
SENATE BILL 5462

State of Washington

65th Legislature

2017 Regular Session

By Senators Carlyle, Ranker, Rolfes, Darneille, Hunt, Billig, McCoy, Pedersen, and Wellman

1 AN ACT Relating to oil transportation safety; amending RCW
2 88.40.025, 88.40.030, 88.40.040, 88.16.190, 90.56.370, 82.23B.020,
3 82.23B.030, 90.56.200, 90.56.240, 90.56.510, 90.56.565, 90.56.210,
4 90.56.220, 90.56.230, and 80.50.060; reenacting and amending RCW
5 88.40.011, 88.40.020, 82.23B.010, and 80.50.020; adding new sections
6 to chapter 90.56 RCW; creating new sections; repealing RCW
7 82.23B.040; prescribing penalties; providing an effective date;
8 providing an expiration date; and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** (1) The legislature finds that the system
11 of crude oil transportation by boat, rail, and pipeline in Washington
12 has experienced significant changes in recent years. By enacting
13 chapter 274, Laws of 2015 (the oil transportation safety act), the
14 legislature took significant steps to address the risks of oil
15 transportation. However, because that legislation primarily focused
16 on the risks of crude oil transportation by rail, and did not address
17 the growing risks of oil shipped through state waters, additional
18 attention to this issue is warranted and the additional steps taken
19 in this act will help continue to improve oil transportation safety.

20 (2) In light of recent events since the passage of the oil
21 transportation safety act, oil transportation patterns are expected

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

3 (a) One important contextual change driving oil transportation
4 risks in Washington was the recent decision by the United States
5 congress in December 2015 to remove the longstanding prohibition on
6 the export of crude oil from the United States. This reversal of
7 federal law presents a significant prospective change to the patterns
8 of oil shipment through the state and may bring additional
9 environmental and public safety risks that are not adequately
10 addressed by existing plans and safety regulations.

11 (b) A second change on the horizon, which will have huge
12 ramifications for the transport of oil through the boundary waters
13 and the Strait of Juan de Fuca, stems from the recently approved
14 expansion of the Trans Mountain pipeline from Alberta to British
15 Columbia, Canada. The expanded pipeline is anticipated to increase
16 oil tanker traffic in the already busy United States-Canadian
17 boundary water shipping lanes from five tankers per month to up to
18 thirty-four oil laden tankers per month. Because the precipitating
19 event for this increase in traffic is the construction of a facility
20 in Canada, the environmental impacts of this traffic in Washington
21 waters will not otherwise be mitigated under chapter 43.21C RCW, the
22 state environmental policy act. Therefore, it is urgent and
23 imperative that the legislature act now to enhance its marine oil
24 transport risk reduction framework in order for the state to be even
25 minimally prepared for the tectonic shift in oil transportation that
26 is likely to occur in our ecologically fragile northern waters.

27 (3) Therefore, in light of these changes, it is the intent of the
28 legislature to enhance a variety of safety measures that protect
29 against the risk of oil spills occurring on land and on water, to
30 provide a sustainable source of funding for the state's oil spill
31 preparedness and response program, and to ensure the state's ability
32 to recover from the full scope of economic harms that would result
33 from a large oil spill.

34 **Sec. 2.** RCW 88.40.011 and 2015 c 274 s 9 are each reenacted and
35 amended to read as follows:

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

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

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

4 (3) "Cargo vessel" means a self-propelled ship in commerce, other
5 than a tank vessel, fishing vessel, or a passenger vessel, of three
6 hundred or more gross tons.

7 (4) "Certificate of financial responsibility" means an official
8 written acknowledgment issued by the director or the director's
9 designee that an owner or operator of a covered vessel or facility,
10 or the owner of the oil, has demonstrated to the satisfaction of the
11 director or the director's designee that the relevant entity has the
12 financial ability to pay for costs and damages caused by an oil
13 spill.

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

16 ((+5)) (6) "Department" means the department of ecology.

17 ((+6)) (7) "Director" means the director of the department of
18 ecology.

19 ((+7)) (8)(a) "Facility" means any structure, group of
20 structures, equipment, pipeline, or device, other than a vessel,
21 located on or near the navigable waters of the state that transfers
22 oil in bulk to or from any vessel with an oil carrying capacity over
23 two hundred fifty barrels or pipeline, that is used for producing,
24 storing, handling, transferring, processing, or transporting oil in
25 bulk.

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

35 (c) For the purposes of oil spill contingency planning in RCW
36 90.56.210 and financial responsibility in RCW 88.40.025, "facility"
37 also means a railroad that transports oil as bulk cargo.

38 ((+8)) (9) "Fishing vessel" means a self-propelled commercial
39 vessel of three hundred or more gross tons that is used for catching
40 or processing fish.

1 ~~((9))~~ (10) "Gross tons" means tonnage as determined by the
2 United States coast guard under 33 C.F.R. section 138.30.

3 ~~((10))~~ (11) "Hazardous substances" means any substance listed
4 as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted
5 under section 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))~~ (12) "Navigable waters of the state" means those waters
12 of the state, and their adjoining shorelines, that are subject to the
13 ebb and flow of the tide and/or are presently used, have been used in
14 the past, or may be susceptible for use to transport intrastate,
15 interstate, or foreign commerce.

16 ~~((12))~~ (13) "Offshore facility" means any facility located in,
17 on, or under any of the navigable waters of the state, but does not
18 include a facility any part of which is located in, on, or under any
19 land of the state, other than submerged land.

20 ~~((13))~~ (14) "Oil" or "oils" means oil of any kind that is
21 liquid at twenty-five degrees Celsius and one atmosphere of pressure
22 and any fractionation thereof, including, but not limited to, crude
23 oil, bitumen, synthetic crude oil, natural gas well condensate,
24 petroleum, gasoline, fuel oil, diesel oil, biological oils and
25 blends, oil sludge, oil refuse, and oil mixed with wastes other than
26 dredged spoil. Oil does not include any substance listed as of March
27 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section
28 102(a) of the federal comprehensive environmental response,
29 compensation, and liability act of 1980, as amended by P.L. 99-499.

30 ~~((14))~~ (15) "Onshore facility" means any facility any part of
31 which is located in, on, or under any land of the state, other than
32 submerged land, that because of its location, could reasonably be
33 expected to cause substantial harm to the environment by discharging
34 oil into or on the navigable waters of the state or the adjoining
35 shorelines.

36 ~~((15))~~ (16)(a) "Owner or operator" means (i) in the case of a
37 vessel, any person owning, operating, or chartering by demise, the
38 vessel; (ii) in the case of an onshore or offshore facility, any
39 person 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)~~) (17) "Passenger vessel" means a ship of three hundred or
7 more gross tons with a fuel capacity of at least six thousand gallons
8 carrying passengers for compensation.

9 (~~(17)~~) (18) "Ship" means any boat, ship, vessel, barge, or
10 other floating craft of any kind.

11 (~~(18)~~) (19) "Spill" means an unauthorized discharge of oil into
12 the waters of the state.

13 (~~(19)~~) (20) "Tank vessel" means a ship that is constructed or
14 adapted to carry, or that carries, oil in bulk as cargo or cargo
15 residue, and that:

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

24 **Sec. 3.** RCW 88.40.020 and 2003 c 91 s 3 and 2003 c 56 s 3 are
25 each reenacted and amended to read as follows:

26 (1) Any barge that transports hazardous substances in bulk as
27 cargo, using any port or place in the state of Washington or the
28 navigable waters of the state shall establish evidence of financial
29 responsibility in the amount of the greater of five million dollars,
30 or three hundred dollars per gross ton of such vessel.

31 (2)(a) Except as provided in (b) or (c) of this subsection, a
32 tank vessel that carries oil as cargo in bulk shall demonstrate
33 financial responsibility to pay at least five hundred million
34 dollars. The amount of financial responsibility required under this
35 subsection is one billion dollars after January 1, 2004.

36 (b) The director by rule may establish a lesser standard of
37 financial responsibility for tank vessels of three hundred gross tons
38 or less. The standard shall set the level of financial responsibility
39 based on the quantity of cargo the tank vessel is capable of

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

4 (c) The owner or operator of a tank vessel who is a member of an
5 international protection and indemnity mutual organization and is
6 covered for oil pollution risks up to the amounts required under this
7 section is not required to demonstrate financial responsibility under
8 this chapter. The director may require the owner or operator of a
9 tank vessel to prove membership in such an organization.

10 (3)(a) A cargo vessel or passenger vessel that carries oil as
11 fuel shall demonstrate financial responsibility to pay at least three
12 hundred million dollars. However, a passenger vessel that transports
13 passengers and vehicles between Washington state and a foreign
14 country shall demonstrate financial responsibility to pay the greater
15 of at least six hundred dollars per gross ton or five hundred
16 thousand dollars.

17 (b) The owner or operator of a cargo vessel or passenger vessel
18 who is a member of an international protection and indemnity mutual
19 organization and is covered for oil pollution risks up to the amounts
20 required under this section is not required to demonstrate financial
21 responsibility under this chapter. The director may require the owner
22 or operator of a cargo vessel or passenger vessel to prove membership
23 in such an organization.

24 (4) A fishing vessel while on the navigable waters of the state
25 must demonstrate financial responsibility in the following amounts:

26 (a) For a fishing vessel carrying predominantly nonpersistent
27 product, one hundred thirty-three dollars and forty cents per
28 incident, for each barrel of total oil storage capacity, persistent
29 and nonpersistent product, on the vessel or one million three hundred
30 thirty-four thousand dollars, whichever is greater; or (b) for a
31 fishing vessel carrying predominantly persistent product, four
32 hundred dollars and twenty cents per incident, for each barrel of
33 total oil storage capacity, persistent product and nonpersistent
34 product, on the vessel or six million six hundred seventy thousand
35 dollars, whichever is greater.

36 (5) The ~~((documentation of financial responsibility shall
37 demonstrate the ability of the document holder to meet state and
38 federal financial liability requirements for the actual costs for
39 removal of oil spills, for natural resource damages, and for
40 necessary expenses))~~ certificate of financial responsibility is

1 conclusive evidence that the person or entity holding the certificate
2 is the party responsible for the specified vessel, facility, or oil
3 for purposes of determining liability pursuant to this chapter.

4 (6) This section shall not apply to a covered vessel owned or
5 operated by the federal government or by a state or local government.

6 **Sec. 4.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to
7 read as follows:

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

25 **Sec. 5.** RCW 88.40.030 and 2000 c 69 s 32 are each amended to
26 read as follows:

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

1 to file documentation of financial responsibility twenty-four hours
2 before entry of the vessel into the navigable waters of the state, if
3 the vessel has filed documentation of financial responsibility with
4 the federal government, and the level of financial responsibility
5 required by the federal government is the same as or exceeds state
6 requirements. The owner or operator of the vessel may file with the
7 department a certificate evidencing compliance with the requirements
8 of another state's or federal financial responsibility requirements
9 if the state or federal government requires a level of financial
10 responsibility the same as or greater than that required under this
11 chapter.

12 (2) A certificate of financial responsibility may not have a term
13 greater than one year.

14 **Sec. 6.** RCW 88.40.040 and 2003 c 56 s 4 are each amended to read
15 as follows:

16 (1) It is unlawful for any vessel or facility required to have
17 financial responsibility under this chapter to enter or operate
18 ~~((on))~~ in Washington ~~((waters))~~ without meeting the requirements of
19 this chapter or rules adopted under this chapter, except when
20 necessary to avoid injury to the vessel's or facility's crew or
21 passengers. Any vessel owner or operator that does not meet the
22 financial responsibility requirements of this chapter and any rules
23 prescribed thereunder or the federal oil pollution act of 1990 shall
24 be reported by the department to the United States coast guard.

25 ~~((The department shall enforce section 1016 of the federal~~
26 ~~oil pollution act of 1990 as authorized by section 1019 of the~~
27 ~~federal act.))~~ Upon notification of an oil spill or discharge or
28 other action or potential liability, the director shall reevaluate
29 the validity of the certificate of financial responsibility. If the
30 director determines that, because of a spill outside of the state or
31 some other action or potential liability, the holder of a certificate
32 may not have the financial resources to pay damages for the oil spill
33 or discharge or other action or potential liability and have
34 resources remaining available to meet the requirements of this
35 chapter, the director may suspend or revoke the certificate.

36 (3) An owner or operator of either more than one covered vessel
37 or facility, or both is only required to obtain one certificate of
38 financial responsibility for each vessel and facility owned or
39 operated.

1 (4) If a person holds a certificate for more than one covered
2 vessel or facility and a spill or spills occurs from one or more of
3 those vessels or facilities for which the owner or operator may be
4 liable for damages in an amount exceeding five percent of the
5 financial resources reflected by the certificate, as determined by
6 the director, the certificate is immediately considered inapplicable
7 to any vessel or facility not associated with the spill. In that
8 event, the owner or operator shall demonstrate to the satisfaction of
9 the director the amount of financial ability required pursuant to
10 this chapter, as well as the financial ability to pay all damages
11 that arise or have arisen from the spill or spills that have
12 occurred.

13 **Sec. 7.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
14 as follows:

15 (1) Any oil tanker, whether enrolled or registered, of greater
16 than one hundred and twenty-five thousand deadweight tons shall be
17 prohibited from proceeding beyond a point east of a line extending
18 from Discovery Island light south to New Dungeness light.

19 ~~(2) ((An oil tanker, whether enrolled or registered, of forty to~~
20 ~~one hundred and twenty five thousand deadweight tons may proceed~~
21 ~~beyond the points enumerated in subsection (1) if such tanker~~
22 ~~possesses all of the following standard safety features:~~

23 ~~(a) Shaft horsepower in the ratio of one horsepower to each two~~
24 ~~and one half deadweight tons; and~~

25 ~~(b) Twin screws; and~~

26 ~~(c) Double bottoms, underneath all oil and liquid cargo~~
27 ~~compartments; and~~

28 ~~(d) Two radars in working order and operating, one of which must~~
29 ~~be collision avoidance radar; and~~

30 ~~(e) Such other navigational position location systems as may be~~
31 ~~prescribed from time to time by the board of pilotage commissioners:~~

32 ~~PROVIDED, That, if such forty to one hundred and twenty five~~
33 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
34 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~
35 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
36 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
37 ~~horsepower equivalencies may be required under certain conditions as~~
38 ~~established by rule and regulation of the Washington utilities and~~
39 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~

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

9 (b) The department of ecology, in consultation with the board of
10 pilotage commissioners and relying on the results of vessel traffic
11 risk assessments, shall adopt rules by November 1, 2018, to implement
12 this subsection (2)(b). These rules may include tug escort
13 requirements and other safety measures for oil tankers of greater
14 than forty thousand deadweight tons, all articulated tug barges, and
15 other towed waterborne vessels or barges. The geographic scope of the
16 rules must be limited to the narrow channels of the San Juan Islands
17 archipelago, including Rosario Strait, Haro Strait, Boundary Pass,
18 and connected waterways. By November 1, 2019, the department of
19 ecology must adopt tug escort requirements and other safety measures
20 for the remaining areas of Puget Sound.

21 (c) In order to adopt a rule under this section, the department
22 of ecology must determine that the results of a vessel traffic risk
23 assessment provide evidence that the rules are necessary in order to
24 achieve best achievable protection as defined in RCW 88.46.010.

25 (d) The department of ecology must consult with the United States
26 coast guard, the Puget Sound safety committee, tribes, ports, local
27 governments, and other appropriate entities before adopting tug
28 escort requirements and other safety measures for Puget Sound.

29 (3)(a) If an oil tanker, articulated tug barge, or other towed
30 waterborne vessel or barge is in ballast, the tug escort requirements
31 of subsection (2)(a) of this section and any tug escort rules adopted
32 pursuant to subsection (2)(b) of this section do not apply.

33 (b) If an oil tanker is a single-hulled oil tanker of greater
34 than five thousand gross tons, the requirements of subsection (2)(a)
35 of this section do not apply and the oil tanker must instead comply
36 with 33 C.F.R. Part 168, as of the effective date of this section.

37 (4)(a) Oil tankers of greater than forty thousand deadweight
38 tons, all articulated tug barges, and other towed waterborne vessels
39 or barges must ensure that any escort tugs they use have an aggregate

1 shaft horsepower equivalent to at least five percent of the
2 deadweight tons of the escorted oil tanker or articulated tug barge.

3 (b) The department of ecology may adopt rules to ensure that
4 escort tugs have sufficient mechanical capabilities to provide for
5 safe escort.

6 (c) Rules adopted under this subsection must be designed to
7 achieve best achievable protection as defined under RCW 88.46.010.

8 (5) A tanker assigned a deadweight of equal to or less than forty
9 thousand deadweight tons at the time of construction or
10 reconstruction as reported in Lloyd's Register of Ships is not
11 subject to the provisions of this section and RCW 88.16.170 (~~through~~
12 ~~88.16.190~~) and 88.16.180.

13 (6) The definitions in this subsection apply throughout this
14 section unless the context clearly requires otherwise.

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

18 (b) "Oil tanker" means a self-propelled deep draft tank vessel
19 designed to transport oil in bulk. "Oil tanker" does not include an
20 articulated tug barge tank vessel.

21 (c) "Waterborne vessel or barge" means any ship, barge, or other
22 watercraft capable of traveling on the navigable waters of this state
23 and capable of transporting any crude oil or petroleum product in
24 quantities of ten thousand gallons or more for purposes other than
25 providing fuel for its motor or engine.

26 **Sec. 8.** RCW 90.56.370 and 2011 c 122 s 10 are each amended to
27 read as follows:

28 (1) Any person owning oil or having control over oil that enters
29 the waters of the state in violation of RCW 90.56.320 shall be
30 strictly liable, without regard to fault, for the damages to persons
31 or property, public or private, caused by such entry.

32 (2) Damages for which responsible parties are liable under this
33 section include loss of income, such as lost fishing income or lost
34 lodging income due to reduced tourism, net revenue, the loss of means
35 of producing income or revenue directly or indirectly attributable to
36 oil entering waters of the state, lost real property value when it is
37 demonstrated to be a direct result of an oil spill, or an economic
38 benefit resulting from an injury to or loss of real or personal
39 property or natural resources.

1 (3) Damages for which responsible parties are liable under this
2 section include damages provided in subsections (1) and (2) of this
3 section resulting from: (a) The use and deployment of chemical
4 dispersants or from in situ burning in response to a violation of RCW
5 90.56.320; and (b) any action conducted in response to a violation of
6 RCW 90.56.320, including actions to collect, investigate, perform
7 surveillance over, remove, contain, treat, or disperse oil discharged
8 into waters of the state.

9 (4) In any action to recover damages resulting from the discharge
10 of oil in violation of RCW 90.56.320, the owner or person having
11 control over the oil shall be relieved from strict liability, without
12 regard to fault, if that person can prove that the discharge was
13 caused solely by:

14 (a) An act of war or sabotage;

15 (b) An act of God;

16 (c) Negligence on the part of the United States government; or

17 (d) Negligence on the part of the state of Washington.

18 (5) The liability established in this section shall in no way
19 affect the rights which: (a) The owner or other person having control
20 over the oil may have against any person whose acts may in any way
21 have caused or contributed to the discharge of oil, or (b) the state
22 of Washington may have against any person whose actions may have
23 caused or contributed to the discharge of oil.

24 **Sec. 9.** RCW 82.23B.010 and 2015 c 274 s 13 are each reenacted
25 and amended to read as follows:

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

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

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

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

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

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

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

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

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

15 (9) "Pipeline" means an interstate or intrastate pipeline subject
16 to regulation by the United States department of transportation under
17 49 C.F.R. Part 195 in effect on the effective date of this section,
18 through which oil moves in transportation, including line pipes,
19 valves, and other appurtenances connected to line pipes, pumping
20 units, and fabricated assemblies associated with pumping units.

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

23 ~~((10))~~ (11) "Taxpayer" means the person owning crude oil or
24 petroleum products immediately after receipt of the same into the
25 storage tanks of a marine or bulk oil terminal in this state and who
26 is liable for the taxes imposed by this chapter.

27 ~~((11))~~ (12) "Waterborne vessel or barge" means any ship, barge,
28 or other watercraft capable of traveling on the navigable waters of
29 this state and capable of transporting any crude oil or petroleum
30 product in quantities of ten thousand gallons or more for purposes
31 other than providing fuel for its motor or engine.

32 **Sec. 10.** RCW 82.23B.020 and 2015 c 274 s 14 are each amended to
33 read as follows:

34 (1) An oil spill response tax is imposed on the privilege of
35 receiving: (a) Crude oil or petroleum products at a marine terminal
36 within this state from a waterborne vessel or barge operating on the
37 navigable waters of this state; ~~((or))~~ (b) crude oil or petroleum
38 products at a bulk oil terminal within this state from a tank car; or
39 (c) crude oil or petroleum products at a bulk oil terminal within

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

7 (2) In addition to the tax imposed in subsection (1) of this
8 section, an oil spill administration tax is imposed on the privilege
9 of receiving: (a) Crude oil or petroleum products at a marine
10 terminal within this state from a waterborne vessel or barge
11 operating on the navigable waters of this state; ~~((or))~~ (b) crude oil
12 or petroleum products at a bulk oil terminal within this state from a
13 tank car; or (c) crude oil or petroleum products at a bulk oil
14 terminal within this state from a pipeline. 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, pipeline, or
18 waterborne vessel or barge at the rate of four cents per barrel of
19 crude oil or petroleum product.

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

32 (4) Taxes collected under this chapter must be held in trust
33 until paid to the department. Any person collecting the taxes who
34 appropriates or converts the taxes collected is guilty of a gross
35 misdemeanor if the money required to be collected is not available
36 for payment on the date payment is due. The taxes required by this
37 chapter to be collected must be stated separately from other charges
38 made by the marine or bulk oil terminal operator in any invoice or
39 other statement of account provided to the taxpayer.

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

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

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

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

29 (9) All receipts from the tax imposed in subsection (1) of this
30 section must be deposited into the state oil spill response account
31 created in RCW 90.56.500. All receipts from the tax imposed in
32 subsection (2) of this section shall be deposited into the oil spill
33 prevention account created in RCW 90.56.510.

34 (10) Within forty-five days after the end of each calendar
35 quarter, the office of financial management must determine the
36 balance of the oil spill response account as of the last day of that
37 calendar quarter. Balance determinations by the office of financial
38 management under this section are final and may not be used to
39 challenge the validity of any tax imposed under this chapter. The
40 office of financial management must promptly notify the departments

1 of revenue and ecology of the account balance once a determination is
2 made. For each subsequent calendar quarter, the tax imposed by
3 subsection (1) of this section shall be imposed during the entire
4 calendar quarter unless:

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

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

11 **Sec. 11.** RCW 82.23B.030 and 2015 c 274 s 15 are each amended to
12 read as follows:

13 (1) The taxes imposed under this chapter only apply to the first
14 receipt of crude oil or petroleum products at a marine or bulk oil
15 terminal in this state and not to the later transporting and
16 subsequent receipt of the same oil or petroleum product, whether in
17 the form originally received at a marine or bulk oil terminal in this
18 state or after refining or other processing.

19 (2) The taxes imposed under this chapter do not apply to the
20 receipt of crude oil or petroleum products that the state is
21 prohibited from taxing under the United States Constitution.

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

24 (1) The department shall evaluate and update planning standards
25 for oil spill response equipment required under contingency plans
26 required by this chapter in order to ensure access in the state to
27 equipment that represents the best achievable protection to respond
28 to a worst case spill and provide for continuous operation of oil
29 spill response activities to the maximum extent practicable and
30 without jeopardizing crew safety, as determined by the incident
31 commander or the unified command.

32 (2) The department shall place the earliest priority upon
33 updating standards that address the increased volume of different
34 types of crude oil and that address a worst case spill from
35 articulated tug barges and from other towed waterborne vessels or
36 barges.

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

3 (1) Each onshore and offshore oil refinery facility proposing to
4 handle crude oil for export must revise its: Facility oil spill
5 prevention plan required under RCW 90.56.200; facility oil spill
6 contingency plan required under RCW 90.56.210; training and
7 certification program required under RCW 90.56.220; and operations
8 manual required under RCW 90.56.230 to specifically address all types
9 of crude oil planned or anticipated to be handled at the facility,
10 including crude oil from the Bakken oil fields as well as diluted
11 bitumen crude from Canada. By December 31, 2018, the department must
12 adopt by rule the required components of these plans addressing
13 handling of crude oil for export and must require that the plans
14 demonstrate best achievable protection from damages caused by the
15 discharge of oil into the waters of the state or other casualty from
16 the release, explosion, or ignition of the oil.

17 (2) No onshore or offshore refinery facility may handle crude oil
18 for export without an oil spill prevention and contingency plan
19 approved by the department.

20 **Sec. 14.** RCW 90.56.200 and 2015 c 274 s 4 are each amended to
21 read as follows:

22 (1) The owner or operator for each onshore and offshore facility,
23 except as determined in subsection (3) of this section, shall prepare
24 and submit to the department an oil spill prevention plan in
25 conformance with the requirements of this chapter. The plans shall be
26 submitted to the department in the time and manner directed by the
27 department. The spill prevention plan may be consolidated with a
28 spill contingency plan submitted pursuant to RCW 90.56.210. The
29 department may accept plans prepared to comply with other state or
30 federal law as spill prevention plans to the extent those plans
31 comply with the requirements of this chapter. The department, by
32 rule, shall establish standards for spill prevention plans.

33 (2) The spill prevention plan for an onshore or offshore facility
34 shall:

35 (a) Establish compliance with the federal oil pollution act of
36 1990, if applicable, and financial responsibility requirements under
37 federal and state law;

1 (b) Certify that supervisory and other key personnel in charge of
2 transfer, storage, and handling of oil have received certification
3 pursuant to RCW 90.56.220;

4 (c) Certify that the facility has an operations manual required
5 by RCW 90.56.230;

6 (d) Certify the implementation of alcohol and drug use awareness
7 programs;

8 (e) Describe the facility's maintenance and inspection program
9 and contain a current maintenance and inspection record of the
10 storage and transfer facilities and related equipment;

11 (f) Describe the facility's alcohol and drug treatment programs;

12 (g) Describe spill prevention technology that has been installed,
13 including overflow alarms, automatic overflow cut-off switches,
14 secondary containment facilities, and storm water retention,
15 treatment, and discharge systems;

16 (h) Describe any discharges of oil to the land or the water of
17 more than twenty-five barrels in the prior five years and the
18 measures taken to prevent a reoccurrence;

19 (i) Describe the procedures followed by the facility to contain
20 and recover any oil that spills during the transfer of oil to or from
21 the facility;

22 (j) Provide for the incorporation into the facility during the
23 period covered by the plan of those measures that will provide the
24 best achievable protection for the public health and the environment;
25 and

26 (k) Include any other information reasonably necessary to carry
27 out the purposes of this chapter required by rules adopted by the
28 department.

29 (3) Plan requirements in subsection (2) of this section are not
30 applicable to railroad facility operators while transporting oil over
31 rail lines of this state.

32 (4) The department shall only approve a prevention plan if it
33 provides the best achievable protection from damages caused by the
34 discharge of oil into the waters of the state and if it determines
35 that the plan meets the requirements of this section and rules
36 adopted by the department.

37 (5) Upon approval of a prevention plan, the department shall
38 provide to the person submitting the plan a statement indicating that
39 the plan has been approved, the facilities covered by the plan, and
40 other information the department determines should be included.

1 (6) The approval of a prevention plan shall be valid for five
2 years. An owner or operator of a facility shall notify the department
3 in writing immediately of any significant change of which it is aware
4 affecting its prevention plan, including changes in any factor set
5 forth in this section or in rules adopted by the department. The
6 department may require the owner or operator to update a prevention
7 plan as a result of these changes. The department shall require that
8 a prevention plan be updated whenever a facility engaged in the
9 refining of petroleum proposes to export crude oil from the facility
10 in volumes that exceed ten percent of the annual average facility
11 production of refined petroleum products over the preceding five
12 years. The department shall provide notice of the proposal to
13 interested parties, including local and tribal governments, and shall
14 make the prevention plan updates available for public review and
15 comment.

16 (7) The department by rule shall require prevention plans to be
17 reviewed, updated, if necessary, and resubmitted to the department at
18 least once every five years.

19 (8) Approval of a prevention plan by the department does not
20 constitute an express assurance regarding the adequacy of the plan
21 nor constitute a defense to liability imposed under this chapter or
22 other state law.

23 (9) This section does not authorize the department to modify the
24 terms of a collective bargaining agreement.

25 **Sec. 15.** RCW 90.56.240 and 1990 c 116 s 4 are each amended to
26 read as follows:

27 The department shall by rule establish standards for persons who
28 contract to provide spill management, cleanup, and containment
29 services under contingency plans approved under RCW 90.56.210.

30 **Sec. 16.** RCW 90.56.510 and 2015 c 274 s 7 are each amended to
31 read as follows:

32 (1) The oil spill prevention account is created in the state
33 treasury. All receipts from RCW 82.23B.020(2) shall be deposited in
34 the account. Moneys from the account may be spent only after
35 appropriation. The account is subject to allotment procedures under
36 chapter 43.88 RCW. ~~((If, on the first day of any calendar month, the~~
37 ~~balance of the oil spill response account is greater than nine~~
38 ~~million dollars and the balance of the oil spill prevention account~~

1 ~~exceeds the unexpended appropriation for the current biennium, then~~
2 ~~the tax under RCW 82.23B.020(2) shall be suspended on the first day~~
3 ~~of the next calendar month until the beginning of the following~~
4 ~~biennium, provided that the tax shall not be suspended during the~~
5 ~~last six months of the biennium. If the tax imposed under RCW~~
6 ~~82.23B.020(2) is suspended during two consecutive biennia, the~~
7 ~~department shall by November 1st after the end of the second~~
8 ~~biennium, recommend to the appropriate standing committees an~~
9 ~~adjustment in the tax rate. For the biennium ending June 30, 1999,~~
10 ~~and the biennium ending June 30, 2001, the state treasurer may~~
11 ~~transfer a total of up to one million dollars from the oil spill~~
12 ~~response account to the oil spill prevention account to support~~
13 ~~appropriations made from the oil spill prevention account in the~~
14 ~~omnibus appropriations act adopted not later than June 30, 1999.)~~)

15 (2) Expenditures from the oil spill prevention account shall be
16 used exclusively for the administrative costs related to the purposes
17 of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. In
18 addition, until June 30, 2019, expenditures from the oil spill
19 prevention account may be used, subject to amounts appropriated
20 specifically for this purpose, for the development and annual review
21 of local emergency planning committee emergency response plans in RCW
22 38.52.040(3). Starting with the 1995-1997 biennium, the legislature
23 shall give activities of state agencies related to prevention of oil
24 spills priority in funding from the oil spill prevention account.
25 Costs of prevention include the costs of:

- 26 (a) Routine responses not covered under RCW 90.56.500;
27 (b) Management and staff development activities;
28 (c) Development of rules and policies and the statewide plan
29 provided for in RCW 90.56.060;
30 (d) Facility and vessel plan review and approval, drills,
31 inspections, investigations, enforcement, and litigation;
32 (e) Interagency coordination and public outreach and education;
33 (f) Collection and administration of the tax provided for in
34 chapter 82.23B RCW; and
35 (g) Appropriate travel, goods and services, contracts, and
36 equipment.

37 (3) Before expending moneys from the account for a response under
38 subsection (2)(a) of this section, but without delaying response
39 activities, the director shall make reasonable efforts to obtain
40 funding for response costs under this section from the person

1 responsible for the spill and from other sources, including the
2 federal government.

3 **Sec. 17.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to
4 read as follows:

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

18 (b) Twice per year, pipelines that transport crude oil must
19 report to the department the following information about the crude
20 oil transported by the pipeline through the state: The volume of
21 crude oil and the state or province of origin of the crude oil. This
22 report must be submitted each year by July 31st for the period
23 January 1st through June 30th and by January 31st for the period July
24 1st through December 31st.

25 (2) The department may share information provided by a facility
26 through the advance notice system established in this section with
27 the state emergency management division and any county, city, tribal,
28 port, ~~((or))~~ local government emergency response agency, or the
29 legislative bodies of local governments that oversee community first
30 response agencies upon request.

31 (3) The department must publish information collected under this
32 section on a quarterly basis on the department's internet web site.
33 With respect to the information reported under subsection (1)(a) of
34 this section, the information published by the department must be
35 aggregated on a statewide basis by route through the state, by week,
36 and by type of crude oil. The report may also include other
37 information available to the department including, but not limited
38 to, place of origin, modes of transport, number of railroad cars

1 delivering crude oil, and number and volume of spills during
2 transport and delivery.

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

8 (5) Consistent with the requirements of chapter 42.56 RCW, the
9 department and any state, local, tribal, or public agency that
10 receives information provided under this section may not disclose any
11 such information to the public or to nongovernmental entities that
12 contains proprietary, commercial, or financial information unless
13 that information is aggregated. The requirement for aggregating
14 information does not apply when information is shared by the
15 department with emergency response agencies as provided in subsection
16 (2) of this section.

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

21 **Sec. 18.** RCW 90.56.210 and 2015 c 274 s 5 are each amended to
22 read as follows:

23 (1) Each onshore and offshore facility shall have a contingency
24 plan for the containment and cleanup of oil spills from the facility
25 into the waters of the state and for the protection of fisheries and
26 wildlife, shellfish beds, natural resources, and public and private
27 property from such spills. The department shall by rule adopt and
28 periodically revise standards for the preparation of contingency
29 plans. The department shall require contingency plans, at a minimum,
30 to meet the following standards:

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

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

37 (c) Provide a clear, precise, and detailed description of how the
38 plan relates to and is integrated into relevant contingency plans

1 which have been prepared by cooperatives, ports, regional entities,
2 the state, and the federal government;

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

6 (e) State the number, training preparedness, and fitness of all
7 dedicated, prepositioned personnel assigned to direct and implement
8 the plan;

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

12 (g) Describe important features of the surrounding environment,
13 including fish and wildlife habitat, shellfish beds, environmentally
14 and archaeologically sensitive areas, and public facilities. The
15 departments of ecology, fish and wildlife, and natural resources, and
16 the department of archaeology and historic preservation, upon
17 request, shall provide information that they have available to assist
18 in preparing this description. The description of archaeologically
19 sensitive areas shall not be required to be included in a contingency
20 plan until it is reviewed and updated pursuant to subsection (9) of
21 this section;

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

26 (i) Provide arrangements for the prepositioning of oil spill
27 containment and cleanup equipment and trained personnel at strategic
28 locations from which they can be deployed to the spill site to
29 promptly and properly remove the spilled oil;

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

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

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

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

4 (n) If the department has adopted rules permitting the use of
5 dispersants, the circumstances, if any, and the manner for the
6 application of the dispersants in conformance with the department's
7 rules.

8 (2)(a) The following shall submit contingency plans to the
9 department within six months after the department adopts rules
10 establishing standards for contingency plans under subsection (1) of
11 this section:

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

14 (ii) Offshore facilities.

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

20 (3) The department by rule shall determine the contingency plan
21 requirements for railroads transporting oil in bulk. Federal oil
22 spill response plans created pursuant to 33 U.S.C. Sec. 1321 may be
23 submitted in lieu of contingency plans until state rules are adopted.

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

26 (b) The owner or operator of a facility shall update its
27 contingency plan when the facility proposes to export crude oil in
28 volumes that exceed ten percent of the annual average facility
29 production of refined petroleum products over the preceding five
30 years. The department shall provide notice of the proposal to
31 interested parties, including local and tribal governments, and shall
32 make the contingency plan updates available for public review and
33 comment.

34 (c) A person who has contracted with a facility to provide
35 containment and cleanup services and who meets the standards
36 established pursuant to RCW 90.56.240, may submit the plan for any
37 facility for which the person is contractually obligated to provide
38 services. Subject to conditions imposed by the department, the person
39 may submit a single plan for more than one facility.

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

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

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

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

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

19 (d) The existence of navigational hazards within the area covered
20 by the plan;

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

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

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

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

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

35 (8) The approval of the contingency plan shall be valid for five
36 years. Upon approval of a contingency plan, the department shall
37 provide to the person submitting the plan a statement indicating that
38 the plan has been approved, the facilities or vessels covered by the
39 plan, and other information the department determines should be
40 included.

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

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

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

14 **Sec. 19.** RCW 90.56.220 and 1991 c 200 s 203 are each amended to
15 read as follows:

16 (1) The department by rule shall adopt standards for onshore and
17 offshore facilities regarding the equipment and operation of the
18 facilities with respect to the transfer, storage, and handling of oil
19 to ensure that the best achievable protection of the public health
20 and the environment is employed at all times. The department shall
21 implement a program to provide for the inspection of all onshore and
22 offshore facilities on a regular schedule to ensure that each
23 facility is in compliance with the standards.

24 (2) The department shall adopt rules for certification of
25 supervisory and other key personnel in charge of the transfer,
26 storage, and handling of oil at onshore and offshore facilities. The
27 rules shall include, but are not limited to:

28 (a) Minimum training requirements for all facility workers
29 involved in the transfer, storage, and handling of oil at a facility;

30 (b) Provisions for periodic renewal of certificates for
31 supervisory and other key personnel involved in the transfer,
32 storage, and handling of oil at the facility; and

33 (c) Continuing education requirements.

34 (3) The rules adopted by the department shall not conflict with
35 or modify standards imposed pursuant to federal or state laws
36 regulating worker safety.

37 (4) An owner or operator of a facility must update its training
38 and certification program when the facility proposes to export crude
39 oil in volumes that exceed ten percent of the annual average facility

1 production of refined petroleum products over the preceding five
2 years.

3 **Sec. 20.** RCW 90.56.230 and 1991 c 200 s 204 are each amended to
4 read as follows:

5 (1)(a) Each owner or operator of an onshore or offshore facility
6 shall prepare an operations manual describing equipment and
7 procedures involving the transfer, storage, and handling of oil that
8 the operator employs or will employ for best achievable protection
9 for the public health and the environment and to prevent oil spills
10 in the navigable waters.

11 (b) An owner or operator of a facility must update its operations
12 manual when the facility proposes to export crude oil in volumes that
13 exceed ten percent of the annual average facility production of
14 refined petroleum products over the preceding five years.

15 (c) The operations manual shall also describe equipment and
16 procedures required for all vessels to or from which oil is
17 transferred through use of the facility. The operations manual shall
18 be submitted to the department for approval.

19 (2) Every existing onshore and offshore facility shall prepare
20 and submit to the department its operations manual within eighteen
21 months after the department has adopted rules governing the content
22 of the manual.

23 (3) The department shall approve an operations manual for an
24 onshore or offshore facility if the manual complies with the rules
25 adopted by the department. If the department determines a manual does
26 not comply with the rules, it shall provide written reasons for the
27 decision. The owner or operator shall resubmit the manual within
28 ninety days of notification of the reasons for noncompliance,
29 responding to the reasons and incorporating any suggested
30 modifications.

31 (4) The approval of an operations manual shall be valid for five
32 years. The owner or operator of the facility shall notify the
33 department in writing immediately of any significant change in its
34 operations affecting its operations manual. The department may
35 require the owner or operator to modify its operations manual as a
36 result of these changes.

37 (5) All equipment and operations of an operator's onshore or
38 offshore facility shall be maintained and carried out in accordance
39 with the facility's operations manual. The owner or operator of the

1 facility shall ensure that all covered vessels docked at an onshore
2 or offshore facility comply with the terms of the operations manual
3 for the facility.

4 NEW SECTION. **Sec. 21.** (1) The department of ecology shall
5 contract with an eligible independent third party to update the
6 October 2006 report to the state emergency response commission
7 regarding statewide response to chemical, biological, radiological,
8 nuclear, and explosive materials. The updated report must also
9 include an update to appendix A of that report, which addresses the
10 state's current hazardous materials response capabilities and that
11 reviews the emergency response programs of other states. The contract
12 for the updated report must give special emphasis to addressing
13 recent changes to patterns of hazardous material transportation,
14 including crude oil transportation, and the availability of resources
15 to respond to incidents resulting from the transport of hazardous
16 materials. The contract must require the updated report to be
17 completed by June 30, 2018.

18 (2) This section expires June 30, 2020.

19 **Sec. 22.** RCW 80.50.020 and 2010 c 152 s 1 are each reenacted and
20 amended to read as follows:

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

23 (1) "Alternative energy resource" includes energy facilities of
24 the following types: (a) Wind; (b) solar energy; (c) geothermal
25 energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass
26 energy based on solid organic fuels from wood, forest, or field
27 residues, or dedicated energy crops that do not include wood pieces
28 that have been treated with chemical preservatives such as creosote,
29 pentachlorophenol, or copper-chrome-arsenic.

30 (2) "Applicant" means any person who makes application for a site
31 certification pursuant to the provisions of this chapter.

32 (3) "Application" means any request for approval of a particular
33 site or sites filed in accordance with the procedures established
34 pursuant to this chapter, unless the context otherwise requires.

35 (4) "Associated facilities" means storage, transmission,
36 handling, or other related and supporting facilities connecting an
37 energy plant with the existing energy supply, processing, or
38 distribution system, including, but not limited to, communications,

1 controls, mobilizing or maintenance equipment, instrumentation, and
2 other types of ancillary transmission equipment, off-line storage or
3 venting required for efficient operation or safety of the
4 transmission system and overhead, and surface or subsurface lines of
5 physical access for the inspection, maintenance, and safe operations
6 of the transmission facility and new transmission lines constructed
7 to operate at nominal voltages of at least 115,000 volts to connect a
8 thermal power plant or alternative energy facilities to the northwest
9 power grid. However, common carrier railroads or motor vehicles shall
10 not be included.

11 (5) "Biofuel" has the same meaning as defined in RCW 43.325.010.

12 (6) "Certification" means a binding agreement between an
13 applicant and the state which shall embody compliance to the siting
14 guidelines, in effect as of the date of certification, which have
15 been adopted pursuant to RCW 80.50.040 as now or hereafter amended as
16 conditions to be met prior to or concurrent with the construction or
17 operation of any energy facility.

18 (7) "Construction" means on-site improvements, excluding
19 exploratory work, which cost in excess of two hundred fifty thousand
20 dollars.

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

23 (9) "Counsel for the environment" means an assistant attorney
24 general or a special assistant attorney general who shall represent
25 the public in accordance with RCW 80.50.080.

26 (10) "Electrical transmission facilities" means electrical power
27 lines and related equipment.

28 (11) "Energy facility" means an energy plant or transmission
29 facilities: PROVIDED, That the following are excluded from the
30 provisions of this chapter:

31 (a) Facilities for the extraction, conversion, transmission or
32 storage of water, other than water specifically consumed or
33 discharged by energy production or conversion for energy purposes;
34 and

35 (b) Facilities operated by and for the armed services for
36 military purposes or by other federal authority for the national
37 defense.

38 (12) "Energy plant" means the following facilities together with
39 their associated facilities:

1 (a) Any nuclear power facility where the primary purpose is to
2 produce and sell electricity;

3 (b) Any nonnuclear stationary thermal power plant with generating
4 capacity of three hundred fifty thousand kilowatts or more, measured
5 using maximum continuous electric generating capacity, less minimum
6 auxiliary load, at average ambient temperature and pressure, and
7 floating thermal power plants of one hundred thousand kilowatts or
8 more suspended on the surface of water by means of a barge, vessel,
9 or other floating platform;

10 (c) Facilities which will have the capacity to receive liquefied
11 natural gas in the equivalent of more than one hundred million
12 standard cubic feet of natural gas per day, which has been
13 transported over marine waters;

14 (d) Facilities which will have the capacity to receive more than
15 an average of fifty thousand barrels per day of crude or refined
16 petroleum or liquefied petroleum gas which has been or will be
17 transported over marine waters, except that the provisions of this
18 chapter shall not apply to storage facilities unless occasioned by
19 such new facility construction;

20 (e) Any underground reservoir for receipt and storage of natural
21 gas as defined in RCW 80.40.010 capable of delivering an average of
22 more than one hundred million standard cubic feet of natural gas per
23 day; and

24 (f) Facilities capable of processing more than twenty-five
25 thousand barrels per day of petroleum or biofuel into refined
26 products except where such biofuel production is undertaken at
27 existing industrial facilities.

28 (13) "Independent consultants" means those persons who have no
29 financial interest in the applicant's proposals and who are retained
30 by the council to evaluate the applicant's proposals, supporting
31 studies, or to conduct additional studies.

32 (14) "Land use plan" means a comprehensive plan or land use
33 element thereof adopted by a unit of local government pursuant to
34 chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise
35 designated by chapter 325, Laws of 2007.

36 (15) "Person" means an individual, partnership, joint venture,
37 private or public corporation, association, firm, public service
38 company, political subdivision, municipal corporation, government
39 agency, public utility district, or any other entity, public or
40 private, however organized.

1 (16) "Preapplicant" means a person considering applying for a
2 site certificate agreement for any transmission facility.

3 (17) "Preapplication process" means the process which is
4 initiated by written correspondence from the preapplicant to the
5 council, and includes the process adopted by the council for
6 consulting with the preapplicant and with cities, towns, and counties
7 prior to accepting applications for all transmission facilities.

8 (18) "Secretary" means the secretary of the United States
9 department of energy.

10 (19) "Site" means any proposed or approved location of an energy
11 facility, alternative energy resource, or electrical transmission
12 facility.

13 (20) "Thermal power plant" means, for the purpose of
14 certification, any electrical generating facility using any fuel for
15 distribution of electricity by electric utilities.

16 (21) "Transmission facility" means any of the following together
17 with their associated facilities:

18 (a) Crude (~~(o)~~) oil transmission pipelines of the following
19 dimensions: A pipeline larger than six inches minimum inside diameter
20 between valves for the transmission of these products with a total
21 length of at least five miles; or

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

26 (~~(b)~~) (c) Natural gas, synthetic fuel gas, or liquefied
27 petroleum gas transmission pipeline of the following dimensions: A
28 pipeline larger than fourteen inches minimum inside diameter between
29 valves, for the transmission of these products, with a total length
30 of at least fifteen miles for the purpose of delivering gas to a
31 distribution facility, except an interstate natural gas pipeline
32 regulated by the United States federal power commission.

33 (22) "Zoning ordinance" means an ordinance of a unit of local
34 government regulating the use of land and adopted pursuant to chapter
35 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
36 Constitution, or as otherwise designated by chapter 325, Laws of
37 2007.

38 **Sec. 23.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to
39 read as follows:

1 (1) The provisions of this chapter apply to the construction of
2 energy facilities which includes the new construction of energy
3 facilities and the reconstruction or enlargement of existing energy
4 facilities where:

5 (a) The net increase in physical capacity or dimensions resulting
6 from such reconstruction or enlargement meets or exceeds those
7 capacities or dimensions set forth in RCW 80.50.020 (~~(7)~~) (12) and
8 (~~(15)~~) (21) (b) and (c); or

9 (b) The total physical capacity or dimensions resulting from such
10 a reconstruction or enlargement meets or exceeds those capacities or
11 dimensions set forth in RCW 80.50.020(21)(a). No construction of such
12 energy facilities may be undertaken, except as otherwise provided in
13 this chapter, after July 15, 1977, without first obtaining
14 certification in the manner provided in this chapter.

15 (2) The provisions of this chapter apply to the construction,
16 reconstruction, or enlargement of a new or existing energy facility
17 that exclusively uses alternative energy resources and chooses to
18 receive certification under this chapter, regardless of the
19 generating capacity of the project.

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

23 (i) The facilities are located in a national interest electric
24 transmission corridor as specified in RCW 80.50.045;

25 (ii) An applicant chooses to receive certification under this
26 chapter, and the facilities are: (A) Of a nominal voltage of at least
27 one hundred fifteen thousand volts and are located in a completely
28 new corridor, except for the terminus of the new facility or
29 interconnection of the new facility with the existing grid, and the
30 corridor is not otherwise used for electrical transmission
31 facilities; and (B) located in more than one jurisdiction that has
32 promulgated land use plans or zoning ordinances; or

33 (iii) An applicant chooses to receive certification under this
34 chapter, and the facilities are: (A) Of a nominal voltage in excess
35 of one hundred fifteen thousand volts; and (B) located outside an
36 electrical transmission corridor identified in (a)(i) and (ii) of
37 this subsection (3).

38 (b) For the purposes of this subsection, "modify" means a
39 significant change to an electrical transmission facility and does
40 not include the following: (i) Minor improvements such as the

1 replacement of existing transmission line facilities or supporting
2 structures with equivalent facilities or structures; (ii) the
3 relocation of existing electrical transmission line facilities; (iii)
4 the conversion of existing overhead lines to underground; or (iv) the
5 placing of new or additional conductors, supporting structures,
6 insulators, or their accessories on or replacement of supporting
7 structures already built.

8 (4) The provisions of this chapter shall not apply to normal
9 maintenance and repairs which do not increase the capacity or
10 dimensions beyond those set forth in RCW 80.50.020 (~~((7))~~) (12) and
11 (~~((15))~~) (21) (b) and (c).

12 (5) Applications for certification of energy facilities made
13 prior to July 15, 1977, shall continue to be governed by the
14 applicable provisions of law in effect on the day immediately
15 preceding July 15, 1977, with the exceptions of RCW 80.50.190 and
16 80.50.071 which shall apply to such prior applications and to site
17 certifications prospectively from July 15, 1977.

18 (6) Applications for certification shall be upon forms prescribed
19 by the council and shall be supported by such information and
20 technical studies as the council may require.

21 NEW SECTION. **Sec. 24.** RCW 82.23B.040 (Credit—Crude oil or
22 petroleum exported or sold for export) and 2015 c 274 s 16, 1992 c 73
23 s 10, & 1991 c 200 s 804 are each repealed.

24 NEW SECTION. **Sec. 25.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 26.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of
30 the state government and its existing public institutions, and takes
31 effect July 1, 2017.

--- END ---