

CHAPTER 116

[Second Substitute House Bill No. 2494]

OIL AND HAZARDOUS SUBSTANCE SPILLS

AN ACT Relating to oil and hazardous substance spills; amending RCW 90.48.315, 90.48.320, 90.48.336, 90.48.338, 90.48.350, 90.48.330, 90.48.335, 90.48.355, 90.48.360, 88.16.090, 88.16.100, 88.40.005, 88.40.010, 88.40.020, and 88.40.030; reenacting and amending RCW 90.48.400; adding new sections to chapter 90.48 RCW; adding a new section to chapter 88.16 RCW; creating new sections; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the increasing reliance on water borne transportation as a source of supply for oil and hazardous substances poses special concern for the state of Washington. Vessels transporting oil into Washington travel on some of the most unique and special marine environments in the United States. These marine environments are a source of natural beauty, recreation, and economic livelihood for many residents of this state. As a result, the state has an obligation to assure the citizens of the state that the waters of the state used for water borne transportation will be protected. The legislature declares that this act is the first step in developing a comprehensive approach to protecting this important and unique resource by developing a set of procedures to respond to spills of oil and hazardous substances into the state's waters.

The legislature also finds that prevention is the best method to protect the unique and special marine environments in this state. The technology for containing and cleaning up a spill of oil or hazardous substances is in the early stages of development. Preventing spills is more protective of the environment and more cost-effective when all the costs associated with responding to a spill are considered. The legislature declares that it will continue to develop this first step in a comprehensive approach to protecting our unique and special marine environment by adopting measures in future sessions of the legislature to reduce the likelihood that a spill of oil or hazardous substances will occur.

Sec. 2. Section 10, chapter 133, Laws of 1969 ex. sess. as last amended by section 6, chapter 388, Laws of 1989 and RCW 90.48.315 are each amended to read as follows:

For purposes of RCW 90.48.315 through ~~((90.48.365))~~ 90.48.410, sections 3 through 10, 12, 13, 15, 16, and 22 of this 1990 act, 78.52.020, 78.52.125, 82.36.330, ((90.48.315, 90.48.370 through 90.48.410;)) 90.48.903, 90.48.906, and 90.48.907~~((and 90.48.366 through 90.48.369))~~, the following definitions shall apply unless the context indicates otherwise:

- (1) "Board" shall mean the pollution control hearings board.
- (2) "Cargo vessel" means a ship in commerce, other than a tank vessel, of three hundred gross tons or more.

(3) "Committee" shall mean the preassessment screening committee established under RCW 90.48.368.

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

~~((3))~~ (5) "Department" shall mean the department of ecology.

~~((4))~~ (6) "Director" shall mean the director of the department of ecology.

~~((5))~~ (7) "Discharge" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

~~((6))~~ (8)(a) "Facility" means any structure, group of structures, equipment, or device, other than a vessel, located on or near the navigable waters of the state that receives oil in bulk from a tank vessel, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk, and is capable of storing ten thousand or more gallons of oil.

(b) A facility does not include any railroad car, motor vehicle, or other rolling stock used to transport oil over the highways or rail lines of this state.

(9) "Fund" shall mean the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

~~((7))~~ (10) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

~~((8))~~ (11) "Maximum probable spill" means the maximum probable spill for a vessel operating in state waters considering the history of spills of vessels of the same class operating on the west coast of the United States, Alaska, and British Columbia.

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

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

~~((9))~~ (14) "Oil" or "oils" shall mean oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural gas, propane, butane, oils distilled from coal, and other liquid hydrocarbons regardless of specific gravity, or any other petroleum related product.

(15) "Passenger vessel" means a ship of three hundred or more gross tons carrying passengers for compensation.

~~((10))~~ (16) "Person" shall mean any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever and any owner, operator, master, officer, or employee of a ship.

~~((11))~~ (17) "Ship" shall mean any boat, ship, vessel, barge, or other floating craft of any kind.

~~((12))~~ (18) "Spill" means a discharge of oil or hazardous substances into the waters of the state.

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

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

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

(20) "Technical feasibility" or "technically feasible" shall mean that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

~~((13))~~ (21) "Waters of the state" shall include lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(22) "Worst case spill" means a spill of the entire cargo of a tank vessel complicated by adverse weather conditions.

NEW SECTION. Sec. 3. (1) Each facility and covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the facility or covered vessel into the waters of the state and for the protection of fisheries and wildlife, natural resources, and public and private property from such spills. The department shall by rule adopt standards for the preparation of contingency plans. The rules for facilities and, except as otherwise provided in this subsection, for covered vessels shall be adopted not later than July 1, 1991. The department shall exclude from the rules to be adopted by July 1, 1991, standards for tank vessels of less than twenty thousand deadweight tons, cargo vessels, and passenger vessels operating on the portion of the Columbia river for which the department determines that Washington and Oregon should cooperate in the adoption of standards for contingency plans. The department, after consultation with the appropriate state agencies in Oregon, shall adopt the rules for standards for contingency plans for this portion of the Columbia river at the earliest possible time, but not later than July 1, 1992. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel, ship, or facility which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department:

(i) Removing oil and minimizing any damage to the environment resulting from a maximum probable spill; and

(ii) Removing oil and minimizing any damage to the environment resulting from a worst case spill;

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

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

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

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

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

(h) Provide a detailed description of equipment and procedures to be used by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and the vessel/safety is assured, contain and clean up the spilled oil;

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

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

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

(l) State the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel or facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

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

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

(2)(a) Contingency plans for facilities capable of storing one million gallons or more of oil and for tank vessels of twenty thousand deadweight tons or more shall be submitted to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Except as otherwise provided in (c) of this subsection, contingency plans for all other facilities and covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(c) Contingency plans for covered vessels which are not required to submit plans within the six month period prescribed in (a) of this subsection and which operate on the portion of the Columbia river for which the department must adopt rules not later than July 1, 1992, shall be submitted to the department not later than January 1, 1993.

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

(b) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(c) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel or by the agent for the vessel resident in this state. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(d) A person who has contracted with a facility or covered vessel to provide containment and cleanup services and who meets the standards established pursuant to section 4 of this act, may submit the plan for any facility or covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility or covered vessel.

(4) A contingency plan prepared for an agency of the federal government that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall assure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

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

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

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

(c) The volume and type of oil or hazardous substances being transported within the area covered by the plan;

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

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

(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

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

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

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

(7) Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.

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

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

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

NEW SECTION. Sec. 4. The department shall by rule establish standards for persons who contract to provide cleanup and containment services under contingency plans approved under section 3 of this act.

NEW SECTION. Sec. 5. The department shall annually publish an index of available, up-to-date descriptions of contingency plans for oil spills submitted and approved pursuant to section 3 of this act and an inventory of equipment available for responding to such spills.

NEW SECTION. Sec. 6. The department shall by rule adopt procedures to determine the adequacy of contingency plans approved under section 3 of this act. The rules shall require random practice drills without prior notice that will test the adequacy of the responding entities. The rules may provide for unannounced practice drills of individual contingency plans. The department shall review and publish a report on the drills, including an assessment of response time and available equipment and personnel compared to those listed in the contingency plans relying on the responding entities, and requirements, if any, for changes in the plans or their implementation. The department may require additional drills and changes in arrangements for implementing approved plans which are necessary to ensure their effective implementation.

NEW SECTION. Sec. 7. The provisions of contingency plans approved by the department under section 3 of this act shall be legally binding on those persons submitting them to the department and on their successors, assigns, agents, and employees. The superior court shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the department. The department may issue an order pursuant to chapter 34.05 RCW requiring compliance with a contingency plan. An order under this section is not subject to review by the pollution control hearings board as provided in RCW 43.21B.110.

NEW SECTION. Sec. 8. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to knowingly and intentionally operate in this state or on the waters of this state a facility or covered vessel without an approved contingency plan as required by section 3 of this act. The first conviction under this section shall be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction shall be a class C felony under chapter 9A.20 RCW.

(2) It shall not be unlawful for a person to operate a facility or covered vessel if:

(a) The facility or covered vessel is not required to have a contingency plan;

(b) A plan has been submitted to the department as required by section 3 of this act and rules adopted by the department and the department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(3) A facility may rely on a copy of the statement issued by the department pursuant to section 3(7) of this act as evidence that the vessel has an approved contingency plan.

NEW SECTION. Sec. 9. (1) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to enter the waters of the state without an approved contingency plan as provided in section 3 of this act. The department may deny entry onto the waters of the state to any covered vessel that does not have a contingency plan and is so required.

(2) Except as provided in subsection (4) of this section, it shall be unlawful:

(a) For a facility to operate without an approved contingency plan as required under section 3 of this act; or

(b) For a facility or any other person to accept cargo or passengers from a covered vessel that does not have an approved contingency plan required under section 3 of this act.

(3) The department may notify the department of licensing to suspend the business license of any facility or other person that is in violation of this section. The department may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a facility, person, or covered vessel is in violation of this section shall be considered a separate violation.

(4) It shall not be unlawful for a covered vessel to operate on the waters of the state or a facility or other person to operate or accept cargo or passengers from a covered vessel if:

(a) A contingency plan is not required for the facility or covered vessel;

(b) A contingency plan has been submitted to the department as required by section 3 of this act and rules adopted by the department and the department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(5) Any person may rely on a copy of the statement issued by the department pursuant to section 3(7) of this act as evidence that the vessel has an approved contingency plan.

NEW SECTION. Sec. 10. (1) Not later than July 1, 1991, the department shall prepare and thereafter annually update a state-wide master oil and hazardous substance spill contingency plan. In preparing the plan, the department shall consult with an advisory committee representing diverse interests concerned with oil and hazardous substance spills, including state agencies, local governments, port districts, private facilities, environmental organizations, oil companies, shipping companies, containment and cleanup contractors, tow companies, and hazardous substance manufacturers.

(2) The state master plan prepared under this section shall at a minimum:

(a) Take into consideration the elements of oil spill contingency plans approved or submitted for approval pursuant to section 3 of this act and oil and hazardous substance spill contingency plans prepared pursuant to other state or federal law or prepared by federal agencies and regional entities;

(b) State the respective responsibilities as established by relevant statutes and rules of each of the following in the assessment, containment, and cleanup of a catastrophic oil spill or of a significant spill of a hazardous substance into the environment of the state: (i) State agencies; (ii) local governments; (iii) appropriate federal agencies; (iv) facility operators; (v) property owners whose land or other property may be affected by the oil or hazardous substance spill; and (vi) other parties identified by the department as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance spill;

(c) State the respective responsibilities of the parties identified in (b) of this subsection in an emergency response;

(d) Identify actions necessary to reduce the likelihood of catastrophic oil spills and significant spills of hazardous substances; and

(e) Identify and obtain mapping of environmentally sensitive areas at particular risk to oil and hazardous substance spills.

(3) In preparing and updating the state master plan, the department shall:

(a) Consult with federal, municipal, and community officials, other state agencies, and with representatives of affected regional organizations;

(b) Submit the draft plan to the public for review and comment;

(c) Submit to the appropriate standing committees of the legislature for review, not later than November 1 of each year, the plan and any annual revision of the plan; and

(d) Require or schedule unannounced oil spill drills as required by section 6 of this act to test the sufficiency of oil spill contingency plans approved under section 3 of this act.

NEW SECTION. Sec. 11. The department of wildlife, in consultation with the departments of fisheries, ecology, and natural resources shall study and report to the appropriate standing committees of the house of representatives and the senate the current efforts by local, state, and federal governments, and recommendations for additional efforts, to collect environmental baseline data in sensitive areas for the determination of potential effects of spills, including data on the chronic effects of spills. The study shall also consider plans for long-term monitoring of environmental effects in those areas, to be implemented in the event of a major spill. The report shall be submitted to the legislature not later than December 1, 1990.

NEW SECTION. Sec. 12. (1) The Washington wildlife rescue coalition shall be established for the purpose of coordinating the rescue and rehabilitation of wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment.

(2) The Washington wildlife rescue coalition shall be composed of:

(a) A representative of the department of wildlife designated by the director of wildlife. The department of wildlife shall be designated as lead agency in the operations of the coalition. The coalition shall be chaired by the representative from the department of wildlife;

(b) A representative of the department of ecology designated by the director;

(c) A representative of the department of community development emergency management program designated by the director of community development;

(d) A licensed veterinarian, with experience and training in wildlife rehabilitation, appointed by the veterinary board of governors;

(e) The director of the Washington conservation corps;

(f) A lay person, with training and experience in the rescue and rehabilitation of wildlife appointed by the department; and

(g) A person designated by the legislative authority of the county where oil spills or spills of other hazardous substances may occur. This member of the coalition shall serve on the coalition until wildlife rescue and rehabilitation is completed in that county. The completion of any rescue or rehabilitation project shall be determined by the director of wildlife.

(3) The duties of the Washington wildlife rescue coalition shall be to:

(a) Develop an emergency mobilization plan to rescue and rehabilitate waterfowl and other wildlife that are injured or endangered by an oil spill or the release of other hazardous substances into the environment;

(b) Develop and maintain a resource directory of persons, governmental agencies, and private organizations that may provide assistance in an emergency rescue effort;

(c) Provide advance training and instruction to volunteers in rescuing and rehabilitating waterfowl and wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment. The training may be provided through grants to community colleges or to groups that conduct programs for training volunteers. The coalition representatives from the agencies described in subsection (2) of this section shall coordinate training efforts with the director of the Washington conservation corps and work to provide training opportunities for young citizens;

(d) Obtain and maintain equipment and supplies used in emergency rescue efforts;

(e) Report to the appropriate standing committees of the legislature on the progress of the coalition's efforts and detail future funding options necessary for the implementation of this section and section 13 of this act. The coalition shall report by January 30, 1991.

(4)(a) Expenses for the coalition may be provided by the coastal protection fund administered according to RCW 90.48.400.

(b) The commission is encouraged to seek grants, gifts, or donations from private sources in order to carry out the provisions of this section and section 13 of this act. Any private funds donated to the commission shall be deposited into the wildlife rescue account hereby created within the wildlife fund as authorized under Title 77 RCW.

NEW SECTION. Sec. 13. The department of wildlife may adopt rules including, but not limited to, the following:

(1) Procedures and methods of handling and caring for waterfowl or other wildlife affected by spills of oil and other hazardous materials;

(2) The certification of persons trained in the removal of pollutants from waterfowl or other wildlife;

(3) Development of procedures with respect to removal of oil and other hazardous substances from waterfowl or other wildlife;

(4) The establishment of training exercises, courses, and other training procedures as necessary;

(5) Such other rules as may be reasonably necessary to carry out the intent of section 12 of this act.

Sec. 14. Section 5, chapter 180, Laws of 1971 ex. sess. as amended by section 4, chapter 262, Laws of 1989 and by section 8, chapter 388, Laws of 1989 and RCW 90.48.400 are each reenacted and amended to read as follows:

(1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:

(a) All costs of the department related to the enforcement of RCW 90.48.315 through 90.48.365, sections 3 through 10, 12, 13, 15, 16, and 25 of this 1990 act, 78.52.020, 78.52.125, 82.36.330, 90.48.142, ~~((90.48.315, 90.48.370 through 90.48.410;))~~ 90.48.903, 90.48.906, and 90.48.907~~((and 90.48.366 through 90.48.368))~~ including but not limited to equipment rental and contracting costs.

(b) All costs involved in the abatement of pollution related to the discharge of oil and other hazardous substances.

(c) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil or other hazardous substances.

(2) Moneys disbursed from the coastal protection fund for the abatement of pollution caused by the discharge of oil or other hazardous substances shall be reimbursed to the fund whenever:

(a) Moneys are available under any federal program; or

(b) Moneys are available from a recovery made by the department from the person liable for the discharge of oil or other hazardous substances.

(3) Moneys collected under RCW 90.48.142 shall only be used for the purposes enumerated in that section, subject to the approval of the steering committee.

(4) A steering committee consisting of representatives of the department of ecology, fisheries, wildlife, and natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under RCW 90.48.366 through 90.48.368, after consulting impacted local agencies and local and tribal governments. The moneys collected under RCW 90.48.366 through 90.48.368 shall only be used for the following purposes: (a) Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, or aesthetic resources for the benefit of Washington's citizens; (b) investigations of the long-term effects of oil spills and the release of other hazardous substances on state resources; ~~((and))~~ (c) reimbursement of agencies for reasonable reconnaissance and damage assessment costs; and (d) wildlife rescue and rehabilitation. Agencies may not be reimbursed under this section for the salaries and benefits of permanent employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources.

NEW SECTION. Sec. 15. The department shall develop policies and a plan concerning:

(1) When and under what circumstances, if any, chemical agents, such as coagulants, dispersants, and bioremediation, may be used in response to an oil spill; and

(2) The disposal of oil and hazardous substances recovered from an oil or hazardous substance spill.

NEW SECTION. Sec. 16. The department of ecology shall study standards for the manner in which, and the equipment with which, tow boats may tow barges carrying oil or hazardous substances as cargo or cargo residue. The standards shall address but are not limited to: Wire rope specifications, catenary, the design of related on-board equipment, number of cables, and back-up or barge retrieval systems in case of cable break.

The department shall seek voluntary compliance with such standards.

Finally, the department shall study state jurisdiction over and liability of mandatory compliance with such standards. The department shall report to the appropriate standing committees of the legislature by July 1, 1991, recommendations regarding mandatory compliance with such standards.

Sec. 17. Section 1, chapter 133, Laws of 1969 ex. sess. as last amended by section 146, chapter 109, Laws of 1987 and RCW 90.48.320 are each amended to read as follows:

It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:

(1) The person discharging was expressly authorized to do so by the department prior to the entry of the oil into state waters; or

(2) The person discharging was authorized to do so by operation of law as provided in RCW 90.48.200(;

~~(3) Where a person having control over the oil can prove that a discharge was caused by:~~

~~(a) An act of war or sabotage, or~~

~~(b) Negligence on the part of the United States government, or the state of Washington)).~~

Sec. 18. Section 6, chapter 88, Laws of 1970 ex. sess. and RCW 90.48.336 are each amended to read as follows:

(1) Any person owning oil or having control over ~~((the same which))~~ oil that enters the waters of the state in violation of RCW 90.48.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) In any action to recover ~~((such))~~ damages resulting from the discharge of oil in violation of RCW 90.48.320, ((said)) the owner or person having control over the oil shall be relieved from strict liability, without regard to fault, if ~~((he))~~ that person can prove that the ~~((oil to which the damages relate entered the waters of the state by causes set forth in RCW 90.48.320(3)))~~ discharge was caused solely by:

(a) An act of war or sabotage;

(b) An act of God;

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

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

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

(4) The chapter —, Laws of 1990 changes to subsection (2) of this section requiring the defenses in that subsection to be the sole causes of the

discharge, and the text of subsection (2)(b) of this section shall apply prospectively and not retroactively after the effective date of this section.

Sec. 19. Section 7, chapter 88, Laws of 1970 ex. sess. and RCW 90.48.338 are each amended to read as follows:

In addition to any cause of action the state may have to recover necessary expenses for the cleanup of oil pursuant to RCW 90.48.325 and 90.48.350, and except as otherwise provided in section 25 of this act, any other person causing the entry of oil shall be directly liable to the state for the necessary expenses of oil cleanup arising from such entry and the state shall have a cause of action to recover from any or all of said persons. Except as otherwise provided in section 25 of this act, any person liable for cost of oil cleanup as provided in RCW 90.48.325 and 90.48.350 shall have a cause of action to recover for costs of cleanup from any other person causing the entry of oil into the waters of the state including any amount recoverable by the state as necessary expenses under RCW 90.48.350.

Sec. 20. Section 7, chapter 133, Laws of 1969 ex. sess. as last amended by section 9, chapter 388, Laws of 1989 and RCW 90.48.350 are each amended to read as follows:

Except as otherwise provided in section 25 of this act, any person who negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director. Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to any other penalty authorized by law, a penalty of up to one hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director. The amount of the penalty shall be determined by the director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal of the oil, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall be imposed pursuant to RCW 43.21B.300.

Sec. 21. Section 3, chapter 133, Laws of 1969 ex. sess. as last amended by section 147, chapter 109, Laws of 1987 and RCW 90.48.330 are each amended to read as follows:

~~The department ((is authorized, with the staff, equipment and material under its control, or by contract with others, to))~~ shall take ~~((such actions~~

~~as are~~) all actions necessary to respond to a substantial threat of a discharge of oil or hazardous substances into the waters of this state or to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil or hazardous substances discharged into waters of the state. The department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized. The authority granted hereunder shall be limited to projects and activities which are designed to protect the public interest or public property. The department may use staff, equipment, and material under its control, or contract with others, to carry out its responsibilities under this section.

Sec. 22. Section 4, chapter 133, Laws of 1969 ex. sess. as amended by section 5, chapter 88, Laws of 1970 ex. sess. and RCW 90.48.335 are each amended to read as follows:

Any person who ~~((fails to immediately collect, remove, contain, treat or disperse oil when under an obligation to do so as provided in RCW 90.48.325;))~~ unlawfully discharges oil or hazardous substances into the waters of the state or who poses a substantial threat of discharging oil or hazardous substances into the waters of the state shall be responsible for the necessary expenses incurred by the state in carrying out a project or activity authorized under RCW 90.48.330.

Sec. 23. Section 8, chapter 133, Laws of 1969 ex. sess. as amended by section 151, chapter 109, Laws of 1987 and RCW 90.48.355 are each amended to read as follows:

The department, through its duly authorized representatives, shall have the power to enter upon any private or public property, including the boarding of any ship, at any reasonable time, and the owner, managing agent, master or occupant of such property shall permit such entry for the purpose of investigating conditions relating to violations or possible violations of ~~((RCW 90.48.315 through 90.48.365))~~ this chapter, and to have access to any pertinent records relating to such property, including but not limited to operation and maintenance records and logs~~((~~PROVIDED~~; That in connection with))~~. The authority granted herein ((no person)) shall not be ((required)) construed to require any person to divulge trade secrets or secret processes. The director may issue subpoenas for the production of any books, records, documents, or witnesses in any hearing conducted pursuant to this chapter.

Sec. 24. Section 9, chapter 133, Laws of 1969 ex. sess. as amended by section 152, chapter 109, Laws of 1987 and RCW 90.48.360 are each amended to read as follows:

It shall be the duty of any person discharging oil or hazardous substances or otherwise causing, permitting, or allowing the same to enter the

waters of the state, unless the discharge or entry was expressly authorized by the department prior thereto or authorized by operation of law under RCW 90.48.200, to immediately notify the ~~((department at its office in Olympia, or a regional office thereof, of such discharge or entry))~~ coast guard and the division of emergency management. The notice to the division of emergency management within the department of community development shall be made to the division's twenty-four hour state-wide toll-free number established for reporting emergencies.

NEW SECTION. Sec. 25. (1) The following persons shall not be liable for necessary expenses or property damage caused by an act or omission of that person during the cleanup of oil spilled into the navigable waters of the state, unless the act or omission was performed in bad faith or with gross negligence:

(a) The state or any unit of local government;

(b) A person who volunteers to assist in the cleanup of the spilled oil; and

(c) A person meeting the standards of section 4 of this act.

(2) This section shall not affect the liability of any person responsible for the spilled oil or responsible for the facility or covered vessel from which the oil was spilled.

NEW SECTION. Sec. 26. A new section is added to chapter 88.16 RCW to read as follows:

An oil tanker under escort of a tug or tugs pursuant to the provisions of RCW 88.16.190 shall not exceed the service speed of the tug or tugs that are escorting the oil tanker.

Sec. 27. Section 8, chapter 18, Laws of 1935 as last amended by section 2, chapter 264, Laws of 1987 and RCW 88.16.090 are each amended to read as follows:

(1) A person may pilot any vessel subject to the provisions of this chapter on waters covered by this chapter only if appointed and licensed to pilot such vessels on said waters under and pursuant to the provisions of this chapter.

(2) A person is eligible to be appointed a pilot if the person is a citizen of the United States, over the age of twenty-five years and under the age of seventy years, a resident of the state of Washington at the time of appointment and only if the pilot applicant holds as a minimum, a United States government license as a master of freight and towing vessels not more than one thousand gross tons (inspected vessel), such license to have been held by the applicant for a period of at least two years prior to taking the Washington state pilotage examination and a first class United States endorsement without restrictions on that license to pilot in the pilotage districts for which the pilot applicant desires to be licensed, and if the pilot applicant meets such other qualifications as may be required by the board.

A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) Pilots shall be licensed hereunder for a term of five years from and after the date of the issuance of their respective state licenses. Such licenses shall thereafter be renewed as of course, unless the board shall withhold same for good cause. Each pilot shall pay to the state treasurer an annual license fee established by the board of pilotage commissioners pursuant to chapter 34.05 RCW, but not to exceed one thousand five hundred dollars, to be placed in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(4) Pilot applicants shall be required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment the United States examinations and qualifications. The board shall conduct the examination on a regular date, as prescribed by rule, at least once every two years.

(5) The board shall have developed five examinations and grading sheets for the Puget Sound pilotage district, and two for each other pilotage district, for the testing and grading of pilot applicants. The examinations shall be administered to pilot applicants on a random basis and shall be updated as required to reflect changes in law, rules, policies, or procedures. The board may appoint a special independent examination committee or may contract with a firm knowledgeable and experienced in the development of professional tests for development of said examinations. Active licensed state pilots may be consulted for the general development of examinations but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination development committee it is authorized to pay the members of said committee the same compensation and travel expenses as received by members of the board. When grading examinations the board shall carefully follow the grading sheet prepared for that examination. The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions on pilot examinations, but such sample questions shall not appear on any actual examinations. Any person who willfully gives advance knowledge of information contained on a pilot examination is guilty of a gross misdemeanor.

(6) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that

pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or candidate is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(7) The board shall prescribe, pursuant to chapter 34.05 RCW, a number of familiarization trips, between a minimum number of twenty-five and a maximum of one hundred, which pilot applicants must make in the pilotage district for which they desire to be licensed. Familiarization trips any particular applicant must make are to be based upon the applicant's vessel handling experience.

(8) The board may prescribe vessel simulator training for a pilot applicant, or pilot subject to RCW 88.16.105, as it deems appropriate, taking into consideration the economic cost of such training, to enhance that person's ability to perform pilotage duties under this chapter.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims, and records of familiarization trips of pilot candidates. Willful misrepresentation of such required information by a pilot candidate shall result in disqualification of the candidate.

Sec. 28. Section 13, chapter 18, Laws of 1935 as last amended by section 1, chapter 392, Laws of 1987 and RCW 88.16.100 are each amended to read as follows:

(1) The board shall have power on its own motion or, in its discretion, upon the written request of any interested party, to investigate the performance of pilotage services subject to this chapter and to issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the license of any pilot, or any combination of the above, for misconduct, incompetency, inattention to duty, intoxication, or failure to perform his duties under this chapter, or violation of any of the rules or regulations provided by the board for the government of pilots. The board may partially or totally stay any disciplinary action authorized in this subsection and subsection (2) of this section. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(2) In all instances where a pilot licensed under this chapter performs pilot services on a vessel exempt under RCW 88.16.070, the board may on its own motion, or in its discretion upon the written request of any interested party, investigate whether the services were performed in a professional manner consistent with sound maritime practices. If the board finds that the

pilotage services were performed in a manner that constitutes an act of incompetence, misconduct, or negligence so as to endanger life, limb, or property, or violated or failed to comply with state laws or regulations intended to promote marine safety or to protect navigable waters, the board may issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the state pilot license, or any combination of the above. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(3) The board shall implement a system of specified disciplinary actions or corrective actions, including training or treatment, that will be taken when a state licensed pilot in a specified period of time has had multiple disciplinary actions taken against the pilot's license pursuant to subsections (1) and (2) of this section. In developing these disciplinary or corrective actions, the board shall take into account the cause of the disciplinary action and the pilot's previous record.

(4) The board shall immediately review the pilot's license of a pilot who has been convicted within the prior twelve months of any offense involving drugs or the personal consumption of alcohol while on duty, including an offense of operation of a vehicle or vessel while under the influence of alcohol or drugs. After a hearing held pursuant to subsection (5) of this section:

(a) The board shall order a pilot who has been found to have been convicted within the prior twelve months of an offense involving drugs or the personal consumption of alcohol while on duty and who has not been convicted of another offense involving drugs or the personal consumption of alcohol in the previous five years to actively participate in and satisfactorily complete a specific program of treatment. The board may impose other sanctions it determines are appropriate. If the pilot does not satisfactorily complete the program of treatment, the board shall suspend, revoke, or withhold the pilot's license until the treatment is completed; and

(b) The board shall suspend for up to one year the license of a pilot found to have been convicted within the prior twelve months of a second or subsequent offense involving drugs or the personal consumption of alcohol while on duty.

(5) When the board determines that reasonable cause exists to issue a reprimand, impose a fine, suspend, revoke, or withhold any pilot's license or require training or treatment under subsection (1) ((or)), (2), or (4) of this section, it shall forthwith prepare and personally serve upon such pilot a notice advising him of the board's intended action, the specific grounds therefor, and the right to request a hearing to challenge the board's action. The pilot shall have thirty days from the date on which notice is served to request a full hearing before an administrative law judge on the issue of the reprimand, fine, suspension, revocation, or withholding of his pilot's license,

or requiring treatment or training. The board's proposed reprimand, fine, suspension, revocation, or withholding of a license, or requiring treatment or training shall become final upon the expiration of thirty days from the date notice is served, unless a hearing has been requested prior to that time. When a hearing is requested the board shall request the appointment of an administrative law judge under chapter 34.12 RCW who has sufficient experience and familiarity with pilotage matters to be able to conduct a fair and impartial hearing. The hearing shall be governed by the provisions of Title 34 RCW. All final decisions of the administrative law judge shall be subject to review by the superior court of the state of Washington for Thurston county or by the superior court of the county in which the pilot maintains his residence or principal place of business, to which court any case with all the papers and proceedings therein shall be immediately certified by the administrative law judge if requested to do so by any party to the proceedings at any time within thirty days after the date of any such final decision. No appeal may be taken after the expiration of thirty days after the date of final decision. Any case so certified to the superior court shall be tried de novo and after certification of the record to said superior court the proceedings shall be had as in a civil action. Moneys collected from fines under this section shall be deposited in the pilotage account.

((5)) (6) The board shall have the power, on an emergency basis, to temporarily suspend a state pilot's license: (a) When a pilot has been involved in any vessel accident where there has been major property damage, loss of life, or loss of a vessel, or (b) where there is a reasonable cause to believe that a pilot has diminished mental capacity or is under the influence of drugs, alcohol, or other substances, when in the opinion of the board, such an accident or physical or mental impairment would significantly diminish that pilot's ability to carry out pilotage duties and that the public health, safety, and welfare requires such emergency action. The board shall make a determination within seventy-two hours whether to continue the suspension. The board shall develop rules for exercising this authority including procedures for the chairperson or vice-chairperson of the board to temporarily order such suspensions, emergency meetings of the board to consider such suspensions, the length of suspension, opportunities for hearings, and an appeal process. The board shall develop rules under chapter 34.05 RCW.

(7) The board shall immediately notify the United States coast guard that it has revoked or suspended a license pursuant to this section and that a suspended or revoked license has been reinstated.

Sec. 29. Section 1, chapter 2, Laws of 1989 1st ex. sess. and RCW 88-.40.005 are each amended to read as follows:

The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this

chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products and hazardous substances across the waters of the state of Washington.

Sec. 30. Section 2, chapter 2, Laws of 1989 1st ex. sess. and RCW 88-.40.010 are each amended to read as follows:

The following definitions apply throughout this chapter:

(1) "Department" means the state department of ecology;

(2) "Hazardous substances" means any hazardous substance as defined in RCW 70.105.010 or any hazardous substance defined by rule pursuant to chapter 70.105 RCW;

(3) "Inland barge" means any barge operating on the waters of the state and certified by the coast guard as an inland barge;

(4) "Petroleum products" means oil as it is defined in RCW 90.48.315;

((3)) (5) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water but does not include an inland barge.

Sec. 31. Section 3, chapter 2, Laws of 1989 1st ex. sess. and RCW 88-.40.020 are each amended to read as follows:

Any vessel over three hundred gross tons, that transports petroleum products as cargo, and any inland barge that transports oil or hazardous substances as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish, under rules prescribed by the director of the department of ecology, evidence of financial responsibility in the amount of the greater of one million dollars, or one hundred fifty dollars per gross ton of such vessel, to meet the liability to the state of Washington for the following: (1) The actual costs for removal of spills of petroleum products or hazardous substances; (2) civil penalties and fines; and (3) natural resource damages.

Sec. 32. Section 4, chapter 2, Laws of 1989 1st ex. sess. and RCW 88-.40.030 are each amended to read as follows:

Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the director of the department of ecology: (1) Evidence of insurance; (2) surety bonds; (3) qualification as a self-insurer; or (4) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. Documentation of such financial responsibility shall be kept on any barge or tank vessel transporting petroleum products or hazardous substances as cargo and filed with the department. The owner or operator of any other vessel shall maintain on the vessel a certificate issued by the United States coast guard evidencing compliance with the requirements of section 311 of the federal clean water act, 33 U.S.C. Sec. 1251 et seq.

NEW SECTION. Sec. 33. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1990, in the omnibus appropriations act, this act shall be null and void. This section does not apply to sections 17 through 32 and 35 of this act.

NEW SECTION. Sec. 34. Sections 3 through 10, 12, 13, 15, 16, and 25 of this act are each added to chapter 90.48 RCW.

NEW SECTION. Sec. 35. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 6, 1990.

Passed the Senate March 1, 1990.

Approved by the Governor March 21, 1990.

Filed in Office of Secretary of State March 21, 1990.

CHAPTER 117

[Substitute Senate Bill No. 6701]

OIL SPILL RESPONSE SYSTEM—MARITIME COMMISSION

AN ACT Relating to the maritime commission and oil spill response system; adding a new chapter to Title 88 RCW; prescribing penalties; and providing effective dates.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. **PURPOSE.** The natural waters of Washington state hold a dual purpose. First, Washington state's waters are one of the most abundantly alive water bodies in the world. The amount of biota, diversity of species, and unique character of habitat makes these waters a natural wonder. Second, these same waters provide one of the most vital maritime trade links for our state, our nation, and for the Pacific Rim.

The future of Washington's waters lies in both purposes. But, at times in the past, maritime accidents have occurred from oil spills which have endangered this unique environment. While some of the commercial vessels which carry petroleum on the water have, already, voluntarily joined organizations to provide immediate oil spill response, not all vessels are so protected.

All commercial vessels which enter Washington waters must have the protection of an oil spill response system. This is a responsibility of the maritime industry and must be taken care of by that industry. Therefore, this chapter creates the Washington state maritime commission to establish an oil spill first response system and carry out the purposes of this chapter to protect the waters of Washington state.

NEW SECTION. Sec. 2. **DEFINITIONS.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.