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**SENATE BILL 5834**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Ranker, Rolfes, Nelson, Frockt, Kohl-Welles, and Conway

AN ACT Relating to oil transportation safety; amending RCW 90.56.005, 90.56.010, 90.56.500, 90.56.510, 88.40.011, 88.40.025, 88.40.030, 88.40.040, 88.16.170, 88.16.190, and 82.23B.020; reenacting and amending RCW 88.46.010 and 88.40.020; adding new sections to chapter 90.56 RCW; and providing an effective date.

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

**Sec.**  RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and amended to read as follows:

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

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

(a) The additional protection provided by the measures;

(b) The technological achievability of the measures; and

(c) The cost of the measures.

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

(i) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and

(ii) Processes that are currently in use.

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

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

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

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

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

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

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

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

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

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

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

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

(13) "Oil" or "oils" means oil of any kind that is liquid at ((~~atmospheric temperature~~))twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ((~~101(14)~~))102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99‑499.

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

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

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

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

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

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

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

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

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

(22) "Spill" means an unauthorized discharge of oil into the waters of the state.

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 90.56.005 and 2010 1st sp.s. c 7 s 72 are each amended to read as follows:

(1) The legislature declares that waterborne transportation as a source of supply for oil and hazardous substances poses special concern for the state of Washington. Each year billions of gallons of crude oil and refined petroleum products are transported as cargo and fuel by vessels on the navigable waters of the state. The state is experiencing rapid changes in how crude oil moves through rail corridors and over Washington waters, creating new safety and environmental risks. The changing sources and transport of crude oil bring new risks to our communities along rail lines and to the Columbia river, Grays Harbor, and Puget Sound waters. Since 2008, rail traffic hauling crude oil has increased more than forty-fold nationwide and major accidents have occurred over the past year in both the United States and Canada. These shipments are expected to increase in the coming years. Vessels and railroads transporting oil into Washington travel on some of the most unique and special marine environments in the United States. These marine environments are a source of natural beauty, recreation, and economic livelihood for many residents of this state. As a result, the state has an obligation to ensure the citizens of the state that the waters of the state will be protected from oil spills.

(2) The legislature finds that prevention is the best method to protect the unique and special marine environments in this state. The technology for containing and cleaning up a spill of oil or hazardous substances is at best only partially effective. Preventing spills is more protective of the environment and more cost-effective when all the response and damage costs associated with responding to a spill are considered. Therefore, the legislature finds that the primary objective of the state is to achieve a zero spills strategy to prevent any oil or hazardous substances from entering waters of the state.

(3) The legislature also finds that:

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

(b) Even with the best efforts, it is nearly impossible to remove all oil that is spilled into the water, and average removal rates are only fourteen percent;

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

(d) The state has a fundamental responsibility, as the trustee of the state's natural resources and the protector of public health and the environment to prevent the spill of oil; and

(e) In section 5002 of the federal oil pollution act of 1990, the United States congress found that many people believed that complacency on the part of industry and government was one of the contributing factors to the Exxon Valdez spill and, further, that one method to combat this complacency is to involve local citizens in the monitoring and oversight of oil spill plans. Congress also found that a mechanism should be established that fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals. Moreover, congress concluded that, in addition to Alaska, a program of citizen monitoring and oversight should be established in other major crude oil terminals in the United States because recent oil spills indicate that the safe transportation of oil is a national problem.

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

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

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

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

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

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

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

(g) To provide for independent review on an ongoing basis the adequacy of oil spill prevention, preparedness, and response activities in this state; ((~~and~~))

(h) To provide an adequate funding source for state response and prevention programs; and

(i) To maintain the best achievable protection that can be obtained through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) "Oil" or "oils" means oil of any kind that is liquid at ((~~atmospheric temperature~~))twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ((~~101(14)~~))102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99‑499.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 90.56.500 and 2009 c 11 s 9 are each amended to read as follows:

(1) The state oil spill response account is created in the state treasury. All receipts from RCW 82.23B.020(1) shall be deposited in the account. All costs reimbursed to the state by a responsible party or any other person for responding to a spill of oil shall also be deposited in the account. Moneys in the account shall be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) The account shall be used exclusively to pay for:

(a) The costs associated with the response to spills ((~~of crude oil or petroleum products into the navigable~~))or threats of spills of oil or hazardous substances to the waters of the state; and

(b) The costs associated with the department's use of ((~~the~~))an emergency response towing vessel ((~~as described in RCW 88.46.135~~)).

(3) Payment of response costs under subsection (2)(a) of this section shall be limited to spills which the director has determined are likely to exceed ((~~fifty~~))one thousand dollars.

(4) Before expending moneys from the account, the director shall make reasonable efforts to obtain funding for response costs under subsection (2) of this section from the person responsible for the spill and from other sources, including the federal government.

(5) Reimbursement for response costs from this account shall be allowed only for costs which are not covered by funds appropriated to the agencies responsible for response activities. Costs associated with the response to spills ((~~of crude oil or petroleum products~~)) shall include:

(a) Natural resource damage assessment and related activities;

(b) Spill related response, containment, wildlife rescue, cleanup, disposal, and associated costs;

(c) Interagency coordination and public information related to a response; and

(d) Appropriate travel, goods and services, contracts, and equipment.

**Sec.**  RCW 90.56.510 and 2000 c 69 s 22 are each amended to read as follows:

(1) The oil spill prevention account is created in the state treasury. All receipts from RCW 82.23B.020(2) shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. If, on the first day of any calendar month, the balance of the oil spill response account is greater than nine million dollars and the balance of the oil spill prevention account exceeds the unexpended appropriation for the current biennium, then the tax under RCW 82.23B.020(2) shall be suspended on the first day of the next calendar month until the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under RCW 82.23B.020(2) is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the biennium ending June 30, 1999, and the biennium ending June 30, 2001, the state treasurer may transfer a total of up to one million dollars from the oil spill response account to the oil spill prevention account to support appropriations made from the oil spill prevention account in the omnibus appropriations act adopted not later than June 30, 1999.

(2) Expenditures from the oil spill prevention account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. Starting with the 1995-1997 biennium, the legislature shall give activities of state agencies related to prevention of oil spills priority in funding from the oil spill prevention account. Costs of prevention include the costs of:

(a) Routine responses not covered under RCW 90.56.500;

(b) Management and staff development activities;

(c) Development of rules and policies and the statewide plan provided for in RCW 90.56.060;

(d) Facility and vessel plan review and approval, drills, inspections, investigations, enforcement, and litigation;

(e) Interagency coordination and public outreach and education;

(f) Collection and administration of the tax provided for in chapter 82.23B RCW; and

(g) Appropriate travel, goods and services, contracts, and equipment.

(3) Before expending moneys from the account, the director shall make reasonable efforts to obtain funding for response costs under this section from the person responsible for the spill and from other sources, including the federal government.

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

(1) In addition to the requirements found in RCW 88.46.165, and relying on the "advanced notice of transfer" system used by the department, the department must be provided prior notice before an oil transfer, that is regulated under this chapter and that may impact waters of the state, occurs between a rail facility or another facility or covered vessel. The notice must include the time, location, volume, and type of the oil transfer and the notice requirement must be immediately implemented while the department adopts rules. The department shall adopt rules under this section.

(2) Twice per year, pipelines must report to the department the type and volume of oil transported through the state. Reporting must occur each year by July 31st for the period January 1st through June 30th and by January 31st for the period July 1st through December 31st.

(3) The department shall publish data collected under RCW 88.46.165 and other sources of information regarding the transfer of oil and oil products to or from tank vessels. The data must be published on the department's web site. Data collected with respect to oil transportation must be aggregated by county and include county of transfer, volume transferred, type of oil transferred, place of origin, mode of transportation, route taken to the point of transfer, and volume and number of oil spills en route to or during transfer that are reported to the department.

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

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

(2) The department shall place the earliest priority upon updating standards that address the increased volume of different types of crude oil and that address a worst case spill from articulated tug barges and from other towed waterborne vessels or barges.

**Sec.**  RCW 88.40.011 and 2007 c 347 s 4 are each amended to read as follows:

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

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

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

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

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

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

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

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

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

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section ((~~101(14)~~))102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

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

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

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

(12) "Oil" or "oils" means oil of any kind that is liquid at ((~~atmospheric temperature~~))twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section ((~~101(14)~~))102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

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

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

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

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

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

(21) "Certificate of financial responsibility" means an official written acknowledgment issued by the director or the director's designee that an owner or operator of a covered vessel or facility, or the owner of the oil, has demonstrated to the satisfaction of the director or the director's designee that the relevant entity has the financial ability to pay for costs and damages caused by an oil spill.

**Sec.**  RCW 88.40.020 and 2003 c 91 s 3 and 2003 c 56 s 3 are each reenacted and amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, any barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish evidence of financial responsibility in the amount of the greater of five million dollars, or three hundred dollars per gross ton of such vessel.

(b) Any barge that transports more than one million gallons of oil or oil products shall establish evidence of financial responsibility in an amount not less than one hundred million dollars.

(2)(a) Except as provided in (b) or (c) of this subsection, a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least five hundred million dollars. The amount of financial responsibility required under this subsection is one billion dollars after January 1, 2004.

(b) The director by rule may establish a lesser standard of financial responsibility for tank vessels of three hundred gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the tank vessel is capable of carrying. The director shall not set the standard for tank vessels of three hundred gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a tank vessel to prove membership in such an organization.

(3)(a) A cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay at least three hundred million dollars. However, a passenger vessel that transports passengers and vehicles between Washington state and a foreign country shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.

(b) The owner or operator of a cargo vessel or passenger vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a cargo vessel or passenger vessel to prove membership in such an organization.

(4) A fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts: (a) For a fishing vessel carrying predominantly nonpersistent product, one hundred thirty-three dollars and forty cents per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or one million three hundred thirty-four thousand dollars, whichever is greater; or (b) for a fishing vessel carrying predominantly persistent product, four hundred dollars and twenty cents per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or six million six hundred seventy thousand dollars, whichever is greater.

(5) The ((~~documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and for necessary expenses~~))certificate of financial responsibility is conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, facility, or oil for purposes of determining liability pursuant to this chapter.

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

**Sec.**  RCW 88.40.025 and 1991 c 200 s 704 are each amended to read as follows:

An onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected counties and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department shall ((~~consider such matters as the amount of oil that could be spilled into the navigable waters from the facility, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill and the commercial availability and affordability of financial responsibility~~))adopt by rule an amount that will be calculated by multiplying the reasonable per barrel cleanup and damage cost of spilled oil, times the worst case spill volume, as measured in barrels, calculated in the applicant's oil spill contingency plan. This section shall not apply to an onshore or offshore facility owned or operated by the federal government or by the state or local government.

**Sec.**  RCW 88.40.030 and 2000 c 69 s 32 are each amended to read as follows:

(1) Financial responsibility required by this chapter may be established by any one of, or a combination of, the following methods acceptable to the department of ecology: ((~~(1)~~))(a) Evidence of insurance; ((~~(2)~~))(b) surety bonds; ((~~(3)~~))(c) qualification as a self-insurer; ((~~or (4)~~))(d) guaranty; (e) letter of credit; (f) certificate of deposits; (g) protection and indemnity club membership; or (h) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. Documentation of such financial responsibility shall be kept on any covered vessel and filed with the department at least twenty-four hours before entry of the vessel into the navigable waters of the state. A covered vessel is not required to file documentation of financial responsibility twenty-four hours before entry of the vessel into the navigable waters of the state, if the vessel has filed documentation of financial responsibility with the federal government, and the level of financial responsibility required by the federal government is the same as or exceeds state requirements. The owner or operator of the vessel may file with the department a certificate evidencing compliance with the requirements of another state's or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter.

(2) A certificate of financial responsibility may not have a term greater than one year.

**Sec.**  RCW 88.40.040 and 2003 c 56 s 4 are each amended to read as follows:

(1) It is unlawful for any vessel required to have financial responsibility under this chapter to enter or operate on Washington waters without meeting the requirements of this chapter or rules adopted under this chapter, except when necessary to avoid injury to the vessel's crew or passengers. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the department to the United States coast guard.

(2) ((~~The department shall enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act.~~))Upon notification of an oil spill or discharge or other action or potential liability, the director shall reevaluate the validity of the certificate of financial responsibility. If the director determines that, because of a spill outside of the state or some other action or potential liability, the holder of a certificate may not have the financial resources to pay damages for the oil spill or discharge or other action or potential liability and have resources remaining available to meet the requirements of this chapter, the director may suspend or revoke the certificate.

(3) An owner or operator of either more than one covered vessel or facility, or both is only required to obtain one certificate of financial responsibility for each vessel and facility owned or operated.

(4) If a person holds a certificate for more than one covered vessel or facility and a spill or spills occurs from one or more of those vessels or facilities for which the owner or operator may be liable for damages in an amount exceeding five percent of the financial resources reflected by the certificate, as determined by the director, the certificate is immediately considered inapplicable to any vessel or facility not associated with the spill. In that event, the owner or operator shall demonstrate to the satisfaction of the director the amount of financial ability required pursuant to this chapter, as well as the financial ability to pay all damages that arise or have arisen from the spill or spills that have occurred.

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

Because of the danger of spills, the legislature finds that the transportation of crude oil and refined petroleum products by tankers, articulated tug barges, and other towed waterborne vessels or barges on the Columbia river, Grays Harbor, and on Puget Sound and adjacent waters creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources.

The legislature recognizes that the Columbia river has many natural obstacles to navigation and shifting navigation channels that create the risk of an oil spill. The legislature also recognizes Grays Harbor and Puget Sound and adjacent waters are ((~~a~~)) relatively confined salt water environments with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from any large oil spill.

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

For these reasons, it is important that large oil tankers, articulated tug barges, and other towed waterborne vessels or barges be piloted by highly skilled persons who are familiar with local waters and that such ((~~tankers~~))vessels have sufficient capability for rapid maneuvering responses.

It is therefore the intent and purpose of RCW 88.16.180 and 88.16.190 to decrease the likelihood of oil spills on the Columbia river, Grays Harbor, and on Puget Sound and its shorelines by requiring all oil tankers above a certain size, all articulated tug barges, and other towed waterborne vessels or barges to employ licensed pilots ((~~and to be escorted by a~~)), tug ((~~or tugs~~))escorts, and other safety measures while navigating on certain areas of Puget Sound and adjacent waters, and also in Grays Harbor and the Columbia river.

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

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

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

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

~~(b) Twin screws; and~~

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

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

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

~~PROVIDED, That, if such forty to one hundred and twenty-five thousand deadweight ton tanker is in ballast or is under escort of a tug or tugs with an aggregate shaft horsepower equivalent to five percent of the deadweight tons of that tanker, subsection (2) of this section shall not apply: PROVIDED FURTHER, That additional tug shaft horsepower equivalencies may be required under certain conditions as established by rule and regulation of the Washington utilities and transportation commission pursuant to chapter 34.05 RCW: PROVIDED FURTHER, That~~))Except as provided in subsection (2) of this section, an oil tanker of greater than forty thousand deadweight tons may operate in the waters described in (a) of this subsection, to the extent that these waters are within the territorial boundaries of Washington, only if the oil tanker is under the escort of a tug or tugs in compliance with the requirements of subsection (4) of this section.

(a) Those waters east of a line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area.

(b) The pilotage commission, in consultation with the department of ecology and relying on the results of vessel traffic risk assessments, may write rules to implement this subsection (1)(b). Rules adopted under this subsection (1)(b) must be designed to achieve best achievable protection as defined in RCW 88.46.010. These rules may include tug escort requirements and other safety measures for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges that may apply in the following areas consistent with subsections (2)(a) and (4) of this section:

(i) Within a two-mile radius of the Grays Harbor pilotage district as defined in RCW 88.16.050;

(ii) Within three miles of Cape Disappointment at the mouth of the Columbia river;

(iii) Any inland portion of the Columbia river; or

(iv) All other navigable waters of the state.

(c) The pilotage commission, in consultation with the department of ecology and relying on the results of vessel traffic risk assessments, shall adopt rules by June 30, 2017, to implement this subsection (1)(c). Rules adopted under this subsection (1)(c) must be designed to achieve best achievable protection as defined under RCW 88.46.010. These rules may include tug escort requirements and other safety measures for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges and apply in the following areas consistent with subsections (2)(a) and (4) of this section: All narrow channels of the San Juan Islands archipelago, including Rosario Strait, Haro Strait, Boundary Pass, and connected waterways.

(2)(a) If an oil tanker, articulated tug barge, or other towed waterborne vessel or barge is in ballast, the tug requirements of subsection (1) of this section do not apply.

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

(3) Prior to proceeding with rule making as authorized under subsection (1)(b) and (c) of this section, the commission shall consult with the United States coast guard, the Oregon board of maritime pilots, the Puget Sound, Grays Harbor, and Columbia river harbor safety committees, area tribes, public ports in Oregon and Washington, local governments, and other appropriate entities.

(4) Oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges must ensure that any escort tugs they use have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of the escorted oil tanker or articulated tug barge. The pilotage commission may adopt rules to ensure that escort tugs have sufficient capabilities to provide for safe escort. Rules adopted on this subject must be designed to achieve best achievable protection as defined under RCW 88.46.010.

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

(b) The department of ecology shall develop a voluntary shipping industry best management practices program to be implemented consistently with and in addition to the regulatory requirements of the United States coast guard and any rules adopted pursuant to this section. The department of ecology shall recognize state-of-the-art oil transport safety measures and practices implemented by entities operating vessels transporting oil and oil products as bulk cargo on the state's waters. The department of ecology shall place the earliest priority upon recognizing safety measures for articulated tug barges and other towed waterborne vessels or barges.

(6) For the purposes of this section:

(a) "Articulated tug barge" means a tank barge and a towing vessel joined by hinged or articulated fixed mechanical equipment affixed or connecting to the stern of the tank barge.

(b) "Oil tanker" means a self-propelled deep draft tank vessel designed to transport oil in bulk. "Oil tanker" does not include an articulated tug barge tank vessel.

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

**Sec.**  RCW 82.23B.020 and 2006 c 256 s 2 are each amended to read as follows:

(1) An oil spill response tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of ((~~four~~))ten cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter ((~~shall~~))must be collected by the marine terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the ((~~imposition of the~~)) taxes imposed, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she ((~~shall~~)), nevertheless, ((~~be~~))is personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal operator ((~~shall~~)) relieves the owner from further liability for the taxes.

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

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

(6) The taxes ((~~shall be~~))are due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

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

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department ((~~shall~~))must give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department ((~~shall~~))must provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator ((~~shall~~)) relieves the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section ((~~shall~~))must be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management ((~~shall~~))must determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and ((~~shall~~))may not be used to challenge the validity of any tax imposed under this chapter. The office of financial management ((~~shall~~))must promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

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

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

NEW SECTION. **Sec.**  Section 15 of this act takes effect January 1, 2016.

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

**--- END ---**