

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6269

Chapter 262, Laws of 2018

65th Legislature
2018 Regular Session

OIL TRANSPORTATION SAFETY

EFFECTIVE DATE: June 7, 2018—Except for sections 102, 103, and 206, which become effective April 1, 2018.

Passed by the Senate March 3, 2018
Yeas 42 Nays 7

CYRUS HABIB

President of the Senate

Passed by the House March 7, 2018
Yeas 62 Nays 35

FRANK CHOPP

Speaker of the House of Representatives

Approved March 23, 2018 9:35 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6269** as passed by Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

March 26, 2018

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6269

Passed Legislature - 2018 Regular Session

State of Washington

65th Legislature

2018 Regular Session

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

READ FIRST TIME 02/22/18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 NEW SECTION. Sec. 104. The department of ecology shall provide
21 a report to the legislature by July 1, 2020, on the following: (1) A
22 description of activities conducted by the department's oil spill
23 program that are expected to continue after fiscal year 2019, and
24 activities that are not expected to continue after fiscal year 2019;
25 (2) recommendations regarding potential sources of funding for the
26 department's oil spill program; (3) recommendations regarding the
27 allocation of funding from the taxes established in RCW 82.23B.020
28 among various state agencies, including whether funding should be
29 discontinued or reduced for any agency; and (4) a forecast of the
30 department's oil spill program funding needs after fiscal year 2019.

31 **PART 2**

32 **VESSELS**

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

35 (1) Each covered vessel shall have a contingency plan for the
36 containment and cleanup of oil spills from the covered vessel into
37 the waters of the state and for the protection of fisheries and

1 wildlife, shellfish beds, natural resources, and public and private
2 property from such spills. The department shall by rule adopt and
3 periodically revise standards for the preparation of contingency
4 plans. The department shall require contingency plans, at a minimum,
5 to meet the following standards:

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

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

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

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

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

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

27 (g) Describe important features of the surrounding environment,
28 including fish ~~((and))~~ habitat, water column species and subsurface
29 resources, wildlife habitat, shellfish beds, environmentally and
30 archaeologically sensitive areas, and public facilities, that are:

31 (i) Based on information documented in geographic response plans and
32 area contingency plans, as required under RCW 90.56.210; or (ii) for
33 areas without geographic response plans or area contingency plans,
34 existing practices protecting these resources used for similar areas.

35 The departments of ecology, fish and wildlife, natural resources, and
36 archaeology and historic preservation, upon request, shall provide
37 information that they have available to assist in preparing this
38 description. The description of archaeologically sensitive areas
39 shall not be required to be included in a contingency plan until it
40 is reviewed and updated pursuant to subsection (9) of this section;

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

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

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

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

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

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

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

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

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

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

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

36 (3)(a) The owner or operator of a tank vessel or of the
37 facilities at which the vessel will be unloading its cargo, or a
38 nonprofit corporation established for the purpose of oil spill
39 response and contingency plan coverage and of which the owner or
40 operator is a member, shall submit the contingency plan for the tank

1 vessel. Subject to conditions imposed by the department, the owner or
2 operator of a facility may submit a single contingency plan for tank
3 vessels of a particular class that will be unloading cargo at the
4 facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (2) The department must:

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

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

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

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

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

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

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

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

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

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

(5) This section expires July 1, 2021.

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

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

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

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

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

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

(b) Transport of bitumen and diluted bitumen;

(c) Emerging trends in vessel traffic;

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

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

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

9 (g) The differences between locations and navigational
10 requirements for vessels transporting petroleum;

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

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

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

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

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

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

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

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

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

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

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

1 The departments of ecology, fish and wildlife, and natural resources,
2 and the department of archaeology and historic preservation, upon
3 request, shall provide information that they have available to assist
4 in preparing this description. The description of archaeologically
5 sensitive areas shall not be required to be included in a contingency
6 plan until it is reviewed and updated pursuant to subsection (9) of
7 this section;

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

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

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

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

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

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

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

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

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

38 (ii) Offshore facilities.

39 (b) Contingency plans for all other onshore and offshore
40 facilities shall be submitted to the department within eighteen

1 months after the department has adopted rules under subsection (1) of
2 this section. The department may adopt a schedule for submission of
3 plans within the eighteen-month period.

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

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

10 (i) Contracted access to oil spill response equipment; or
11 (ii) The completion of more than a total of one basic table-top
12 drill every three years to test the contingency plans.

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

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

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

26 (iii) Include information related to the relevant accident
27 insurance carried by the railroad and provide a certificate of
28 insurance upon request;

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

33 (v) Annually review the plan for accuracy.

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

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

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

3 (b) A person who has contracted with a facility to provide
4 containment and cleanup services and who meets the standards
5 established pursuant to RCW 90.56.240, may submit the plan for any
6 facility for which the person is contractually obligated to provide
7 services. Subject to conditions imposed by the department, the person
8 may submit a single plan for more than one facility.

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

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

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

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

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

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

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

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

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

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

38 (7) The department shall approve a contingency plan only if it
39 determines that the plan meets the requirements of this section and
40 that, if implemented, the plan is capable, in terms of personnel,

1 materials, and equipment, of removing oil promptly and properly and
2 minimizing any damage to the environment.

3 (8) The approval of the contingency plan shall be valid for five
4 years. Upon approval of a contingency plan, the department shall
5 provide to the person submitting the plan a statement indicating that
6 the plan has been approved, the facilities or vessels covered by the
7 plan, and other information the department determines should be
8 included.

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

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

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

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

24 By December 31, 2019, consistent with the authority under RCW
25 90.56.210, the department must update rules for contingency plans to
26 require:

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

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

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

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

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

1 (a) Some or all aspects of a response, containment, and cleanup
2 of a spill, and utilizing an incident command or unified command
3 structure; or

4 (b) Wildlife rehabilitation and recovery services for a spill
5 response.

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

8 (1) The department must provide to the relevant policy and fiscal
9 committees of the senate and house of representatives(÷

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

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

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

26 (3) All requirements in this section are subject to the
27 availability of amounts appropriated for the specific purposes
28 described.

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

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

1 depending on their qualities, weathering, environmental factors, and
2 method of discharge, may submerge or sink in water.

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

5 (a) The functional ability for multiple contingency plans to be
6 simultaneously activated with the purpose of testing the ability for
7 dedicated equipment and trained personnel cited in multiple
8 contingency plans to be activated in a large-scale spill; and

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

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

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

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

21 **PART 4**

22 **SEVERABILITY AND EMERGENCY CLAUSE**

23 NEW SECTION. **Sec. 401.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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

Passed by the Senate March 3, 2018.

Passed by the House March 7, 2018.

Approved by the Governor March 23, 2018.

Filed in Office of Secretary of State March 26, 2018.

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