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SECOND SUBSTITUTE SENATE BILL 5057

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State of Washington                      64th Legislature                      2015 Regular Session

By Senate Ways & Means (originally sponsored by Senator Ericksen)

READ FIRST TIME 02/26/15.

1            AN ACT Relating to the safe transport of hazardous materials;  
2 amending RCW 82.23B.010, 82.23B.020, 82.23B.030, 82.23B.040,  
3 88.40.011, 90.56.010, 81.53.240, 38.52.070, and 81.53.010; reenacting  
4 and amending RCW 88.46.010 and 38.52.040; adding a new section to  
5 chapter 90.56 RCW; adding a new section to chapter 81.53 RCW; adding  
6 a new section to chapter 81.44 RCW; and creating new sections.

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

8            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 90.56  
9 RCW to read as follows:

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

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

15            (b) Annual updates, beginning December 31, 2016, and ending  
16 December 31, 2021, as required under RCW 43.01.036, as to the  
17 progress made in completing state and federal geographic response  
18 plans as needed in contingency plans required under RCW 90.56.060,  
19 90.56.210, and 88.46.060.

20            (2) The department must contract, if practicable, with eligible  
21 independent third parties to ensure completion by December 1, 2017,

1 of at least fifty percent of the geographic response plans as needed  
2 in contingency plans required under RCW 90.56.210 and 88.46.060 for  
3 the state.

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

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

12 (2) For the purposes of determining grant allocations, the  
13 department of ecology, in consultation with emergency first  
14 responders, oil spill response cooperatives, representatives from the  
15 oil and rail industries, and businesses that are recipients of liquid  
16 bulk crude oil shall: (a) Conduct an evaluation of oil spill and  
17 hazardous materials response and firefighting equipment and resources  
18 currently available for oil spill and hazardous materials response  
19 activities throughout the state; (b) review the local emergency  
20 management coordinating efforts for oil spill and hazardous materials  
21 response; (c) determine the need for additional, new, or updated  
22 equipment and resources; and (d) identify areas or regions of the  
23 state that are in greatest need of resources and oil spill and  
24 hazardous materials response and firefighting equipment.

25 (3) The department of ecology, in consultation with emergency  
26 first responders, oil spill response cooperatives, representatives  
27 from the oil and rail industries, and businesses that are recipients  
28 of liquid bulk crude oil shall review grant applications to  
29 prioritize grant awards using the evaluation of availability of oil  
30 spill and hazardous materials response and firefighting equipment and  
31 resources as determined in subsection (2) of this section.

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

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

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

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

6 ~~((Unless the context clearly requires otherwise, the definitions~~  
7 ~~in this section apply throughout this chapter.)) The definitions in  
8 this section apply throughout this chapter unless the context clearly  
9 requires otherwise.~~

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

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

17 ~~((3))~~ (4) "Department" means the department of revenue.

18 ~~((4))~~ (5) "Marine terminal" means a facility of any kind, other  
19 than a waterborne vessel, that is used for transferring crude oil or  
20 petroleum products to or from a waterborne vessel or barge.

21 ~~((5))~~ (6) "Navigable waters" means those waters of the state  
22 and their adjoining shorelines that are subject to the ebb and flow  
23 of the tide, including the Columbia and Snake rivers.

24 ~~((6))~~ (7) "Person" has the meaning provided in RCW 82.04.030.

25 ~~((7))~~ (8) "Petroleum product" means any liquid hydrocarbons at  
26 atmospheric temperature and pressure that are the product of the  
27 fractionation, distillation, or other refining or processing of crude  
28 oil, and that are used as, useable as, or may be refined as a fuel or  
29 fuel blendstock, including but not limited to, gasoline, diesel fuel,  
30 aviation fuel, bunker fuel, and fuels containing a blend of alcohol  
31 and petroleum.

32 ~~((8))~~ (9) "Tank car" means a rail car, the body of which  
33 consists of a tank for transporting liquids. (10) "Taxpayer" means  
34 the person owning crude oil or petroleum products immediately after  
35 receipt of the same into the storage tanks of a marine or bulk oil  
36 terminal in this state ~~((from a waterborne vessel or barge))~~ and who  
37 is liable for the taxes imposed by this chapter.

38 ~~((9))~~ (11) "Waterborne vessel or barge" means any ship, barge,  
39 or other watercraft capable of travelling on the navigable waters of

1 this state and capable of transporting any crude oil or petroleum  
2 product in quantities of ten thousand gallons or more for purposes  
3 other than providing fuel for its motor or engine.

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

6 (1) An oil spill response tax is imposed on the privilege of  
7 receiving: (a) Crude oil or petroleum products at a marine terminal  
8 within this state from a waterborne vessel or barge operating on the  
9 navigable waters of this state; and (b) crude oil at a bulk oil  
10 terminal within this state from a tank car. The tax imposed in this  
11 section is levied upon the owner of the crude oil or petroleum  
12 products immediately after receipt of the same into the storage tanks  
13 of a marine or bulk oil terminal from a tank car or waterborne vessel  
14 or barge at the rate of one cent per barrel of crude oil or petroleum  
15 product received.

16 (2) In addition to the tax imposed in subsection (1) of this  
17 section, an oil spill administration tax is imposed on the privilege  
18 of receiving: (a) Crude oil or petroleum products at a marine  
19 terminal within this state from a waterborne vessel or barge  
20 operating on the navigable waters of this state; and (b) crude oil at  
21 a bulk oil terminal within this state from a tank car. The tax  
22 imposed in this section is levied upon the owner of the crude oil or  
23 petroleum products immediately after receipt of the same into the  
24 storage tanks of a marine or bulk oil terminal from a tank car or  
25 waterborne vessel or barge at the rate of four cents per barrel of  
26 crude oil or petroleum product.

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

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

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

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

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

27 (8) Upon prior approval of the department, the taxpayer may pay  
28 the taxes imposed by this chapter directly to the department. The  
29 department (~~shall~~) must give its approval for direct payment under  
30 this section whenever it appears, in the department's judgment, that  
31 direct payment will enhance the administration of the taxes imposed  
32 under this chapter. The department (~~shall~~) must provide by rule for  
33 the issuance of a direct payment certificate to any taxpayer  
34 qualifying for direct payment of the taxes. Good faith acceptance of  
35 a direct payment certificate by a terminal operator (~~shall~~) must  
36 relieve the marine or bulk oil terminal operator from any liability  
37 for the collection or payment of the taxes imposed under this  
38 chapter.

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

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

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

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

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

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

22 The taxes imposed under this chapter (~~shall~~) only apply to the  
23 first receipt of crude oil or petroleum products at a marine or bulk  
24 oil terminal in this state and not to the later transporting and  
25 subsequent receipt of the same oil or petroleum product, whether in  
26 the form originally received at a marine or bulk oil terminal in this  
27 state or after refining or other processing.

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

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

34 NEW SECTION. **Sec. 7.** Subject to the availability of amounts  
35 appropriated for this specific purpose, the department of ecology and  
36 the utilities and transportation commission shall jointly hold a  
37 symposium on oil spill prevention and response activities for

1 international transport of liquid bulk crude oil. The department of  
2 ecology and the utilities and transportation commission must invite  
3 representatives from affected tribes, local governments, the United  
4 States government, Canadian provinces, Canada, and other appropriate  
5 stakeholders. The symposium must at a minimum address:

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

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

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

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

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

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

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

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

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

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

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

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

33 (b) A facility does not include any: (i) Railroad car, motor  
34 vehicle, or other rolling stock while transporting oil over the  
35 highways or rail lines of this state; (ii) retail motor vehicle motor  
36 fuel outlet; (iii) facility that is operated as part of an exempt  
37 agricultural activity as provided in RCW 82.04.330; (iv) underground  
38 storage tank regulated by the department or a local government under  
39 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense

1 more than three thousand gallons of fuel to a ship that is not a  
2 covered vessel, in a single transaction.

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

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

8 (10) "Hazardous substances" means any substance listed as of  
9 March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under  
10 section (~~(101-14)~~) 102(a) of the federal comprehensive environmental  
11 response, compensation, and liability act of 1980, as amended by P.L.  
12 99-499. The following are not hazardous substances for purposes of  
13 this chapter:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) The additional protection provided by the measures;  
2 (b) The technological achievability of the measures; and  
3 (c) The cost of the measures.

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

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

9 (ii) Processes that are currently in use.

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

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

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

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

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

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

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

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

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

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

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

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

14 (13) "Oil" or "oils" means oil of any kind that is liquid at  
15 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one  
16 atmosphere of pressure and any fractionation thereof, including, but  
17 not limited to, crude oil, bitumen, synthetic crude oil, natural gas  
18 well condensate, petroleum, gasoline, fuel oil, diesel oil,  
19 biological oils and blends, oil sludge, oil refuse, and oil mixed  
20 with wastes other than dredged spoil. Oil does not include any  
21 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August  
22 14, 1989, under section (~~(101(14))~~) 102(a) of the federal  
23 comprehensive environmental response, compensation, and liability act  
24 of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (27) "Vessels of opportunity response system" means nondedicated  
38 boats and operators, including fishing and other vessels, that are  
39 under contract with and equipped by contingency plan holders to  
40 assist with oil spill response activities, including on-water oil

1 recovery in the near shore environment and the placement of oil spill  
2 containment booms to protect sensitive habitats.

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

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

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

20 **Sec. 10.** RCW 90.56.010 and 2007 c 347 s 6 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 (1) "Best achievable protection" means the highest level of  
25 protection that can be achieved through the use of the best  
26 achievable technology and those staffing levels, training procedures,  
27 and operational methods that provide the greatest degree of  
28 protection achievable. The director's determination of best  
29 achievable protection shall be guided by the critical need to protect  
30 the state's natural resources and waters, while considering (a) the  
31 additional protection provided by the measures; (b) the technological  
32 achievability of the measures; and (c) the cost of the measures.

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

1 consider the effectiveness, engineering feasibility, and commercial  
2 availability of the technology.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (17) "Oil" or "oils" means oil of any kind that is liquid at  
17 (~~atmospheric temperature~~) twenty-five degrees Celsius and one  
18 atmosphere of pressure and any fractionation thereof, including, but  
19 not limited to, crude oil, bitumen, synthetic crude oil, natural gas  
20 well condensate, petroleum, gasoline, fuel oil, diesel oil,  
21 biological oils and blends, oil sludge, oil refuse, and oil mixed  
22 with wastes other than dredged spoil. Oil does not include any  
23 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August  
24 14, 1989, under section (~~101(14)~~) 102(a) of the federal  
25 comprehensive environmental response, compensation, and liability act  
26 of 1980, as amended by P.L. 99-499.

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

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

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

1 owned or operated the vessel or facility immediately before its  
2 abandonment.

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

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

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

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

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

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

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

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

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

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

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

34 (1) Except to the extent necessary to permit participation by  
35 first-class cities in the grade crossing protective fund, when an  
36 election to participate is made as provided in RCW 81.53.261 through  
37 81.53.291, or to the extent a first-class city requests to  
38 participate in the commission's crossing safety inspection program  
39 within the city, this chapter ((81.53-RCW)) is not operative within



1 the limits of first-class cities, and does not apply to street  
2 railway lines operating on or across any street, alley, or other  
3 public place within the limits of any city, except that a streetcar  
4 line outside of cities of the first class shall not cross a railroad  
5 at grade without express authority from the commission. The  
6 commission may not change the location of a state highway without the  
7 approval of the secretary of transportation, or the location of any  
8 crossing thereon adopted or approved by the department of  
9 transportation, or grant a railroad authority to cross a state  
10 highway at grade without the consent of the secretary of  
11 transportation.

12 (2) Within thirty days of the effective date of this section,  
13 first-class cities must provide to the commission a list of all  
14 existing public crossings within the limits of a first-class city,  
15 including over and under-crossings, including the United States  
16 department of transportation number for the crossing. Within thirty  
17 days of modifying, closing, or opening a grade crossing within the  
18 limits of a first-class city, the city must notify the commission in  
19 writing of the action taken, identifying the crossing by the United  
20 States department of transportation number. All requirements in this  
21 subsection are subject to the availability of amounts appropriated  
22 for the specific purposes described.

23 **Sec. 12.** RCW 38.52.040 and 2011 1st sp.s. c 21 s 27, 2011 c 336  
24 s 789, and 2011 c 79 s 9 are each reenacted and amended to read as  
25 follows:

26 (1) There is hereby created the emergency management council  
27 (hereinafter called the council), to consist of not more than  
28 seventeen members who shall be appointed by the adjutant general. The  
29 membership of the council shall include, but not be limited to,  
30 representatives of city and county governments, sheriffs and police  
31 chiefs, the Washington state patrol, the military department, the  
32 department of ecology, state and local fire chiefs, seismic safety  
33 experts, state and local emergency management directors, search and  
34 rescue volunteers, medical professions who have expertise in  
35 emergency medical care, building officials, and private industry. The  
36 representatives of private industry shall include persons  
37 knowledgeable in emergency and hazardous materials management. The  
38 councilmembers shall elect a chair from within the council  
39 membership. The members of the council shall serve without

1 compensation, but may be reimbursed for their travel expenses  
2 incurred in the performance of their duties in accordance with RCW  
3 43.03.050 and 43.03.060 as now existing or hereafter amended.

4 (2) The emergency management council shall advise the governor  
5 and the director on all matters pertaining to state and local  
6 emergency management. The council may appoint such ad hoc committees,  
7 subcommittees, and working groups as are required to develop specific  
8 recommendations for the improvement of emergency management  
9 practices, standards, policies, or procedures. The council shall  
10 ensure that the governor receives an annual assessment of statewide  
11 emergency preparedness including, but not limited to, specific  
12 progress on hazard mitigation and reduction efforts, implementation  
13 of seismic safety improvements, reduction of flood hazards, and  
14 coordination of hazardous materials planning and response activities.  
15 The council or a subcommittee thereof shall periodically convene in  
16 special session and serve during those sessions as the state  
17 emergency response commission required by P.L. 99-499, the emergency  
18 planning and community right-to-know act. When sitting in session as  
19 the state emergency response commission, the council shall confine  
20 its deliberations to those items specified in federal statutes and  
21 state administrative rules governing the coordination of hazardous  
22 materials policy. Subject to the availability of amounts appropriated  
23 for this specific purpose, the council must require local emergency  
24 planning organizations to submit hazardous materials plans and to  
25 update the plans on a five-year cycle for compliance review by the  
26 director. The council shall review administrative rules governing  
27 state and local emergency management practices and recommend  
28 necessary revisions to the director.

29 (3)(a) The intrastate mutual aid committee is created and is a  
30 subcommittee of the emergency management council. The intrastate  
31 mutual aid committee consists of not more than five members who must  
32 be appointed by the council chair from council membership. The chair  
33 of the intrastate mutual aid committee is the military department  
34 representative appointed as a member of the council. Meetings of the  
35 intrastate mutual aid committee must be held at least annually.

36 (b) In support of the intrastate mutual aid system established in  
37 chapter 38.56 RCW, the intrastate mutual aid committee shall develop  
38 and update guidelines and procedures to facilitate implementation of  
39 the intrastate mutual aid system by member jurisdictions, including  
40 but not limited to the following: Projected or anticipated costs;

1 checklists and forms for requesting and providing assistance;  
2 recordkeeping; reimbursement procedures; and other implementation  
3 issues. These guidelines and procedures are not subject to the rule-  
4 making requirements of chapter 34.05 RCW.

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

7 (1) Each political subdivision of this state is hereby authorized  
8 and directed to establish a local organization or to be a member of a  
9 joint local organization for emergency management in accordance with  
10 the state comprehensive emergency management plan and program:  
11 PROVIDED, That a political subdivision proposing such establishment  
12 shall submit its plan and program for emergency management to the  
13 state director and secure his or her recommendations thereon, and  
14 verification of consistency with the state comprehensive emergency  
15 management plan, in order that the plan of the local organization for  
16 emergency management may be coordinated with the plan and program of  
17 the state. Local comprehensive emergency management plans must: (a)  
18 Specify the use of the incident command system for multiagency/  
19 multijurisdiction operations; and (b) include hazardous materials  
20 plans that are updated on a five-year cycle for compliance review by  
21 the director. No political subdivision may be required to include in  
22 its plan provisions for the emergency evacuation or relocation of  
23 residents in anticipation of nuclear attack. If the director's  
24 recommendations are adverse to the plan as submitted, and, if the  
25 local organization does not agree to the director's recommendations  
26 for modification to the proposal, the matter shall be referred to the  
27 council for final action. The director may authorize two or more  
28 political subdivisions to join in the establishment and operation of  
29 a joint local organization for emergency management as circumstances  
30 may warrant, in which case each political subdivision shall  
31 contribute to the cost of emergency management upon such fair and  
32 equitable basis as may be determined upon by the executive heads of  
33 the constituent subdivisions. If in any case the executive heads  
34 cannot agree upon the proper division of cost the matter shall be  
35 referred to the council for arbitration and its decision shall be  
36 final. When two or more political subdivisions join in the  
37 establishment and operation of a joint local organization for  
38 emergency management each shall pay its share of the cost into a  
39 special pooled fund to be administered by the treasurer of the most

1 populous subdivision, which fund shall be known as the . . . . .  
2 emergency management fund. Each local organization or joint local  
3 organization for emergency management shall have a director who shall  
4 be appointed by the executive head of the political subdivision, and  
5 who shall have direct responsibility for the organization,  
6 administration, and operation of such local organization for  
7 emergency management, subject to the direction and control of such  
8 executive officer or officers. In the case of a joint local  
9 organization for emergency management, the director shall be  
10 appointed by the joint action of the executive heads of the  
11 constituent political subdivisions. Each local organization or joint  
12 local organization for emergency management shall perform emergency  
13 management functions within the territorial limits of the political  
14 subdivision within which it is organized, and, in addition, shall  
15 conduct such functions outside of such territorial limits as may be  
16 required pursuant to the provisions of this chapter.

17 (2) In carrying out the provisions of this chapter each political  
18 subdivision, in which any disaster as described in RCW 38.52.020  
19 occurs, shall have the power to enter into contracts and incur  
20 obligations necessary to combat such disaster, protecting the health  
21 and safety of persons and property, and providing emergency  
22 assistance to the victims of such disaster. Each political  
23 subdivision is authorized to exercise the powers vested under this  
24 section in the light of the exigencies of an extreme emergency  
25 situation without regard to time-consuming procedures and formalities  
26 prescribed by law (excepting mandatory constitutional requirements),  
27 including, but not limited to, budget law limitations, requirements  
28 of competitive bidding and publication of notices, provisions  
29 pertaining to the performance of public work, entering into  
30 contracts, the incurring of obligations, the employment of temporary  
31 workers, the rental of equipment, the purchase of supplies and  
32 materials, the levying of taxes, and the appropriation and  
33 expenditures of public funds.

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

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

38 ((The term)) (1) "Commission(( ))" ((when used in this chapter,))  
39 means the utilities and transportation commission of Washington.

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

5       ~~((The term))~~ (3) "Railroad(~~(τ)~~)" ~~((when used in this chapter,τ))~~  
6 means every railroad, including interurban and suburban electric  
7 railroads, by whatsoever power operated, for the public use in the  
8 conveyance of persons or property for hire, with all bridges,  
9 ferries, tunnels, equipment, switches, spurs, sidings, tracks,  
10 stations, and terminal facilities of every kind, used, operated,  
11 controlled, managed, or owned by or in connection therewith. The  
12 ~~((said))~~ term ~~((shall))~~ also includes every logging and other  
13 industrial railway owned or operated primarily for the purpose of  
14 carrying the property of its owners or operators or of a limited  
15 class of persons, with all tracks, spurs, and sidings used in  
16 connection therewith. The ~~((said))~~ term ~~((shall))~~ does not include  
17 street railways operating within the limits of any incorporated city  
18 or town.

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

25       ~~((The term))~~ (5) "Over-crossing(~~(τ)~~)" ~~((when used in this~~  
26 ~~chapter,τ))~~ means any point or place where a highway crosses a  
27 railroad by passing above the same. "Over-crossing" also means any  
28 point or place where one railroad crosses another railroad not at  
29 grade.

30       ~~((The term))~~ (6) "Under-crossing(~~(τ)~~)" ~~((when used in this~~  
31 ~~chapter,τ))~~ means any point or place where a highway crosses a  
32 railroad by passing under the same. "Under-crossing" also means any  
33 point or place where one railroad crosses another railroad not at  
34 grade.

35       ~~((The term "over-crossing" or "under-crossing," shall also mean~~  
36 ~~any point or place where one railroad crosses another railroad not at~~  
37 ~~grade.~~

38       ~~The term))~~ (7) "Grade crossing(~~(τ)~~)" ~~((when used in this~~  
39 ~~chapter,τ))~~ means any point or place where a railroad crosses a

1 highway or a highway crosses a railroad or one railroad crosses  
2 another, at a common grade.

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

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

8 (1) To address the potential public safety hazards presented by  
9 private crossings in the state and by the transportation of hazardous  
10 materials in the state, including crude oil, the commission is  
11 authorized to adopt rules governing safety standards for private  
12 crossings along the railroad tracks over which crude oil is  
13 transported in the state. The commission is also authorized to  
14 conduct inspections of the private crossings subject to this section,  
15 to order the railroads to make improvements at the private crossings,  
16 and enforce the orders.

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

20 (a) Minimum safety standards for the private crossings subject to  
21 this section, including, but not limited to, requirements for  
22 signage;

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

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

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

30 (4) All requirements in this section are subject to the  
31 availability of amounts appropriated for the specific purposes  
32 described.

33 NEW SECTION. Sec. 16. (1)(a) The department of ecology must  
34 convene a panel consisting of representatives from: The oil and rail  
35 industries, businesses that are recipients of liquid bulk crude oil,  
36 Grays Harbor and Columbia river harbor safety committees, maritime  
37 fire safety associations, the United States coast guard, Columbia

1 river public ports in Oregon and Washington, Grays Harbor public  
2 ports, and Columbia river pilots.

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

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

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

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. 17.** A new section is added to chapter 81.44  
20 RCW to read as follows:

21 Commission employees certified by the federal railroad  
22 administration to perform hazardous materials inspections may enter  
23 the property of any business that receives, ships, or offers for  
24 shipment hazardous materials by rail. Entry shall be at a reasonable  
25 time and in a reasonable manner. The purpose of entry is limited to  
26 performing inspections, investigations, or surveillance of equipment,  
27 records, and operations relating to the packaging, loading,  
28 unloading, or transportation of hazardous materials by rail, pursuant  
29 only to the state participation program outlined in 49 C.F.R. Part  
30 212. The term "business" is all inclusive and is not limited to  
31 common carriers or public service companies.

32 NEW SECTION. **Sec. 18.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

--- END ---