
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5057

State of Washington

64th Legislature

2015 Regular Session

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

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, 81.53.010, and 81.24.010;
4 reenacting and amending RCW 88.46.010, 38.52.040, and 42.56.270;
5 adding new sections to chapter 90.56 RCW; adding a new section to
6 chapter 81.53 RCW; adding a new section to chapter 81.44 RCW; adding
7 a new section to chapter 81.24 RCW; adding new sections to chapter
8 81.40 RCW; creating new sections; repealing RCW 81.40.010 and
9 81.40.035; repealing 2015 c ... s 19; prescribing penalties;
10 providing an effective date; and declaring an emergency.

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

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

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

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

19 (b) Annual updates, beginning December 31, 2016, and ending
20 December 31, 2021, as required under RCW 43.01.036, as to the
21 progress made in completing state and federal geographic response

1 plans as needed in contingency plans required under RCW 90.56.060,
2 90.56.210, and 88.46.060.

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

8 (3) All requirements in this section are subject to the
9 availability of amounts appropriated for the specific purposes
10 described.

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

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

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

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

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

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

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

10 ~~((Unless the context clearly requires otherwise, the definitions~~
11 ~~in this section apply throughout this chapter.)) The definitions in
12 this section apply throughout this chapter unless the context clearly
13 requires otherwise.~~

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

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

21 ~~((3))~~ (4) "Department" means the department of revenue.

22 ~~((4))~~ (5) "Marine terminal" means a facility of any kind, other
23 than a waterborne vessel, that is used for transferring crude oil or
24 petroleum products to or from a waterborne vessel or barge.

25 ~~((5))~~ (6) "Navigable waters" means those waters of the state
26 and their adjoining shorelines that are subject to the ebb and flow
27 of the tide, including the Columbia and Snake rivers.

28 ~~((6))~~ (7) "Person" has the meaning provided in RCW 82.04.030.

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

36 ~~((8))~~ (9) "Tank car" means a rail car, the body of which
37 consists of a tank for transporting liquids. (10) "Taxpayer" means
38 the person owning crude oil or petroleum products immediately after
39 receipt of the same into the storage tanks of a marine or bulk oil

1 terminal in this state (~~from a waterborne vessel or barge~~) and who
2 is liable for the taxes imposed by this chapter.

3 ~~((9))~~ (11) "Waterborne vessel or barge" means any ship, barge,
4 or other watercraft capable of travelling on the navigable waters of
5 this state and capable of transporting any crude oil or petroleum
6 product in quantities of ten thousand gallons or more for purposes
7 other than providing fuel for its motor or engine.

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

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

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

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

1 personally liable to the state for the amount of the taxes. Payment
2 of the taxes by the owner to a marine or bulk oil terminal operator
3 (~~shall~~) must relieve the owner from further liability for the
4 taxes.

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

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

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

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

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

1 for the collection or payment of the taxes imposed under this
2 chapter.

3 (9) All receipts from the tax imposed in subsection (1) of this
4 section (~~shall~~) must be deposited into the state oil spill response
5 account. All receipts from the tax imposed in subsection (2) of this
6 section shall be deposited into the oil spill prevention account.

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.56

2 RCW to read as follows:

3 (1) A facility that receives crude oil from a railroad car must
4 provide advance notice to the department that the facility will
5 receive crude oil from a railroad car, as provided in this section.
6 The advance notice must include the route taken to the facility
7 within the state, if known, and the scheduled time, location, volume,
8 and type of crude oil received. Each week, a facility that provides
9 advance notice under this section must provide the required
10 information regarding the scheduled arrival of railroad cars carrying
11 crude oil to be received by the facility in the succeeding seven-day
12 period. A facility is not required to provide advance notice when
13 there is no receipt of crude oil from a railroad car scheduled for a
14 seven-day period.

15 (2) The department may share information provided by a facility
16 through the advance notice system established in this section with
17 the state emergency management division and any county, city, tribal,
18 port, or local government emergency response agency upon request.

19 (3) The department must publish information collected under the
20 advance notice system established in this section on a quarterly
21 basis on the department's internet web site. The information
22 published by the department must be aggregated on a statewide basis
23 with respect to information reported under subsection (1) of this
24 section and may include other information available to the department
25 including, but not limited to, place of origin, modes of transport,
26 route taken to the facility, number of railroad cars delivering crude
27 oil, and number and volume of spills during transport and delivery.
28 The department must ensure that information is aggregated to the
29 extent that publication does not allow for identification of a
30 facility.

31 (4) A facility providing advance notice under this section is not
32 responsible for meeting advance notice time frame requirements under
33 subsection (1) of this section in the event that the schedule of
34 arrivals of railroad cars carrying crude oil changes during a seven-
35 day period.

36 (5) Consistent with the requirements of chapter 42.56 RCW, the
37 department and any state, local, tribal, or public agency that
38 receives information provided under the advance notice system
39 established in this section may not disclose any such information
40 that is not aggregated and that might result in the identification of

1 a facility. The requirement for aggregating information does not
2 apply when information is shared by the department with emergency
3 response agencies as provided in subsection (2) of this section.

4 (6) The department shall adopt rules to implement this section.
5 The advance notice system required in this section must be consistent
6 with the oil transfer reporting system adopted by the department
7 pursuant to RCW 88.46.165.

8 NEW SECTION. **Sec. 8.** Subject to the availability of amounts
9 appropriated for this specific purpose, the department of ecology and
10 the utilities and transportation commission shall jointly hold a
11 symposium on oil spill prevention and response activities for
12 international transport of liquid bulk crude oil. The department of
13 ecology and the utilities and transportation commission must invite
14 representatives from affected tribes, local governments, the United
15 States government, Canadian provinces, Canada, and other appropriate
16 stakeholders. The symposium must at a minimum address:

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

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

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

23 **Sec. 9.** RCW 88.40.011 and 2007 c 347 s 4 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 (1) "Barge" means a vessel that is not self-propelled.

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

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

34 (4) "Covered vessel" means a tank vessel, cargo vessel, or
35 passenger vessel.

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

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

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

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

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

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

21 (10) "Hazardous substances" means any substance listed as of
22 March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under
23 section (~~(101(14))~~) 102(a) of the federal comprehensive environmental
24 response, compensation, and liability act of 1980, as amended by P.L.
25 99-499. The following are not hazardous substances for purposes of
26 this chapter:

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

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

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

34 (12) "Oil" or "oils" means oil of any kind that is liquid at
35 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one
36 atmosphere of pressure and any fractionation thereof, including, but
37 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
38 well condensate, petroleum, gasoline, fuel oil, diesel oil,
39 biological oils and blends, oil sludge, oil refuse, and oil mixed
40 with wastes other than dredged spoil. Oil does not include any

1 substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R.
2 Part 302 adopted under section (~~(101(14))~~) 102(a) of the federal
3 comprehensive environmental response, compensation, and liability act
4 of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

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

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

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

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

37 (20) "Waters of the state" includes lakes, rivers, ponds,
38 streams, inland waters, underground water, salt waters, estuaries,
39 tidal flats, beaches and lands adjoining the seacoast of the state,

1 sewers, and all other surface waters and watercourses within the
2 jurisdiction of the state of Washington.

3 **Sec. 10.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and
4 amended to read as follows:

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

7 (1) "Best achievable protection" means the highest level of
8 protection that can be achieved through the use of the best
9 achievable technology and those staffing levels, training procedures,
10 and operational methods that provide the greatest degree of
11 protection achievable. The director's determination of best
12 achievable protection shall be guided by the critical need to protect
13 the state's natural resources and waters, while considering:

- 14 (a) The additional protection provided by the measures;
- 15 (b) The technological achievability of the measures; and
- 16 (c) The cost of the measures.

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

19 (i) Processes that are being developed, or could feasibly be
20 developed, given overall reasonable expenditures on research and
21 development; and

22 (ii) Processes that are currently in use.

23 (b) In determining what is best achievable technology, the
24 director shall consider the effectiveness, engineering feasibility,
25 and commercial availability of the technology.

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

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

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

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

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

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

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

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

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

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

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

29 (13) "Oil" or "oils" means oil of any kind that is liquid at
30 (~~atmospheric temperature~~) twenty-five degrees Celsius and one
31 atmosphere of pressure and any fractionation thereof, including, but
32 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
33 well condensate, petroleum, gasoline, fuel oil, diesel oil,
34 biological oils and blends, oil sludge, oil refuse, and oil mixed
35 with wastes other than dredged spoil. Oil does not include any
36 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August
37 14, 1989, under section (~~101-14~~) 102(a) of the federal
38 comprehensive environmental response, compensation, and liability act
39 of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

24 (19) "Regional vessels of opportunity response group" means a
25 group of nondedicated vessels participating in a vessels of
26 opportunity response system to respond when needed and available to
27 spills in a defined geographic area.

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

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

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

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

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

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

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

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

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

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

20 (28) "Volunteer coordination system" means an oil spill response
21 system that, before a spill occurs, prepares for the coordination of
22 volunteers to assist with appropriate oil spill response activities,
23 which may include shoreline protection and cleanup, wildlife
24 recovery, field observation, light construction, facility
25 maintenance, donations management, clerical support, and other
26 aspects of a spill response.

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

32 (30) "Worst case spill" means: (a) In the case of a vessel, a
33 spill of the entire cargo and fuel of the vessel complicated by
34 adverse weather conditions; and (b) in the case of an onshore or
35 offshore facility, the largest foreseeable spill in adverse weather
36 conditions.

37 **Sec. 11.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to
38 read as follows:

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

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

12 (2) "Best achievable technology" means the technology that
13 provides the greatest degree of protection taking into consideration
14 (a) processes that are being developed, or could feasibly be
15 developed, given overall reasonable expenditures on research and
16 development, and (b) processes that are currently in use. In
17 determining what is best achievable technology, the director shall
18 consider the effectiveness, engineering feasibility, and commercial
19 availability of the technology.

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

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

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

28 (6) "Committee" means the preassessment screening committee
29 established under RCW 90.48.368.

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

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

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

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

36 (11)(a) "Facility" means any structure, group of structures,
37 equipment, pipeline, or device, other than a vessel, located on or
38 near the navigable waters of the state that transfers oil in bulk to
39 or from a tank vessel or pipeline, that is used for producing,

1 storing, handling, transferring, processing, or transporting oil in
2 bulk.

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

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

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

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

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

26 (16) "Necessary expenses" means the expenses incurred by the
27 department and assisting state agencies for (a) investigating the
28 source of the discharge; (b) investigating the extent of the
29 environmental damage caused by the discharge; (c) conducting actions
30 necessary to clean up the discharge; (d) conducting predamage and
31 damage assessment studies; and (e) enforcing the provisions of this
32 chapter and collecting for damages caused by a discharge.

33 (17) "Oil" or "oils" means oil of any kind that is liquid at
34 (~~atmospheric temperature~~) twenty-five degrees Celsius and one
35 atmosphere of pressure and any fractionation thereof, including, but
36 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
37 well condensate, petroleum, gasoline, fuel oil, diesel oil,
38 biological oils and blends, oil sludge, oil refuse, and oil mixed
39 with wastes other than dredged spoil. Oil does not include any
40 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August

1 14, 1989, under section (~~101(14)~~) 102(a) of the federal
2 comprehensive environmental response, compensation, and liability act
3 of 1980, as amended by P.L. 99-499.

4 (18) "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.

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

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

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

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

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

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

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

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

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

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

39 (26) "Waters of the state" includes lakes, rivers, ponds,
40 streams, inland waters, underground water, salt waters, estuaries,

1 tidal flats, beaches and lands adjoining the seacoast of the state,
2 sewers, and all other surface waters and watercourses within the
3 jurisdiction of the state of Washington.

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

9 **Sec. 12.** RCW 81.53.240 and 1984 c 7 s 375 are each amended to
10 read as follows:

11 (1) Except to the extent necessary to permit participation by
12 first-class cities in the grade crossing protective fund, when an
13 election to participate is made as provided in RCW 81.53.261 through
14 81.53.291, or to the extent a first-class city requests to
15 participate in the commission's crossing safety inspection program
16 within the city, this chapter ((81.53-RCW)) is not operative within
17 the limits of first-class cities, and does not apply to street
18 railway lines operating on or across any street, alley, or other
19 public place within the limits of any city, except that a streetcar
20 line outside of cities of the first class shall not cross a railroad
21 at grade without express authority from the commission. The
22 commission may not change the location of a state highway without the
23 approval of the secretary of transportation, or the location of any
24 crossing thereon adopted or approved by the department of
25 transportation, or grant a railroad authority to cross a state
26 highway at grade without the consent of the secretary of
27 transportation.

28 (2) Within thirty days of the effective date of this section,
29 first-class cities must provide to the commission a list of all
30 existing public crossings within the limits of a first-class city,
31 including over and under-crossings, including the United States
32 department of transportation number for the crossing. Within thirty
33 days of modifying, closing, or opening a grade crossing within the
34 limits of a first-class city, the city must notify the commission in
35 writing of the action taken, identifying the crossing by the United
36 States department of transportation number. All requirements in this
37 subsection are subject to the availability of amounts appropriated
38 for the specific purposes described.

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

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

21 (2) The emergency management council shall advise the governor
22 and the director on all matters pertaining to state and local
23 emergency management. The council may appoint such ad hoc committees,
24 subcommittees, and working groups as are required to develop specific
25 recommendations for the improvement of emergency management
26 practices, standards, policies, or procedures. The council shall
27 ensure that the governor receives an annual assessment of statewide
28 emergency preparedness including, but not limited to, specific
29 progress on hazard mitigation and reduction efforts, implementation
30 of seismic safety improvements, reduction of flood hazards, and
31 coordination of hazardous materials planning and response activities.
32 The council or a subcommittee thereof shall periodically convene in
33 special session and serve during those sessions as the state
34 emergency response commission required by P.L. 99-499, the emergency
35 planning and community right-to-know act. When sitting in session as
36 the state emergency response commission, the council shall confine
37 its deliberations to those items specified in federal statutes and
38 state administrative rules governing the coordination of hazardous
39 materials policy. Subject to the availability of amounts appropriated
40 for this specific purpose, the council must require local emergency

1 planning organizations to submit hazardous materials plans and to
2 update the plans on a five-year cycle for compliance review by the
3 director. The council shall review administrative rules governing
4 state and local emergency management practices and recommend
5 necessary revisions to the director.

6 (3)(a) The intrastate mutual aid committee is created and is a
7 subcommittee of the emergency management council. The intrastate
8 mutual aid committee consists of not more than five members who must
9 be appointed by the council chair from council membership. The chair
10 of the intrastate mutual aid committee is the military department
11 representative appointed as a member of the council. Meetings of the
12 intrastate mutual aid committee must be held at least annually.

13 (b) In support of the intrastate mutual aid system established in
14 chapter 38.56 RCW, the intrastate mutual aid committee shall develop
15 and update guidelines and procedures to facilitate implementation of
16 the intrastate mutual aid system by member jurisdictions, including
17 but not limited to the following: Projected or anticipated costs;
18 checklists and forms for requesting and providing assistance;
19 recordkeeping; reimbursement procedures; and other implementation
20 issues. These guidelines and procedures are not subject to the rule-
21 making requirements of chapter 34.05 RCW.

22 **Sec. 14.** RCW 38.52.070 and 1997 c 49 s 4 are each amended to
23 read as follows:

24 (1) Each political subdivision of this state is hereby authorized
25 and directed to establish a local organization or to be a member of a
26 joint local organization for emergency management in accordance with
27 the state comprehensive emergency management plan and program:
28 PROVIDED, That a political subdivision proposing such establishment
29 shall submit its plan and program for emergency management to the
30 state director and secure his or her recommendations thereon, and
31 verification of consistency with the state comprehensive emergency
32 management plan, in order that the plan of the local organization for
33 emergency management may be coordinated with the plan and program of
34 the state. Local comprehensive emergency management plans must: (a)
35 Specify the use of the incident command system for multiagency/
36 multijurisdiction operations; and (b) include hazardous materials
37 plans that are updated on a five-year cycle for compliance review by
38 the director. No political subdivision may be required to include in
39 its plan provisions for the emergency evacuation or relocation of

1 residents in anticipation of nuclear attack. If the director's
2 recommendations are adverse to the plan as submitted, and, if the
3 local organization does not agree to the director's recommendations
4 for modification to the proposal, the matter shall be referred to the
5 council for final action. The director may authorize two or more
6 political subdivisions to join in the establishment and operation of
7 a joint local organization for emergency management as circumstances
8 may warrant, in which case each political subdivision shall
9 contribute to the cost of emergency management upon such fair and
10 equitable basis as may be determined upon by the executive heads of
11 the constituent subdivisions. If in any case the executive heads
12 cannot agree upon the proper division of cost the matter shall be
13 referred to the council for arbitration and its decision shall be
14 final. When two or more political subdivisions join in the
15 establishment and operation of a joint local organization for
16 emergency management each shall pay its share of the cost into a
17 special pooled fund to be administered by the treasurer of the most
18 populous subdivision, which fund shall be known as the
19 emergency management fund. Each local organization or joint local
20 organization for emergency management shall have a director who shall
21 be appointed by the executive head of the political subdivision, and
22 who shall have direct responsibility for the organization,
23 administration, and operation of such local organization for
24 emergency management, subject to the direction and control of such
25 executive officer or officers. In the case of a joint local
26 organization for emergency management, the director shall be
27 appointed by the joint action of the executive heads of the
28 constituent political subdivisions. Each local organization or joint
29 local organization for emergency management shall perform emergency
30 management functions within the territorial limits of the political
31 subdivision within which it is organized, and, in addition, shall
32 conduct such functions outside of such territorial limits as may be
33 required pursuant to the provisions of this chapter.

34 (2) In carrying out the provisions of this chapter each political
35 subdivision, in which any disaster as described in RCW 38.52.020
36 occurs, shall have the power to enter into contracts and incur
37 obligations necessary to combat such disaster, protecting the health
38 and safety of persons and property, and providing emergency
39 assistance to the victims of such disaster. Each political
40 subdivision is authorized to exercise the powers vested under this

1 section in the light of the exigencies of an extreme emergency
2 situation without regard to time-consuming procedures and formalities
3 prescribed by law (excepting mandatory constitutional requirements),
4 including, but not limited to, budget law limitations, requirements
5 of competitive bidding and publication of notices, provisions
6 pertaining to the performance of public work, entering into
7 contracts, the incurring of obligations, the employment of temporary
8 workers, the rental of equipment, the purchase of supplies and
9 materials, the levying of taxes, and the appropriation and
10 expenditures of public funds.

11 **Sec. 15.** RCW 81.53.010 and 2013 c 23 s 302 are each amended to
12 read as follows:

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

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

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

21 ~~((The term))~~ (3) "Railroad~~(())"~~ ~~((when used in this chapter,))~~
22 means every railroad, including interurban and suburban electric
23 railroads, by whatsoever power operated, for the public use in the
24 conveyance of persons or property for hire, with all bridges,
25 ferries, tunnels, equipment, switches, spurs, sidings, tracks,
26 stations, and terminal facilities of every kind, used, operated,
27 controlled, managed, or owned by or in connection therewith. The
28 ~~((said))~~ term ~~((shall))~~ also includes every logging and other
29 industrial railway owned or operated primarily for the purpose of
30 carrying the property of its owners or operators or of a limited
31 class of persons, with all tracks, spurs, and sidings used in
32 connection therewith. The ~~((said))~~ term ~~((shall))~~ does not include
33 street railways operating within the limits of any incorporated city
34 or town.

35 ~~((The term))~~ (4) "Railroad company~~(())"~~ ~~((when used in this~~
36 ~~chapter,))~~ includes every corporation, company, association, joint
37 stock association, partnership, or person, its, their, or his or her
38 lessees, trustees, or receivers appointed by any court whatsoever,

1 owning, operating, controlling, or managing any railroad(~~(, as that~~
2 ~~term is defined in this section)~~)).

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

8 ~~((The term))~~ (6) "Under-crossing((~~τ~~))" ~~((when used in this~~
9 ~~chapter~~τ~~))~~ means any point or place where a highway crosses a
10 railroad by passing under the same. "Under-crossing" also means any
11 point or place where one railroad crosses another railroad not at
12 grade.

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

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

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

23 NEW SECTION. Sec. 16. A new section is added to chapter 81.53
24 RCW to read as follows:

25 (1) To address the potential public safety hazards presented by
26 private crossings in the state and by the transportation of hazardous
27 materials in the state, including crude oil, the commission is
28 authorized to adopt rules governing safety standards for private
29 crossings along the railroad tracks over which crude oil is
30 transported in the state, including, but not limited to, requirements
31 for signage.

32 (2) Nothing in this section modifies existing agreements between
33 the railroad company and the landowner governing cost allocation for
34 upgrades to private crossing or liability for injuries or damages
35 occurring at the private crossing.

36 (3) All requirements in this section are subject to the
37 availability of amounts appropriated for the specific purposes
38 described.

1 NEW SECTION. **Sec. 17.** (1)(a) The department of ecology must
2 convene a panel consisting of representatives from: The oil and rail
3 industries, businesses that are recipients of liquid bulk crude oil,
4 Grays Harbor and Columbia river harbor safety committees, maritime
5 fire safety associations, the United States coast guard, Columbia
6 river public ports in Oregon and Washington, Grays Harbor public
7 ports, and Columbia river pilots.

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

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

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

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

24 NEW SECTION. **Sec. 18.** A new section is added to chapter 81.44
25 RCW to read as follows:

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

37 **Sec. 19.** RCW 81.24.010 and 2007 c 234 s 21 are each amended to
38 read as follows:

1 (1) Every company subject to regulation by the commission, except
2 those listed in subsection (3) of this section, shall, on or before
3 the date specified by the commission for filing annual reports under
4 RCW 81.04.080, file with the commission a statement on oath showing
5 its gross operating revenue from intrastate operations for the
6 preceding calendar year, or portion thereof, and pay to the
7 commission a fee equal to one-tenth of one percent of the first fifty
8 thousand dollars of gross operating revenue, plus two-tenths of one
9 percent of any gross operating revenue in excess of fifty thousand
10 dollars, except railroad companies which shall each pay to the
11 commission a fee equal to ~~((one))~~ two and one-half percent of its
12 intrastate gross operating revenue. The commission may, by rule, set
13 minimum fees that do not exceed the cost of collecting the fees. The
14 commission may by rule waive any or all of the minimum fee
15 established pursuant to this section. Any railroad association that
16 qualifies as a nonprofit charitable organization under the federal
17 internal revenue code section 501(c)(3) is exempt from the fee
18 required under this subsection.

19 (2) The percentage rates of gross operating revenue to be paid in
20 any one year may be decreased by the commission for any class of
21 companies subject to the payment of such fees, by general order
22 entered before March 1st of such year, and for such purpose railroad
23 companies are classified as class two. Every other company subject to
24 regulation by the commission, for which regulatory fees are not
25 otherwise fixed by law, shall pay fees as herein provided and shall
26 constitute additional classes according to kinds of businesses
27 engaged in.

28 (3) This section does not apply to private nonprofit
29 transportation providers, auto transportation companies, charter
30 party carriers and excursion service carriers, solid waste collection
31 companies, motor freight carriers, household goods carriers,
32 commercial ferries, and low-level radioactive waste storage
33 facilities.

34 NEW SECTION. **Sec. 20.** A new section is added to chapter 81.24
35 RCW to read as follows:

36 The authority of the commission to charge a railroad company a
37 fee equal to two and one-half percent of its intrastate gross
38 operating revenue under the authority of this chapter expires July 1,
39 2023.

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

4 **Sec. 21.** RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and
5 2014 c 144 s 6 are each reenacted and amended to read as follows:

6 The following financial, commercial, and proprietary information
7 is exempt from disclosure under this chapter:

8 (1) Valuable formulae, designs, drawings, computer source code or
9 object code, and research data obtained by any agency within five
10 years of the request for disclosure when disclosure would produce
11 private gain and public loss;

12 (2) Financial information supplied by or on behalf of a person,
13 firm, or corporation for the purpose of qualifying to submit a bid or
14 proposal for (a) a ferry system construction or repair contract as
15 required by RCW 47.60.680 through 47.60.750 or (b) highway
16 construction or improvement as required by RCW 47.28.070;

17 (3) Financial and commercial information and records supplied by
18 private persons pertaining to export services provided under chapters
19 43.163 and 53.31 RCW, and by persons pertaining to export projects
20 under RCW 43.23.035;

21 (4) Financial and commercial information and records supplied by
22 businesses or individuals during application for loans or program
23 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
24 43.168 RCW, or during application for economic development loans or
25 program services provided by any local agency;

26 (5) Financial information, business plans, examination reports,
27 and any information produced or obtained in evaluating or examining a
28 business and industrial development corporation organized or seeking
29 certification under chapter 31.24 RCW;

30 (6) Financial and commercial information supplied to the state
31 investment board by any person when the information relates to the
32 investment of public trust or retirement funds and when disclosure
33 would result in loss to such funds or in private loss to the
34 providers of this information;

35 (7) Financial and valuable trade information under RCW 51.36.120;

36 (8) Financial, commercial, operations, and technical and research
37 information and data submitted to or obtained by the clean Washington
38 center in applications for, or delivery of, program services under
39 chapter 70.95H RCW;

1 (9) Financial and commercial information requested by the public
2 stadium authority from any person or organization that leases or uses
3 the stadium and exhibition center as defined in RCW 36.102.010;

4 (10)(a) Financial information, including but not limited to
5 account numbers and values, and other identification numbers supplied
6 by or on behalf of a person, firm, corporation, limited liability
7 company, partnership, or other entity related to an application for a
8 horse racing license submitted pursuant to RCW 67.16.260(1)(b),
9 marijuana producer, processor, or retailer license, liquor license,
10 gambling license, or lottery retail license;

11 (b) Internal control documents, independent auditors' reports and
12 financial statements, and supporting documents: (i) Of house-banked
13 social card game licensees required by the gambling commission
14 pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted
15 by tribes with an approved tribal/state compact for class III gaming;

16 (11) Proprietary data, trade secrets, or other information that
17 relates to: (a) A vendor's unique methods of conducting business; (b)
18 data unique to the product or services of the vendor; or (c)
19 determining prices or rates to be charged for services, submitted by
20 any vendor to the department of social and health services for
21 purposes of the development, acquisition, or implementation of state
22 purchased health care as defined in RCW 41.05.011;

23 (12)(a) When supplied to and in the records of the department of
24 commerce:

25 (i) Financial and proprietary information collected from any
26 person and provided to the department of commerce pursuant to RCW
27 43.330.050(8); and

28 (ii) Financial or proprietary information collected from any
29 person and provided to the department of commerce or the office of
30 the governor in connection with the siting, recruitment, expansion,
31 retention, or relocation of that person's business and until a siting
32 decision is made, identifying information of any person supplying
33 information under this subsection and the locations being considered
34 for siting, relocation, or expansion of a business;

35 (b) When developed by the department of commerce based on
36 information as described in (a)(i) of this subsection, any work
37 product is not exempt from disclosure;

38 (c) For the purposes of this subsection, "siting decision" means
39 the decision to acquire or not to acquire a site;

1 (d) If there is no written contact for a period of sixty days to
2 the department of commerce from a person connected with siting,
3 recruitment, expansion, retention, or relocation of that person's
4 business, information described in (a)(ii) of this subsection will be
5 available to the public under this chapter;

6 (13) Financial and proprietary information submitted to or
7 obtained by the department of ecology or the authority created under
8 chapter 70.95N RCW to implement chapter 70.95N RCW;

9 (14) Financial, commercial, operations, and technical and
10 research information and data submitted to or obtained by the life
11 sciences discovery fund authority in applications for, or delivery
12 of, grants under chapter 43.350 RCW, to the extent that such
13 information, if revealed, would reasonably be expected to result in
14 private loss to the providers of this information;

15 (15) Financial and commercial information provided as evidence to
16 the department of licensing as required by RCW 19.112.110 or
17 19.112.120, except information disclosed in aggregate form that does
18 not permit the identification of information related to individual
19 fuel licensees;

20 (16) Any production records, mineral assessments, and trade
21 secrets submitted by a permit holder, mine operator, or landowner to
22 the department of natural resources under RCW 78.44.085;

23 (17)(a) Farm plans developed by conservation districts, unless
24 permission to release the farm plan is granted by the landowner or
25 operator who requested the plan, or the farm plan is used for the
26 application or issuance of a permit;

27 (b) Farm plans developed under chapter 90.48 RCW and not under
28 the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject
29 to RCW 42.56.610 and 90.64.190;

30 (18) Financial, commercial, operations, and technical and
31 research information and data submitted to or obtained by a health
32 sciences and services authority in applications for, or delivery of,
33 grants under RCW 35.104.010 through 35.104.060, to the extent that
34 such information, if revealed, would reasonably be expected to result
35 in private loss to providers of this information;

36 (19) Information gathered under chapter 19.85 RCW or RCW
37 34.05.328 that can be identified to a particular business;

38 (20) Financial and commercial information submitted to or
39 obtained by the University of Washington, other than information the
40 university is required to disclose under RCW 28B.20.150, when the

1 information relates to investments in private funds, to the extent
2 that such information, if revealed, would reasonably be expected to
3 result in loss to the University of Washington consolidated endowment
4 fund or to result in private loss to the providers of this
5 information; (~~and~~)

6 (21) Market share data submitted by a manufacturer under RCW
7 70.95N.190(4); (~~and~~)

8 (22) Financial information supplied to the department of
9 financial institutions or to a portal under RCW 21.20.883, when filed
10 by or on behalf of an issuer of securities for the purpose of
11 obtaining the exemption from state securities registration for small
12 securities offerings provided under RCW 21.20.880 or when filed by or
13 on behalf of an investor for the purpose of purchasing such
14 securities; and

15 (23) Notices of a transfer of crude oil submitted to the
16 department of ecology pursuant to section 7(1) of this act and that
17 is in the possession of the department of ecology or any entity with
18 which the department of ecology has shared the notice pursuant to
19 section 7(5) of this act.

20 NEW SECTION. Sec. 22. 2015 c ... s 19 (section 19 of this act)
21 as now existing or hereafter amended, is repealed, effective July 1,
22 2023.

23 NEW SECTION. Sec. 23. A new section is added to chapter 81.40
24 RCW to read as follows:

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

27 (1) "Commission" means the utilities and transportation
28 commission created in chapter 80.01 RCW.

29 (2) "Hazardous material" means a substance or material the
30 federal secretary of transportation has determined to be capable of
31 posing a significant risk to health, safety, and property when
32 transported in commerce.

33 (3) "Hazardous material train" means any:

34 (a) High-hazard flammable train as defined by the United States
35 department of transportation as of the effective date of this
36 section; or

37 (b) Train containing any of following:

1 (i) One or more tank car loads of poison inhalation hazard or
2 toxic inhalation hazard, hazard zone "A," "B," "C," or "D"; anhydrous
3 ammonia, UN1005;

4 (ii) Twenty car loads or intermodal portable tank loads of any
5 combination of hazardous material; or

6 (iii) One or more car loads of spent nuclear fuel or high level
7 nuclear waste.

8 (4) "Qualified crew member" means a railroad operating craft
9 employee who has been trained and meets the requirements and
10 qualifications as determined by the federal railroad administration
11 for a railroad operating service employee.

12 (5) "Railroad carrier" means a carrier of persons or property
13 upon vehicles, other than streetcars, operated upon stationary rails,
14 the route of which is principally outside incorporated cities and
15 towns. "Railroad carrier" includes the officers and agents of the
16 railroad carrier.

17 NEW SECTION. **Sec. 24.** A new section is added to chapter 81.40
18 RCW to read as follows:

19 Except as provided in section 25 of this act, the following
20 minimum crew requirements apply:

21 (1) Any person, corporation, company, or officer of the court
22 operating any railroad, railway, or any part of any railroad or
23 railway, in the state of Washington, and engaged, as a common
24 carrier, in the transportation of freight or passengers, shall
25 operate all trains and switching assignments over its road with crews
26 consisting of no less than two qualified crew members.

27 (2)(a) Railroad carriers shall operate all hazardous material
28 trains over its road with crews consisting of no less than three
29 qualified crew members. One qualified train crew member shall be
30 assigned to a position located on the rear of the train and within
31 rolling equipment, situated to safely observe and monitor the train's
32 contents and movement.

33 (b) Railroad carriers shall operate any hazardous material trains
34 consisting of fifty-one or more car loads of any combination of
35 hazardous materials over its road with crews consisting of no less
36 than four qualified crew members. Two qualified crew members shall be
37 assigned to a position on the rear of the train and within rolling
38 equipment, situated to safely observe and monitor the train's
39 contents and movement.

1 NEW SECTION. **Sec. 25.** A new section is added to chapter 81.40
2 RCW to read as follows:

3 (1) Trains transporting hazardous material shipments a distance
4 of five miles or less may operate the train with the required crew
5 members positioned on the lead locomotive.

6 (2)(a) Class II and class III carriers transporting fewer than
7 twenty loaded hazardous material cars on trains operating on their
8 road while at a speed of twenty-five miles per hour or less are
9 exempt from the additional train crew requirements specified in
10 section 24(2) of this act.

11 (b) The commission may grant exemptions to the minimum crew size
12 requirements to class III railroad carriers that are not transporting
13 hazardous materials on their road.

14 (3)(a) The commission may order class I or II railroad carriers
15 to exceed the minimum crew size and operate specific trains, routes,
16 or switching assignments on their road with additional numbers of
17 qualified crew members if it is determined that such an increase in
18 crew size is necessary to protect the safety, health, and welfare of
19 the public and railroad employees, to prevent harm to the
20 environment, and to address local safety and security hazards.

21 (b) In issuing such an order the commission may consider relevant
22 factors including but not limited to the volatility of the
23 commodities being transported, vulnerabilities, risk exposure to
24 localities along the train route, security risks including sabotage
25 or terrorism threat levels, a railroad carriers prior history of
26 accidents, compliance violations, and track and equipment maintenance
27 issues.

28 NEW SECTION. **Sec. 26.** A new section is added to chapter 81.40
29 RCW to read as follows:

30 (1) Each train or engine run in violation of section 24 of this
31 act constitutes a separate offense. However, section 24 of this act
32 does not apply in the case of disability of one or more members of
33 any train crew while out on the road between division terminals, or
34 assigned to wrecking trains.

35 (2) Any person, corporation, company, or officer of the court
36 operating any railroad, or part of any railroad or railway within the
37 state of Washington, and engaged as a common carrier, in the
38 transportation of freight or passengers, who violates any of the
39 provisions of section 24 of this act shall be fined not less than one

1 thousand dollars and not more than one hundred thousand dollars for
2 each offense.

3 (3) It is the duty of the commission to enforce this section.

4 NEW SECTION. **Sec. 27.** The following acts or parts of acts are
5 each repealed:

6 (1) RCW 81.40.010 (Full train crews—Passenger—Safety review—
7 Penalty—Enforcement) and 2003 c 53 s 386, 1992 c 102 s 1, & 1961 c 14
8 s 81.40.010; and

9 (2) RCW 81.40.035 (Freight train crews) and 1967 c 2 s 2.

10 NEW SECTION. **Sec. 28.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 29.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of
16 the state government and its existing public institutions, and takes
17 effect July 1, 2015.

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