
SUBSTITUTE SENATE BILL 5057

State of Washington 64th Legislature 2015 Regular Session

By Senate Energy, Environment & Telecommunications (originally sponsored by Senator Ericksen)

READ FIRST TIME 01/28/15.

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

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

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

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

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

16 (b) Annual updates, beginning December 31, 2016, and ending
17 December 31, 2021, as required under RCW 43.01.036, as to the
18 progress made in completing state and federal geographic response
19 plans as needed in contingency plans required under RCW 90.56.060,
20 90.56.210, and 88.46.060.

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

6 NEW SECTION. **Sec. 2.** (1) The department of ecology shall
7 provide grants to emergency responders to assist with oil spill and
8 hazardous materials response and firefighting equipment and resources
9 needed to meet the requirements of this act.

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

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

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

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

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

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

3 ~~((Unless the context clearly requires otherwise, the definitions~~
4 ~~in this section apply throughout this chapter.)) The definitions in
5 this section apply throughout this chapter unless the context clearly
6 requires otherwise.~~

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

9 (2) "Bulk oil terminal" means a facility of any kind, other than
10 a waterborne vessel, that is used for transferring crude oil from a

11 tank car.(3) "Crude oil" means any naturally occurring liquid
12 hydrocarbons at atmospheric temperature and pressure coming from the
13 earth, including condensate and natural gasoline.

14 ~~((3))~~ (4) "Department" means the department of revenue.

15 ~~((4))~~ (5) "Marine terminal" means a facility of any kind, other
16 than a waterborne vessel, that is used for transferring crude oil or
17 petroleum products to or from a waterborne vessel or barge.

18 ~~((5))~~ (6) "Navigable waters" means those waters of the state
19 and their adjoining shorelines that are subject to the ebb and flow
20 of the tide, including the Columbia and Snake rivers.

21 ~~((6))~~ (7) "Person" has the meaning provided in RCW 82.04.030.

22 ~~((7))~~ (8) "Petroleum product" means any liquid hydrocarbons at
23 atmospheric temperature and pressure that are the product of the
24 fractionation, distillation, or other refining or processing of crude
25 oil, and that are used as, useable as, or may be refined as a fuel or
26 fuel blendstock, including but not limited to, gasoline, diesel fuel,
27 aviation fuel, bunker fuel, and fuels containing a blend of alcohol
28 and petroleum.

29 ~~((8))~~ (9) "Tank car" means a rail car, the body of which
30 consists of a tank for transporting liquids.(10) "Taxpayer" means the
31 person owning crude oil or petroleum products immediately after
32 receipt of the same into the storage tanks of a marine or bulk oil
33 terminal in this state ~~((from a waterborne vessel or barge))~~ and who
34 is liable for the taxes imposed by this chapter.

35 ~~((9))~~ (11) "Waterborne vessel or barge" means any ship, barge,
36 or other watercraft capable of travelling on the navigable waters of
37 this state and capable of transporting any crude oil or petroleum
38 product in quantities of ten thousand gallons or more for purposes
39 other than providing fuel for its motor or engine.

1 **Sec. 4.** RCW 82.23B.020 and 2006 c 256 s 2 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; and (b) crude oil at a bulk oil
7 terminal within this state from a tank car. The tax imposed in this
8 section is levied upon the owner of the crude oil or petroleum
9 products immediately after receipt of the same into the storage tanks
10 of a marine or bulk oil terminal from a tank car or waterborne vessel
11 or barge at the rate of one cent per barrel of crude oil or petroleum
12 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; and (b) crude oil at
18 a bulk oil terminal within this state from a tank car. The tax
19 imposed in this section is levied upon the owner of the crude oil or
20 petroleum products immediately after receipt of the same into the
21 storage tanks of a marine or bulk oil terminal from a tank car or
22 waterborne vessel or barge at the rate of four cents per barrel of
23 crude oil or petroleum product.

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

37 (4) Taxes collected under this chapter (~~shall~~) must be held in
38 trust until paid to the department. Any person collecting the taxes
39 who appropriates or converts the taxes collected (~~shall be~~) is
40 guilty of a gross misdemeanor if the money required to be collected

1 is not available for payment on the date payment is due. The taxes
2 required by this chapter to be collected (~~shall~~) must be stated
3 separately from other charges made by the marine or bulk oil terminal
4 operator in any invoice or other statement of account provided to the
5 taxpayer.

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

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

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

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

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

39 (10) Within forty-five days after the end of each calendar
40 quarter, the office of financial management (~~shall~~) must determine

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 7.** The department of ecology and the
31 utilities and transportation commission shall jointly hold a
32 symposium on oil spill prevention and response activities for
33 international transport of liquid bulk crude oil. The department of
34 ecology and the utilities and transportation commission must invite
35 representatives from affected tribes, local governments, the United
36 States government, Canadian provinces, Canada, and other appropriate
37 stakeholders. The symposium must at a minimum address:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (10) "Hazardous substances" means any substance listed as of
4 March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under
5 section (~~(101-14)~~) 102(a) of the federal comprehensive environmental
6 response, compensation, and liability act of 1980, as amended by P.L.
7 99-499. The following are not hazardous substances for purposes of
8 this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (c) The cost of the measures.

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

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

4 (ii) Processes that are currently in use.

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

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

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

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

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

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

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

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

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

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

39 (11) "Navigable waters of the state" means those waters of the
40 state, and their adjoining shorelines, that are subject to the ebb

1 and flow of the tide and/or are presently used, have been used in the
2 past, or may be susceptible for use to transport intrastate,
3 interstate, or foreign commerce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (28) "Volunteer coordination system" means an oil spill response
38 system that, before a spill occurs, prepares for the coordination of
39 volunteers to assist with appropriate oil spill response activities,
40 which may include shoreline protection and cleanup, wildlife

1 recovery, field observation, light construction, facility
2 maintenance, donations management, clerical support, and other
3 aspects of a spill response.

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

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

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

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

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

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

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

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

1 (5) "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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 transportation, or grant a railroad authority to cross a state
2 highway at grade without the consent of the secretary of
3 transportation.

4 (2) Within thirty days of the effective date of this section,
5 first-class cities must provide to the commission a list of all
6 existing public crossings within the limits of a first-class city,
7 including over and under-crossings, including the United States
8 department of transportation number for the crossing. Within thirty
9 days of modifying, closing, or opening a grade crossing within the
10 limits of a first-class city, the city must notify the commission in
11 writing of the action taken, identifying the crossing by the United
12 States department of transportation number.

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

16 (1) There is hereby created the emergency management council
17 (hereinafter called the council), to consist of not more than
18 seventeen members who shall be appointed by the adjutant general. The
19 membership of the council shall include, but not be limited to,
20 representatives of city and county governments, sheriffs and police
21 chiefs, the Washington state patrol, the military department, the
22 department of ecology, state and local fire chiefs, seismic safety
23 experts, state and local emergency management directors, search and
24 rescue volunteers, medical professions who have expertise in
25 emergency medical care, building officials, and private industry. The
26 representatives of private industry shall include persons
27 knowledgeable in emergency and hazardous materials management. The
28 councilmembers shall elect a chair from within the council
29 membership. The members of the council shall serve without
30 compensation, but may be reimbursed for their travel expenses
31 incurred in the performance of their duties in accordance with RCW
32 43.03.050 and 43.03.060 as now existing or hereafter amended.

33 (2) The emergency management council shall advise the governor
34 and the director on all matters pertaining to state and local
35 emergency management. The council may appoint such ad hoc committees,
36 subcommittees, and working groups as are required to develop specific
37 recommendations for the improvement of emergency management
38 practices, standards, policies, or procedures. The council shall
39 ensure that the governor receives an annual assessment of statewide

1 emergency preparedness including, but not limited to, specific
2 progress on hazard mitigation and reduction efforts, implementation
3 of seismic safety improvements, reduction of flood hazards, and
4 coordination of hazardous materials planning and response activities.
5 The council or a subcommittee thereof shall periodically convene in
6 special session and serve during those sessions as the state
7 emergency response commission required by P.L. 99-499, the emergency
8 planning and community right-to-know act. When sitting in session as
9 the state emergency response commission, the council shall confine
10 its deliberations to those items specified in federal statutes and
11 state administrative rules governing the coordination of hazardous
12 materials policy. The council must require local emergency planning
13 organizations to submit hazardous materials plans and to update the
14 plans on a five-year cycle for compliance review by the director. The
15 council shall review administrative rules governing state and local
16 emergency management practices and recommend necessary revisions to
17 the director.

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

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

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

36 (1) Each political subdivision of this state is hereby authorized
37 and directed to establish a local organization or to be a member of a
38 joint local organization for emergency management in accordance with
39 the state comprehensive emergency management plan and program:

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

1 local organization for emergency management shall perform emergency
2 management functions within the territorial limits of the political
3 subdivision within which it is organized, and, in addition, shall
4 conduct such functions outside of such territorial limits as may be
5 required pursuant to the provisions of this chapter.

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

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

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

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

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

33 ~~((The term))~~(3) "Railroad~~(())~~" ~~((when used in this chapter,))~~
34 means every railroad, including interurban and suburban electric
35 railroads, by whatsoever power operated, for the public use in the
36 conveyance of persons or property for hire, with all bridges,
37 ferries, tunnels, equipment, switches, spurs, sidings, tracks,
38 stations, and terminal facilities of every kind, used, operated,
39 controlled, managed, or owned by or in connection therewith. The

1 ((said)) term ((shall)) also includes every logging and other
2 industrial railway owned or operated primarily for the purpose of
3 carrying the property of its owners or operators or of a limited
4 class of persons, with all tracks, spurs, and sidings used in
5 connection therewith. The ((said)) term ((shall))does not include
6 street railways operating within the limits of any incorporated city
7 or town.

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

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

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

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

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

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

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

36 (1) To address the potential public safety hazards presented by
37 private crossings in the state and by the transportation of hazardous
38 materials in the state, including crude oil, the commission is
39 authorized to adopt rules governing safety standards for private

1 crossings along the railroad tracks over which crude oil is
2 transported in the state. The commission is also authorized to
3 conduct inspections of the private crossings subject to this section,
4 to order the railroads to make improvements at the private crossings,
5 and enforce the orders.

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

9 (a) Minimum safety standards for the private crossings subject to
10 this section, including, but not limited to, requirements for
11 signage;

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

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

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 18.** The sum of ten million dollars, or as
15 much thereof as may be necessary, is appropriated for the biennium
16 ending June 30, 2017, from the model toxics control account to the
17 department of ecology for the purposes of providing grants for
18 equipment and training for first responders as provided in section 2
19 of this act.

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

--- END ---