

2SSB 6524 - S AMD 454
By Senator Rolfes

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that oil
4 transportation by train and vessel poses a potential hazard to the
5 health and well-being of Washington residents and the natural resources
6 and economic vitality of the state. Recent accidents, such as the oil
7 train explosions in North Dakota, Alabama, New Brunswick, and Quebec,
8 as well as the frequent incidence of leaks and spills from pipelines,
9 railcars, and vessels carrying oil across the nation, highlight the
10 risks to human health and the environment caused by the transportation
11 of oil. Furthermore, as the location and type of oil extracted in
12 North America changes with the advent of new technology, there are
13 associated changes in the patterns and methods of transporting crude
14 oil and refined petroleum products. According to the United States
15 department of transportation, the new types of oil being transported
16 through the state may also be particularly flammable and dangerous.
17 Measures to prevent spills from oil trains and tank vessels are
18 critical to lowering risks to the state's natural resources and
19 economic base. It is therefore the intent and purpose of this act to
20 establish appropriate measures to reduce the risk of oil spills from
21 vessels, to encourage the adoption of spill prevention measures, to
22 ensure that the public has access to information about the movement of
23 oil through the state, and to ensure that communities are fully
24 informed about any risks posed to their safety by the transportation of
25 oil.

26 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.56 RCW
27 to read as follows:

28 The department shall make available on its web site a quarterly

1 report on the maritime and terrestrial transportation of oil in
2 Washington. The report must include information including, but not
3 limited to, the following sources:

4 (1) Information submitted to the department pursuant to section 3
5 of this act;

6 (2) Advanced notices of transfer and other information provided to
7 the department pursuant to RCW 88.46.165, including aggregated
8 information on the quantities and types of oil being transferred, the
9 frequency and duration of oil transfers, and the locations of product
10 transfers;

11 (3) Reported information on spills, accidents, discharges, or other
12 prohibited occurrences submitted to the department pursuant to RCW
13 90.56.050(1), 90.56.280, or 88.46.100; and

14 (4) Relevant information about the volume and type of oil
15 transported through Washington that is collected by federal agencies
16 including the United States department of transportation, United States
17 coast guard, United States department of energy, and United States army
18 corps of engineers.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.56 RCW
20 to read as follows:

21 (1) The owner or operator for each facility other than a
22 transmission pipeline shall submit to the department the following
23 information:

24 (a) The number of tank vessels and railcars that transferred or
25 delivered oil at the facility each week;

26 (b) The volume and type of oil that arrived at and departed from
27 the facility each week, including the volume and type of oil:

28 (i) By mode of arrival at the facility, including but not limited
29 to arrival by vessel, rail, pipeline, or motor vehicle;

30 (ii) By mode of departure from the facility, including but not
31 limited to departure by vessel, rail, pipeline, or motor vehicle;

32 (c) The route taken by any oil that arrived at the facility by
33 railcar.

34 (2) Beginning November 1, 2014, the owner or operator of each
35 facility must submit the information required pursuant to subsection
36 (1) of this section by February 1st, May 1st, August 1st, and November
37 1st of each year and each quarterly submission must include the

1 information in subsection (1) of this section for each week of the
2 quarter covered by the submission. The department may develop a
3 reporting form and guidance for the submission of the information in
4 subsection (1) of this section by facility owners or operators. To the
5 extent feasible, the department must integrate the reporting form with
6 other forms used by facilities to submit information to the department,
7 including forms used to submit the information required by RCW
8 88.46.165.

9 (3)(a) Prior to making any confidential information submitted
10 pursuant to this section available on its web site, the department must
11 aggregate the submitted information to the extent necessary to ensure
12 confidentiality if public disclosure of the specific information or
13 data would result in an unfair competitive disadvantage to the owner or
14 operator submitting the information.

15 (b) The department may not make publicly available specific
16 information about the volume of oil or the number of vessels or
17 railcars that arrive at or depart from individual facilities. Instead,
18 information about facility-specific arrivals and departures of oil must
19 be aggregated prior to disclosure in order to prevent unfair
20 competitive disadvantage to the owner or operator submitting the
21 information.

22 NEW SECTION. **Sec. 4.** (1) Washington State University shall
23 consult with the department of ecology and the emergency management
24 division of the military department to conduct a study regarding the
25 state's capacity to respond to and recover from accidents involving
26 railcars transporting oil. In conducting this study, Washington State
27 University shall consider the potential near-term increase in the
28 volume of oil being transported via rail through Washington as a result
29 of proposed new or expanded oil refining and storage facilities.
30 Washington State University shall seek the input of relevant
31 stakeholders and other state agencies in carrying out this study.

32 (2) The study required under subsection (1) of this section must:

33 (a) Examine the current and projected prevalence of oil
34 transportation by railcar through Washington communities;

35 (b) Make a preliminary identification of the communities at the
36 greatest risk of an accident involving oil transportation by railcar;

1 (c) Examine, generally, the extent to which state and local
2 emergency plans, oil spill contingency plans developed pursuant to
3 chapter 90.56 RCW, and geographic response plans address this threat;

4 (d) Examine the roles and responsibilities of federal, state,
5 local, and tribal entities in preparing for emergencies or oil spills;

6 (e) Determine whether adequate resources are available to respond
7 to and recover from such an accident in a timely and effective manner;
8 and

9 (f) Address the potential impacts to transportation networks and
10 other critical infrastructure from an accident involving oil
11 transported by railcar.

12 (3) Washington State University shall report its findings from the
13 study to the appropriate committees of the legislature by December 1,
14 2014.

15 (4) This section expires June 30, 2015.

16 **Sec. 5.** RCW 88.16.035 and 2009 c 496 s 1 are each amended to read
17 as follows:

18 (1) The board of pilotage commissioners shall:

19 (a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the
20 enforcement and administration of this chapter, except for rules
21 adopted after July 1, 2014, that implement RCW 88.16.190, 88.16.195,
22 88.16.200, and section 12 of this act, for which the department of
23 ecology may adopt rules as described in section 8 of this act;

24 (b)(i) Issue training licenses and pilot licenses to pilot
25 applicants meeting the qualifications provided for in RCW 88.16.090 and
26 such additional qualifications as may be determined by the board;

27 (ii) Establish a comprehensive training program to assist in the
28 training and evaluation of pilot applicants before final licensing; and

29 (iii) Establish additional training requirements, including a
30 program of continuing education developed after consultation with pilot
31 organizations, including those located within the state of Washington,
32 as required to maintain a competent pilotage service;

33 (c) Maintain a register of pilots, records of pilot accidents, and
34 other history pertinent to pilotage;

35 (d) Determine from time to time the number of pilots necessary to
36 be licensed in each district of the state to optimize the operation of

1 a safe, fully regulated, efficient, and competent pilotage service in
2 each district;

3 (e) Annually fix the pilotage tariffs for pilotage services
4 provided under this chapter: PROVIDED, That the board may fix extra
5 compensation for extra services to vessels in distress, for awaiting
6 vessels, for all vessels in direct transit to or from a Canadian port
7 where Puget Sound pilotage is required for a portion of the voyage, or
8 for being carried to sea on vessels against the will of the pilot, and
9 for such other services as may be determined by the board: PROVIDED
10 FURTHER, That as an element of the Puget Sound pilotage district
11 tariff, the board may consider pilot retirement plan expenses incurred
12 in the prior year in either pilotage district. However, under no
13 circumstances shall the state be obligated to fund or pay for any
14 portion of retirement payments for pilots or retired pilots;

15 (f) File annually with the governor and the chairs of the
16 transportation committees of the senate and house of representatives a
17 report which includes, but is not limited to, the following: The
18 number, names, ages, pilot license number, training license number, and
19 years of service as a Washington licensed pilot of any person licensed
20 by the board as a Washington state pilot or trainee; the names,
21 employment, and other information of the members of the board; the
22 total number of pilotage assignments by pilotage district, including
23 information concerning the various types and sizes of vessels and the
24 total annual tonnage; the annual earnings or stipends of individual
25 pilots and trainees before and after deduction for expenses of pilot
26 organizations, including extra compensation as a separate category; the
27 annual expenses of private pilot associations, including personnel
28 employed and capital expenditures; the status of pilotage tariffs,
29 extra compensation, and travel; the retirement contributions paid to
30 pilots and the disposition thereof; the number of groundings, marine
31 occurrences, or other incidents which are reported to or investigated
32 by the board, and which are determined to be accidents, as defined by
33 the board, including the vessel name, location of incident, pilot's or
34 trainee's name, and disposition of the case together with information
35 received before the board acted from all persons concerned, including
36 the United States coast guard; the names, qualifications, time
37 scheduled for examinations, and the district of persons desiring to
38 apply for Washington state pilotage licenses; summaries of dispatch

1 records, quarterly reports from pilots, and the bylaws and operating
2 rules of pilotage organizations; the names, sizes in deadweight tons,
3 surcharges, if any, port of call, name of the pilot or trainee, and
4 names and horsepower of tug boats for any and all oil tankers subject
5 to the provisions of RCW 88.16.190 together with the names of any and
6 all vessels for which the United States coast guard requires special
7 handling pursuant to their authority under the Ports and Waterways
8 Safety Act of 1972; the expenses of the board; and any and all other
9 information which the board deems appropriate to include;

10 (g) Make available information that includes the pilotage act and
11 other statutes of Washington state and the federal government that
12 affect pilotage, including the rules of the board, together with such
13 additional information as may be informative for pilots, agents,
14 owners, operators, and masters;

15 (h) Appoint advisory committees and employ marine experts as
16 necessary to carry out its duties under this chapter;

17 (i) Provide for the maintenance of efficient and competent pilotage
18 service on all waters covered by this chapter; and do such other things
19 as are reasonable, necessary, and expedient to insure proper and safe
20 pilotage upon the waters covered by this chapter and facilitate the
21 efficient administration of this chapter.

22 (2) If the department of ecology adopts rules after July 1, 2014,
23 pursuant to subsection (1)(a) of this section, any rules previously
24 adopted by the board pursuant to subsection (1)(a) of this section that
25 implement RCW 88.16.190, 88.16.195, and 88.16.200 are no longer in
26 effect as of the effective date of the rules adopted by the department
27 of ecology.

28 (3) The board may pay stipends to pilot trainees under subsection
29 (1)(b) of this section.

30 **Sec. 6.** RCW 88.16.170 and 1991 c 200 s 601 are each amended to
31 read as follows:

32 Because of the danger of spills, the legislature finds that the
33 transportation of crude oil and refined petroleum products by tankers
34 on the Columbia river, Grays Harbor, and on Puget Sound and adjacent
35 waters creates a great potential hazard to important natural resources
36 of the state and 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 Grays Harbor
4 and Puget Sound and adjacent waters are ((a)) relatively confined salt
5 water environments with irregular shorelines and therefore there is a
6 greater than usual likelihood of long-term damage from any large oil
7 spill.

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

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

17 It is therefore the intent and purpose of RCW 88.16.180 and
18 88.16.190 to decrease the likelihood of oil spills on the Columbia
19 river, Grays Harbor, and on Puget Sound and its shorelines by requiring
20 all oil tankers above a certain size to employ licensed pilots and to
21 be escorted by a tug or tugs while navigating on certain areas of Puget
22 Sound and adjacent waters, and also in Grays Harbor and the Columbia
23 river if deemed prudent by the department of ecology.

24 **Sec. 7.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
25 as follows:

26 ~~(1) ((Any oil tanker, whether enrolled or registered, of greater~~
27 ~~than one hundred and twenty five thousand deadweight tons shall be~~
28 ~~prohibited from proceeding beyond a point east of a line extending from~~
29 ~~Discovery Island light south to New Dungeness light.~~

30 ~~(2) An oil tanker, whether enrolled or registered, of forty to one~~
31 ~~hundred and twenty five thousand deadweight tons may proceed beyond the~~
32 ~~points enumerated in subsection (1) if such tanker possesses all of the~~
33 ~~following standard safety features:~~

34 ~~(a) Shaft horsepower in the ratio of one horsepower to each two and~~
35 ~~one half deadweight tons; and~~

36 ~~(b) Twin screws; and~~

1 ~~(c) Double bottoms, underneath all oil and liquid cargo~~
2 ~~compartments; and~~

3 ~~(d) Two radars in working order and operating, one of which must be~~
4 ~~collision avoidance radar; and~~

5 ~~(e) Such other navigational position location systems as may be~~
6 ~~prescribed from time to time by the board of pilotage commissioners:~~

7 ~~PROVIDED, That, if such forty to one hundred and twenty five~~
8 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
9 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~
10 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
11 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
12 ~~horsepower equivalencies may be required under certain conditions as~~
13 ~~established by rule and regulation of the Washington utilities and~~
14 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~
15 ~~FURTHER, That)) Except as provided in subsection (2) of this section,~~
16 ~~an oil tanker of greater than forty thousand deadweight tons may enter~~
17 ~~any of the waters in (a) of this subsection, to the extent that these~~
18 ~~waters are within the territorial boundaries of Washington, only if the~~
19 ~~oil tanker is under the escort of a tug or tugs in compliance with the~~
20 ~~requirements of subsection (3) of this section and section 8 of this~~
21 ~~act:~~

22 ~~(a) East of a line extending from Discovery Island light south to~~
23 ~~New Dungeness light and all points in the Puget Sound area, including~~
24 ~~but not limited to Haro Strait, Rosario Strait, the Strait of Georgia,~~
25 ~~Puget Sound, Hood Canal, and those portions of the Strait of Juan de~~
26 ~~Fuca east of the line between New Dungeness light and Discovery Island~~
27 ~~light;~~

28 ~~(b) The department of ecology may designate the following~~
29 ~~additional areas by rule where tug escorts are required:~~

30 ~~(i) Within a two mile radius of the Grays Harbor pilotage district~~
31 ~~as defined by RCW 88.16.050;~~

32 ~~(ii) Within three miles of Cape Disappointment at the mouth of the~~
33 ~~Columbia river; or~~

34 ~~(iii) Any inland portion of the Columbia river up to Bonneville~~
35 ~~dam.~~

36 ~~(2)(a) If an oil tanker is in ballast, the tug requirements of~~
37 ~~subsection (1) of this section do not apply.~~

1 (b) If an oil tanker is a single-hulled oil tanker of greater than
2 five thousand gross tons, the requirements of subsection (1)(a) of this
3 section do not apply and the oil tanker must instead comply with 33
4 C.F.R. Part 168, as of the effective date of this section.

5 (3) Oil tankers of greater than forty thousand deadweight tons must
6 ensure that any escort tugs they use have an aggregate shaft horsepower
7 equivalent to at least five percent of the deadweight tons of the
8 escorted oil tanker. The department of ecology may adopt rules to
9 ensure that escort tugs have sufficient capacity for safe escort.

10 (4) A tanker assigned a deadweight of less than forty thousand
11 deadweight tons at the time of construction or reconstruction as
12 reported in Lloyd's Register of Ships is not subject to the provisions
13 of RCW 88.16.170 through 88.16.190.

14 (5) For the purposes of this section, "oil tanker" means a self-
15 propelled deep draft tank vessel designed to transport oil in bulk.
16 "Oil tanker" does not include an articulated tug-barge tank vessel.

17 NEW SECTION. Sec. 8. A new section is added to chapter 88.16 RCW
18 to read as follows:

19 (1)(a) Prior to adopting rules pursuant to this section, the
20 department of ecology must seek the input of stakeholders including
21 maritime safety forums such as the Puget Sound, Grays Harbor, and lower
22 Columbia region harbor safety committees. Both prior to and in
23 adopting rules pursuant to this section, the department of ecology must
24 consider the net benefits to navigational safety of any new tug escort
25 requirements. Both prior to and in adopting rules applicable to the
26 area described in RCW 88.16.190(1)(a), the department of ecology must
27 also consider the data and findings of the 2014 vessel traffic risk
28 assessment completed under the direction of the Puget Sound partnership
29 and maritime experts.

30 (b) Prior to adopting rules pursuant to this section, the
31 department of ecology must submit a report to the legislature by
32 December 1, 2014. The report must include a recommendation on the
33 merits of establishing additional tug escort safeguards by rule
34 pursuant to this section.

35 (c) Unless the 2015 legislature acts to repeal the department of
36 ecology's rule-making authority based on the recommendations of the
37 report, the department may adopt rules pursuant to this section.

1 (2) Beginning July 1, 2015, the department of ecology may adopt
2 rules to require the escort of oil tankers by a tug or tugs in the
3 areas listed in RCW 88.16.190(1).

4 (3) Beginning July 1, 2015, the department of ecology may adopt
5 rules that require additional safeguards related to tanker escorts to
6 address specific spill risks based on season, adverse weather
7 conditions, the type of oil, as defined in RCW 90.56.010, being
8 transported by the tanker, or geographic location. However, if an oil
9 tanker is equipped with fully redundant systems, the department of
10 ecology may not:

11 (a) Require escort by more than one tug; and

12 (b) Subject the oil tanker to any requirements adopted by rule
13 under this subsection (3).

14 (4) In developing rules for Grays Harbor and the Columbia river,
15 the department of ecology must recognize the differences between these
16 areas and Puget Sound, including differences in the physical
17 environment, vessel traffic, weather, and other relevant factors. The
18 department of ecology must appropriately account for these unique local
19 circumstances in any rules adopted pursuant to this section.

20 (5) The authority of the department of ecology to initiate rule
21 making to adopt additional tug escort safety requirements pursuant to
22 this section and RCW 88.16.190 expires January 1, 2020.

23 (6) For the purposes of this section, "redundant systems" includes,
24 at minimum, all of the following features:

25 (a) A double hull;

26 (b) Two independent propellers each with a dedicated engine or
27 motor, propulsion system, electrical system, fuel system, lube oil
28 system, and any other system required to provide an independent means
29 of propulsion;

30 (c) Two independent rudders, each with separate steering systems;
31 and

32 (d) The arrangement of the propulsion and steering systems in (b)
33 and (c) of this subsection such that a fire or flood in one space will
34 not affect the equivalent system in the other space or spaces.

35 **Sec. 9.** RCW 88.16.200 and 2008 c 128 s 14 are each amended to read
36 as follows:

37 Any vessel designed for the purpose of carrying as its cargo

1 liquefied natural or liquefied petroleum gas shall adhere to the
2 provisions of RCW 88.16.190(~~(+2)~~) and rules adopted under section 8 of
3 this act as though it were an oil tanker.

4 **Sec. 10.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

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

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

24 (3) "Board" means the pollution control hearings board.

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

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

32 (6) "Committee" means the preassessment screening committee
33 established under RCW 90.48.368.

34 (7) "Covered vessel" means a tank vessel, cargo vessel, or
35 passenger vessel.

36 (8) "Department" means the department of ecology.

37 (9) "Director" means the director of the department of ecology.

1 (10) "Discharge" means any spilling, leaking, pumping, pouring,
2 emitting, emptying, or dumping.

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

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

17 (12) "Fund" means the state coastal protection fund as provided in
18 RCW 90.48.390 and 90.48.400.

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

23 (14) "Marine facility" means any facility used for tank vessel
24 wharfage or anchorage, including any equipment used for the purpose of
25 handling or transferring oil in bulk to or from a tank vessel.

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

31 (16) "Necessary expenses" means the expenses incurred by the
32 department and assisting state agencies for (a) investigating the
33 source of the discharge; (b) investigating the extent of the
34 environmental damage caused by the discharge; (c) conducting actions
35 necessary to clean up the discharge; (d) conducting predamage and
36 damage assessment studies; and (e) enforcing the provisions of this
37 chapter and collecting for damages caused by a discharge.

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

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

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

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

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

28 (21) "Passenger vessel" means a ship of three hundred or more gross
29 tons with a fuel capacity of at least six thousand gallons carrying
30 passengers for compensation.

31 (22) "Person" means any political subdivision, government agency,
32 municipality, industry, public or private corporation, copartnership,
33 association, firm, individual, or any other entity whatsoever.

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

36 (24) "Spill" means an unauthorized discharge of oil or hazardous
37 substances into the waters of the state.

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

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

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

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

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

16 (28) "Transmission pipeline" means an interstate or intrastate
17 pipeline subject to regulation by the United States department of
18 transportation under Part 195 of Title 49 of the code of federal
19 regulations in effect as of January 1, 2014, through which oil moves in
20 transportation, including line pipes, valves, and other appurtenances
21 connected to line pipes, pumping units, and fabricated assemblies
22 associated with pumping units.

23 (29) "Type of oil" means crude oil or refined petroleum products
24 including gasoline, diesel, jet fuel, fuel oils, blending components,
25 and other petroleum products. Crude oil types must be specified by
26 their distinct place of origin.

27 NEW SECTION. Sec. 11. A new section is added to chapter 90.56 RCW
28 to read as follows:

29 (1) For the purposes of this section, "barge" means a vessel that
30 is not self-propelled.

31 (2)(a) If an oil spill occurs involving a barge laden with oil
32 towed by a tug in the following geographic areas and the department
33 finds that the owner or operator of the tug has acted with recklessness
34 or negligence, the tug owner or operator is subject to a penalty of
35 between one thousand and one thousand five hundred dollars per gallon
36 of oil discharged, to the extent that these waters are within the
37 territorial boundaries of Washington:

1 (i) East of a line extending from Discovery Island light south to
2 New Dungeness light and all points in the Puget Sound area, including
3 but not limited to Haro Strait, Rosario Strait, the Strait of Georgia,
4 Puget Sound, Hood Canal, and those portions of the Strait of Juan de
5 Fuca east of the line between New Dungeness light and Discovery Island
6 light;

7 (ii) Within a two mile radius of the Grays Harbor pilotage district
8 as defined by RCW 88.16.050;

9 (iii) Within three miles of Cape Disappointment at the mouth of the
10 Columbia river; or

11 (iv) Any inland portion of the Columbia river.

12 (b) Regardless of whether the department makes a finding of
13 recklessness or negligence under (a) of this subsection, the owner or
14 operator of a tug is not subject to the penalties under (a) of this
15 subsection if there were at least two individuals qualified by the
16 United States coast guard in the control bridge of the tug for the
17 duration of the voyage as recorded in the ship's log, one of whom was
18 assigned to serve exclusively as lookout except during the docking of
19 the vessel.

20 (c) The absence of a finding of recklessness or negligence by the
21 department for purposes of the assessment of penalties under this
22 subsection (2) may not be used as a defense to liability under RCW
23 9A.08.010 or other statutes or common law that establish standards for
24 the determination of recklessness or negligence.

25 (3) The penalty assessed in subsection (2) of this section is in
26 addition to any natural resource damages provided for under RCW
27 90.48.366 or 90.48.367 and any other penalties provided for under this
28 chapter or chapter 90.48 or 88.46 RCW.

29 NEW SECTION. **Sec. 12.** A new section is added to chapter 88.16 RCW
30 to read as follows:

31 The department of ecology may issue a penalty of up to ten thousand
32 dollars a day for each violation of RCW 88.16.190 or 88.16.200 or rules
33 adopted under section 8 of this act. Each violation is a separate and
34 distinct offense, and in the case of a continuing violation, every
35 day's continuance is a separate and distinct violation. Every act of
36 commission or omission which procures, aids, or abets in the violation
37 is considered a violation and subject to the penalty. The penalty

1 amount must be set in consideration of the previous history of the
2 violator and the severity of the violation's impact on public health,
3 the environment, or both, in addition to other relevant factors.
4 Penalties under this section shall be imposed pursuant to the
5 procedures set forth in RCW 43.21B.300.

6 **Sec. 13.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
7 read as follows:

8 (1) The hearings board shall only have jurisdiction to hear and
9 decide appeals from the following decisions of the department, the
10 director, local conservation districts, the air pollution control
11 boards or authorities as established pursuant to chapter 70.94 RCW,
12 local health departments, the department of natural resources, the
13 department of fish and wildlife, the parks and recreation commission,
14 and authorized public entities described in chapter 79.100 RCW:

15 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
16 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, section 12 of
17 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
18 90.56.330, section 11 of this act, and 90.64.102.

19 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
20 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
21 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

22 (c) A final decision by the department or director made under
23 chapter 183, Laws of 2009.

24 (d) Except as provided in RCW 90.03.210(2), the issuance,
25 modification, or termination of any permit, certificate, or license by
26 the department or any air authority in the exercise of its
27 jurisdiction, including the issuance or termination of a waste disposal
28 permit, the denial of an application for a waste disposal permit, the
29 modification of the conditions or the terms of a waste disposal permit,
30 or a decision to approve or deny an application for a solid waste
31 permit exemption under RCW 70.95.300.

32 (e) Decisions of local health departments regarding the grant or
33 denial of solid waste permits pursuant to chapter 70.95 RCW.

34 (f) Decisions of local health departments regarding the issuance
35 and enforcement of permits to use or dispose of biosolids under RCW
36 70.95J.080.

1 (g) Decisions of the department regarding waste-derived fertilizer
2 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
3 department regarding waste-derived soil amendments under RCW 70.95.205.

4 (h) Decisions of local conservation districts related to the denial
5 of approval or denial of certification of a dairy nutrient management
6 plan; conditions contained in a plan; application of any dairy nutrient
7 management practices, standards, methods, and technologies to a
8 particular dairy farm; and failure to adhere to the plan review and
9 approval timelines in RCW 90.64.026.

10 (i) Any other decision by the department or an air authority which
11 pursuant to law must be decided as an adjudicative proceeding under
12 chapter 34.05 RCW.

13 (j) Decisions of the department of natural resources, the
14 department of fish and wildlife, and the department that are reviewable
15 under chapter 76.09 RCW, and the department of natural resources'
16 appeals of county, city, or town objections under RCW 76.09.050(7).

17 (k) Forest health hazard orders issued by the commissioner of
18 public lands under RCW 76.06.180.

19 (l) Decisions of the department of fish and wildlife to issue,
20 deny, condition, or modify a hydraulic project approval permit under
21 chapter 77.55 RCW.

22 (m) Decisions of the department of natural resources that are
23 reviewable under RCW 78.44.270.

24 (n) Decisions of an authorized public entity under RCW 79.100.010
25 to take temporary possession or custody of a vessel or to contest the
26 amount of reimbursement owed that are reviewable by the hearings board
27 under RCW 79.100.120.

28 (2) The following hearings shall not be conducted by the hearings
29 board:

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

32 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
33 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

34 (c) Appeals of decisions by the department under RCW 90.03.110 and
35 90.44.220.

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

1 (3) Review of rules and regulations adopted by the hearings board
2 shall be subject to review in accordance with the provisions of the
3 administrative procedure act, chapter 34.05 RCW.

4 **Sec. 14.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
5 read as follows:

6 (1) The hearings board shall only have jurisdiction to hear and
7 decide appeals from the following decisions of the department, the
8 director, local conservation districts, the air pollution control
9 boards or authorities as established pursuant to chapter 70.94 RCW,
10 local health departments, the department of natural resources, the
11 department of fish and wildlife, the parks and recreation commission,
12 and authorized public entities described in chapter 79.100 RCW:

13 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
14 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, section 12 of
15 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
16 90.56.330, section 11 of this act, and 90.64.102.

17 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
18 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
19 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

20 (c) Except as provided in RCW 90.03.210(2), the issuance,
21 modification, or termination of any permit, certificate, or license by
22 the department or any air authority in the exercise of its
23 jurisdiction, including the issuance or termination of a waste disposal
24 permit, the denial of an application for a waste disposal permit, the
25 modification of the conditions or the terms of a waste disposal permit,
26 or a decision to approve or deny an application for a solid waste
27 permit exemption under RCW 70.95.300.

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

30 (e) Decisions of local health departments regarding the issuance
31 and enforcement of permits to use or dispose of biosolids under RCW
32 70.95J.080.

33 (f) Decisions of the department regarding waste-derived fertilizer
34 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
35 department regarding waste-derived soil amendments under RCW 70.95.205.

36 (g) Decisions of local conservation districts related to the denial
37 of approval or denial of certification of a dairy nutrient management

1 plan; conditions contained in a plan; application of any dairy nutrient
2 management practices, standards, methods, and technologies to a
3 particular dairy farm; and failure to adhere to the plan review and
4 approval timelines in RCW 90.64.026.

5 (h) Any other decision by the department or an air authority which
6 pursuant to law must be decided as an adjudicative proceeding under
7 chapter 34.05 RCW.

8 (i) Decisions of the department of natural resources, the
9 department of fish and wildlife, and the department that are reviewable
10 under chapter 76.09 RCW, and the department of natural resources'
11 appeals of county, city, or town objections under RCW 76.09.050(7).

12 (j) Forest health hazard orders issued by the commissioner of
13 public lands under RCW 76.06.180.

14 (k) Decisions of the department of fish and wildlife to issue,
15 deny, condition, or modify a hydraulic project approval permit under
16 chapter 77.55 RCW.

17 (l) Decisions of the department of natural resources that are
18 reviewable under RCW 78.44.270.

19 (m) Decisions of an authorized public entity under RCW 79.100.010
20 to take temporary possession or custody of a vessel or to contest the
21 amount of reimbursement owed that are reviewable by the hearings board
22 under RCW 79.100.120.

23 (2) The following hearings shall not be conducted by the hearings
24 board:

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

27 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
28 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

29 (c) Appeals of decisions by the department under RCW 90.03.110 and
30 90.44.220.

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

33 (3) Review of rules and regulations adopted by the hearings board
34 shall be subject to review in accordance with the provisions of the
35 administrative procedure act, chapter 34.05 RCW.

36 **Sec. 15.** RCW 43.21B.300 and 2010 c 210 s 12 and 2010 c 84 s 4 are
37 each reenacted and amended to read as follows:

1 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
2 70.95.315, 70.105.080, 70.107.050, section 12 of this act, 88.46.090,
3 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102
4 and chapter 90.76 RCW shall be imposed by a notice in writing, either
5 by certified mail with return receipt requested or by personal service,
6 to the person incurring the penalty from the department or the local
7 air authority, describing the violation with reasonable particularity.
8 For penalties issued by local air authorities, within thirty days after
9 the notice is received, the person incurring the penalty may apply in
10 writing to the authority for the remission or mitigation of the
11 penalty. Upon receipt of the application, the authority may remit or
12 mitigate the penalty upon whatever terms the authority in its
13 discretion deems proper. The authority may ascertain the facts
14 regarding all such applications in such reasonable manner and under
15 such rules as it may deem proper and shall remit or mitigate the
16 penalty only upon a demonstration of extraordinary circumstances such
17 as the presence of information or factors not considered in setting the
18 original penalty.

19 (2) Any penalty imposed under this section may be appealed to the
20 pollution control hearings board in accordance with this chapter if the
21 appeal is filed with the hearings board and served on the department or
22 authority thirty days after the date of receipt by the person penalized
23 of the notice imposing the penalty or thirty days after the date of
24 receipt of the notice of disposition by a local air authority of the
25 application for relief from penalty.

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

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

28 (b) Thirty days after receipt of the notice of disposition by a
29 local air authority on application for relief from penalty, if such an
30 application is made; or

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

33 (4) If the amount of any penalty is not paid to the department
34 within thirty days after it becomes due and payable, the attorney
35 general, upon request of the department, shall bring an action in the
36 name of the state of Washington in the superior court of Thurston
37 county, or of any county in which the violator does business, to
38 recover the penalty. If the amount of the penalty is not paid to the

1 authority within thirty days after it becomes due and payable, the
2 authority may bring an action to recover the penalty in the superior
3 court of the county of the authority's main office or of any county in
4 which the violator does business. In these actions, the procedures and
5 rules of evidence shall be the same as in an ordinary civil action.

6 (5) All penalties recovered shall be paid into the state treasury
7 and credited to the general fund except those penalties imposed
8 pursuant to RCW 18.104.155, which shall be credited to the reclamation
9 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
10 disposition of which shall be governed by that provision, RCW
11 70.105.080, which shall be credited to the hazardous waste control and
12 elimination account created by RCW 70.105.180, RCW 90.56.330, which
13 shall be credited to the coastal protection fund created by RCW
14 90.48.390, and RCW 90.76.080, which shall be credited to the
15 underground storage tank account created by RCW 90.76.100.

16 NEW SECTION. **Sec. 16.** Section 13 of this act expires June 30,
17 2019.

18 NEW SECTION. **Sec. 17.** Section 14 of this act takes effect June
19 30, 2019.

20 NEW SECTION. **Sec. 18.** Section 4 of this act is necessary for the
21 immediate preservation of the public peace, health, or safety, or
22 support of the state government and its existing public institutions,
23 and takes effect immediately.

24 NEW SECTION. **Sec. 19.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected."

2SSB 6524 - S AMD
By Senator Rolfes

1 On page 1, line 2 of the title, after "materials;" strike the
2 remainder of the title and insert "amending RCW 88.16.035, 88.16.170,
3 88.16.190, 88.16.200, 90.56.010, 43.21B.110, and 43.21B.110; adding new
4 sections to chapter 90.56 RCW; adding new sections to chapter 88.16
5 RCW; creating new sections; prescribing penalties; providing an
6 effective date; providing expiration dates; and declaring an
7 emergency."

--- END ---