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HOUSE BILL 1611

State of Washington 65th Legislature 2017 Regular Session

By Representatives Farrell, Fitzgibbon, Fey, Peterson, Slatter, Tharinger, Pollet, Stonier, Senn, Appleton, Chapman, Goodman, Robinson, Pettigrew, Bergquist, Hudgins, McBride, Cody, Macri, Doglio, Stanford, Jinkins, Tarleton, and Kagi

Read first time 01/25/17. Referred to Committee on Environment.

- AN ACT Relating to oil transportation safety; amending RCW 1 2 88.40.025, 88.40.030, 88.40.040, 88.16.190, 90.56.370, 82.23B.020, 3 82.23B.030, 90.56.200, 90.56.240, 90.56.510, 90.56.565, 90.56.210, 90.56.220, 90.56.230, and 80.50.060; reenacting and amending RCW 4 88.40.011, 88.40.020, 82.23B.010, and 80.50.020; adding a new section 5 90.56 RCW; creating 6 chapter new sections; repealing 7 82.23B.040; prescribing penalties; providing an effective date; 8 providing an expiration date; and declaring an emergency.
- 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- 10 Sec. 1. (1) The legislature finds that the system NEW SECTION. 11 of crude oil transportation by boat, rail, and pipeline in Washington has experienced significant changes in recent years. By enacting 12 13 chapter 274, Laws of 2015 (the oil transportation safety act), the 14 legislature took significant steps to address the risks of oil transportation. However, because that legislation primarily focused 15 16 on the risks of crude oil transportation by rail, and did not address the growing risks of oil shipped through state waters, additional 17 attention to this issue is warranted and the additional steps taken 18 in this act will help continue to improve oil transportation safety. 19
 - (2) In light of recent events since the passage of the oil transportation safety act, oil transportation patterns are expected

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to continue to further change in coming years. With these changes, additional and changing risks are also expected:

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- (a) One important contextual change driving oil transportation risks in Washington was the recent decision by the United States congress in December 2015 to remove the longstanding prohibition on the export of crude oil from the United States. This reversal of federal law presents a significant prospective change to the patterns of oil shipment through the state and may bring additional environmental and public safety risks that are not adequately addressed by existing plans and safety regulations.
- (b) A second change on the horizon, which will have huge ramifications for the transport of oil through the boundary waters and the Strait of Juan de Fuca, stems from the recently approved expansion of the Trans Mountain pipeline from Alberta to British Columbia, Canada. The expanded pipeline is anticipated to increase tanker traffic in the already busy United States-Canadian boundary water shipping lanes from five tankers per month to up to thirty-four oil laden tankers per month. Because the precipitating event for this increase in traffic is the construction of a facility in Canada, the environmental impacts of this traffic in Washington waters will not otherwise be mitigated under chapter 43.21C RCW, the state environmental policy act. Therefore, it is urgent imperative that the legislature act now to enhance its marine oil transport risk reduction framework in order for the state to be even minimally prepared for the tectonic shift in oil transportation that is likely to occur in our ecologically fragile northern waters.
- (3) Therefore, in light of these changes, it is the intent of the legislature to enhance a variety of safety measures that protect against the risk of oil spills occurring on land and on water, to provide a sustainable source of funding for the state's oil spill preparedness and response program, and to ensure the state's ability to recover from the full scope of economic harms that would result from a large oil spill.
- 34 Sec. 2. RCW 88.40.011 and 2015 c 274 s 9 are each reenacted and 35 amended to read as follows:
- The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.
 - (1) "Barge" means a vessel that is not self-propelled.

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1 (2) "Bulk" means material that is stored or transported in a 2 loose, unpackaged liquid, powder, or granular form capable of being 3 conveyed by a pipe, bucket, chute, or belt system.

- (3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.
- written acknowledgment issued by the director or the director's designee that an owner or operator of a covered vessel or facility, or the owner of the oil, has demonstrated to the satisfaction of the director or the director's designee that the relevant entity has the financial ability to pay for costs and damages caused by an oil spill.
- 14 <u>(5)</u> "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.
- $((\frac{5}{}))$ (6) "Department" means the department of ecology.
- $((\frac{(+6)}{(+6)}))$ "Director" means the director of the department of 18 ecology.
 - (((7))) (<u>8)</u>(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.
 - (b) A facility does not include any: (i) ((Railroad car,)) Motor vehicle((, or other rolling stock)) while transporting oil over the highways ((or rail lines)) of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.
- 35 (c) For the purposes of oil spill contingency planning in RCW 36 90.56.210 and financial responsibility in RCW 88.40.025, "facility" 37 also means a railroad that transports oil as bulk cargo.
- ((+8)) (9) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

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((+9))) (10) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

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

- (a) Wastes listed as F001 through F028 in Table 302.4; and
- (b) Wastes listed as K001 through K136 in Table 302.4.
- $((\frac{11}{11}))$ (12) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.
- 16 (((12))) <u>(13)</u> "Offshore facility" means any facility located in, 17 on, or under any of the navigable waters of the state, but does not 18 include a facility any part of which is located in, on, or under any 19 land of the state, other than submerged land.
 - (((13))) (14) "Oil" or "oils" means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.
 - (((14))) (15) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.
 - ((\(\frac{(15)}{15}\))) (16)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who

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- owned or operated the vessel or facility immediately before its 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 (((16))) <u>(17)</u> "Passenger vessel" means a ship of three hundred or 7 more gross tons with a fuel capacity of at least six thousand gallons 8 carrying passengers for compensation.
- 9 $((\frac{17}{17}))$ <u>(18)</u> "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.
- 11 $((\frac{18}{18}))$ (19) "Spill" means an unauthorized discharge of oil into 12 the waters of the state.
- 13 $((\frac{19}{19}))$ (20) "Tank vessel" means a ship that is constructed or 14 adapted to carry, or that carries, oil in bulk as cargo or cargo 15 residue, and that:
 - (a) Operates on the waters of the state; or

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- 17 (b) Transfers oil in a port or place subject to the jurisdiction 18 of this state.
- 19 $((\frac{(20)}{(20)}))$ (21) "Waters of the state" includes lakes, rivers, 20 ponds, streams, inland waters, underground water, salt waters, 21 estuaries, tidal flats, beaches and lands adjoining the seacoast of 22 the state, sewers, and all other surface waters and watercourses 23 within the jurisdiction of the state of Washington.
- 24 Sec. 3. RCW 88.40.020 and 2003 c 91 s 3 and 2003 c 56 s 3 are 25 each reenacted and amended to read as follows:
 - (1) Any barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish evidence of financial responsibility in the amount of the greater of five million dollars, or three hundred dollars per gross ton of such vessel.
 - (2)(a) Except as provided in (b) or (c) of this subsection, a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least five hundred million dollars. The amount of financial responsibility required under this subsection is one billion dollars after January 1, 2004.
- 36 (b) The director by rule may establish a lesser standard of 37 financial responsibility for tank vessels of three hundred gross tons 38 or less. The standard shall set the level of financial responsibility 39 based on the quantity of cargo the tank vessel is capable of

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carrying. The director shall not set the standard for tank vessels of three hundred gross tons or less below that required under federal law.

- (c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a tank vessel to prove membership in such an organization.
- (3)(a) A cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay at least three hundred million dollars. However, a passenger vessel that transports passengers and vehicles between Washington state and a foreign country shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.
- (b) The owner or operator of a cargo vessel or passenger vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a cargo vessel or passenger vessel to prove membership in such an organization.
- (4) A fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts:

 (a) For a fishing vessel carrying predominantly nonpersistent product, one hundred thirty-three dollars and forty cents per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or one million three hundred thirty-four thousand dollars, whichever is greater; or (b) for a fishing vessel carrying predominantly persistent product, four hundred dollars and twenty cents per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or six million six hundred seventy thousand dollars, whichever is greater.
- (5) The ((documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and for necessary expenses)) certificate of financial responsibility is

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- conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, facility, or oil for purposes of determining liability pursuant to this chapter.
- 4 (6) This section shall not apply to a covered vessel owned or operated by the federal government or by a state or local government.
- 6 **Sec. 4.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to 7 read as follows:

An onshore or offshore facility shall demonstrate financial 8 9 responsibility in an amount determined by the department as necessary 10 to compensate the state and affected counties and cities for damages 11 that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department 12 13 shall ((consider such matters as the amount of oil that could be spilled into the navigable waters from the facility, the cost of 14 15 cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill and the 16 commercial availability and affordability of financial 17 responsibility)) adopt by rule the amount necessary to demonstrate 18 financial responsibility by multiplying the reasonable per barrel 19 20 cleanup and damage cost of spilled oil by the worst case spill volume in barrels as determined in the applicant's oil spill contingency 21 plan. This section shall not apply to an onshore or offshore facility 22 owned or operated by the federal government or by the state or local 23 24 government.

- 25 **Sec. 5.** RCW 88.40.030 and 2000 c 69 s 32 are each amended to 26 read as follows:
- (1) Financial responsibility required by this chapter may be 27 established by any one of, or a combination of, the following methods 28 29 acceptable to the department of ecology: $((\frac{1}{1}))$ (a) Evidence of 30 insurance; $((\frac{2}{2}))$ (b) surety bonds; $((\frac{3}{2}))$ (c) qualification as a self-insurer; ((or (4))) (d) guaranty; (e) letter of credit; (f) 31 certificate of deposits; (q) protection and indemnity club 32 membership; or (h) other evidence of financial responsibility. Any 33 bond filed shall be issued by a bonding company authorized to do 34 business in the United States. Documentation of such financial 35 responsibility shall be kept on any covered vessel and filed with the 36 37 department at least twenty-four hours before entry of the vessel into 38 the navigable waters of the state. A covered vessel is not required

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- to file documentation of financial responsibility twenty-four hours before entry of the vessel into the navigable waters of the state, if the vessel has filed documentation of financial responsibility with the federal government, and the level of financial responsibility required by the federal government is the same as or exceeds state requirements. The owner or operator of the vessel may file with the department a certificate evidencing compliance with the requirements of another state's or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter.
- 12 (2) A certificate of financial responsibility may not have a term 13 greater than one year.
- **Sec. 6.** RCW 88.40.040 and 2003 c 56 s 4 are each amended to read 15 as follows:

- (1) It is unlawful for any vessel <u>or facility</u> required to have financial responsibility under this chapter to enter or operate ((on)) <u>in</u> Washington ((waters)) without meeting the requirements of this chapter or rules adopted under this chapter, except when necessary to avoid injury to the vessel's <u>or facility's</u> crew or passengers. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the department to the United States coast guard.
- (2) ((The department shall enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act.)) Upon notification of an oil spill or discharge or other action or potential liability, the director shall reevaluate the validity of the certificate of financial responsibility. If the director determines that, because of a spill outside of the state or some other action or potential liability, the holder of a certificate may not have the financial resources to pay damages for the oil spill or discharge or other action or potential liability and have resources remaining available to meet the requirements of this chapter, the director may suspend or revoke the certificate.
- 36 (3) An owner or operator of either more than one covered vessel
 37 or facility, or both is only required to obtain one certificate of
 38 financial responsibility for each vessel and facility owned or
 39 operated.

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- (4) If a person holds a certificate for more than one covered 1 vessel or facility and a spill or spills occurs from one or more of 2 those vessels or facilities for which the owner or operator may be 3 liable for damages in an amount exceeding five percent of the 4 financial resources reflected by the certificate, as determined by 5 6 the director, the certificate is immediately considered inapplicable to any vessel or facility not associated with the spill. In that 7 event, the owner or operator shall demonstrate to the satisfaction of 8 the director the amount of financial ability required pursuant to 9 10 this chapter, as well as the financial ability to pay all damages that arise or have arisen from the spill or spills that have 11 12 occurred.
- 13 **Sec. 7.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read 14 as follows:
 - (1) Any oil tanker, whether enrolled or registered, of greater than one hundred and twenty-five thousand deadweight tons shall be prohibited from proceeding beyond a point east of a line extending from Discovery Island light south to New Dungeness light.
 - (2) ((An oil tanker, whether enrolled or registered, of forty to one hundred and twenty-five thousand deadweight tons may proceed beyond the points enumerated in subsection (1) if such tanker possesses all of the following standard safety features:
- 23 (a) Shaft horsepower in the ratio of one horsepower to each two 24 and one-half deadweight tons; and
 - (b) Twin screws; and

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- 26 (c) Double bottoms, underneath all oil and liquid cargo 27 compartments; and
- 28 (d) Two radars in working order and operating, one of which must 29 be collision avoidance radar; and
- 30 (e) Such other navigational position location systems as may be 31 prescribed from time to time by the board of pilotage commissioners:
 - PROVIDED, That, if such forty to one hundred and twenty-five thousand deadweight ton tanker is in ballast or is under escort of a tug or tugs with an aggregate shaft horsepower equivalent to five percent of the deadweight tons of that tanker, subsection (2) of this section shall not apply: PROVIDED FURTHER, That additional tug shaft horsepower equivalencies may be required under certain conditions as established by rule and regulation of the Washington utilities and transportation commission pursuant to chapter 34.05 RCW: PROVIDED

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FURTHER, That)) (a) Except as provided in subsection (3) of this section, an oil tanker of greater than forty thousand deadweight tons may operate in the waters east of a line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area, to the extent that these waters are within the territorial boundaries of Washington, only if the oil tanker is under the escort of a tug or tugs in compliance with the requirements of subsection (4) of this section.

- (b) The department of ecology, in consultation with the board of pilotage commissioners and relying on the results of vessel traffic risk assessments, shall adopt rules by November 1, 2018, to implement this subsection (2)(b). These rules may include tug escort requirements and other safety measures for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges. The geographic scope of the rules must be limited to the narrow channels of the San Juan Islands archipelago, including Rosario Strait, Haro Strait, Boundary Pass, and connected waterways. By November 1, 2019, the department of ecology must adopt tug escort requirements and other safety measures for the remaining areas of Puget Sound.
- (c) In order to adopt a rule under this section, the department of ecology must determine that the results of a vessel traffic risk assessment provide evidence that the rules are necessary in order to achieve best achievable protection as defined in RCW 88.46.010.
- (d) The department of ecology must consult with the United States coast guard, the Puget Sound safety committee, tribes, ports, local governments, and other appropriate entities before adopting tug escort requirements and other safety measures for Puget Sound.
- (3)(a) If an oil tanker, articulated tug barge, or other towed waterborne vessel or barge is in ballast, the tug escort requirements of subsection (2)(a) of this section and any tug escort rules adopted pursuant to subsection (2)(b) of this section do not apply.
- (b) If an oil tanker is a single-hulled oil tanker of greater than five thousand gross tons, the requirements of subsection (2)(a) of this section do not apply and the oil tanker must instead comply with 33 C.F.R. Part 168, as of the effective date of this section.
- (4)(a) Oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges must ensure that any escort tugs they use have an aggregate

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- 1 shaft horsepower equivalent to at least five percent of the
 2 deadweight tons of the escorted oil tanker or articulated tug barge.
 - (b) The department of ecology may adopt rules to ensure that escort tugs have sufficient mechanical capabilities to provide for safe escort.

- 6 (c) Rules adopted under this subsection must be designed to 7 achieve best achievable protection as defined under RCW 88.46.010.
 - (5) A tanker assigned a deadweight of equal to or less than forty thousand deadweight tons at the time of construction or reconstruction as reported in Lloyd's Register of Ships is not subject to the provisions of this section and RCW 88.16.170 ((through 88.16.190)) and 88.16.180.
- 13 <u>(6) The definitions in this subsection apply throughout this</u> 14 section unless the context clearly requires otherwise.
- 15 <u>(a) "Articulated tug barge" means a tank barge and a towing</u>
 16 <u>vessel joined by hinged or articulated fixed mechanical equipment</u>
 17 <u>affixed or connecting to the stern of the tank barge.</u>
- 18 <u>(b) "Oil tanker" means a self-propelled deep draft tank vessel</u>
 19 <u>designed to transport oil in bulk. "Oil tanker" does not include an</u>
 20 <u>articulated tug barge tank vessel.</u>
 - (c) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.
- **Sec. 8.** RCW 90.56.370 and 2011 c 122 s 10 are each amended to 27 read as follows:
 - (1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.
 - (2) Damages for which responsible parties are liable under this section include loss of income, <u>such as lost fishing income or lost lodging income due to reduced tourism</u>, net revenue, the <u>loss of means of producing income or revenue directly or indirectly attributable to oil entering waters of the state, lost real property value when it is <u>demonstrated to be a direct result of an oil spill</u>, or an economic benefit resulting from an injury to or loss of real or personal property or natural resources.</u>

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- (3) Damages for which responsible parties are liable under this section include damages provided in subsections (1) and (2) of this section resulting from: (a) The use and deployment of chemical dispersants or from in situ burning in response to a violation of RCW 90.56.320; and (b) any action conducted in response to a violation of RCW 90.56.320, including actions to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil discharged into waters of the state.
- 9 (4) In any action to recover damages resulting from the discharge 10 of oil in violation of RCW 90.56.320, the owner or person having 11 control over the oil shall be relieved from strict liability, without 12 regard to fault, if that person can prove that the discharge was 13 caused solely by:
 - (a) An act of war or sabotage;
- 15 (b) An act of God;

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- (c) Negligence on the part of the United States government; or
- (d) Negligence on the part of the state of Washington.
- 18 (5) The liability established in this section shall in no way
 19 affect the rights which: (a) The owner or other person having control
 20 over the oil may have against any person whose acts may in any way
 21 have caused or contributed to the discharge of oil, or (b) the state
 22 of Washington may have against any person whose actions may have
 23 caused or contributed to the discharge of oil.
 - **Sec. 9.** RCW 82.23B.010 and 2015 c 274 s 13 are each reenacted and amended to read as follows:
 - The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.
- 28 (1) "Barrel" means a unit of measurement of volume equal to 29 forty-two United States gallons of crude oil or petroleum product.
- 30 (2) "Bulk oil terminal" means a facility of any kind, other than 31 a waterborne vessel, that is used for transferring crude oil or 32 petroleum products from a tank car <u>or pipeline</u>.
- 33 (3) "Crude oil" means any naturally occurring hydrocarbons coming 34 from the earth that are liquid at twenty-five degrees Celsius and one 35 atmosphere of pressure including, but not limited to, crude oil, 36 bitumen and diluted bitumen, synthetic crude oil, and natural gas 37 well condensate.
 - (4) "Department" means the department of revenue.

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- 1 (5) "Marine terminal" means a facility of any kind, other than a 2 waterborne vessel, that is used for transferring crude oil or 3 petroleum products to or from a waterborne vessel or barge.
 - (6) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.
 - (7) "Person" has the meaning provided in RCW 82.04.030.

- (8) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.
- (9) "Pipeline" means an interstate or intrastate pipeline subject to regulation by the United States department of transportation under 49 C.F.R. Part 195 in effect on the effective date of this section, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipes, pumping units, and fabricated assemblies associated with pumping units.
- 21 (10) "Tank car" means a rail car, the body of which consists of a 22 tank for transporting liquids.
 - (((10))) (11) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal in this state and who is liable for the taxes imposed by this chapter.
 - $((\frac{11}{11}))$ (12) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.
 - Sec. 10. RCW 82.23B.020 and 2015 c 274 s 14 are each amended to read as follows:
 - (1) An oil spill response tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; ((or)) (b) crude oil or petroleum products at a bulk oil terminal within this state from a tank car; or (c) crude oil or petroleum products at a bulk oil terminal within

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this state from a pipeline. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car, pipeline, or waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

- (2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; ((ex)) (b) crude oil or petroleum products at a bulk oil terminal within this state from a tank car; or (c) crude oil or petroleum products at a bulk oil terminal within this state from a pipeline. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car, pipeline, or waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.
- (3) The taxes imposed by this chapter must be collected by the marine or bulk oil terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the taxes imposed, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she, nevertheless, is personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine or bulk oil terminal operator relieves the owner from further liability for the taxes.
- (4) Taxes collected under this chapter must be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected is guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected must be stated separately from other charges made by the marine or bulk oil terminal operator in any invoice or other statement of account provided to the taxpayer.

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

- (6) The taxes are due from the marine or bulk oil terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.
- (7) The amount of taxes, until paid by the taxpayer to the marine or bulk oil terminal operator or to the department, constitutes a debt from the taxpayer to the marine or bulk oil terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, is guilty of a misdemeanor as provided in chapter 9A.20 RCW.
- (8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department must give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department must provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator relieves the marine or bulk oil terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.
- (9) All receipts from the tax imposed in subsection (1) of this section must be deposited into the state oil spill response account created in RCW 90.56.500. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill prevention account created in RCW 90.56.510.
- (10) Within forty-five days after the end of each calendar quarter, the office of financial management must determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and may not be used to challenge the validity of any tax imposed under this chapter. The office of financial management must promptly notify the departments

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- of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:
- 5 (a) Tax was imposed under subsection (1) of this section during 6 the immediately preceding calendar quarter, and the most recent 7 quarterly balance is more than nine million dollars; or
- 8 (b) Tax was not imposed under subsection (1) of this section 9 during the immediately preceding calendar quarter, and the most 10 recent quarterly balance is more than eight million dollars.
- 11 **Sec. 11.** RCW 82.23B.030 and 2015 c 274 s 15 are each amended to 12 read as follows:

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- (1) The taxes imposed under this chapter only apply to the first receipt of crude oil or petroleum products at a marine or bulk oil terminal in this state and not to the later transporting and subsequent receipt of the same oil or petroleum product, whether in the form originally received at a marine or bulk oil terminal in this state or after refining or other processing.
- 19 <u>(2) The taxes imposed under this chapter do not apply to the</u>
 20 <u>receipt of crude oil or petroleum products that the state is</u>
 21 prohibited from taxing under the United States Constitution.
- NEW SECTION. Sec. 12. A new section is added to chapter 90.56 RCW to read as follows:
 - (1) Each onshore and offshore oil refinery facility proposing to handle crude oil for export must revise its: Facility oil spill prevention plan required under RCW 90.56.200; facility oil spill contingency plan required under RCW 90.56.210; training and certification program required under RCW 90.56.220; and operations manual required under RCW 90.56.230 to specifically address all types of crude oil planned or anticipated to be handled at the facility, including crude oil from the Bakken oil fields as well as diluted bitumen crude from Canada. By December 31, 2018, the department must adopt by rule the required components of these plans addressing handling of crude oil for export and must require that the plans demonstrate best achievable protection from damages caused by the discharge of oil into the waters of the state or other casualty from the release, explosion, or ignition of the oil.

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- 1 (2) No onshore or offshore refinery facility may handle crude oil 2 for export without an oil spill prevention and contingency plan 3 approved by the department.
- 4 **Sec. 13.** RCW 90.56.200 and 2015 c 274 s 4 are each amended to read as follows:

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- (1) The owner or operator for each onshore and offshore facility, except as determined in subsection (3) of this section, shall prepare and submit to the department an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the department in the time and manner directed by the department. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 90.56.210. The department may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this chapter. The department, by rule, shall establish standards for spill prevention plans.
- 17 (2) The spill prevention plan for an onshore or offshore facility shall:
- 19 (a) Establish compliance with the federal oil pollution act of 20 1990, if applicable, and financial responsibility requirements under 21 federal and state law;
- (b) Certify that supervisory and other key personnel in charge of transfer, storage, and handling of oil have received certification pursuant to RCW 90.56.220;
- 25 (c) Certify that the facility has an operations manual required 26 by RCW 90.56.230;
- 27 (d) Certify the implementation of alcohol and drug use awareness 28 programs;
 - (e) Describe the facility's maintenance and inspection program and contain a current maintenance and inspection record of the storage and transfer facilities and related equipment;
 - (f) Describe the facility's alcohol and drug treatment programs;
- (g) Describe spill prevention technology that has been installed, including overflow alarms, automatic overflow cut-off switches, secondary containment facilities, and storm water retention, treatment, and discharge systems;
- 37 (h) Describe any discharges of oil to the land or the water of 38 more than twenty-five barrels in the prior five years and the 39 measures taken to prevent a reoccurrence;

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1 (i) Describe the procedures followed by the facility to contain 2 and recover any oil that spills during the transfer of oil to or from 3 the facility;

- (j) Provide for the incorporation into the facility during the period covered by the plan of those measures that will provide the best achievable protection for the public health and the environment; and
- (k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the department.
- (3) Plan requirements in subsection (2) of this section are not applicable to railroad facility operators while transporting oil over rail lines of this state.
- (4) The department shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the department.
- (5) Upon approval of a prevention plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities covered by the plan, and other information the department determines should be included.
- (6) The approval of a prevention plan shall be valid for five years. An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its prevention plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a prevention plan as a result of these changes. The department shall require that a prevention plan be updated whenever a facility engaged in the refining of petroleum proposes to export crude oil from the facility in volumes that exceed ten percent of the annual average facility production of refined petroleum products over the preceding five years. The department shall provide notice of the proposal to interested parties, including local and tribal governments, and shall make the prevention plan updates available for public review and comment.
- 38 (7) The department by rule shall require prevention plans to be 39 reviewed, updated, if necessary, and resubmitted to the department at 40 least once every five years.

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- 1 (8) Approval of a prevention plan by the department does not 2 constitute an express assurance regarding the adequacy of the plan 3 nor constitute a defense to liability imposed under this chapter or 4 other state law.
- 5 (9) This section does not authorize the department to modify the 6 terms of a collective bargaining agreement.
- 7 **Sec. 14.** RCW 90.56.240 and 1990 c 116 s 4 are each amended to 8 read as follows:
- 9 The department shall by rule establish standards for persons who 10 contract to provide <u>spill management</u>, cleanup, and containment 11 services under contingency plans approved under RCW 90.56.210.
- 12 **Sec. 15.** RCW 90.56.510 and 2015 c 274 s 7 are each amended to 13 read as follows:

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- (1) The oil spill prevention account is created in the state treasury. All receipts from RCW 82.23B.020(2) shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. ((If, on the first day of any calendar month, the balance of the oil spill response account is greater than nine million dollars and the balance of the oil spill prevention account exceeds the unexpended appropriation for the current biennium, then the tax under RCW 82.23B.020(2) shall be suspended on the first day of the next calendar month until the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under RCW 82.23B.020(2) is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the biennium ending June 30, 1999, and the biennium ending June 30, 2001, the state treasurer may transfer a total of up to one million dollars from the oil spill response account to the oil spill prevention account to support appropriations made from the oil spill prevention account in the omnibus appropriations act adopted not later than June 30, 1999.))
- (2) Expenditures from the oil spill prevention account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. In addition, until June 30, 2019, expenditures from the oil spill

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- 1 prevention account may be used, subject to amounts appropriated
- 2 specifically for this purpose, for the development and annual review
- 3 of local emergency planning committee emergency response plans in RCW
- 4 38.52.040(3). Starting with the 1995-1997 biennium, the legislature
- 5 shall give activities of state agencies related to prevention of oil
- 6 spills priority in funding from the oil spill prevention account.
- 7 Costs of prevention include the costs of:

- 8 (a) Routine responses not covered under RCW 90.56.500;
- 9 (b) Management and staff development activities;
- 10 (c) Development of rules and policies and the statewide plan provided for in RCW 90.56.060;
- 12 (d) Facility and vessel plan review and approval, drills, 13 inspections, investigations, enforcement, and litigation;
 - (e) Interagency coordination and public outreach and education;
- 15 (f) Collection and administration of the tax provided for in 16 chapter 82.23B RCW; and
- 17 (g) Appropriate travel, goods and services, contracts, and 18 equipment.
- 19 (3) Before expending moneys from the account for a response under 20 subsection (2)(a) of this section, but without delaying response 21 activities, the director shall make reasonable efforts to obtain 22 funding for response costs under this section from the person 23 responsible for the spill and from other sources, including the 24 federal government.
- 25 **Sec. 16.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to 26 read as follows:
- 27 (1)(a) A facility that receives crude oil from a railroad car must provide advance notice to the department that the facility will 28 receive crude oil from a railroad car, as provided in this section. 29 30 The advance notice must include the route taken to the facility within the state, if known, and the scheduled time, location, volume, 31 region per bill of lading, and gravity as measured by standards 32 developed by the American petroleum institute, of crude oil received. 33 Each week, a facility that provides advance notice under this section 34 35 must provide the required information regarding the scheduled arrival of railroad cars carrying crude oil to be received by the facility in 36 the succeeding seven-day period. A facility is not required to 37 38 provide advance notice when there is no receipt of crude oil from a railroad car scheduled for a seven-day period. 39

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(b) Twice per year, pipelines that transport crude oil must report to the department the following information about the crude oil transported by the pipeline through the state: The volume of crude oil and the state or province of origin of the crude oil. This report must be submitted each year by July 31st for the period January 1st through June 30th and by January 31st for the period July 1st through December 31st.

- (2) The department may share information provided by a facility through the advance notice system established in this section with the state emergency management division and any county, city, tribal, port, $((\Theta r))$ local government emergency response agency, or the legislative bodies of local governments that oversee community first response agencies upon request.
- (3) The department must publish information collected under this section on a quarterly basis on the department's internet web site. With respect to the information reported under subsection (1)(a) of this section, the information published by the department must be aggregated on a statewide basis by route through the state, by week, and by type of crude oil. The report may also include other information available to the department including, but not limited to, place of origin, modes of transport, number of railroad cars delivering crude oil, and number and volume of spills during transport and delivery.
- (4) A facility providing advance notice under this section is not responsible for meeting advance notice time frame requirements under subsection (1) of this section in the event that the schedule of arrivals of railroad cars carrying crude oil changes during a sevenday period.
- (5) Consistent with the requirements of chapter 42.56 RCW, the department and any state, local, tribal, or public agency that receives information provided under this section may not disclose any such information to the public or to nongovernmental entities that contains proprietary, commercial, or financial information unless that information is aggregated. The requirement for aggregating information does not apply when information is shared by the department with emergency response agencies as provided in subsection (2) of this section.
- 38 (6) The department shall adopt rules to implement this section. 39 The advance notice system required in this section must be consistent

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- with the oil transfer reporting system adopted by the department pursuant to RCW 88.46.165.
- **Sec. 17.** RCW 90.56.210 and 2015 c 274 s 5 are each amended to 4 read as follows:

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- (1) Each onshore and offshore facility shall have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:
- 13 (a) Include full details of the method of response to spills of various sizes from any facility which is covered by the plan;
 - (b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department removing oil and minimizing any damage to the environment resulting from a worst case spill;
- (c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;
 - (d) Provide procedures for early detection of oil spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;
 - (e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;
 - (f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;
 - (g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, and natural resources, and the department of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency

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1 plan until it is reviewed and updated pursuant to subsection (9) of 2 this section;

- (h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;
- (i) Provide arrangements for the prepositioning of oil spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;
- (j) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;
- (k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;
- (1) Until a spill prevention plan has been submitted pursuant to RCW 90.56.200, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;
- 20 (m) State the amount and type of equipment available to respond 21 to a spill, where the equipment is located, and the extent to which 22 other contingency plans rely on the same equipment; and
 - (n) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.
 - (2)(a) The following shall submit contingency plans to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section:
- 31 (i) Onshore facilities capable of storing one million gallons or 32 more of oil; and
 - (ii) Offshore facilities.

- (b) Contingency plans for all other onshore and offshore facilities shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.
- 39 (3) The department by rule shall determine the contingency plan 40 requirements for railroads transporting oil in bulk. Federal oil

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spill response plans created pursuant to 33 U.S.C. Sec. 1321 may be submitted in lieu of contingency plans until state rules are adopted.

- (4)(a) The owner or operator of a facility shall submit the contingency plan for the facility.
- (b) The owner or operator of a facility shall update its contingency plan when the facility proposes to export crude oil in volumes that exceed ten percent of the annual average facility production of refined petroleum products over the preceding five years. The department shall provide notice of the proposal to interested parties, including local and tribal governments, and shall make the contingency plan updates available for public review and comment.
- (c) A person who has contracted with a facility to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any facility for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility.
- (5) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.
- (6) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:
- (a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;
- (b) The nature and amount of vessel traffic within the area covered by the plan;
- 35 (c) The volume and type of oil being transported within the area 36 covered by the plan;
- 37 (d) The existence of navigational hazards within the area covered 38 by the plan;
- (e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

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1 (f) The sensitivity of fisheries, shellfish beds, and wildlife 2 and other natural resources within the area covered by the plan;

- (g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the department; and
- (h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.
- (7) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.
- (8) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.
- 19 (9) An owner or operator of a facility shall notify the 20 department in writing immediately of any significant change of which 21 it is aware affecting its contingency plan, including changes in any 22 factor set forth in this section or in rules adopted by the 23 department. The department may require the owner or operator to 24 update a contingency plan as a result of these changes.
 - (10) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.
 - (11) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.
- **Sec. 18.** RCW 90.56.220 and 1991 c 200 s 203 are each amended to 33 read as follows:
 - (1) The department by rule shall adopt standards for onshore and offshore facilities regarding the equipment and operation of the facilities with respect to the transfer, storage, and handling of oil to ensure that the best achievable protection of the public health and the environment is employed at all times. The department shall implement a program to provide for the inspection of all onshore and

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- offshore facilities on a regular schedule to ensure that each facility is in compliance with the standards.
 - (2) The department shall adopt rules for certification of supervisory and other key personnel in charge of the transfer, storage, and handling of oil at onshore and offshore facilities. The rules shall include, but are not limited to:
 - (a) Minimum training requirements for all facility workers involved in the transfer, storage, and handling of oil at a facility;
 - (b) Provisions for periodic renewal of certificates for supervisory and other key personnel involved in the transfer, storage, and handling of oil at the facility; and
 - (c) Continuing education requirements.

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- 13 (3) The rules adopted by the department shall not conflict with 14 or modify standards imposed pursuant to federal or state laws 15 regulating worker safety.
- (4) An owner or operator of a facility must update its training
 and certification program when the facility proposes to export crude
 oil in volumes that exceed ten percent of the annual average facility
 production of refined petroleum products over the preceding five
 years.
- 21 **Sec. 19.** RCW 90.56.230 and 1991 c 200 s 204 are each amended to 22 read as follows:
 - (1)(a) Each owner or operator of an onshore or offshore facility shall prepare an operations manual describing equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ for best achievable protection for the public health and the environment and to prevent oil spills in the navigable waters.
- (b) An owner or operator of a facility must update its operations
 manual when the facility proposes to export crude oil in volumes that
 exceed ten percent of the annual average facility production of
 refined petroleum products over the preceding five years.
 - (c) The operations manual shall also describe equipment and procedures required for all vessels to or from which oil is transferred through use of the facility. The operations manual shall be submitted to the department for approval.
- 37 (2) Every existing onshore and offshore facility shall prepare 38 and submit to the department its operations manual within eighteen

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1 months after the department has adopted rules governing the content 2 of the manual.

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- (3) The department shall approve an operations manual for an onshore or offshore facility if the manual complies with the rules adopted by the department. If the department determines a manual does not comply with the rules, it shall provide written reasons for the decision. The owner or operator shall resubmit the manual within ninety days of notification of the reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.
- (4) The approval of an operations manual shall be valid for five years. The owner or operator of the facility shall notify the department in writing immediately of any significant change in its operations affecting its operations manual. The department may require the owner or operator to modify its operations manual as a result of these changes.
- 17 (5) All equipment and operations of an operator's onshore or 18 offshore facility shall be maintained and carried out in accordance 19 with the facility's operations manual. The owner or operator of the 20 facility shall ensure that all covered vessels docked at an onshore 21 or offshore facility comply with the terms of the operations manual 22 for the facility.
- <u>NEW SECTION.</u> **Sec. 20.** (1) The department of ecology shall 23 24 contract with an eligible independent third party to update the October 2006 report to the state emergency response commission 25 regarding statewide response to chemical, biological, radiological, 26 27 nuclear, and explosive materials. The updated report must also 28 include an update to appendix A of that report, which addresses the state's current hazardous materials response capabilities and that 29 30 reviews the emergency response programs of other states. The contract 31 for the updated report must give special emphasis to addressing recent changes to patterns of hazardous material transportation, 32 including crude oil transportation, and the availability of resources 33 to respond to incidents resulting from the transport of hazardous 34 35 materials. The contract must require the updated report to be completed by June 30, 2018. 36
 - (2) This section expires June 30, 2020.

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1 **Sec. 21.** RCW 80.50.020 and 2010 c 152 s 1 are each reenacted and 2 amended to read as follows:

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

- (1) "Alternative energy resource" includes energy facilities of the following types: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.
- (2) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.
 - (3) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.
 - "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or for efficient operation or venting required safety of transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a thermal power plant or alternative energy facilities to the northwest power grid. However, common carrier railroads or motor vehicles shall not be included.
 - (5) "Biofuel" has the same meaning as defined in RCW 43.325.010.
 - (6) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.
- 38 (7) "Construction" means on-site improvements, excluding 39 exploratory work, which cost in excess of two hundred fifty thousand 40 dollars.

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1 (8) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

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- (9) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.
- 6 (10) "Electrical transmission facilities" means electrical power 7 lines and related equipment.
- 8 (11) "Energy facility" means an energy plant or transmission 9 facilities: PROVIDED, That the following are excluded from the 10 provisions of this chapter:
- 11 (a) Facilities for the extraction, conversion, transmission or 12 storage of water, other than water specifically consumed or 13 discharged by energy production or conversion for energy purposes; 14 and
- 15 (b) Facilities operated by and for the armed services for 16 military purposes or by other federal authority for the national 17 defense.
 - (12) "Energy plant" means the following facilities together with their associated facilities:
 - (a) Any nuclear power facility where the primary purpose is to produce and sell electricity;
 - (b) Any nonnuclear stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more suspended on the surface of water by means of a barge, vessel, or other floating platform;
 - (c) Facilities which will have the capacity to receive liquefied natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;
 - (d) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;
- 39 (e) Any underground reservoir for receipt and storage of natural 40 gas as defined in RCW 80.40.010 capable of delivering an average of

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1 more than one hundred million standard cubic feet of natural gas per 2 day; and

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- (f) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products except where such biofuel production is undertaken at existing industrial facilities.
- (13) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.
- (14) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007.
- 15 (15) "Person" means an individual, partnership, joint venture, 16 private or public corporation, association, firm, public service 17 company, political subdivision, municipal corporation, government 18 agency, public utility district, or any other entity, public or 19 private, however organized.
- 20 (16) "Preapplicant" means a person considering applying for a 21 site certificate agreement for any transmission facility.
 - (17) "Preapplication process" means the process which is initiated by written correspondence from the preapplicant to the council, and includes the process adopted by the council for consulting with the preapplicant and with cities, towns, and counties prior to accepting applications for all transmission facilities.
- 27 (18) "Secretary" means the secretary of the United States 28 department of energy.
- 29 (19) "Site" means any proposed or approved location of an energy 30 facility, alternative energy resource, or electrical transmission 31 facility.
- 32 (20) "Thermal power plant" means, for the purpose of 33 certification, any electrical generating facility using any fuel for 34 distribution of electricity by electric utilities.
- 35 (21) "Transmission facility" means any of the following together 36 with their associated facilities:
- 37 (a) Crude ((or)) <u>oil transmission pipelines of the following</u>
 38 <u>dimensions: A pipeline larger than six inches minimum inside diameter</u>
 39 <u>between valves for the transmission of these products with a total</u>
 40 length of at least five miles; or

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1 (b) Refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of 3 these products with a total length of at least fifteen miles; 4

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- (((b))) <u>(c)</u> Natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission.
- 12 (22) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter 13 14 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 15 16 2007.
- 17 Sec. 22. RCW 80.50.060 and 2007 c 325 s 2 are each amended to 18 read as follows:
 - (1) The provisions of this chapter apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where:
 - (a) The net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 $((\frac{7}{12}))$ and $((\frac{15}{15}))$ (21) (b) and (c); or
 - (b) The total physical capacity or dimensions resulting from such a reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020(21)(a). No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.
 - (2) The provisions of this chapter apply to the construction, reconstruction, or enlargement of a new or existing energy facility that exclusively uses alternative energy resources and chooses to receive certification under this chapter, regardless of the generating capacity of the project.

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1 (3)(a) The provisions of this chapter apply to the construction, 2 reconstruction, or modification of electrical transmission facilities 3 when:

- (i) The facilities are located in a national interest electric transmission corridor as specified in RCW 80.50.045;
- (ii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage of at least one hundred fifteen thousand volts and are located in a completely new corridor, except for the terminus of the new facility or interconnection of the new facility with the existing grid, and the corridor is not otherwise used for electrical transmission facilities; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances; or
- (iii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage in excess of one hundred fifteen thousand volts; and (B) located outside an electrical transmission corridor identified in (a)(i) and (ii) of this subsection (3).
- (b) For the purposes of this subsection, "modify" means a significant change to an electrical transmission facility and does not include the following: (i) Minor improvements such as the replacement of existing transmission line facilities or supporting structures with equivalent facilities or structures; (ii) the relocation of existing electrical transmission line facilities; (iii) the conversion of existing overhead lines to underground; or (iv) the placing of new or additional conductors, supporting structures, insulators, or their accessories on or replacement of supporting structures already built.
- (4) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW $80.50.020 \ ((\frac{(7)}{15})) \ (21) \ (b) \ and \ (c)$.
- (5) Applications for certification of energy facilities made prior to July 15, 1977, shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding July 15, 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

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- 1 (6) Applications for certification shall be upon forms prescribed 2 by the council and shall be supported by such information and 3 technical studies as the council may require.
- MEW SECTION. Sec. 23. RCW 82.23B.040 (Credit—Crude oil or petroleum exported or sold for export) and 2015 c 274 s 16, 1992 c 73 s 10, & 1991 c 200 s 804 are each repealed.
- NEW SECTION. Sec. 24. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.
- NEW SECTION. Sec. 25. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017.

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