory techniques or methods, to
2 supervise the examination of individuals to ascertain their
3 qualifications and competence to conduct such analyses, and to issue
4 permits that are subject to termination or revocation at the discretion
5 of the state toxicologist.

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

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

18 (6) Upon the request of the person who submits to a test or tests
19 at the request of a law enforcement officer, full information
20 concerning the test or tests shall be made available to the person or
21 his or her attorney.

22 NEW SECTION. **Sec. 607.** LIMITED IMMUNITY FOR BLOOD WITHDRAWAL. No
23 physician, registered nurse, qualified technician, or hospital, or duly
24 licensed clinical laboratory employing or using services of the
25 physician, registered nurse, or qualified technician, may incur any
26 civil or criminal liability as a result of the act of withdrawing blood
27 from any person when directed by a law enforcement officer to do so for
28 the purpose of a blood test under section 606 of this act. This
29 section shall not relieve any physician, registered nurse, qualified

1 technician, or hospital or duly licensed clinical laboratory from civil
2 liability arising from the use of improper procedures or failing to
3 exercise the required standard of care.

4 **PART VII**

5 **FINANCIAL RESPONSIBILITY**

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

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

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

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

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

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

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

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

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

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

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

19 (8) "Hazardous substances" means any substance listed in Table
20 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section
21 101(14) of the federal comprehensive environmental response,
22 compensation, and liability act of 1980, as amended by P.L. 99-499.
23 The following are not hazardous substances for purposes of this
24 chapter:

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

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

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

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

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

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

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

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

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

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

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

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

6 (16) "Passenger vessel" means a ship of greater than three hundred
7 or more gross tons or five hundred or more international gross tons
8 carrying passengers for compensation.

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

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

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

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

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

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

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

26 (1) Any ~~((vessel over three hundred gross tons, that transports
27 petroleum products as cargo, and any))~~ inland barge that transports
28 ~~((oil or))~~ hazardous substances in bulk as cargo, using any port or
29 place in the state of Washington or the navigable waters of the state

1 shall establish(~~(, under rules prescribed by the director of the~~
2 ~~department of ecology,~~) evidence of financial responsibility in the
3 amount of the greater of one million dollars, or one hundred fifty
4 dollars per gross ton of such vessel(~~(, to meet the liability to the~~
5 ~~state of Washington for the following: (1) The actual costs for~~
6 ~~removal of spills of petroleum products or hazardous substances; (2)~~
7 ~~civil penalties and fines; and (3) natural resource damages)~~).

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

11 (b) The administrator by rule may establish a lesser standard of
12 financial responsibility for barges of three hundred gross tons or
13 less. The standard shall set the level of financial responsibility
14 based on the quantity of cargo the barge is capable of carrying. The
15 administrator shall not set the standard for barges of three thousand
16 gross tons or less below that required under federal law.

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

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

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

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

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

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

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

24 Financial responsibility required by this chapter may be
25 established by any one of, or a combination of, the following methods
26 acceptable to the ~~((director of))~~ office of marine safety or the
27 department of ecology: (1) Evidence of insurance; (2) surety bonds;
28 (3) qualification as a self-insurer; or (4) other evidence of financial

1 responsibility. Any bond filed shall be issued by a bonding company
2 authorized to do business in the United States. Documentation of such
3 financial responsibility shall be kept on any (~~barge or tank~~) covered
4 vessel (~~(transporting petroleum products or hazardous substances as~~
5 ~~cargo)~~) and filed with the (~~department. The owner or operator of any~~
6 ~~other vessel shall maintain on the vessel a certificate issued by the~~
7 ~~United States coast guard evidencing compliance with the requirements~~
8 ~~of section 311 of the federal clean water act, 33 U.S.C. Sec. 1251 et~~
9 ~~seq)) office at least twenty-four hours before entry of the vessel into~~
10 the navigable waters of the state. A covered vessel is not required to
11 file documentation of financial responsibility twenty-four hours before
12 entry of the vessel into the navigable waters of the state, if the
13 vessel has filed documentation of financial responsibility with the
14 federal government, and the level of financial responsibility required
15 by the federal government is the same as or exceeds state requirements.
16 The owner or operator of the vessel may file with the office a
17 certificate evidencing compliance with the requirements of another
18 state's or federal financial responsibility requirements if the state
19 or federal government requires a level of financial responsibility the
20 same as or greater than 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 or office shall be
8 reported to the secretary of state. The secretary of state shall
9 suspend the facility's privilege of operating in this state until
10 financial 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 immediately before the same are off-loaded at a marine
10 terminal in this state and who is liable for the taxes imposed by this
11 chapter.

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

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

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

1 off-loading begins at the rate of three cents per barrel of crude oil
2 or 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 (11) The office of marine safety, the department of revenue, and
13 the department of trade and economic development shall study tax
14 credits for taxpayers employing vessels with the best achievable
15 technology and the best available protection to reduce the risk of oil
16 spills to the navigable waters of the state and submit the study to the
17 appropriate standing committees of the legislature by December 1, 1992.

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

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

1 NEW SECTION. **Sec. 805.** The state oil spill response account is
2 created in the state treasury. All receipts from section 802(1) of
3 this act shall be deposited in the account. All costs reimbursed to
4 the state by a responsible party or any other person for responding to
5 a spill of oil shall also be deposited in the account. Moneys in the
6 account shall be spent only after appropriation. The account is
7 subject to allotment procedures under chapter 43.88 RCW. The account
8 shall be used exclusively to pay for the costs associated with the
9 response to spills of crude oil or petroleum products into the
10 navigable waters of the state. Payment of response costs under this
11 section shall be limited to spills which the director has determined
12 are likely to exceed fifty thousand dollars. Before expending moneys
13 from the account, the director shall make reasonable efforts to obtain
14 funding for response costs from the person responsible for the spill
15 and from other sources, including the federal government.
16 Reimbursement for response costs shall be allowed only for costs which
17 are not covered by funds appropriated to the agencies responsible for
18 response activities. Costs associated with the response to spills of
19 crude oil or petroleum products shall include:

- 20 (1) Natural resource damage assessment and related activities;
- 21 (2) Spill related response, containment, wildlife rescue, cleanup,
22 disposal, and associated costs;
- 23 (3) Interagency coordination and public information related to a
24 response; and
- 25 (4) Appropriate travel, goods and services, contracts, and
26 equipment.

27 NEW SECTION. **Sec. 806.** The state oil spill administration
28 account is created in the state treasury. All receipts from section
29 802(2) of this act shall be deposited in the account. Moneys from the

1 account may be spent only after appropriation. The account is subject
2 to allotment procedures under chapter 43.88 RCW. On July 1 of each
3 odd-numbered year, if receipts deposited in the account from the tax
4 imposed by section 802(2) of this act for the previous fiscal biennium
5 exceed the amount appropriated from the account for the previous fiscal
6 biennium, the state treasurer shall transfer the amount of receipts
7 exceeding the appropriation to the oil spill response account. If, on
8 the first day of any calendar month, the balance of the spill response
9 account is greater than twenty-five million dollars and the balance of
10 the administration account exceeds the unexpended appropriation for the
11 current biennium, then the tax under section 802(2) of this act shall
12 be suspended on the first day of the next calendar month until the
13 beginning of the following biennium, provided that the tax shall not be
14 suspended during the last six months of the biennium. If the tax
15 imposed under section 802(2) of this act is suspended during two
16 consecutive biennia, the department shall by November 1st after the end
17 of the second biennium, recommend to the appropriate standing
18 committees an adjustment in the tax rate. For the period 1991-93 the
19 state treasurer may transfer funds from the oil spill response account
20 to the oil spill administration account in amounts necessary to support
21 appropriations made from the oil spill administration account in the
22 omnibus appropriations act. Expenditures from the oil spill
23 administration account shall be used exclusively for the administrative
24 costs related to the purposes of this chapter, and chapters 90.48,
25 88.40, and 88.-- (sections 414 through 436 of this act) RCW. Costs of
26 administration include the costs of:

- 27 (1) Routine responses not covered under section 805 of this act;
 - 28 (2) Management and staff development activities;
 - 29 (3) Development of rules and policies and the state-wide plan
- 30 provided for in RCW 90.48.378 as recodified by this act;

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

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

4 (6) Collection and administration of the tax provided for in
5 chapter 82.-- RCW (sections 801 through 804, 808, and 809 of this act);
6 and

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

9 NEW SECTION. **Sec. 807.** The director of the department of
10 ecology shall submit a report to the appropriate standing committees of
11 the legislature by November 1 of each even-numbered year showing
12 detailed information regarding expenditures authorized by the director
13 under section 805 of this act. The report shall include, but not be
14 limited to:

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

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

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

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

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

26 This section shall expire December 31, 1996.

27 NEW SECTION. **Sec. 808.** The department shall adopt such rules as
28 may be necessary to enforce and administer the provisions of this

1 chapter. Chapter 82.32 RCW applies to the administration, collection,
2 and enforcement of the taxes levied under this chapter.

3 NEW SECTION. Sec. 809. The taxes imposed in this chapter shall
4 take effect October 1, 1991.

5 **Sec. 810.** RCW 90.48.142 and 1989 c 262 s 2 are each amended to
6 read as follows:

7 (1) Any person who:

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

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

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

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

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

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

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

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

10 (2) 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 prior to the injury, as such condition is determined
15 by the department. The lost value of a damaged resource shall be equal
16 to 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.

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

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

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

21 NEW SECTION. **Sec. 811.** A new section is added to chapter 90.48
22 RCW to read as follows:

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

1 **Sec. 812.** RCW 90.48.366 and 1989 c 388 s 2 are each amended to
2 read as follows:

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

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

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

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

9 **Sec. 813.** RCW 90.48.367 and 1989 c 388 s 3 are each amended to
10 read as follows:

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

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

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

26 (3) If the preassessment screening committee determines that the
27 compensation schedule should not be used, compensation shall be
28 assessed for the amount of money necessary to restore any damaged
29 resource to its condition before the injury, to the extent technically

1 feasible, and compensate for the lost value incurred during the period
2 between injury and restoration.

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

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

23 ~~((+4))~~ (6) Compensation assessed under this section ~~((for a~~
24 ~~particular oil spill))~~ shall preclude claims under this chapter by
25 local governments for compensation for damages to publicly owned
26 resources resulting from the same ~~((spill))~~ incident.

27 **Sec. 814.** RCW 90.48.368 and 1989 c 388 s 4 are each amended to
28 read as follows:

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

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

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

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

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

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

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

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

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

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

8 **Sec. 815.** RCW 90.48.390 and 1989 c 388 s 7 and 1989 c 262 s 3 are
9 each reenacted and amended to read as follows:

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

22 Moneys in the fund not needed currently to meet the obligations of
23 the department in the exercise of its powers, duties, and functions
24 under RCW (~~(90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125,~~

25 ~~82.36.330,)~~ 90.48.142, (~~(90.48.315, 90.48.370 through 90.48.410,~~
26 ~~90.48.903, 90.48.906 and 90.48.907)~~) 90.48.366, 90.48.367, and
27 90.48.368 shall be deposited with the state treasurer to the credit of
28 the fund and may be invested in such manner as is provided for by law.
29 Interest received on such investment shall be credited to the fund.

1 **Sec. 816.** RCW 90.48.400 and 1990 c 116 s 14 are each amended to
2 read as follows:

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

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

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

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

16 (c) Development and implementation of an aquatic land geographic
17 information system.

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

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

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

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

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

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

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

22 **Sec. 817.** RCW 90.48.369 and 1989 c 388 s 5 are each amended to
23 read as follows:

24 The department shall submit an annual report to the appropriate
25 standing committees of the legislature for the next five years
26 beginning January 1, 1990. The annual report shall cover the
27 implementation of ~~((this act))~~ RCW 90.48.366, 90.48.367, 90.48.368, and
28 90.48.369 and shall include information on each ~~((oil))~~ spill for which
29 a preassessment screening committee was convened, the outcome of each

1 process, any compensation claims imposed or damage assessment studies
2 conducted, and the revenues to and expenditures from the coastal
3 protection fund.

4 **PART IX**

5 **MARITIME COMMISSION**

6 **Sec. 901.** RCW 88.44.010 and 1990 c 117 s 2 are each amended to
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

14 ~~((2))~~ (3) "Commission" means the Washington state maritime
15 commission.

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

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

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

26 (6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel
27 oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural
28 gas, propane, butane, oils distilled from coal, and other liquid

1 hydrocarbons regardless of specific gravity, or any other petroleum
2 related products.

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

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

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

17 (10) "State" means a state of the United States, Guam, Puerto Rico,
18 the Virgin Islands, American Samoa, the District of Columbia, the
19 Northern Mariana Islands, and any other territory or possession of the
20 United States.

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

26 (12) "Steamship liner company" means a steamship company
27 maintaining a regular schedule of calls at designated ports of the
28 state of Washington.

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

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

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

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

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

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

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

27 (1) To (~~(elect a chairperson and such other officers as it deems
28 advisable; and to~~)) adopt, rescind, and amend rules and orders for the

1 exercise of its powers, which shall have the force and effect of the
2 law when not inconsistent with existing laws;

3 (2) To administer and enforce the provisions of this chapter, and
4 do all things reasonably necessary to effectuate the purposes of this
5 chapter;

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

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

13 (5) To assess vessels transiting the waters of this state, to
14 collect such assessments, investigate violations, and enforce the
15 provisions of this chapter, except for vessels which transit upon the
16 portion of the Columbia river that runs between the states of
17 Washington and Oregon;

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

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

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

24 (9) To borrow money and incur indebtedness;

25 (10) To establish an oil spill first response system, except for
26 vessels which transit upon the portion of the Columbia river that runs
27 between the states of Washington and Oregon. This system will provide
28 a mandatory emergency response communications network for vessels
29 involved in commerce in Washington waters, and provide an immediate
30 response to such vessels which, for whatever reason, discharge oil into

1 the state's waters. In the event of an oil spill or threatened oil
2 spill, the system must be able to provide a complete response for the
3 first twenty-four hours after the initial report, which may include,
4 but not be limited to, as needed, response vessel or vessels, boom
5 equipment, skimmers, qualified personnel, and wildlife care centers.

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

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

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

16 (13) To hold response readiness drills with state and federal
17 agencies;

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

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

28 (16) To develop a data base from existing information sources, of
29 accidents, groundings, near misses, and oil discharges of all cargo and
30 passenger vessels entering the waters of the state and to report any

1 such information to the office of marine safety for the purposes of
2 preparing a summary of accidents and near miss incidents; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~((Resignations of commission members will be filled by a majority~~
28 ~~of the remaining commission members. The appointed commission members~~
29 ~~shall serve out the remaining term. If a commission member leaves the~~

1 employment of their respective business class for more than one hundred
2 twenty days, the commission member must resign from that position. A
3 commission member may be removed from the commission for just cause by
4 a two-thirds majority vote of commission members.))

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

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

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

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

1 PART X

2 PILOTAGE

3 Sec. 1001. RCW 88.16.010 and 1987 c 485 s 1 are each amended to
4 read as follows:

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

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

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

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

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

15 (1) A person may pilot any vessel subject to the provisions of this
16 chapter on waters covered by this chapter only if appointed and
17 licensed to pilot such vessels on said waters under and pursuant to the
18 provisions of this chapter.

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

1 examination and a first class United States endorsement without
2 restrictions on that license to pilot in the pilotage districts for
3 which the pilot applicant desires to be licensed, and if the pilot
4 applicant meets such other qualifications as may be required by the
5 board. A person applying for a license under this section shall not
6 have been convicted of an offense involving drugs or the personal
7 consumption of alcohol in the twelve months prior to the date of
8 application. This restriction does not apply to license renewals under
9 this section.

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

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

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

23 (6) All pilots and applicants are subject to an annual physical
24 examination by a physician chosen by the board. The physician shall
25 examine the applicant's heart, blood pressure, circulatory system,
26 lungs and respiratory system, eyesight, hearing, and such other items
27 as may be prescribed by the board. After consultation with a physician
28 and the United States coast guard, the board shall establish minimum
29 health standards to ensure that pilots licensed by the state are able
30 to perform their duties. Within ninety days of the date of each annual

1 physical examination, and after review of the physician's report, the
2 board shall make a determination of whether the pilot or candidate is
3 fully able to carry out the duties of a pilot under this chapter. The
4 board may in its discretion check with the appropriate authority for
5 any convictions of offenses involving drugs or the personal consumption
6 of alcohol in the prior twelve months.

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

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

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

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

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

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

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

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

24 (2) The report shall include information for each vessel that
25 suffers a grounding, collision, or other major marine casualty that
26 occurred while the pilot was on duty during the reporting period. The
27 report shall also include information on near miss incidents as defined
28 in section 423 of this 1991 act. Information concerning near miss
29 incidents provided pursuant to this section shall not be used for

1 imposing any sanctions or penalties. The board shall forward
2 information provided under this subsection to the office of marine
3 safety for inclusion in the collision reporting system established
4 under section 423 of this 1991 act.

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

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

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

15 ~~(b) The provisions of current international agreements governing~~
16 ~~the safety, radio equipment, and pollution of vessels and other matters~~
17 ~~as ratified by the United States Senate and prescribed by the board))~~
18 to the United States coast guard before the vessel enters the navigable
19 waters of the state, that the vessel complies with:

20 (a) United States coast guard regulations as codified in 33 C.F.R.
21 Part 161; and

22 (b) The federal oil pollution act of 1990.

23 (2) ~~The master of any vessel which employs a Washington licensed~~
24 ~~pilot shall be prepared to ((produce, and any Washington licensed pilot~~
25 ~~employed by a vessel shall request to see, certificates of the vessel~~
26 ~~which)) certify and indicate to the United States coast guard that the~~
27 ~~vessel complies with subsection (1) of this section and the rules of~~
28 ~~the board ((promulgated)) adopted pursuant to subsection (1) of this~~
29 ~~section.~~

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

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

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

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

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

18 (a) Immediately inform the United States coast guard and the port
19 captain of the conditions and circumstances by the best possible means;
20 and

21 (b) Disembark from the vessel as soon as practicable(~~;~~ ~~and~~

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

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

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

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

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

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

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

1 responding to a subpoena as provided herein shall be entitled to fees
2 as are witnesses in superior court.

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

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

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

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

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

18 Notwithstanding any other provisions of this chapter or chapter
19 90.56 RCW, whenever it appears to the director that water quality
20 conditions exist which require immediate action to protect the public
21 health or welfare, or that a person required by RCW 90.48.160 to obtain
22 a waste discharge permit prior to discharge is discharging without the
23 same, or that a person conducting an operation which is subject to a
24 permit issued pursuant to RCW 90.48.160 conducts the same in violation
25 of the terms of said permit, causing water quality conditions to exist
26 which require immediate action to protect the public health or welfare,
27 the director may issue a written order to the person or persons

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

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

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

27 NEW SECTION. **Sec. 1108.** The department of ecology, the office of
28 marine safety, and the marine oversight board shall study issues

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

16 NEW SECTION. **Sec. 1109.** The department of ecology shall report
17 to the appropriate standing committees on the effectiveness of chapter
18 90.56 RCW, and in particular as to how the chapter has been implemented
19 to complement federal law. A report shall be submitted not later than
20 December 1, 1992, and a second report not later than December 1, 1994.

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

1 NEW SECTION. **Sec. 1111.** TIMING OF CONTINGENCY PLAN RULES. The
2 rules required by RCW 90.48.371 as recodified by this act for
3 facilities and, except as otherwise provided in this section for
4 covered vessels, shall be adopted not later than July 1, 1991. The
5 department shall exclude from the rules to be adopted by July 1, 1991,
6 standards for tank vessels of less than twenty thousand deadweight
7 tons, cargo vessels, and passenger vessels operating on the portion of
8 the Columbia river for which the department determines that Washington
9 and Oregon should cooperate in the adoption of standards for
10 contingency plans. The department, after consultation with the
11 appropriate state agencies in Oregon, shall adopt the rules for
12 standards for contingency plans for this portion of the Columbia river
13 at the earliest possible time, but not later than July 1, 1992.

14 NEW SECTION. **Sec. 1112.** A new section is added to chapter 80.50
15 RCW to read as follows:

16 In making its recommendations to the governor under this chapter
17 regarding an application that includes transmission facilities for
18 petroleum products, the council shall give appropriate weight to city
19 or county facility siting standards adopted for the protection of sole
20 source aquifers.

21 NEW SECTION. **Sec. 1113.** CAPTIONS NOT LAW. Section headings and
22 part headings as used in this chapter shall constitute no part of the
23 law.

24 NEW SECTION. **Sec. 1114.** Sections 101, 103, 108 through 110, 201,
25 203, 204, 304, 501, 805, and 806 of this act are each added to a new
26 chapter in Title 90 RCW to be codified as provided for in section 1115
27 of this act.

1 NEW SECTION. **Sec. 1115.** CODIFICATION INSTRUCTIONS. (1) Parts I
2 through III and sections 501, 805, and 806 of this act shall constitute
3 a new chapter in Title 90 RCW to be codified as chapter 90.56 RCW, and
4 shall be codified and recodified as provided for in this section. The
5 code reviser shall correct all statutory references to these sections
6 to reflect this recodification.

7 The following sections shall be codified and recodified in the
8 following order:

9 Section 101 of this act

10 RCW 90.48.315

11 Section 103 of this act

12 RCW 90.48.370

13 RCW 90.48.365

14 RCW 90.48.380

15 RCW 90.48.378

16 Section 108 of this act

17 Section 109 of this act

18 Section 110 of this act

19 RCW 90.48.387

20 RCW 90.48.388

21 Section 201 of this act

22 RCW 90.48.371

23 Section 203 of this act

24 Section 204 of this act

25 RCW 90.48.372

26 RCW 90.48.373

27 RCW 90.48.374

28 RCW 90.48.375

29 RCW 90.48.360

30 RCW 90.48.376

1 RCW 90.48.377

2 RCW 90.48.320

3 RCW 90.48.350

4 RCW 90.48.325

5 RCW 90.48.330

6 RCW 90.48.335

7 RCW 90.48.336

8 RCW 90.48.338

9 Section 304 of this act

10 RCW 90.48.340

11 RCW 90.48.355

12 RCW 90.48.343

13 Section 501 of this act

14 Section 805 of this act

15 Section 806 of this act

16 RCW 90.48.907.

17 (2) Sections 801 through 804, 808, and 809 of this act shall
18 constitute a new chapter in Title 82 RCW.

19 (3) Sections 402, 403, 405, and 407 of this act shall constitute a
20 new chapter in Title 43 RCW.

21 (4)(a) Sections 414 through 436 of this act shall constitute a new
22 chapter in Title 88 RCW.

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

25 (5) Sections 604 through 607 of this act are each added to chapter
26 88.16 RCW.

27 NEW SECTION. **Sec. 1116.** REPEALER. The following acts or parts of
28 acts are each repealed:

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

- 1 (2) RCW 90.48.381 and 1990 c 116 s 15;
- 2 (3) RCW 90.48.410 and 1971 ex.s. c 180 s 6;
- 3 (4) RCW 88.40.010 and 1990 c 116 s 30 & 1989 1st ex.s. c 2 s 2;
- 4 (5) RCW 88.40.050 and 1989 1st ex.s. c 2 s 6;
- 5 (6) RCW 90.48.910 and 1967 c 13 s 25;
- 6 (7) RCW 88.44.050 and 1990 c 117 s 6;
- 7 (8) RCW 88.44.060 and 1990 c 117 s 7;
- 8 (9) RCW 88.44.070 and 1990 c 117 s 8; and
- 9 (10) RCW 90.48.383 and 1990 c 116 s 25.

10 **NEW SECTION.** *Sec. 1117. If specific funding for the purposes of*
12 *this act, referencing this act by bill number, is not provided by June*
13 *30, 1991, in the omnibus appropriations act, this act shall be null and*
14 *void.*

15 **Sec. 1117 was vetoed, see message at end of chapter.*

16 **NEW SECTION.** **Sec. 1118.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 **NEW SECTION.** **Sec. 1119.** (1) Sections 101 through 429, 501
21 through 706, 805 through 807, 810 through 817, and 901 through 1118 of
22 this act are necessary for the immediate preservation of the public
23 peace, health, or safety, or support of the state government and its
24 existing public institutions, and shall take effect immediately.

25 (2) Sections 801 through 804, 808, and 809 of this act shall take
26 effect October 1, 1991.

1 NEW SECTION. **Sec. 1120.** Sections 430 through 436 of this act
2 shall take effect July 1, 1997.

 Passed the House March 15, 1991.

 Passed the Senate April 19, 1991.

 Approved by the Governor May 15, 1991, with the exception of
 certain items which were vetoed.

 Filed in Office of Secretary of State May 15, 1991.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 306,
3 1005, and 1117, Engrossed Substitute House Bill No. 1027 entitled:

4 "AN ACT Relating to oil and hazardous substances."

5 Existing state law establishes penalties for any person who
6 negligently discharges oil into Washington's waters. Section 306 of
7 this bill qualifies this standard by stating that an employee shall be
8 indemnified by the owner or operator of a facility or covered vessel
9 for any penalty resulting from a negligent discharge of oil by the
10 employee. I am vetoing this section for three reasons. First, this
11 penalty provision has been state law for over 20 years. Current law
12 should not be relaxed if no problems have been identified. Second,
13 there is no valid policy reason to exempt from penalty an employee,
14 including a pilot or ship captain, who negligently discharges oil.
15 Third, this section creates a special class of individuals who get
16 special protection under the law. Others who are not employees of
17 facilities or vessels do not get the same special treatment and are
18 liable for penalties for the negligent discharge of oil. The veto of
19 section 306 restores current law.

20 Under existing state law, the master of a vessel certifies in
21 writing that the vessel meets certain safety requirements. If the
22 certification is made, the pilot countersigns the certificate. If the
23 certification is not made, the pilot must refuse to take the ship in.
24 Section 1005 changes this requirement. There appears to be no
25 justification for this change. Without sufficient justification,
26 current responsibilities of masters and pilots to ensure vessel safety
27 should be maintained.

28 Section 1117 states that this bill is null and void unless specific
29 funding is provided in the omnibus appropriations act. This section
30 conflicts with Section 1119 which declares an emergency. There is much
31 work to do to implement this important bill and to protect Washington's
32 marine waters from the threat of oil spills. Agencies need to begin
33 that work now.

34 With the exception of sections 306, 1005, and 1117, Engrossed
35 Substitute House Bill No. 1027 is approved."