
HOUSE BILL 2347

State of Washington

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By Representatives Farrell, Hudgins, Carlyle, Wylie, Tarleton, Van De Wege, Bergquist, Tharinger, Pollet, Appleton, Kagi, Ryu, Hunt, Jinkins, Riccelli, Lias, Stanford, Reykdal, Roberts, Senn, Dunshee, Goodman, Freeman, Sawyer, Fey, Fitzgibbon, Green, Habib, and Walkinshaw

Read first time 01/15/14. Referred to Committee on Environment.

1 AN ACT Relating to enhancing the safety of the transportation of
2 oil; amending RCW 88.16.035, 88.16.170, 88.16.190, 88.16.200,
3 90.56.010, 90.48.366, 90.48.367, 43.21B.110, and 43.21B.110; adding new
4 sections to chapter 90.56 RCW; adding a new section to chapter 88.16
5 RCW; creating new sections; prescribing penalties; providing an
6 effective date; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the
9 transportation of crude oil and refined petroleum products by vessels
10 on Puget Sound, Grays Harbor, the Columbia river, and other waters of
11 the state pose a potential hazard to the natural resources and economic
12 vitality of the state. Measures to prevent spills from oil
13 transportation vessels are critical to lowering risks to the state's
14 natural resources and economic base. Furthermore, as the location and
15 type of oil extracted in North America changes with the advent of new
16 technology, there are associated changes in the patterns and methods of
17 transporting crude oil and refined petroleum products. New risks of
18 spillage accompany those changes in the routes and methods of oil
19 transportation in the state and, according to the United States

1 department of transportation, the new types of oil being transported
2 through the state may also be particularly flammable and dangerous.
3 Recent accidents, such as the oil train explosions in North Dakota, New
4 Brunswick, and Quebec, as well as the frequent incidence of leaks and
5 spills from pipelines, rail cars, and vessels carrying oil across the
6 nation, highlight the risks to human health and the environment caused
7 by the transportation of oil. It is therefore the intent and purpose
8 of this act to establish appropriate measures to reduce the risk of oil
9 spills from vessels, to encourage the adoption of spill prevention
10 measures by transporters of oil by vessel, to ensure that the public
11 has access to information about the movement of oil through the state,
12 and to ensure that communities are fully informed about any risks posed
13 to their safety by the transportation of oil.

14 **Sec. 2.** RCW 88.16.035 and 2009 c 496 s 1 are each amended to read
15 as follows:

16 (1) The board of pilotage commissioners shall:

17 (a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the
18 enforcement and administration of this chapter, except for rules
19 adopted after July 1, 2014, that implement RCW 88.16.190, 88.16.195,
20 88.16.200, and section 11 of this act, for which the department of
21 ecology may adopt rules;

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

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

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

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

33 (d) Determine from time to time the number of pilots necessary to
34 be licensed in each district of the state to optimize the operation of
35 a safe, fully regulated, efficient, and competent pilotage service in
36 each district;

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

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

1 surcharges, if any, port of call, name of the pilot or trainee, and
2 names and horsepower of tug boats for any and all oil tankers subject
3 to the provisions of RCW 88.16.190 together with the names of any and
4 all vessels for which the United States coast guard requires special
5 handling pursuant to their authority under the Ports and Waterways
6 Safety Act of 1972; the expenses of the board; and any and all other
7 information which the board deems appropriate to include;

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

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

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

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

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

28 **Sec. 3.** RCW 88.16.170 and 1991 c 200 s 601 are each amended to
29 read as follows:

30 Because of the danger of spills, the legislature finds that the
31 transportation of crude oil and refined petroleum products by tankers
32 on the Columbia river, Grays Harbor, and on Puget Sound and adjacent
33 waters creates a great potential hazard to important natural resources
34 of the state and to jobs and incomes dependent on these resources.

35 The legislature recognizes that the Columbia river has many natural
36 obstacles to navigation and shifting navigation channels that create
37 the risk of an oil spill. The legislature also recognizes Grays Harbor

1 and Puget Sound and adjacent waters are a relatively confined salt
2 water environment with irregular shorelines and therefore there is a
3 greater than usual likelihood of long-term damage from any large oil
4 spill.

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

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

14 It is therefore the intent and purpose of RCW 88.16.180 and
15 88.16.190 to decrease the likelihood of oil spills on the Columbia
16 river, Grays Harbor, and on Puget Sound and its shorelines by requiring
17 all oil tankers above a certain size to employ licensed pilots and to
18 be escorted by a tug or tugs (~~((while navigating on certain areas of
19 Puget Sound and adjacent waters))~~).

20 **Sec. 4.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
21 as follows:

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

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

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

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

33 ~~(c) Double bottoms, underneath all oil and liquid cargo
34 compartments; and~~

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

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

3 ~~PROVIDED, That, if such forty to one hundred and twenty five~~
4 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
5 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~
6 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
7 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
8 ~~horsepower equivalencies may be required under certain conditions as~~
9 ~~established by rule and regulation of the Washington utilities and~~
10 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~
11 ~~FURTHER, That))~~ Except as provided in subsection (2) of this section,
12 an oil tanker larger than five thousand gross tons may not enter any of
13 the following waters, to the extent that these waters are within the
14 territorial boundaries of Washington, unless the oil tanker is under
15 the escort of a tug or tugs in compliance with the requirements of
16 subsections (4) and (5) of this section:

17 (a) East of a line extending from Discovery Island light south to
18 New Dungeness light and all points in the Puget Sound area north and
19 south of these lights, including but not limited to Haro Strait,
20 Rosario Strait, the Strait of Georgia, Puget Sound, Hood Canal, and
21 those portions of the Strait of Juan de Fuca east of the line between
22 New Dungeness light and Discovery Island light;

23 (b) Within a two mile radius of the Grays Harbor pilotage district
24 as defined by RCW 88.16.050;

25 (c) Within three miles of Cape Disappointment at the mouth of the
26 Columbia river; or

27 (d) Any inland portion of the Columbia river.

28 (2)(a) If an oil tanker is in ballast, the requirements of
29 subsection (1) of this section do not apply.

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

34 (3) If an oil tanker is larger than one hundred twenty five
35 thousand deadweight tons, it is prohibited from proceeding into the
36 waters listed in subsection (1)(a) of this section as provided in 33
37 C.F.R. Part 165, as of the effective date of this section.

1 (4) Escort tugs must have an aggregate shaft horsepower equivalent
2 to at least five percent of the deadweight tons of the escorted oil
3 tanker. The department of ecology may adopt rules to require that
4 escort tugs possess specified navigational capabilities, including the
5 performance of tug power and steering systems.

6 (5) The department of ecology may adopt rules that require the
7 escort of more than one tug, require an oil tanker to be tethered to
8 the escort tug or tugs, or require other safeguards related to tanker
9 escorts in order for an oil tanker covered by subsection (1) of this
10 section to be allowed to enter the areas listed in subsection (1)(a),
11 (b), (c), or (d) of this section. However, if an oil tanker is
12 equipped with fully redundant systems, the department of ecology may
13 not:

14 (a) Require escort by more than one tug;

15 (b) Require the oil tanker to be tethered to the escort tug; and

16 (c) Subject the oil tanker to any requirements adopted by rule
17 under this subsection (5).

18 (6) A tanker assigned a ((deadweight)) weight of less than
19 ((forty)) five thousand ((deadweight)) gross tons at the time of
20 construction or reconstruction as reported in Lloyd's Register of Ships
21 is not subject to the provisions of RCW 88.16.170 through 88.16.190.

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

24 (a) A double hull;

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

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

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

34 **Sec. 5.** RCW 88.16.200 and 2008 c 128 s 14 are each amended to read
35 as follows:

36 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))~~) as though it were an oil tanker.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.56 RCW
4 to read as follows:

5 The department shall make available on its web site a quarterly
6 report on the maritime and terrestrial transportation of oil in
7 Washington. The report must include information including, but not
8 limited to, the following sources:

9 (1) Information submitted to the department pursuant to section 7
10 of this act;

11 (2) Advanced notices of transfer and other information provided to
12 the department pursuant to RCW 88.46.165, including aggregated
13 information on the quantities and types of oil being transferred, the
14 frequency and duration of oil transfers, and the locations of product
15 transfers;

16 (3) Reported information on spills, accidents, discharges, or other
17 prohibited occurrences submitted to the department pursuant to RCW
18 90.56.050(1), 90.56.280, or 88.46.100; and

19 (4) Relevant information about the volume and type of oil
20 transported through Washington that is collected by federal agencies
21 including the United States department of transportation, United States
22 coast guard, United States department of energy, and United States army
23 corps of engineers.

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.56 RCW
25 to read as follows:

26 (1) The owner or operator for each facility other than a
27 transmission pipeline shall submit to the department the following
28 information:

29 (a) The number of tank vessels and rail cars that transferred or
30 delivered oil at the facility each week;

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

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

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

1 (iii) The route taken by any oil that arrived at the facility by
2 rail car.

3 (2) Beginning November 1, 2014, the owner or operator of each
4 facility must submit the information required pursuant to subsection
5 (1) of this section by February 1st, May 1st, August 1st, and November
6 1st of each year and each quarterly submission must include the
7 information in subsection (1) of this section for each week of the
8 quarter covered by the submission. The department may develop a
9 reporting form and guidance for the submission of the information in
10 subsection (1) of this section by facility owners or operators. To the
11 extent feasible, the department must integrate the reporting form with
12 other forms used by facilities to submit information to the department,
13 including forms used to submit the information required by RCW
14 88.46.165.

15 (3) Prior to making any confidential information submitted pursuant
16 to this section available on its web site, the department must
17 aggregate the submitted information to the extent necessary to ensure
18 confidentiality if public disclosure of the specific information or
19 data would result in an unfair competitive disadvantage to the owner or
20 operator submitting the information.

21 **Sec. 8.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read
22 as follows:

23 The definitions in this section apply throughout this chapter
24 unless the context clearly requires otherwise.

25 (1) "Best achievable protection" means the highest level of
26 protection that can be achieved through the use of the best achievable
27 technology and those staffing levels, training procedures, and
28 operational methods that provide the greatest degree of protection
29 achievable. The director's determination of best achievable protection
30 shall be guided by the critical need to protect the state's natural
31 resources and waters, while considering (a) the additional protection
32 provided by the measures; (b) the technological achievability of the
33 measures; and (c) the cost of the measures.

34 (2) "Best achievable technology" means the technology that provides
35 the greatest degree of protection taking into consideration (a)
36 processes that are being developed, or could feasibly be developed,
37 given overall reasonable expenditures on research and development, and

1 (b) processes that are currently in use. In determining what is best
2 achievable technology, the director shall consider the effectiveness,
3 engineering feasibility, and commercial availability of the technology.

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

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

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

12 (6) "Committee" means the preassessment screening committee
13 established under RCW 90.48.368.

14 (7) "Covered vessel" means a tank vessel, cargo vessel, or
15 passenger vessel.

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

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

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

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

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

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

36 (13) "Having control over oil" shall include but not be limited to
37 any person using, storing, or transporting oil immediately prior to

1 entry of such oil into the waters of the state, and shall specifically
2 include carriers and bailees of such oil.

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

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

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

18 (17) "Oil" or "oils" means oil of any kind that is liquid at
19 atmospheric temperature and any fractionation thereof, including, but
20 not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil,
21 biological oils and blends, oil sludge, oil refuse, and oil mixed with
22 wastes other than dredged spoil. Oil does not include any substance
23 listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989,
24 under section 101(14) of the federal comprehensive environmental
25 response, compensation, and liability act of 1980, as amended by P.L.
26 99-499.

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

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

36 (20)(a) "Owner or operator" means (i) in the case of a vessel, any
37 person owning, operating, or chartering by demise, the vessel; (ii) in
38 the case of an onshore or offshore facility, any person owning or

1 operating the facility; and (iii) in the case of an abandoned vessel or
2 onshore or offshore facility, the person who owned or operated the
3 vessel or facility immediately before its abandonment.

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

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

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

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

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

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

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

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

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

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

32 (28) "Transmission pipeline" means an interstate or intrastate
33 pipeline subject to regulation by the United States department of
34 transportation under Part 195 of Title 49 of the code of federal
35 regulations in effect as of January 1, 2014, through which oil moves in
36 transportation, including line pipes, valves, and other appurtenances
37 connected to line pipes, pumping units, and fabricated assemblies
38 associated with pumping units.

1 (29) "Type of oil" means crude oil or refined petroleum products
2 including gasoline, diesel, jet fuel, blending components, and other
3 petroleum products.

4 **Sec. 9.** RCW 90.48.366 and 2011 c 122 s 9 are each amended to read
5 as follows:

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

11 (a) For spills totaling one thousand gallons or more in any one
12 event other than spills involving a barge tank vessel towed by a tug if
13 the department determines that the owner or operator acted recklessly
14 or negligently in an area listed in RCW 88.16.190(1) (a),(b),(c), or
15 (d), no less than three dollars per gallon of oil spilled and no
16 greater than three hundred dollars per gallon of oil spilled; ((and))

17 (b) For spills totaling less than one thousand gallons in any one
18 event other than spills involving a barge tank vessel towed by a tug if
19 the department determines that the owner or operator acted recklessly
20 or negligently in an area listed in RCW 88.16.190(1) (a),(b),(c), or
21 (d), no less than one dollar per gallon of oil spilled and no greater
22 than one hundred dollars per gallon of oil spilled;

23 (c) For spills totaling one thousand gallons or more in any one
24 event involving a barge tank vessel towed by a tug where the department
25 determines that the owner or operator of the barge tank vessel or tug
26 acted recklessly or negligently in an area listed in RCW 88.16.190(1)
27 (a),(b),(c), or (d), no less than nine dollars per gallon of oil
28 spilled and no greater than nine hundred dollars per gallon of oil
29 spilled; and

30 (d) For spills totaling less than one thousand gallons in any one
31 event involving a barge tank vessel towed by a tug where the department
32 determines that the owner or operator of the barge tank vessel or tug
33 acted recklessly or negligently in an area listed in RCW 88.16.190(1)
34 (a),(b),(c), or (d), no less than three dollars per gallon of oil
35 spilled and no greater than three hundred dollars per gallon of oil
36 spilled.

1 (2) The department may not determine that the owner or operator of
2 a barge tank vessel operated recklessly or negligently if there were at
3 least two qualified individuals in the control bridge of the tug for
4 the duration of the voyage as recorded in the ship's log, one of whom
5 was assigned to serve exclusively as lookout.

6 (3) Persistent oil recovered from the surface of the water within
7 forty-eight hours of a discharge must be deducted from the total spill
8 volume for purposes of determining the amount of compensation assessed
9 under the compensation schedule.

10 (~~(3)~~) (4) The compensation schedule adopted under this section
11 shall reflect adequate compensation for unquantifiable damages or for
12 damages not quantifiable at reasonable cost for any adverse
13 environmental, recreational, aesthetic, or other effects caused by the
14 spill and shall take into account:

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

19 (b) The sensitivity of the affected area as determined by such
20 factors as:

21 (i) The location of the spill;

22 (ii) Habitat and living resource sensitivity;

23 (iii) Seasonal distribution or sensitivity of living resources;

24 (iv) Areas of recreational use or aesthetic importance;

25 (v) The proximity of the spill to important habitats for birds,
26 aquatic mammals, fish, or to species listed as threatened or endangered
27 under state or federal law;

28 (vi) Significant archaeological resources as determined by the
29 department of archaeology and historic preservation; and

30 (vii) Other areas of special ecological or recreational importance,
31 as determined by the department; and

32 (c) Actions taken by the party who spilled oil or any party liable
33 for the spill that:

34 (i) Demonstrate a recognition and affirmative acceptance of
35 responsibility for the spill, such as the immediate removal of oil and
36 the amount of oil removed from the environment; or

37 (ii) Enhance or impede the detection of the spill, the

1 determination of the quantity of oil spilled, or the extent of damage,
2 including the unauthorized removal of evidence such as injured fish or
3 wildlife.

4 (5) The definitions in this subsection apply throughout this
5 section unless the context clearly requires otherwise.

6 (a) "Barge" means a vessel that is not self-propelled.

7 (b) "Tank vessel" means a tank vessel as defined by RCW 90.56.010.

8 **Sec. 10.** RCW 90.48.367 and 1991 c 200 s 813 are each amended to
9 read as follows:

10 (1) After a spill or other incident causing damages to the natural
11 resources of the state, the department shall conduct a formal
12 preassessment screening as provided in RCW 90.48.368.

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

21 (3)(a) If the preassessment screening committee determines that the
22 compensation schedule should not be used((~~τ~~)):

23 (i) Compensation shall be assessed for the amount of money
24 necessary to restore any damaged resource to its condition before the
25 injury, to the extent technically feasible, and compensate for the lost
26 value incurred during the period between injury and restoration;

27 (ii) For spills totaling one thousand gallons or more in any one
28 event involving a barge tank vessel towed by a tug that the department
29 determines acted recklessly or negligently in an area listed in RCW
30 88.16.190(1) (a), (b), (c), or (d), compensation must be assessed up to
31 three times the amount of money:

32 (A) Necessary to restore any damaged resource to its condition
33 before the injury, to the extent technically feasible; and

34 (B) To compensate for the lost value incurred during the period
35 between injury and restoration.

36 (b) The department may not determine that the owner or operator of
37 a barge tank vessel operated recklessly or negligently if there were at

1 least two qualified individuals in the control bridge of the tug for
2 the duration of the voyage as recorded in the ship's log, one of whom
3 was assigned to serve exclusively as lookout.

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

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

24 (6) Compensation assessed under this section shall preclude claims
25 under this chapter by local governments for compensation for damages to
26 publicly owned resources resulting from the same incident.

27 NEW SECTION. Sec. 11. A new section is added to chapter 88.16 RCW
28 to read as follows:

29 The department of ecology may issue a penalty of up to ten thousand
30 dollars a day for each violation of RCW 88.16.190 or 88.16.200. Each
31 violation is a separate and distinct offense, and in case of a
32 continuing violation, every day's continuance is a separate and
33 distinct violation. Every act of commission or omission which
34 procures, aids, or abets in the violation is considered a violation and
35 subject to the penalty. The penalty amount must be set in
36 consideration of the previous history of the violator and the severity
37 of the violation's impact on public health, the environment, or both,

1 in addition to other relevant factors. Penalties under this section
2 shall be imposed pursuant to the procedures set forth in RCW
3 43.21B.300.

4 NEW SECTION. **Sec. 12.** (1) The office of financial management
5 shall work with all relevant state agencies to conduct a study
6 regarding the state's preparedness and capacity to respond to accidents
7 involving railcars transporting oil. In conducting this study, the
8 office of financial management shall consider the potential near-term
9 increase in the volume of oil being transported via rail through
10 Washington as a result of proposed new or expanded oil refining and
11 storage facilities. The office of financial management shall seek the
12 input of relevant stakeholders in carrying out this study.

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

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

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

18 (c) Examine, generally, the extent to which state and local
19 emergency plans address this threat;

20 (d) Determine whether adequate resources are available to respond
21 to such an accident in a timely and effective manner; and

22 (e) Address the potential impacts to transportation networks and
23 other critical infrastructure from an accident involving oil
24 transported by railcar.

25 (3) The office of financial management shall report its findings
26 from the study to the appropriate committees of the legislature by
27 October 15, 2014.

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

30 (1) The hearings board shall only have jurisdiction to hear and
31 decide appeals from the following decisions of the department, the
32 director, local conservation districts, the air pollution control
33 boards or authorities as established pursuant to chapter 70.94 RCW,
34 local health departments, the department of natural resources, the
35 department of fish and wildlife, the parks and recreation commission,
36 and authorized public entities described in chapter 79.100 RCW:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
2 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, section 11 of
3 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
4 90.56.330, and 90.64.102.

5 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
6 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
7 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

10 (d) Except as provided in RCW 90.03.210(2), the issuance,
11 modification, or termination of any permit, certificate, or license by
12 the department or any air authority in the exercise of its
13 jurisdiction, including the issuance or termination of a waste disposal
14 permit, the denial of an application for a waste disposal permit, the
15 modification of the conditions or the terms of a waste disposal permit,
16 or a decision to approve or deny an application for a solid waste
17 permit exemption under RCW 70.95.300.

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

20 (f) Decisions of local health departments regarding the issuance
21 and enforcement of permits to use or dispose of biosolids under RCW
22 70.95J.080.

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

26 (h) Decisions of local conservation districts related to the denial
27 of approval or denial of certification of a dairy nutrient management
28 plan; conditions contained in a plan; application of any dairy nutrient
29 management practices, standards, methods, and technologies to a
30 particular dairy farm; and failure to adhere to the plan review and
31 approval timelines in RCW 90.64.026.

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

35 (j) Decisions of the department of natural resources, the
36 department of fish and wildlife, and the department that are reviewable
37 under chapter 76.09 RCW, and the department of natural resources'
38 appeals of county, city, or town objections under RCW 76.09.050(7).

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

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

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

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

12 (2) The following hearings shall not be conducted by the hearings
13 board:

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

16 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
17 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

18 (c) Appeals of decisions by the department under RCW 90.03.110 and
19 90.44.220.

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

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

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

27 (1) The hearings board shall only have jurisdiction to hear and
28 decide appeals from the following decisions of the department, the
29 director, local conservation districts, the air pollution control
30 boards or authorities as established pursuant to chapter 70.94 RCW,
31 local health departments, the department of natural resources, the
32 department of fish and wildlife, the parks and recreation commission,
33 and authorized public entities described in chapter 79.100 RCW:

34 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
35 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, section 11 of
36 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
37 90.56.330, and 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
3 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,
5 modification, or termination of any permit, certificate, or license by
6 the department or any air authority in the exercise of its
7 jurisdiction, including the issuance or termination of a waste disposal
8 permit, the denial of an application for a waste disposal permit, the
9 modification of the conditions or the terms of a waste disposal permit,
10 or a decision to approve or deny an application for a solid waste
11 permit exemption under RCW 70.95.300.

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

14 (e) Decisions of local health departments regarding the issuance
15 and enforcement of permits to use or dispose of biosolids under RCW
16 70.95J.080.

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

20 (g) Decisions of local conservation districts related to the denial
21 of approval or denial of certification of a dairy nutrient management
22 plan; conditions contained in a plan; application of any dairy nutrient
23 management practices, standards, methods, and technologies to a
24 particular dairy farm; and failure to adhere to the plan review and
25 approval timelines in RCW 90.64.026.

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

29 (i) Decisions of the department of natural resources, the
30 department of fish and wildlife, and the department that are reviewable
31 under chapter 76.09 RCW, and the department of natural resources'
32 appeals of county, city, or town objections under RCW 76.09.050(7).

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

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

1 (1) Decisions of the department of natural resources that are
2 reviewable under RCW 78.44.270.

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

7 (2) The following hearings shall not be conducted by the hearings
8 board:

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

11 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
12 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

13 (c) Appeals of decisions by the department under RCW 90.03.110 and
14 90.44.220.

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

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

20 NEW SECTION. **Sec. 15.** Section 13 of this act expires June 30,
21 2019.

22 NEW SECTION. **Sec. 16.** Section 14 of this act takes effect June
23 30, 2019.

24 NEW SECTION. **Sec. 17.** 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.

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