

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1186

Chapter 122, Laws of 2011

62nd Legislature
2011 Regular Session

STATE OIL SPILL PROGRAM

EFFECTIVE DATE: 07/22/11

Passed by the House April 13, 2011
Yeas 62 Nays 34

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 5, 2011
Yeas 47 Nays 2

BRAD OWEN

President of the Senate

Approved April 20, 2011, 1:43 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1186** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 20, 2011

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1186

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington

62nd Legislature

2011 Regular Session

By House General Government Appropriations & Oversight (originally sponsored by Representatives Rolfes, Hudgins, Upthegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Liiias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu, and Seaquist)

READ FIRST TIME 02/22/11.

1 AN ACT Relating to requirements under the state's oil spill
2 program; amending RCW 88.46.060, 88.46.100, 90.48.366, and 90.56.370;
3 reenacting and amending RCW 88.46.010; adding new sections to chapter
4 88.46 RCW; creating a new section; prescribing penalties; and providing
5 an expiration date.

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

7 **Sec. 1.** RCW 88.46.010 and 2009 c 11 s 7 are each reenacted and
8 amended to read as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

11 (1) "Best achievable protection" means the highest level of
12 protection that can be achieved through the use of the best achievable
13 technology and those staffing levels, training procedures, and
14 operational methods that provide the greatest degree of protection
15 achievable. The director's determination of best achievable protection
16 shall be guided by the critical need to protect the state's natural
17 resources and waters, while considering:

18 (a) The additional protection provided by the measures;

19 (b) The technological achievability of the measures; and

1 (c) The cost of the measures.

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

4 (~~(a)~~) (i) Processes that are being developed, or could feasibly
5 be developed, given overall reasonable expenditures on research and
6 development~~(~~(7)~~)~~; and

7 (~~(b)~~) (ii) Processes that are currently in use.

8 (b) In determining what is best achievable technology, the director
9 shall consider the effectiveness, engineering feasibility, and
10 commercial availability of the technology.

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

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

18 (5) "Covered vessel" means a tank vessel, cargo vessel, or
19 passenger vessel.

20 (6) "Department" means the department of ecology.

21 (7) "Director" means the director of the department of ecology.

22 (8) "Discharge" means any spilling, leaking, pumping, pouring,
23 emitting, emptying, or dumping.

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

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

1 (10) "Marine facility" means any facility used for tank vessel
2 wharfage or anchorage, including any equipment used for the purpose of
3 handling or transferring oil in bulk to or from a tank vessel.

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

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

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

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

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

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

37 (16) "Passenger vessel" means a ship of three hundred or more gross

1 tons with a fuel capacity of at least six thousand gallons carrying
2 passengers for compensation.

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

6 (18) "Race Rocks light" means the nautical landmark located
7 southwest of the city of Victoria, British Columbia.

8 (19) "Severe weather conditions" means observed nautical conditions
9 with sustained winds measured at forty knots and wave heights measured
10 between twelve and eighteen feet.

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

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

15 (22) "Strait of Juan de Fuca" means waters off the northern coast
16 of the Olympic Peninsula seaward of a line drawn from New Dungeness
17 light in Clallam county to Discovery Island light on Vancouver Island,
18 British Columbia, Canada.

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

- 22 (a) Operates on the waters of the state; or
- 23 (b) Transfers oil in a port or place subject to the jurisdiction of
24 this state.

25 (24) "Vessel emergency" means a substantial threat of pollution
26 originating from a covered vessel, including loss or serious
27 degradation of propulsion, steering, means of navigation, primary
28 electrical generating capability, and seakeeping capability.

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

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

1 (27) "Vessels of opportunity response system" means nondedicated
2 boats and operators, including fishing and other vessels, that are
3 under contract with and equipped by contingency plan holders to assist
4 with oil spill response activities, including on-water oil recovery in
5 the near shore environment and the placement of oil spill containment
6 booms to protect sensitive habitats.

7 (28) "Regional vessels of opportunity response group" means a group
8 of nondedicated vessels participating in a vessels of opportunity
9 response system to respond when needed and available to spills in a
10 defined geographic area.

11 (29) "Volunteer coordination system" means an oil spill response
12 system that, before a spill occurs, prepares for the coordination of
13 volunteers to assist with appropriate oil spill response activities,
14 which may include shoreline protection and cleanup, wildlife recovery,
15 field observation, light construction, facility maintenance, donations
16 management, clerical support, and other aspects of a spill response.

17 (30) "Umbrella plan holder" means a nonprofit corporation
18 established consistent with this chapter for the purposes of providing
19 oil spill response and contingency plan coverage.

20 NEW SECTION. Sec. 2. A new section is added to chapter 88.46 RCW
21 to read as follows:

22 (1) The department shall evaluate and update planning standards for
23 oil spill response equipment required under contingency plans required
24 by this chapter, including aerial surveillance, in order to ensure
25 access in the state to equipment that represents the best achievable
26 protection to respond to a worst case spill and provide for continuous
27 operation of oil spill response activities to the maximum extent
28 practicable and without jeopardizing crew safety, as determined by the
29 incident commander or the unified command.

30 (2) The department shall by rule update the planning standards at
31 five-year intervals to ensure the maintenance of best available
32 protection over time. Rule updates to covered nontank vessels shall
33 minimize potential impacts to discretionary cargo moved through the
34 state.

35 (3) The department shall evaluate and update planning standards for
36 tank vessels by December 31, 2012.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 88.46 RCW
2 to read as follows:

3 By December 31, 2012, the department shall complete rule making for
4 purposes of improving the effectiveness of the vessels of opportunity
5 system to participate in spill response.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46 RCW
7 to read as follows:

8 (1) The department shall establish a volunteer coordination system.
9 The volunteer coordination system may be included as a part of the
10 state's overall oil spill response strategy, and may be implemented by
11 local emergency management organizations, in coordination with any
12 analogous federal efforts, to supplement the state's timely and
13 effective response to spills.

14 (2) The department should consider how the volunteer coordination
15 system will:

16 (a) Coordinate with the incident commander or unified command of an
17 oil spill and any affected local governments to receive, screen, and
18 register volunteers who are not affiliated with the emergency
19 management organization or a local nongovernmental organization;

20 (b) Coordinate the management of volunteers with local
21 nongovernmental organizations and their affiliated volunteers;

22 (c) Coordinate appropriate response operations with different
23 classes of volunteers, including pretrained volunteers and convergent
24 volunteers, to fulfill requests by the department or an oil spill
25 incident commander or unified command;

26 (d) Coordinate public outreach regarding the need for and use of
27 volunteers;

28 (e) Determine minimum participation criteria for volunteers; and

29 (f) Identify volunteer training requirements and, if applicable,
30 provide training opportunities for volunteers prior to an oil spill
31 response incident.

32 (3) An act or omission by any volunteer participating in a spill
33 response or training as part of a volunteer coordination system, while
34 engaged in such activities, does not impose any liability on any state
35 agency, any participating local emergency management organization, or
36 the volunteer for civil damages resulting from the act or omission.

1 However, the immunity provided under this subsection does not apply to
2 an act or omission that constitutes gross negligence or willful or
3 wanton misconduct.

4 (4) The decisions to utilize volunteers in an oil spill response,
5 which volunteers to utilize, and to determine which response activities
6 are appropriate for volunteer participation in any given response are
7 the sole responsibilities of the designated incident commander or
8 unified command.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46 RCW
10 to read as follows:

11 (1) The department is responsible for requiring joint large-scale,
12 multiple plan equipment deployment drills of tank vessels to determine
13 the adequacy of the owner's or operator's compliance with the
14 contingency plan requirements of this chapter. The department must
15 order at least one drill as outlined in this section every three years.

16 (2) Drills required under this section must focus on, at a minimum,
17 the following:

18 (a) The functional ability for multiple contingency plans to be
19 simultaneously activated with the purpose of testing the ability for
20 dedicated equipment and trained personnel cited in multiple contingency
21 plans to be activated in a large scale spill; and

22 (b) The operational readiness during both the first six hours of a
23 spill and, at the department's discretion, over multiple operational
24 periods of response.

25 (3) Drills required under this section may be incorporated into
26 other drill requirements under this chapter to avoid increasing the
27 number of drills and equipment deployments otherwise required.

28 (4) Each successful drill conducted under this section may be
29 considered by the department as a drill of the underlying contingency
30 plan and credit may be awarded to the plan holder accordingly.

31 (5) The department shall, when practicable, coordinate with
32 applicable federal agencies, the state of Oregon, and the province of
33 British Columbia to establish a drill incident command and to help
34 ensure that lessons learned from the drills are evaluated with the goal
35 of improving the underlying contingency plans.

1 **Sec. 6.** RCW 88.46.060 and 2005 c 78 s 2 are each amended to read
2 as follows:

3 (1) Each covered vessel shall have a contingency plan for the
4 containment and cleanup of oil spills from the covered vessel into the
5 waters of the state and for the protection of fisheries and wildlife,
6 shellfish beds, natural resources, and public and private property from
7 such spills. The department shall by rule adopt and periodically
8 revise standards for the preparation of contingency plans. The
9 department shall require contingency plans, at a minimum, to meet the
10 following standards:

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

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

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

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

24 (e) State the number, training preparedness, and fitness of all
25 dedicated, prepositioned personnel assigned to direct and implement the
26 plan;

27 (f) Incorporate periodic training and drill programs consistent
28 with this chapter to evaluate whether personnel and equipment provided
29 under the plan are in a state of operational readiness at all times;

30 (g) Describe important features of the surrounding environment,
31 including fish and wildlife habitat, shellfish beds, environmentally
32 and archaeologically sensitive areas, and public facilities. The
33 departments of ecology, fish and wildlife, (~~and~~) natural resources,
34 and (~~the office of~~) archaeology and historic preservation, upon
35 request, shall provide information that they have available to assist
36 in preparing this description. The description of archaeologically
37 sensitive areas shall not be required to be included in a contingency

1 plan until it is reviewed and updated pursuant to subsection (9) of
2 this section;

3 (h) State the means of protecting and mitigating effects on the
4 environment, including fish, shellfish, marine mammals, and other
5 wildlife, and ensure that implementation of the plan does not pose
6 unacceptable risks to the public or the environment;

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

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

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

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

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

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

27 (o) If the department has adopted rules permitting the use of
28 dispersants, the circumstances, if any, and the manner for the
29 application of the dispersants in conformance with the department's
30 rules;

31 (p) Compliance with section 7 of this act if the contingency plan
32 is submitted by an umbrella plan holder; and

33 (q) Include any additional elements of contingency plans as
34 required by this chapter.

35 (2)~~((a))~~ The owner or operator of a ~~((tank))~~ covered vessel ~~((of~~
36 ~~three-thousand-gross-tons-or-more-shall))~~ must submit ~~((a))~~ any
37 required contingency plan updates to the department within ~~((six-months~~

1 after)) the timelines established by the department ((adopts rules
2 ~~establishing standards for contingency plans under subsection (1) of~~
3 ~~this section.~~

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

9 (3)(a) The owner or operator of a tank vessel or of the facilities
10 at which the vessel will be unloading its cargo, or a ((~~Washington~~
11 ~~state~~)) nonprofit corporation established for the purpose of oil spill
12 response and contingency plan coverage and of which the owner or
13 operator is a member, shall submit the contingency plan for the tank
14 vessel. Subject to conditions imposed by the department, the owner or
15 operator of a facility may submit a single contingency plan for tank
16 vessels of a particular class that will be unloading cargo at the
17 facility.

18 (b) The contingency plan for a cargo vessel or passenger vessel may
19 be submitted by the owner or operator of the cargo vessel or passenger
20 vessel, by the agent for the vessel resident in this state, or by a
21 ((~~Washington state~~)) nonprofit corporation established for the purpose
22 of oil spill response and contingency plan coverage and of which the
23 owner or operator is a member. Subject to conditions imposed by the
24 department, the owner, operator, or agent may submit a single
25 contingency plan for cargo vessels or passenger vessels of a particular
26 class.

27 (c) A person who has contracted with a covered vessel to provide
28 containment and cleanup services and who meets the standards
29 established pursuant to RCW 90.56.240, may submit the plan for any
30 covered vessel for which the person is contractually obligated to
31 provide services. Subject to conditions imposed by the department, the
32 person may submit a single plan for more than one covered vessel.

33 (4) A contingency plan prepared for an agency of the federal
34 government or another state that satisfies the requirements of this
35 section and rules adopted by the department may be accepted by the
36 department as a contingency plan under this section. The department
37 shall ensure that to the greatest extent possible, requirements for

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

3 (5) In reviewing the contingency plans required by this section,
4 the department 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, shellfish beds, and
19 other natural 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)(a) The department 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.

30 (b) The department must notify the plan holder in writing within
31 sixty-five days of an initial or amended plan's submittal to the
32 department as to whether the plan is disapproved, approved, or
33 conditionally approved. If a plan is conditionally approved, the
34 department must clearly describe each condition and specify a schedule
35 for plan holders to submit required updates.

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

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

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

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

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

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 88.46 RCW
18 to read as follows:

19 (1) When submitting a contingency plan to the department under RCW
20 88.46.060, any umbrella plan holder that enrolls both tank vessels and
21 covered vessels that are not tank vessels must, in addition to
22 satisfying the other requirements of this chapter, specify:

23 (a) The maximum worst case discharge volume from covered vessels
24 that are not tank vessels to be covered by the umbrella plan holder's
25 contingency plan; and

26 (b) The maximum worst case discharge volume from tank vessels to be
27 covered by the umbrella plan holder's contingency plan.

28 (2) Any owner or operator of a covered vessel having a worst case
29 discharge volume that exceeds the maximum volume covered by an approved
30 umbrella plan holder may enroll with the umbrella plan holder if the
31 owner or operator of the covered vessel maintains an agreement with
32 another entity to provide supplemental equipment sufficient to meet the
33 requirements of this chapter.

34 (3) The department must approve an umbrella plan holder that covers
35 vessels having a worst case discharge volume that exceeds the maximum
36 volume if:

1 (a) The department determines that the umbrella plan holder should
2 be approved for a lower discharge volume;

3 (b) The vessel owner or operator provides documentation to the
4 umbrella plan holder authorizing the umbrella plan holder to activate
5 additional resources sufficient to meet the worst case discharge volume
6 of the vessel; and

7 (c) The department has previously approved a plan that provides
8 access to the same resources identified in (3)(b) to meet the
9 requirements of this chapter for worst case discharge volumes equal to
10 or greater than the worst case discharge volume of the vessel.

11 (4) The umbrella plan holder must describe in the plan how the
12 activation of additional resources will be implemented and provide the
13 department the ability to review and inspect any documentation that the
14 umbrella plan holder relies on to enroll a vessel with a worst case
15 discharge that exceeds the plan's maximum volume.

16 **Sec. 8.** RCW 88.46.100 and 2000 c 69 s 10 are each amended to read
17 as follows:

18 ~~((1)) In (order to assist the state in identifying areas of the~~
19 ~~navigable waters of the state needing special attention, the owner or~~
20 ~~operator of a covered vessel shall notify the)) addition to any~~
21 ~~notifications that the owner or operator of a covered vessel must~~
22 ~~provide to the United States coast guard (within one hour:~~

23 ~~(a) Of the disability of the covered vessel if the disabled vessel~~
24 ~~is within twelve miles of the shore of the state; and~~

25 ~~(b) Of a collision or a near miss incident within twelve miles of~~
26 ~~the shore of the state.~~

27 ~~(2) The state military department and the department shall request~~
28 ~~the coast guard to notify the state military department as soon as~~
29 ~~possible after the coast guard receives notice of a disabled covered~~
30 ~~vessel or of a collision or near miss incident within twelve miles of~~
31 ~~the shore of the state. The department shall negotiate an agreement~~
32 ~~with the coast guard governing procedures for coast guard notification~~
33 ~~to the state regarding disabled covered vessels and collisions and near~~
34 ~~miss incidents.~~

35 ~~(3) The department shall prepare a summary of the information~~
36 ~~collected under this section and provide the summary to the regional~~

1 marine safety committees, the coast guard, and others in order to
2 identify problems with the marine transportation system.

3 ~~(4) For the purposes of this section:~~

4 ~~(a) A tank vessel or cargo vessel is considered disabled if any of~~
5 ~~the following occur:~~

6 ~~(i) Any accidental or intentional grounding;~~

7 ~~(ii) The total or partial failure of the main propulsion or primary~~
8 ~~steering or any component or control system that causes a reduction in~~
9 ~~the maneuvering capabilities of the vessel;~~

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

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

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

16 ~~(i) The towing mechanism becomes disabled;~~

17 ~~(ii) The towboat towing the barge becomes disabled through~~
18 ~~occurrences defined in (a) of this subsection.~~

19 ~~(c) A near miss incident is an incident that requires the pilot or~~
20 ~~master of a covered vessel to take evasive actions or make significant~~
21 ~~course corrections in order to avoid a collision with another ship or~~
22 ~~to avoid a grounding as required by the international rules of the~~
23 ~~road.~~

24 ~~(5) Failure of any person to make a report under this section shall~~
25 ~~not be used as the basis for the imposition of any fine or penalty))~~
26 regarding a vessel emergency, the owner or operator of a covered vessel
27 must notify the state of any vessel emergency that results in the
28 discharge or substantial threat of discharge of oil to state waters or
29 that may affect the natural resources of the state within one hour of
30 the onset of that emergency. The purpose of this notification is to
31 enable the department to coordinate with the vessel operator,
32 contingency plan holder, and the United States coast guard to protect
33 the public health, welfare, and natural resources of the state and to
34 ensure all reasonable spill preparedness and response measures are in
35 place prior to a spill occurring.

36 **Sec. 9.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read
37 as follows:

1 (1) The department, in consultation with the departments of fish
2 and wildlife and natural resources, and the parks and recreation
3 commission, shall adopt rules establishing a compensation schedule for
4 the discharge of oil in violation of this chapter and chapter 90.56
5 RCW. The amount of compensation assessed under this schedule shall be:

6 (a) For spills totaling one thousand gallons or more in any one
7 event, no less than ((one-dollar)) three dollars per gallon of oil
8 spilled and no greater than ((one)) three hundred dollars per gallon of
9 oil spilled; and

10 (b) For spills totaling less than one thousand gallons in any one
11 event, no less than one dollar per gallon of oil spilled and no greater
12 than one hundred dollars per gallon of oil spilled.

13 (2) Persistent oil recovered from the surface of the water within
14 forty-eight hours of a discharge must be deducted from the total spill
15 volume for purposes of determining the amount of compensation assessed
16 under the compensation schedule.

17 (3) The compensation schedule adopted under this section shall
18 reflect adequate compensation for unquantifiable damages or for damages
19 not quantifiable at reasonable cost for any adverse environmental,
20 recreational, aesthetic, or other effects caused by the spill and shall
21 take into account:

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

26 ((+2)) (b) The sensitivity of the affected area as determined by
27 such factors as:

28 ((+a)) (i) The location of the spill;

29 ((+b)) (ii) Habitat and living resource sensitivity;

30 ((+c)) (iii) Seasonal distribution or sensitivity of living
31 resources;

32 ((+d)) (iv) Areas of recreational use or aesthetic importance;

33 ((+e)) (v) The proximity of the spill to important habitats for
34 birds, aquatic mammals, fish, or to species listed as threatened or
35 endangered under state or federal law;

36 ((+f)) (vi) Significant archaeological resources as determined by
37 the department of archaeology and historic preservation; and

1 ~~((g))~~ (vii) Other areas of special ecological or recreational
2 importance, as determined by the department; and

3 ~~((3))~~ (c) Actions taken by the party who spilled oil or any party
4 liable for the spill that:

5 ~~((a))~~ (i) Demonstrate a recognition and affirmative acceptance of
6 responsibility for the spill, such as the immediate removal of oil and
7 the amount of oil removed from the environment; or

8 ~~((b))~~ (ii) Enhance or impede the detection of the spill, the
9 determination of the quantity of oil spilled, or the extent of damage,
10 including the unauthorized removal of evidence such as injured fish or
11 wildlife.

12 **Sec. 10.** RCW 90.56.370 and 2000 c 69 s 21 are each amended to read
13 as follows:

14 (1) Any person owning oil or having control over oil that enters
15 the waters of the state in violation of RCW 90.56.320 shall be strictly
16 liable, without regard to fault, for the damages to persons or
17 property, public or private, caused by such entry.

18 (2) Damages for which responsible parties are liable under this
19 section include loss of income, net revenue, the means of producing
20 income or revenue, or an economic benefit resulting from an injury to
21 or loss of real or personal property or natural resources.

22 (3) Damages for which responsible parties are liable under this
23 section include damages provided in subsections (1) and (2) of this
24 section resulting from the use and deployment of chemical dispersants
25 or from in situ burning in response to a violation of RCW 90.56.320.

26 (4) In any action to recover damages resulting from the discharge
27 of oil in violation of RCW 90.56.320, the owner or person having
28 control over the oil shall be relieved from strict liability, without
29 regard to fault, if that person can prove that the discharge was caused
30 solely by:

31 (a) An act of war or sabotage;

32 (b) An act of God;

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

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

35 ~~((3))~~ (5) The liability established in this section shall in no
36 way affect the rights which: (a) The owner or other person having
37 control over the oil may have against any person whose acts may in any

1 way have caused or contributed to the discharge of oil, or (b) the
2 state of Washington may have against any person whose actions may have
3 caused or contributed to the discharge of oil.

4 NEW_SECTION. **Sec. 11.** (1) The director of the department of
5 ecology must formally request that the federal government contribute to
6 the establishment of regional oil spill response equipment caches in
7 Washington to ensure adequate response capabilities during a multiple
8 spill event.

9 (2) This section expires December 31, 2014.

Passed by the House April 13, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.