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**SECOND SUBSTITUTE SENATE BILL 6269**

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**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Ranker, Rolfes, Carlyle, Darneille, Hasegawa, Pedersen, Conway, Keiser, Hunt, Frockt, Kuderer, Chase, Lias, and Saldaña; by request of Department of Ecology)

READ FIRST TIME 02/22/18.

1 AN ACT Relating to strengthening oil transportation safety;  
2 amending RCW 82.23B.020, 88.46.060, 88.46.220, 88.46.167, 90.56.210,  
3 90.56.240, and 90.56.569, reenacting and amending RCW 82.23B.010;  
4 adding new sections to chapter 88.46 RCW; adding new sections to  
5 chapter 90.56 RCW; creating new sections; providing an effective  
6 date; providing an expiration date; and declaring an emergency.

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

8 **PART 1**  
9 **REVENUE**

10 NEW SECTION. **Sec. 101.** (1) The legislature finds that:

11 (a) The 2004 legislature declared a zero spills goal for the  
12 state of Washington. When a spill occurs, there is severe and  
13 irreversible damage to the environment, human health, tribal and  
14 other cultural and historical resources, and the economy. Fish,  
15 orcas, wildlife habitats, shellfish beds, archaeologically sensitive  
16 areas, clean air, and public facilities are put at risk when spills  
17 occur in the state of Washington.

18 (b) The department of ecology's oil spill program faces a  
19 critical funding gap due to the lack of adequate revenue to fully  
20 fund the prevention and preparedness services required by state law,

1 including the 2015 oil transportation safety act. Moreover, the  
2 program has endured a decline in capacity and resources to fully  
3 utilize its existing authority for critical needs, like vessel  
4 inspections and developing spill response plans. Without an adequate  
5 investment in revenue, there will be a continued decline in required  
6 prevention and preparedness services, causing an increased risk of  
7 oil spills in the state of Washington and our shared waters with the  
8 Canadian transboundary region.

9 (c) While oil transported into the state by rail and tank vessels  
10 is taxed to fund the oil spill program's oil spill prevention and  
11 preparedness activities, a third method of transport, pipelines,  
12 currently is not taxed, despite it generating a sizeable oil spill  
13 risk.

14 (d) Some oils are inherently heavy and are likely to stay  
15 submerged in the water column or sink to the bottom of a water body.  
16 In addition, many oils, depending on their qualities, weathering,  
17 environmental factors, and method of discharge, may also submerge or  
18 sink in water. Oils that submerge or sink in water pose a substantial  
19 risk to the environment, human health, tribal and other cultural and  
20 historical resources, and the economy and are a significant challenge  
21 to cleanup. Oils are currently being transported by vessels, trains,  
22 and pipelines in large volumes in our state, with increased volumes  
23 of heavy oils being transported by vessel through our shared waters  
24 from Canada. As knowledge about how oils submerge or sink in water  
25 grows and technological advances to respond are developed, preventing  
26 and preparing for these spills must be updated.

27 (2) Therefore, the legislature intends to provide adequate  
28 revenue to fully fund prevention and preparedness services required  
29 by state law, as well as direct the department of ecology to  
30 specifically address the risks of oils submerging and sinking and  
31 more extensively coordinate with our Canadian partners in order to  
32 protect our state's economy and its shared resources.

33 **Sec. 102.** RCW 82.23B.010 and 2015 c 274 s 13 are each reenacted  
34 and amended to read as follows:

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

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

1 (2) "Bulk oil terminal" means a facility of any kind, other than  
2 a waterborne vessel, that is used for transferring crude oil or  
3 petroleum products from a tank car or pipeline.

4 (3) "Crude oil" means any naturally occurring hydrocarbons coming  
5 from the earth that are liquid at twenty-five degrees Celsius and one  
6 atmosphere of pressure including, but not limited to, crude oil,  
7 bitumen and diluted bitumen, synthetic crude oil, and natural gas  
8 well condensate.

9 (4) "Department" means the department of revenue.

10 (5) "Marine terminal" means a facility of any kind, other than a  
11 waterborne vessel, that is used for transferring crude oil or  
12 petroleum products to or from a waterborne vessel or barge.

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

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

17 (8) "Petroleum product" means any liquid hydrocarbons at  
18 atmospheric temperature and pressure that are the product of the  
19 fractionation, distillation, or other refining or processing of crude  
20 oil, and that are used as, useable as, or may be refined as a fuel or  
21 fuel blendstock, including but not limited to, gasoline, diesel fuel,  
22 aviation fuel, bunker fuel, and fuels containing a blend of alcohol  
23 and petroleum.

24 (9) "Pipeline" means an interstate or intrastate pipeline subject  
25 to regulation by the United States department of transportation under  
26 49 C.F.R. Part 195 in effect on the effective date of this section,  
27 through which oil moves in transportation, including line pipes,  
28 valves, and other appurtenances connected to line pipes, pumping  
29 units, and fabricated assemblies associated with pumping units.

30 (10) "Tank car" means a rail car, the body of which consists of a  
31 tank for transporting liquids.

32 ~~((10))~~ (11) "Taxpayer" means the person owning crude oil or  
33 petroleum products immediately after receipt of the same into the  
34 storage tanks of a marine or bulk oil terminal in this state and who  
35 is liable for the taxes imposed by this chapter.

36 ~~((11))~~ (12) "Waterborne vessel or barge" means any ship, barge,  
37 or other watercraft capable of traveling on the navigable waters of  
38 this state and capable of transporting any crude oil or petroleum  
39 product in quantities of ten thousand gallons or more for purposes  
40 other than providing fuel for its motor or engine.

1       **Sec. 103.** RCW 82.23B.020 and 2015 c 274 s 14 are each amended to  
2 read as follows:

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

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

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

37       (4) Taxes collected under this chapter must be held in trust  
38 until paid to the department. Any person collecting the taxes who  
39 appropriates or converts the taxes collected is guilty of a gross  
40 misdemeanor if the money required to be collected is not available

1 for payment on the date payment is due. The taxes required by this  
2 chapter to be collected must be stated separately from other charges  
3 made by the marine or bulk oil terminal operator in any invoice or  
4 other statement of account provided to the taxpayer.

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

10 (6) The taxes are due from the marine or bulk oil terminal  
11 operator, along with reports and returns on forms prescribed by the  
12 department, within twenty-five days after the end of the month in  
13 which the taxable activity occurs.

14 (7) The amount of taxes, until paid by the taxpayer to the marine  
15 or bulk oil terminal operator or to the department, constitutes a  
16 debt from the taxpayer to the marine or bulk oil terminal operator.  
17 Any person required to collect the taxes under this chapter who, with  
18 intent to violate the provisions of this chapter, fails or refuses to  
19 do so as required and any taxpayer who refuses to pay any taxes due  
20 under this chapter, is guilty of a misdemeanor as provided in chapter  
21 9A.20 RCW.

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

33 (9)(a) All receipts from the tax imposed in subsection (1) of  
34 this section must be deposited into the state oil spill response  
35 account. ((All))

36 (b) Beginning in fiscal year 2019 and each fiscal year  
37 thereafter, the first two hundred thousand dollars of receipts from  
38 the tax imposed in subsection (2) of this section ((shall)) must be  
39 deposited into the military department active state service account  
40 created in RCW 38.40.220, and the remainder of the receipts from the

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

3 (10) Within forty-five days after the end of each calendar  
4 quarter, the office of financial management must determine the  
5 balance of the oil spill response account as of the last day of that  
6 calendar quarter. Balance determinations by the office of financial  
7 management under this section are final and may not be used to  
8 challenge the validity of any tax imposed under this chapter. The  
9 office of financial management must promptly notify the departments  
10 of revenue and ecology of the account balance once a determination is  
11 made. For each subsequent calendar quarter, the tax imposed by  
12 subsection (1) of this section shall be imposed during the entire  
13 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 NEW SECTION. **Sec. 104.** The department of ecology shall provide  
21 a report to the legislature by July 1, 2020, on the following: (1) A  
22 description of activities conducted by the department's oil spill  
23 program that are expected to continue after fiscal year 2019, and  
24 activities that are not expected to continue after fiscal year 2019;  
25 (2) recommendations regarding potential sources of funding for the  
26 department's oil spill program other than, or in addition to, sources  
27 of funding existing on the effective date of this section; (3)  
28 recommendations regarding the allocation of funding from the taxes  
29 established in RCW 82.23B.020 among various state agencies, including  
30 whether funding should be discontinued or reduced for any agency; and  
31 (4) a forecast of the department's oil spill program funding needs  
32 after fiscal year 2019.

33 **PART 2**  
34 **VESSELS**

35 **Sec. 201.** RCW 88.46.060 and 2011 c 122 s 6 are each amended to  
36 read as follows:

1 (1) Each covered vessel shall have a contingency plan for the  
2 containment and cleanup of oil spills from the covered vessel into  
3 the waters of the state and for the protection of fisheries and  
4 wildlife, shellfish beds, natural resources, and public and private  
5 property from such spills. The department shall by rule adopt and  
6 periodically revise standards for the preparation of contingency  
7 plans. The department shall require contingency plans, at a minimum,  
8 to meet the following standards:

9 (a) Include full details of the method of response to spills of  
10 various sizes from any vessel which is covered by the plan;

11 (b) Be designed to be capable in terms of personnel, materials,  
12 and equipment, of promptly and properly, to the maximum extent  
13 practicable, as defined by the department, removing oil and  
14 minimizing any damage to the environment resulting from a worst case  
15 spill;

16 (c) Provide a clear, precise, and detailed description of how the  
17 plan relates to and is integrated into relevant contingency plans  
18 which have been prepared by cooperatives, ports, regional entities,  
19 the state, and the federal government;

20 (d) Provide procedures for early detection of spills and timely  
21 notification of such spills to appropriate federal, state, and local  
22 authorities under applicable state and federal law;

23 (e) State the number, training preparedness, and fitness of all  
24 dedicated, prepositioned personnel assigned to direct and implement  
25 the plan;

26 (f) Incorporate periodic training and drill programs consistent  
27 with this chapter to evaluate whether personnel and equipment  
28 provided under the plan are in a state of operational readiness at  
29 all times;

30 (g) Describe important features of the surrounding environment,  
31 including fish ((and)) habitat, water column species and subsurface  
32 resources, wildlife habitat, shellfish beds, environmentally and  
33 archaeologically sensitive areas, and public facilities, that are:  
34 (i) Based on information documented in geographic response plans and  
35 area contingency plans, as required under RCW 90.56.210; or (ii) for  
36 areas without geographic response plans or area contingency plans,  
37 existing practices protecting these resources used for similar areas.

38 The departments of ecology, fish and wildlife, natural resources, and  
39 archaeology and historic preservation, upon request, shall provide  
40 information that they have available to assist in preparing this

1 description. The description of archaeologically sensitive areas  
2 shall not be required to be included in a contingency plan until it  
3 is reviewed and updated pursuant to subsection (9) of this section;

4 (h) State the means of protecting and mitigating effects on the  
5 environment, including fish, shellfish, marine mammals, and other  
6 wildlife, and ensure that implementation of the plan does not pose  
7 unacceptable risks to the public or the environment;

8 (i) Establish guidelines for the use of equipment by the crew of  
9 a vessel to minimize vessel damage, stop or reduce any spilling from  
10 the vessel, and, only when appropriate and only when vessel safety is  
11 assured, contain and clean up the spilled oil;

12 (j) Provide arrangements for the prepositioning of spill  
13 containment and cleanup equipment and trained personnel at strategic  
14 locations from which they can be deployed to the spill site to  
15 promptly and properly remove the spilled oil;

16 (k) Provide arrangements for enlisting the use of qualified and  
17 trained cleanup personnel to implement the plan;

18 (l) Provide for disposal of recovered spilled oil in accordance  
19 with local, state, and federal laws;

20 (m) Until a spill prevention plan has been submitted pursuant to  
21 RCW 88.46.040, state the measures that have been taken to reduce the  
22 likelihood that a spill will occur, including but not limited to,  
23 design and operation of a vessel, training of personnel, number of  
24 personnel, and backup systems designed to prevent a spill;

25 (n) State the amount and type of equipment available to respond  
26 to a spill, where the equipment is located, and the extent to which  
27 other contingency plans rely on the same equipment;

28 (o) If the department has adopted rules permitting the use of  
29 dispersants, the circumstances, if any, and the manner for the  
30 application of the dispersants in conformance with the department's  
31 rules;

32 (p) Compliance with RCW 88.46.230 if the contingency plan is  
33 submitted by an umbrella plan holder; and

34 (q) Include any additional elements of contingency plans as  
35 required by this chapter.

36 (2) The owner or operator of a covered vessel must submit any  
37 required contingency plan updates to the department within the  
38 timelines established by the department.

39 (3)(a) The owner or operator of a tank vessel or of the  
40 facilities at which the vessel will be unloading its cargo, or a



1 nonprofit corporation established for the purpose of oil spill  
2 response and contingency plan coverage and of which the owner or  
3 operator is a member, shall submit the contingency plan for the tank  
4 vessel. Subject to conditions imposed by the department, the owner or  
5 operator of a facility may submit a single contingency plan for tank  
6 vessels of a particular class that will be unloading cargo at the  
7 facility.

8 (b) The contingency plan for a cargo vessel or passenger vessel  
9 may be submitted by the owner or operator of the cargo vessel or  
10 passenger vessel, by the agent for the vessel resident in this state,  
11 or by a nonprofit corporation established for the purpose of oil  
12 spill response and contingency plan coverage and of which the owner  
13 or operator is a member. Subject to conditions imposed by the  
14 department, the owner, operator, or agent may submit a single  
15 contingency plan for cargo vessels or passenger vessels of a  
16 particular class.

17 (c) A person who has contracted with a covered vessel to provide  
18 containment and cleanup services and who meets the standards  
19 established pursuant to RCW 90.56.240, may submit the plan for any  
20 covered vessel for which the person is contractually obligated to  
21 provide services. Subject to conditions imposed by the department,  
22 the person may submit a single plan for more than one covered vessel.

23 (4) A contingency plan prepared for an agency of the federal  
24 government or another state that satisfies the requirements of this  
25 section and rules adopted by the department may be accepted by the  
26 department as a contingency plan under this section. The department  
27 shall ensure that to the greatest extent possible, requirements for  
28 contingency plans under this section are consistent with the  
29 requirements for contingency plans under federal law.

30 (5) In reviewing the contingency plans required by this section,  
31 the department shall consider at least the following factors:

32 (a) The adequacy of containment and cleanup equipment, personnel,  
33 communications equipment, notification procedures and call down  
34 lists, response time, and logistical arrangements for coordination  
35 and implementation of response efforts to remove oil spills promptly  
36 and properly and to protect the environment;

37 (b) The nature and amount of vessel traffic within the area  
38 covered by the plan;

39 (c) The volume and type of oil being transported within the area  
40 covered by the plan;

1 (d) The existence of navigational hazards within the area covered  
2 by the plan;

3 (e) The history and circumstances surrounding prior spills of oil  
4 within the area covered by the plan;

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

7 (g) Relevant information on previous spills contained in on-scene  
8 coordinator reports prepared by the director; and

9 (h) The extent to which reasonable, cost-effective measures to  
10 prevent a likelihood that a spill will occur have been incorporated  
11 into the plan.

12 (6)(a) The department shall approve a contingency plan only if it  
13 determines that the plan meets the requirements of this section and  
14 that, if implemented, the plan is capable, in terms of personnel,  
15 materials, and equipment, of removing oil promptly and properly and  
16 minimizing any damage to the environment.

17 (b) The department must notify the plan holder in writing within  
18 sixty-five days of an initial or amended plan's submittal to the  
19 department as to whether the plan is disapproved, approved, or  
20 conditionally approved. If a plan is conditionally approved, the  
21 department must clearly describe each condition and specify a  
22 schedule for plan holders to submit required updates.

23 (7) The approval of the contingency plan shall be valid for five  
24 years. Upon approval of a contingency plan, the department shall  
25 provide to the person submitting the plan a statement indicating that  
26 the plan has been approved, the vessels covered by the plan, and  
27 other information the department determines should be included.

28 (8) An owner or operator of a covered vessel shall notify the  
29 department in writing immediately of any significant change of which  
30 it is aware affecting its contingency plan, including changes in any  
31 factor set forth in this section or in rules adopted by the  
32 department. The department may require the owner or operator to  
33 update a contingency plan as a result of these changes.

34 (9) The department by rule shall require contingency plans to be  
35 reviewed, updated, if necessary, and resubmitted to the department at  
36 least once every five years.

37 (10) Approval of a contingency plan by the department does not  
38 constitute an express assurance regarding the adequacy of the plan  
39 nor constitute a defense to liability imposed under this chapter or  
40 other state law.

1        NEW SECTION.    **Sec. 202.**    A new section is added to chapter 88.46  
2    RCW to read as follows:

3        By December 31, 2019, consistent with the authority under RCW  
4    88.46.060, the department must update rules for contingency plans to  
5    require:

6        (1) Covered vessels to address situations where oils, depending  
7    on their qualities, weathering, environmental factors, and method of  
8    discharge, may submerge or sink in water; and

9        (2) Standards for best achievable protection for situations  
10    involving the oils in subsection (1) of this section.

11       **Sec. 203.**    RCW 88.46.220 and 2011 c 122 s 5 are each amended to  
12    read as follows:

13       (1) The department is responsible for requiring joint large-  
14    scale, multiple plan equipment deployment drills of (~~tank~~) covered  
15    vessels to determine the adequacy of the owner's or operator's  
16    compliance with the contingency plan requirements of this chapter.  
17    The department must order at least one drill as outlined in this  
18    section every three years, which must address situations where oils,  
19    depending on their qualities, weathering, environmental factors, and  
20    method of discharge, may submerge or sink in water.

21       (2) Drills required under this section must focus on, at a  
22    minimum, the following:

23       (a) The functional ability for multiple contingency plans to be  
24    simultaneously activated with the purpose of testing the ability for  
25    dedicated equipment and trained personnel cited in multiple  
26    contingency plans to be activated in a large scale spill; and

27       (b) The operational readiness during both the first six hours of  
28    a spill and, at the department's discretion, over multiple  
29    operational periods of response.

30       (3) Drills required under this section may be incorporated into  
31    other drill requirements under this chapter to avoid increasing the  
32    number of drills and equipment deployments otherwise required.

33       (4) Each successful drill conducted under this section may be  
34    considered by the department as a drill of the underlying contingency  
35    plan and credit may be awarded to the plan holder accordingly.

36       (5) The department shall, when practicable, coordinate with  
37    applicable federal agencies, the state of Oregon, and the province of  
38    British Columbia to establish a drill incident command and to help

1 ensure that lessons learned from the drills are evaluated with the  
2 goal of improving the underlying contingency plans.

3 NEW SECTION. **Sec. 204.** A new section is added to chapter 88.46  
4 RCW to read as follows:

5 (1) The department must establish the Salish Sea shared waters  
6 forum to address common issues in the cross-boundary waterways  
7 between Washington state and British Columbia such as: Enhancing  
8 efforts to reduce oil spill risk; addressing navigational safety; and  
9 promoting data sharing.

10 (2) The department must:

11 (a) Coordinate with provincial and federal Canadian agencies when  
12 establishing the Salish Sea shared waters forum; and

13 (b) Seek participation from stakeholders that, at minimum,  
14 includes representatives of the following: State, provincial, and  
15 federal governmental entities, regulated entities, environmental  
16 organizations, tribes, and first nations.

17 (3) The Salish Sea shared waters forum must meet at least once  
18 per year to consider the following:

19 (a) Gaps and conflicts in oil spill policies, regulations, and  
20 laws;

21 (b) Opportunities to reduce oil spill risk, including requiring  
22 tug escorts for oil tankers, articulated tug barges, and other  
23 waterborne vessels or barges;

24 (c) Enhancing oil spill prevention, preparedness, and response  
25 capacity; and

26 (d) Whether an emergency response system in Haro Strait, Boundary  
27 Pass, and Rosario Strait, similar to the system implemented by the  
28 maritime industry pursuant to RCW 88.46.130, will decrease oil spill  
29 risk and how to fund such a shared system.

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

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

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

1       **Sec. 205.** RCW 88.46.167 and 2006 c 316 s 2 are each amended to  
2 read as follows:

3       In addition to other inspection authority provided for in this  
4 chapter and chapter 90.56 RCW, the department may conduct inspections  
5 of oil transfer operations regulated under RCW 88.46.160 or  
6 88.46.165. The department must conduct specialized reviews and  
7 prioritize adding capacity for the inspection of oil transfer  
8 operations where oils, depending on their qualities, weathering,  
9 environmental factors, and method of discharge, may submerge or sink  
10 in water.

11       NEW SECTION.   **Sec. 206.** (1)(a) The department of ecology, in  
12 consultation with the Puget Sound partnership and the pilotage  
13 commission, must complete a report of vessel traffic and vessel  
14 traffic safety within the Strait of Juan de Fuca, Puget Sound area  
15 that includes the San Juan archipelago, its connected waterways, Haro  
16 Strait, Boundary Pass, Rosario Strait, and the waters south of  
17 Admiralty Inlet. A draft report, including recommendations, must be  
18 completed and submitted, consistent with RCW 43.01.036, to the  
19 legislature by December 1, 2018. The final report must be completed  
20 and submitted to the legislature by June 30, 2019.

21       (b) In conducting the evaluation to produce the report, the  
22 department of ecology must rely only on existing current vessel  
23 traffic risk assessments and other available studies, consult with  
24 the United States coast guard, maritime experts, including  
25 representatives of covered vessels, onshore and offshore facilities,  
26 environmental organizations, tribes, commercial and noncommercial  
27 fishers, recreational resource users, provincial experts,  
28 representatives of the Salish Sea shared waters forum established in  
29 section 204 of this act, and other appropriate entities.

30       (2) The report completed under subsection (1) of this section  
31 must include an assessment and evaluation of:

32       (a) Worldwide incident and spill data for articulated tug barges  
33 and other towed waterborne vessels or barges;

34       (b) Transport of bitumen and diluted bitumen;

35       (c) Emerging trends in vessel traffic;

36       (d) Tug escorts for oil tankers, articulated tug barges, and  
37 other towed waterborne vessels or barges, including a review of  
38 requirements in California and Alaska;

1 (e) Requirements for tug capabilities to ensure safe escort of  
2 vessels, including manning and pilotage needs;

3 (f) An emergency response system in Haro Strait, Boundary Pass,  
4 and Rosario Strait, similar to the system implemented by the maritime  
5 industry pursuant to RCW 88.46.130;

6 (g) The differences between locations and navigational  
7 requirements for vessels transporting petroleum;

8 (h) The economic impact of proposals for tug escorts and  
9 limitations on vessel size; and

10 (i) Situations, where oils, depending on their qualities,  
11 weathering, environmental factors, and method of discharge, may  
12 submerge or sink in water.

13 (3) The report required under subsection (1) of this section must  
14 include recommendations for:

15 (a) Vessel traffic management and vessel traffic safety; and

16 (b) The viability of the following in reducing oil spill risk:

17 (i) Tug escorts for oil tankers, articulated tug barges, and  
18 other towed waterborne vessels or barges. If tug escorts are  
19 determined in this assessment to reduce oil spill risk, the  
20 department of ecology must recommend specific requirements and  
21 capabilities for tug escorts;

22 (ii) An emergency response system in Haro Strait, Boundary Pass,  
23 and Rosario Strait, similar to the system implemented by the maritime  
24 industry pursuant to RCW 88.46.130. If the department of ecology  
25 determines such a system will decrease oil spill risk, it must also  
26 recommend an action plan to implement it.

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

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

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

37 (5) This section expires June 30, 2019.

38 **PART 3**

39 **FACILITIES, GEOGRAPHIC RESPONSE PLANS, AND SPILL MANAGEMENT TEAMS**

1       **Sec. 301.** RCW 90.56.210 and 2017 c 239 s 1 are each amended to  
2 read as follows:

3       (1) Each onshore and offshore facility shall have a contingency  
4 plan for the containment and cleanup of oil spills from the facility  
5 into the waters of the state and for the protection of fisheries and  
6 wildlife, shellfish beds, natural resources, and public and private  
7 property from such spills. The department shall by rule adopt and  
8 periodically revise standards for the preparation of contingency  
9 plans. The department shall require contingency plans, at a minimum,  
10 to meet the following standards:

11       (a) Include full details of the method of response to spills of  
12 various sizes from any facility which is covered by the plan;

13       (b) Be designed to be capable in terms of personnel, materials,  
14 and equipment, of promptly and properly, to the maximum extent  
15 practicable, as defined by the department removing oil and minimizing  
16 any damage to the environment resulting from a worst case spill;

17       (c) Provide a clear, precise, and detailed description of how the  
18 plan relates to and is integrated into relevant contingency plans  
19 which have been prepared by cooperatives, ports, regional entities,  
20 the state, and the federal government;

21       (d) Provide procedures for early detection of oil spills and  
22 timely notification of such spills to appropriate federal, state, and  
23 local authorities under applicable state and federal law;

24       (e) State the number, training preparedness, and fitness of all  
25 dedicated, prepositioned personnel assigned to direct and implement  
26 the plan;

27       (f) Incorporate periodic training and drill programs to evaluate  
28 whether personnel and equipment provided under the plan are in a  
29 state of operational readiness at all times;

30       (g) Describe important features of the surrounding environment,  
31 including fish (~~and~~) habitat, water column species and subsurface  
32 resources, wildlife habitat, shellfish beds, environmentally and  
33 archaeologically sensitive areas, and public facilities, that are:  
34 (i) Based on information documented in geographic response plans and  
35 area contingency plans, as required under RCW 90.56.210; or (ii) for  
36 areas without geographic response plans or area contingency plans,  
37 existing practices protecting these resources used for similar areas.

38 The departments of ecology, fish and wildlife, and natural resources,  
39 and the department of archaeology and historic preservation, upon  
40 request, shall provide information that they have available to assist

1 in preparing this description. The description of archaeologically  
2 sensitive areas shall not be required to be included in a contingency  
3 plan until it is reviewed and updated pursuant to subsection (9) of  
4 this section;

5 (h) State the means of protecting and mitigating effects on the  
6 environment, including fish, shellfish, marine mammals, and other  
7 wildlife, and ensure that implementation of the plan does not pose  
8 unacceptable risks to the public or the environment;

9 (i) Provide arrangements for the repositioning of oil spill  
10 containment and cleanup equipment and trained personnel at strategic  
11 locations from which they can be deployed to the spill site to  
12 promptly and properly remove the spilled oil;

13 (j) Provide arrangements for enlisting the use of qualified and  
14 trained cleanup personnel to implement the plan;

15 (k) Provide for disposal of recovered spilled oil in accordance  
16 with local, state, and federal laws;

17 (l) Until a spill prevention plan has been submitted pursuant to  
18 RCW 90.56.200, state the measures that have been taken to reduce the  
19 likelihood that a spill will occur, including but not limited to,  
20 design and operation of a facility, training of personnel, number of  
21 personnel, and backup systems designed to prevent a spill;

22 (m) State the amount and type of equipment available to respond  
23 to a spill, where the equipment is located, and the extent to which  
24 other contingency plans rely on the same equipment; and

25 (n) If the department has adopted rules permitting the use of  
26 dispersants, the circumstances, if any, and the manner for the  
27 application of the dispersants in conformance with the department's  
28 rules.

29 (2)(a) The following shall submit contingency plans to the  
30 department within six months after the department adopts rules  
31 establishing standards for contingency plans under subsection (1) of  
32 this section:

33 (i) Onshore facilities capable of storing one million gallons or  
34 more of oil; and

35 (ii) Offshore facilities.

36 (b) Contingency plans for all other onshore and offshore  
37 facilities shall be submitted to the department within eighteen  
38 months after the department has adopted rules under subsection (1) of  
39 this section. The department may adopt a schedule for submission of  
40 plans within the eighteen-month period.



1 (3)(a) The department by rule shall determine the contingency  
2 plan requirements for railroads transporting oil in bulk.

3 (b) For class III railroads transporting oil in bulk that is not  
4 crude oil in an amount of forty-nine or more tank car loads per year,  
5 the rules adopted under this subsection may not require contingency  
6 plans to include:

7 (i) Contracted access to oil spill response equipment; or

8 (ii) The completion of more than a total of one basic table-top  
9 drill every three years to test the contingency plans.

10 (c) For class III railroads transporting oil in bulk that is not  
11 crude oil in an amount less than forty-nine tank car loads per year,  
12 rules adopted under this subsection may only require railroads to  
13 submit a basic contingency plan to the department. A basic  
14 contingency plan filed under this subsection (3)(c) must be limited  
15 to requiring the class III railroads to:

16 (i) Keep documentation of the basic contingency plan on file with  
17 the department at the plan holder's principal place of business and  
18 at dispatcher field offices of the railroad;

19 (ii) Identify and include contact information for the chain of  
20 command and other personnel, including employees or spill response  
21 contractors, who will be involved in the railroad's response in the  
22 event of a spill;

23 (iii) Include information related to the relevant accident  
24 insurance carried by the railroad and provide a certificate of  
25 insurance upon request;

26 (iv) Develop a field document for use by personnel involved in  
27 oil handling operations that includes time-critical information  
28 regarding basic contingency plan procedures to be used in the initial  
29 response to a spill or a threatened spill; and

30 (v) Annually review the plan for accuracy.

31 (d) Federal oil spill response plans created pursuant to 33  
32 U.S.C. Sec. 1321 may be submitted in lieu of contingency plans by a  
33 class III railroad transporting oil in bulk that is not crude oil.

34 (e) For the purposes of this section, "class III railroad" has  
35 the same meaning as defined by the United States surface  
36 transportation board as of January 1, 2017.

37 (4)(a) The owner or operator of a facility shall submit the  
38 contingency plan for the facility.

39 (b) A person who has contracted with a facility to provide  
40 containment and cleanup services and who meets the standards

1 established pursuant to RCW 90.56.240, may submit the plan for any  
2 facility for which the person is contractually obligated to provide  
3 services. Subject to conditions imposed by the department, the person  
4 may submit a single plan for more than one facility.

5 (5) A contingency plan prepared for an agency of the federal  
6 government or another state that satisfies the requirements of this  
7 section and rules adopted by the department may be accepted by the  
8 department as a contingency plan under this section. The department  
9 shall ensure that to the greatest extent possible, requirements for  
10 contingency plans under this section are consistent with the  
11 requirements for contingency plans under federal law.

12 (6) In reviewing the contingency plans required by this section,  
13 the department shall consider at least the following factors:

14 (a) The adequacy of containment and cleanup equipment, personnel,  
15 communications equipment, notification procedures and call down  
16 lists, response time, and logistical arrangements for coordination  
17 and implementation of response efforts to remove oil spills promptly  
18 and properly and to protect the environment;

19 (b) The nature and amount of vessel traffic within the area  
20 covered by the plan;

21 (c) The volume and type of oil being transported within the area  
22 covered by the plan;

23 (d) The existence of navigational hazards within the area covered  
24 by the plan;

25 (e) The history and circumstances surrounding prior spills of oil  
26 within the area covered by the plan;

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

29 (g) Relevant information on previous spills contained in on-scene  
30 coordinator reports prepared by the department; and

31 (h) The extent to which reasonable, cost-effective measures to  
32 prevent a likelihood that a spill will occur have been incorporated  
33 into the plan.

34 (7) The department shall approve a contingency plan only if it  
35 determines that the plan meets the requirements of this section and  
36 that, if implemented, the plan is capable, in terms of personnel,  
37 materials, and equipment, of removing oil promptly and properly and  
38 minimizing any damage to the environment.

39 (8) The approval of the contingency plan shall be valid for five  
40 years. Upon approval of a contingency plan, the department shall

1 provide to the person submitting the plan a statement indicating that  
2 the plan has been approved, the facilities or vessels covered by the  
3 plan, and other information the department determines should be  
4 included.

5 (9) An owner or operator of a facility shall notify the  
6 department in writing immediately of any significant change of which  
7 it is aware affecting its contingency plan, including changes in any  
8 factor set forth in this section or in rules adopted by the  
9 department. The department may require the owner or operator to  
10 update a contingency plan as a result of these changes.

11 (10) The department by rule shall require contingency plans to be  
12 reviewed, updated, if necessary, and resubmitted to the department at  
13 least once every five years.

14 (11) Approval of a contingency plan by the department does not  
15 constitute an express assurance regarding the adequacy of the plan  
16 nor constitute a defense to liability imposed under this chapter or  
17 other state law.

18 NEW SECTION. **Sec. 302.** A new section is added to chapter 90.56  
19 RCW to read as follows:

20 By December 31, 2019, consistent with the authority under RCW  
21 90.56.210, the department must update rules for contingency plans to  
22 require:

23 (1) Covered facilities to address situations where oils,  
24 depending on their qualities, weathering, environmental factors, and  
25 method of discharge, may submerge or sink in water; and

26 (2) Standards for best achievable protection for situations  
27 involving the oils in subsection (1) of this section.

28 **Sec. 303.** RCW 90.56.240 and 1990 c 116 s 4 are each amended to  
29 read as follows:

30 (1) The department shall by rule establish standards for persons  
31 who contract to provide spill management, cleanup, and containment  
32 services under contingency plans approved under RCW 90.56.210.

33 (2) For the purposes of this section, "spill management" means  
34 managing:

35 (a) Some or all aspects of a response, containment, and cleanup  
36 of a spill, and utilizing an incident command or unified command  
37 structure; or

1 (b) Wildlife rehabilitation and recovery services for a spill  
2 response.

3 **Sec. 304.** RCW 90.56.569 and 2015 c 274 s 25 are each amended to  
4 read as follows:

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

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

10 ~~(b))~~ updates ((every two years, beginning)) by December 31,  
11 ((2017)) 2019, and ((ending)) December 31, 2021, consistent with the  
12 requirements of RCW 43.01.036, as to the progress made in completing  
13 state and federal geographic response plans as needed in contingency  
14 plans required under RCW 90.56.060, 90.56.210, and 88.46.060.

15 ~~(2) ((The department must contract, if practicable, with eligible~~  
16 ~~independent third parties to ensure completion by December 1, 2017,~~  
17 ~~of at least fifty percent of the geographic response plans as needed~~  
18 ~~in contingency plans required under RCW 90.56.210 and 88.46.060 for~~  
19 ~~the state.))~~ In its updates of geographic response plans, the  
20 department must address situations where oils, depending on their  
21 qualities, weathering, environmental factors, and method of  
22 discharge, may submerge or sink in water.

23 (3) All requirements in this section are subject to the  
24 availability of amounts appropriated for the specific purposes  
25 described.

26 NEW SECTION. **Sec. 305.** A new section is added to chapter 90.56  
27 RCW to read as follows:

28 (1) The department is responsible for requiring joint large-  
29 scale, multiple plan equipment deployment drills of onshore and  
30 offshore facilities and covered vessels under chapter 88.46 RCW to  
31 determine the adequacy of the owner's or operator's compliance with  
32 the contingency plan requirements of this chapter and chapter 88.46  
33 RCW. The department must order at least one drill as outlined in this  
34 section every three years, which must address situations where oils,  
35 depending on their qualities, weathering, environmental factors, and  
36 method of discharge, may submerge or sink in water.

37 (2) Drills required under this section must focus on, at a  
38 minimum, the following:

1 (a) The functional ability for multiple contingency plans to be  
2 simultaneously activated with the purpose of testing the ability for  
3 dedicated equipment and trained personnel cited in multiple  
4 contingency plans to be activated in a large-scale spill; and

5 (b) The operational readiness during both the first six hours of  
6 a spill and, at the department's discretion, over multiple  
7 operational periods of response.

8 (3) Drills required under this section may be incorporated into  
9 other drill requirements under this chapter to avoid increasing the  
10 number of drills and equipment deployments otherwise required.

11 (4) Each successful drill conducted under this section may be  
12 considered by the department as a drill of the underlying contingency  
13 plan and credit may be awarded to the plan holder accordingly.

14 (5) The department must prioritize drills for situations where  
15 oils, depending on their qualities, weathering, environmental  
16 factors, and method of discharge, may submerge or sink in water.

17 **PART 4**

18 **SEVERABILITY AND EMERGENCY CLAUSE**

19 NEW SECTION. **Sec. 401.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 402.** Sections 102, 103, and 206 of this act  
24 are necessary for the immediate preservation of the public peace,  
25 health, or safety, or support of the state government and its  
26 existing public institutions, and take effect April 1, 2018.

--- END ---