

2SSB 5057 - S AMD 144
By Senator Ericksen

ADOPTED AS AMENDED 3/9/2015

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 90.56
4 RCW to read as follows:

5 (1) The department must provide to the relevant policy and fiscal
6 committees of the senate and house of representatives:

7 (a) A review of all state geographic response plans and any
8 federal requirements as needed in contingency plans required under
9 RCW 90.56.210 and 88.46.060 by December 31, 2015; and

10 (b) Annual updates, beginning December 31, 2016, and ending
11 December 31, 2021, as required under RCW 43.01.036, as to the
12 progress made in completing state and federal geographic response
13 plans as needed in contingency plans required under RCW 90.56.060,
14 90.56.210, and 88.46.060.

15 (2) The department must contract, if practicable, with eligible
16 independent third parties to ensure completion by December 1, 2017,
17 of at least fifty percent of the geographic response plans as needed
18 in contingency plans required under RCW 90.56.210 and 88.46.060 for
19 the state.

20 (3) All requirements in this section are subject to the
21 availability of amounts appropriated for the specific purposes
22 described.

23 NEW SECTION. **Sec. 2.** (1) Subject to the availability of amounts
24 appropriated for this specific purpose, the department of ecology
25 shall provide grants to emergency responders to assist with oil spill
26 and hazardous materials response and firefighting equipment and
27 resources needed to meet the requirements of this act.

28 (2) For the purposes of determining grant allocations, the
29 department of ecology, in consultation with emergency first
30 responders, oil spill response cooperatives, representatives from the
31 oil and rail industries, and businesses that are recipients of liquid
32 bulk crude oil shall: (a) Conduct an evaluation of oil spill and

1 hazardous materials response and firefighting equipment and resources
2 currently available for oil spill and hazardous materials response
3 activities throughout the state; (b) review the local emergency
4 management coordinating efforts for oil spill and hazardous materials
5 response; (c) determine the need for additional, new, or updated
6 equipment and resources; and (d) identify areas or regions of the
7 state that are in greatest need of resources and oil spill and
8 hazardous materials response and firefighting equipment.

9 (3) The department of ecology, in consultation with emergency
10 first responders, oil spill response cooperatives, representatives
11 from the oil and rail industries, and businesses that are recipients
12 of liquid bulk crude oil shall review grant applications to
13 prioritize grant awards using the evaluation of availability of oil
14 spill and hazardous materials response and firefighting equipment and
15 resources as determined in subsection (2) of this section.

16 (a) The application review must include evaluation of equipment
17 and resource requests, funding requirements, and coordination with
18 existing equipment and resources in the area.

19 (b) Funding must be prioritized for applicants from areas where
20 the need for firefighting and oil spill and hazardous materials
21 response equipment is the greatest as determined in subsection (2) of
22 this section.

23 (c) Grants must be coordinated to maximize currently existing
24 equipment and resources that have been put in place by first
25 responders and industry.

26 **Sec. 3.** RCW 82.23B.010 and 1992 c 73 s 6 are each amended to
27 read as follows:

28 ~~((Unless the context clearly requires otherwise, the definitions~~
29 ~~in this section apply throughout this chapter.)) The definitions in
30 this section apply throughout this chapter unless the context clearly
31 requires otherwise.~~

32 (1) "Barrel" means a unit of measurement of volume equal to
33 forty-two United States gallons of crude oil or petroleum product.

34 (2) "Bulk oil terminal" means a facility of any kind, other than
35 a waterborne vessel, that is used for transferring crude oil from a
36 tank car. (3) "Crude oil" means any naturally occurring liquid
37 hydrocarbons at atmospheric temperature and pressure coming from the
38 earth, including condensate and natural gasoline.

39 ~~((3))~~ (4) "Department" means the department of revenue.

1 ((+4)) (5) "Marine terminal" means a facility of any kind, other
2 than a waterborne vessel, that is used for transferring crude oil or
3 petroleum products to or from a waterborne vessel or barge.

4 ((+5)) (6) "Navigable waters" means those waters of the state
5 and their adjoining shorelines that are subject to the ebb and flow
6 of the tide, including the Columbia and Snake rivers.

7 ((+6)) (7) "Person" has the meaning provided in RCW 82.04.030.

8 ((+7)) (8) "Petroleum product" means any liquid hydrocarbons at
9 atmospheric temperature and pressure that are the product of the
10 fractionation, distillation, or other refining or processing of crude
11 oil, and that are used as, useable as, or may be refined as a fuel or
12 fuel blendstock, including but not limited to, gasoline, diesel fuel,
13 aviation fuel, bunker fuel, and fuels containing a blend of alcohol
14 and petroleum.

15 ((+8)) (9) "Tank car" means a rail car, the body of which
16 consists of a tank for transporting liquids. (10) "Taxpayer" means
17 the person owning crude oil or petroleum products immediately after
18 receipt of the same into the storage tanks of a marine or bulk oil
19 terminal in this state (~~from a waterborne vessel or barge~~)) and who
20 is liable for the taxes imposed by this chapter.

21 ((+9)) (11) "Waterborne vessel or barge" means any ship, barge,
22 or other watercraft capable of travelling on the navigable waters of
23 this state and capable of transporting any crude oil or petroleum
24 product in quantities of ten thousand gallons or more for purposes
25 other than providing fuel for its motor or engine.

26 **Sec. 4.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to
27 read as follows:

28 (1) An oil spill response tax is imposed on the privilege of
29 receiving: (a) Crude oil or petroleum products at a marine terminal
30 within this state from a waterborne vessel or barge operating on the
31 navigable waters of this state; and (b) crude oil at a bulk oil
32 terminal within this state from a tank car. The tax imposed in this
33 section is levied upon the owner of the crude oil or petroleum
34 products immediately after receipt of the same into the storage tanks
35 of a marine or bulk oil terminal from a tank car or waterborne vessel
36 or barge at the rate of one cent per barrel of crude oil or petroleum
37 product received.

38 (2) In addition to the tax imposed in subsection (1) of this
39 section, an oil spill administration tax is imposed on the privilege

1 of receiving: (a) Crude oil or petroleum products at a marine
2 terminal within this state from a waterborne vessel or barge
3 operating on the navigable waters of this state; and (b) crude oil at
4 a bulk oil terminal within this state from a tank car. The tax
5 imposed in this section is levied upon the owner of the crude oil or
6 petroleum products immediately after receipt of the same into the
7 storage tanks of a marine or bulk oil terminal from a tank car or
8 waterborne vessel or barge at the rate of four cents per barrel of
9 crude oil or petroleum product.

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

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

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

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

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

9 (8) Upon prior approval of the department, the taxpayer may pay
10 the taxes imposed by this chapter directly to the department. The
11 department (~~shall~~) must give its approval for direct payment under
12 this section whenever it appears, in the department's judgment, that
13 direct payment will enhance the administration of the taxes imposed
14 under this chapter. The department (~~shall~~) must provide by rule for
15 the issuance of a direct payment certificate to any taxpayer
16 qualifying for direct payment of the taxes. Good faith acceptance of
17 a direct payment certificate by a terminal operator (~~shall~~) must
18 relieve the marine or bulk oil terminal operator from any liability
19 for the collection or payment of the taxes imposed under this
20 chapter.

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

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

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

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

4 **Sec. 5.** RCW 82.23B.030 and 1992 c 73 s 9 are each amended to
5 read as follows:

6 The taxes imposed under this chapter (~~shall~~) only apply to the
7 first receipt of crude oil or petroleum products at a marine or bulk
8 oil terminal in this state and not to the later transporting and
9 subsequent receipt of the same oil or petroleum product, whether in
10 the form originally received at a marine or bulk oil terminal in this
11 state or after refining or other processing.

12 **Sec. 6.** RCW 82.23B.040 and 1992 c 73 s 10 are each amended to
13 read as follows:

14 Credit (~~shall~~) must be allowed against the taxes imposed under
15 this chapter for any crude oil or petroleum products received at a
16 marine or bulk oil terminal and subsequently exported from or sold
17 for export from the state.

18 NEW SECTION. **Sec. 7.** Subject to the availability of amounts
19 appropriated for this specific purpose, the department of ecology and
20 the utilities and transportation commission shall jointly hold a
21 symposium on oil spill prevention and response activities for
22 international transport of liquid bulk crude oil. The department of
23 ecology and the utilities and transportation commission must invite
24 representatives from affected tribes, local governments, the United
25 States government, Canadian provinces, Canada, and other appropriate
26 stakeholders. The symposium must at a minimum address:

27 (1) Cooperative prevention and emergency response activities
28 between the shared international and state borders;

29 (2) Expected risks posed by transport of Canadian crude oil or
30 liquid bulk crude oil throughout the Pacific Northwest region; and

31 (3) An update of the marine transport of liquid bulk crude oil
32 through the Pacific Northwest region.

33 **Sec. 8.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to
34 read as follows:

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

- 1 (1) "Barge" means a vessel that is not self-propelled.
- 2 (2) "Cargo vessel" means a self-propelled ship in commerce, other
3 than a tank vessel, fishing vessel, or a passenger vessel, of three
4 hundred or more gross tons.
- 5 (3) "Bulk" means material that is stored or transported in a
6 loose, unpackaged liquid, powder, or granular form capable of being
7 conveyed by a pipe, bucket, chute, or belt system.
- 8 (4) "Covered vessel" means a tank vessel, cargo vessel, or
9 passenger vessel.
- 10 (5) "Department" means the department of ecology.
- 11 (6) "Director" means the director of the department of ecology.
- 12 (7)(a) "Facility" means any structure, group of structures,
13 equipment, pipeline, or device, other than a vessel, located on or
14 near the navigable waters of the state that transfers oil in bulk to
15 or from any vessel with an oil carrying capacity over two hundred
16 fifty barrels or pipeline, that is used for producing, storing,
17 handling, transferring, processing, or transporting oil in bulk.
- 18 (b) A facility does not include any: (i) Railroad car, motor
19 vehicle, or other rolling stock while transporting oil over the
20 highways or rail lines of this state; (ii) retail motor vehicle motor
21 fuel outlet; (iii) facility that is operated as part of an exempt
22 agricultural activity as provided in RCW 82.04.330; (iv) underground
23 storage tank regulated by the department or a local government under
24 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
25 more than three thousand gallons of fuel to a ship that is not a
26 covered vessel, in a single transaction.
- 27 (8) "Fishing vessel" means a self-propelled commercial vessel of
28 three hundred or more gross tons that is used for catching or
29 processing fish.
- 30 (9) "Gross tons" means tonnage as determined by the United States
31 coast guard under 33 C.F.R. section 138.30.
- 32 (10) "Hazardous substances" means any substance listed as of
33 March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under
34 section (~~(101-14)~~) 102(a) of the federal comprehensive environmental
35 response, compensation, and liability act of 1980, as amended by P.L.
36 99-499. The following are not hazardous substances for purposes of
37 this chapter:
- 38 (a) Wastes listed as F001 through F028 in Table 302.4; and
39 (b) Wastes listed as K001 through K136 in Table 302.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **Sec. 9.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and
15 amended to read as follows:

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

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

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

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

27 (c) The cost of the measures.

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

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

33 (ii) Processes that are currently in use.

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

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

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

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

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

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

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

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

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

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

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

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

39 (13) "Oil" or "oils" means oil of any kind that is liquid at
40 (~~at atmospheric temperature~~) twenty-five degrees Celsius and one

1 atmosphere of pressure and any fractionation thereof, including, but
2 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
3 well condensate, petroleum, gasoline, fuel oil, diesel oil,
4 biological oils and blends, oil sludge, oil refuse, and oil mixed
5 with wastes other than dredged spoil. Oil does not include any
6 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August
7 14, 1989, under section (~~101(14)~~) 102(a) of the federal
8 comprehensive environmental response, compensation, and liability act
9 of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (17) "Oil" or "oils" means oil of any kind that is liquid at
2 ((~~atmospheric temperature~~)) twenty-five degrees Celsius and one
3 atmosphere of pressure and any fractionation thereof, including, but
4 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
5 well condensate, petroleum, gasoline, fuel oil, diesel oil,
6 biological oils and blends, oil sludge, oil refuse, and oil mixed
7 with wastes other than dredged spoil. Oil does not include any
8 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August
9 14, 1989, under section ((~~101(14)~~)) 102(a) of the federal
10 comprehensive environmental response, compensation, and liability act
11 of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **Sec. 11.** RCW 81.53.240 and 1984 c 7 s 375 are each amended to
18 read as follows:

19 (1) Except to the extent necessary to permit participation by
20 first-class cities in the grade crossing protective fund, when an
21 election to participate is made as provided in RCW 81.53.261 through
22 81.53.291, or to the extent a first-class city requests to
23 participate in the commission's crossing safety inspection program
24 within the city, this chapter ((81.53-RCW)) is not operative within
25 the limits of first-class cities, and does not apply to street
26 railway lines operating on or across any street, alley, or other
27 public place within the limits of any city, except that a streetcar
28 line outside of cities of the first class shall not cross a railroad
29 at grade without express authority from the commission. The
30 commission may not change the location of a state highway without the
31 approval of the secretary of transportation, or the location of any
32 crossing thereon adopted or approved by the department of
33 transportation, or grant a railroad authority to cross a state
34 highway at grade without the consent of the secretary of
35 transportation.

36 (2) Within thirty days of the effective date of this section,
37 first-class cities must provide to the commission a list of all
38 existing public crossings within the limits of a first-class city,
39 including over and under-crossings, including the United States

1 special session and serve during those sessions as the state
2 emergency response commission required by P.L. 99-499, the emergency
3 planning and community right-to-know act. When sitting in session as
4 the state emergency response commission, the council shall confine
5 its deliberations to those items specified in federal statutes and
6 state administrative rules governing the coordination of hazardous
7 materials policy. Subject to the availability of amounts appropriated
8 for this specific purpose, the council must require local emergency
9 planning organizations to submit hazardous materials plans and to
10 update the plans on a five-year cycle for compliance review by the
11 director. The council shall review administrative rules governing
12 state and local emergency management practices and recommend
13 necessary revisions to the director.

14 (3)(a) The intrastate mutual aid committee is created and is a
15 subcommittee of the emergency management council. The intrastate
16 mutual aid committee consists of not more than five members who must
17 be appointed by the council chair from council membership. The chair
18 of the intrastate mutual aid committee is the military department
19 representative appointed as a member of the council. Meetings of the
20 intrastate mutual aid committee must be held at least annually.

21 (b) In support of the intrastate mutual aid system established in
22 chapter 38.56 RCW, the intrastate mutual aid committee shall develop
23 and update guidelines and procedures to facilitate implementation of
24 the intrastate mutual aid system by member jurisdictions, including
25 but not limited to the following: Projected or anticipated costs;
26 checklists and forms for requesting and providing assistance;
27 recordkeeping; reimbursement procedures; and other implementation
28 issues. These guidelines and procedures are not subject to the rule-
29 making requirements of chapter 34.05 RCW.

30 **Sec. 13.** RCW 38.52.070 and 1997 c 49 s 4 are each amended to
31 read as follows:

32 (1) Each political subdivision of this state is hereby authorized
33 and directed to establish a local organization or to be a member of a
34 joint local organization for emergency management in accordance with
35 the state comprehensive emergency management plan and program:
36 PROVIDED, That a political subdivision proposing such establishment
37 shall submit its plan and program for emergency management to the
38 state director and secure his or her recommendations thereon, and
39 verification of consistency with the state comprehensive emergency

1 management plan, in order that the plan of the local organization for
2 emergency management may be coordinated with the plan and program of
3 the state. Local comprehensive emergency management plans must: (a)
4 Specify the use of the incident command system for multiagency/
5 multijurisdiction operations; and (b) include hazardous materials
6 plans that are updated on a five-year cycle for compliance review by
7 the director. No political subdivision may be required to include in
8 its plan provisions for the emergency evacuation or relocation of
9 residents in anticipation of nuclear attack. If the director's
10 recommendations are adverse to the plan as submitted, and, if the
11 local organization does not agree to the director's recommendations
12 for modification to the proposal, the matter shall be referred to the
13 council for final action. The director may authorize two or more
14 political subdivisions to join in the establishment and operation of
15 a joint local organization for emergency management as circumstances
16 may warrant, in which case each political subdivision shall
17 contribute to the cost of emergency management upon such fair and
18 equitable basis as may be determined upon by the executive heads of
19 the constituent subdivisions. If in any case the executive heads
20 cannot agree upon the proper division of cost the matter shall be
21 referred to the council for arbitration and its decision shall be
22 final. When two or more political subdivisions join in the
23 establishment and operation of a joint local organization for
24 emergency management each shall pay its share of the cost into a
25 special pooled fund to be administered by the treasurer of the most
26 populous subdivision, which fund shall be known as the
27 emergency management fund. Each local organization or joint local
28 organization for emergency management shall have a director who shall
29 be appointed by the executive head of the political subdivision, and
30 who shall have direct responsibility for the organization,
31 administration, and operation of such local organization for
32 emergency management, subject to the direction and control of such
33 executive officer or officers. In the case of a joint local
34 organization for emergency management, the director shall be
35 appointed by the joint action of the executive heads of the
36 constituent political subdivisions. Each local organization or joint
37 local organization for emergency management shall perform emergency
38 management functions within the territorial limits of the political
39 subdivision within which it is organized, and, in addition, shall

1 conduct such functions outside of such territorial limits as may be
2 required pursuant to the provisions of this chapter.

3 (2) In carrying out the provisions of this chapter each political
4 subdivision, in which any disaster as described in RCW 38.52.020
5 occurs, shall have the power to enter into contracts and incur
6 obligations necessary to combat such disaster, protecting the health
7 and safety of persons and property, and providing emergency
8 assistance to the victims of such disaster. Each political
9 subdivision is authorized to exercise the powers vested under this
10 section in the light of the exigencies of an extreme emergency
11 situation without regard to time-consuming procedures and formalities
12 prescribed by law (excepting mandatory constitutional requirements),
13 including, but not limited to, budget law limitations, requirements
14 of competitive bidding and publication of notices, provisions
15 pertaining to the performance of public work, entering into
16 contracts, the incurring of obligations, the employment of temporary
17 workers, the rental of equipment, the purchase of supplies and
18 materials, the levying of taxes, and the appropriation and
19 expenditures of public funds.

20 **Sec. 14.** RCW 81.53.010 and 2013 c 23 s 302 are each amended to
21 read as follows:

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

24 ~~((The term))~~ (1) "Commission~~((τ))~~" ~~((when used in this chapter,τ))~~
25 means the utilities and transportation commission of Washington.

26 ~~((The term))~~ (2) "Highway~~((τ))~~" ~~((when used in this chapter,τ))~~
27 includes all state and county roads, streets, alleys, avenues,
28 boulevards, parkways, and other public places actually open and in
29 use, or to be opened and used, for travel by the public.

30 ~~((The term))~~ (3) "Railroad~~((τ))~~" ~~((when used in this chapter,τ))~~
31 means every railroad, including interurban and suburban electric
32 railroads, by whatsoever power operated, for the public use in the
33 conveyance of persons or property for hire, with all bridges,
34 ferries, tunnels, equipment, switches, spurs, sidings, tracks,
35 stations, and terminal facilities of every kind, used, operated,
36 controlled, managed, or owned by or in connection therewith. The
37 ~~((said))~~ term ~~((shall))~~ also includes every logging and other
38 industrial railway owned or operated primarily for the purpose of
39 carrying the property of its owners or operators or of a limited

1 class of persons, with all tracks, spurs, and sidings used in
2 connection therewith. The ~~((said))~~ term ~~((shall))~~ does not include
3 street railways operating within the limits of any incorporated city
4 or town.

5 ~~((The term))~~ (4) "Railroad company((τ))" ~~((when used in this~~
6 ~~chapter τ))~~ includes every corporation, company, association, joint
7 stock association, partnership, or person, its, their, or his or her
8 lessees, trustees, or receivers appointed by any court whatsoever,
9 owning, operating, controlling, or managing any railroad(~~(τ , as that~~
10 ~~term is defined in this section))~~).

11 ~~((The term))~~ (5) "Over-crossing((τ))" ~~((when used in this~~
12 ~~chapter τ))~~ means any point or place where a highway crosses a
13 railroad by passing above the same. "Over-crossing" also means any
14 point or place where one railroad crosses another railroad not at
15 grade.

16 ~~((The term))~~ (6) "Under-crossing((τ))" ~~((when used in this~~
17 ~~chapter τ))~~ means any point or place where a highway crosses a
18 railroad by passing under the same. "Under-crossing" also means any
19 point or place where one railroad crosses another railroad not at
20 grade.

21 ~~((The term "over crossing" or "under crossing," shall also mean~~
22 ~~any point or place where one railroad crosses another railroad not at~~
23 ~~grade.~~

24 ~~The term))~~ (7) "Grade crossing((τ))" ~~((when used in this~~
25 ~~chapter τ))~~ means any point or place where a railroad crosses a
26 highway or a highway crosses a railroad or one railroad crosses
27 another, at a common grade.

28 (8) "Private crossing" means any point or place where a railroad
29 crosses a private road at grade or a private road crosses a railroad
30 at grade, where the private road is not a highway.

31 NEW SECTION. Sec. 15. A new section is added to chapter 81.53
32 RCW to read as follows:

33 (1) To address the potential public safety hazards presented by
34 private crossings in the state and by the transportation of hazardous
35 materials in the state, including crude oil, the commission is
36 authorized to adopt rules governing safety standards for private
37 crossings along the railroad tracks over which crude oil is
38 transported in the state. The commission is also authorized to
39 conduct inspections of the private crossings subject to this section,

1 to order the railroads to make improvements at the private crossings,
2 and enforce the orders.

3 (2) The commission must adopt rules governing private crossings
4 along railroad tracks over which crude oil is transported in the
5 state, establishing:

6 (a) Minimum safety standards for the private crossings subject to
7 this section, including, but not limited to, requirements for
8 signage;

9 (b) Criteria for prioritizing the inspection and improvements of
10 the private crossings subject to this section; and

11 (c) Requirements governing the improvements to private crossings
12 the railroad company must pay for and complete.

13 (3) Nothing in this section modifies existing agreements between
14 the railroad company and the landowner governing liability for
15 injuries or damages occurring at the private crossing.

16 (4) All requirements in this section are subject to the
17 availability of amounts appropriated for the specific purposes
18 described.

19 NEW SECTION. **Sec. 16.** (1)(a) The department of ecology must
20 convene a panel consisting of representatives from: The oil and rail
21 industries, businesses that are recipients of liquid bulk crude oil,
22 Grays Harbor and Columbia river harbor safety committees, maritime
23 fire safety associations, the United States coast guard, Columbia
24 river public ports in Oregon and Washington, Grays Harbor public
25 ports, and Columbia river pilots.

26 (b) The panel convened under (a) of this subsection must evaluate
27 and assess vessel traffic management and vessel traffic safety within
28 the Columbia river and Grays Harbor.

29 (2) The panel shall convene no more than four times to assess and
30 evaluate: (a) The need for tug escorts for oil tankers of greater
31 than forty thousand deadweight tons, all articulated tug barges, and
32 other towed waterborne vessels or barges; (b) best achievable
33 protection; and (c) required tug capabilities to ensure safe escort
34 of vessels on the Columbia river and Grays Harbor.

35 (3) By December 15, 2015, the department of ecology must provide
36 to the appropriate committees of the legislature recommendations for
37 vessel traffic management and vessel traffic safety on the Columbia
38 river and Grays Harbor.

1 (4) All requirements in this section are subject to the
2 availability of amounts appropriated for the specific purposes
3 described.

4 NEW SECTION. **Sec. 17.** A new section is added to chapter 81.44
5 RCW to read as follows:

6 Commission employees certified by the federal railroad
7 administration to perform hazardous materials inspections may enter
8 the property of any business that receives, ships, or offers for
9 shipment hazardous materials by rail. Entry shall be at a reasonable
10 time and in a reasonable manner. The purpose of entry is limited to
11 performing inspections, investigations, or surveillance of equipment,
12 records, and operations relating to the packaging, loading,
13 unloading, or transportation of hazardous materials by rail, pursuant
14 only to the state participation program outlined in 49 C.F.R. Part
15 212. The term "business" is all inclusive and is not limited to
16 common carriers or public service companies.

17 **Sec. 18.** RCW 81.24.010 and 2007 c 234 s 21 are each amended to
18 read as follows:

19 (1) Every company subject to regulation by the commission, except
20 those listed in subsection (3) of this section, shall, on or before
21 the date specified by the commission for filing annual reports under
22 RCW 81.04.080, file with the commission a statement on oath showing
23 its gross operating revenue from intrastate operations for the
24 preceding calendar year, or portion thereof, and pay to the
25 commission a fee equal to one-tenth of one percent of the first fifty
26 thousand dollars of gross operating revenue, plus two-tenths of one
27 percent of any gross operating revenue in excess of fifty thousand
28 dollars, except railroad companies which shall each pay to the
29 commission a fee equal to (~~one~~) two and one-half percent of its
30 intrastate gross operating revenue. The commission may, by rule, set
31 minimum fees that do not exceed the cost of collecting the fees. The
32 commission may by rule waive any or all of the minimum fee
33 established pursuant to this section. Any railroad association that
34 qualifies as a nonprofit charitable organization under the federal
35 internal revenue code section 501(c)(3) is exempt from the fee
36 required under this subsection.

37 (2) The percentage rates of gross operating revenue to be paid in
38 any one year may be decreased by the commission for any class of

1 companies subject to the payment of such fees, by general order
2 entered before March 1st of such year, and for such purpose railroad
3 companies are classified as class two. Every other company subject to
4 regulation by the commission, for which regulatory fees are not
5 otherwise fixed by law, shall pay fees as herein provided and shall
6 constitute additional classes according to kinds of businesses
7 engaged in.

8 (3) This section does not apply to private nonprofit
9 transportation providers, auto transportation companies, charter
10 party carriers and excursion service carriers, solid waste collection
11 companies, motor freight carriers, household goods carriers,
12 commercial ferries, and low-level radioactive waste storage
13 facilities.

14 NEW SECTION. **Sec. 19.** A new section is added to chapter 81.24
15 RCW to read as follows:

16 The authority of the commission to charge a railroad company a
17 fee equal to two and one-half percent of its intrastate gross
18 operating revenue under the authority of this chapter expires July 1,
19 2023.

20 (2) Beginning July 1, 2023, the commission is authorized to
21 charge a railroad company a fee equal to one and one-half percent of
22 its intrastate gross operating revenue.

23 NEW SECTION. **Sec. 20.** 2015 c ... s 18 (section 18 of this act)
24 as now existing or hereafter amended, is repealed, effective July 1,
25 2023.

26 NEW SECTION. **Sec. 21.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected."

2SSB 5057 - S AMD 144
By Senator Ericksen

ADOPTED AS AMENDED 3/9/2015

30 On page 1, line 1 of the title, after "materials;" strike the
31 remainder of the title and insert "amending RCW 82.23B.010,
32 82.23B.020, 82.23B.030, 82.23B.040, 88.40.011, 90.56.010, 81.53.240,

1 38.52.070, 81.53.010, and 81.24.010; reenacting and amending RCW
2 88.46.010 and 38.52.040; adding a new section to chapter 90.56 RCW;
3 adding a new section to chapter 81.53 RCW; adding a new section to
4 chapter 81.44 RCW; adding a new section to chapter 81.24 RCW;
5 creating new sections; repealing 2015 c ... s 18; and providing an
6 effective date."

EFFECT: Revises the UTC fee structure for railroads and repeals
the new railroad fee structure in 2023.

--- END ---