
SUBSTITUTE HOUSE BILL 1027

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Environmental Affairs (originally sponsored by Representatives Rust, Horn, Phillips, Heavey, Anderson, Basich, Vance, Wineberry, Wilson, R. Johnson, Wang, Sprenkle, Spanel, Miller, Ogden, Jones, Prentice, Leonard, Inslee, Fraser, R. King, Nelson, Pruitt, G. Fisher, Jacobsen, R. Fisher, Valle, Roland, Hine, Winsley, Rasmussen, Appelwick and Brekke; by request of Governor Gardner).

Read first time March 6, 1991.

1 AN ACT Relating to oil and hazardous substances; amending RCW
2 90.48.315, 90.48.370, 90.48.365, 90.48.380, 90.48.378, 90.48.371,
3 90.48.373, 90.48.375, 90.48.376, 90.48.377, 90.48.350, 90.48.325,
4 90.48.383, 90.48.340, 90.48.385, 90.48.510, 88.16.170, 88.16.180,
5 88.16.200, 88.40.005, 88.40.020, 88.40.030, 88.40.040, 90.48.142,
6 90.48.366, 90.48.367, 90.48.368, 90.48.400, 90.48.369, 88.44.010,
7 88.44.020, 88.44.030, 88.44.040, 88.44.080, 88.44.110, 88.44.160,
8 88.16.010, 88.16.105, 88.16.110, 88.16.155, 90.48.037, 90.48.095,
9 90.48.100, 90.48.156, 90.48.240, and 90.48.907; amending 1990 c 116 s
10 1 (uncodified); reenacting and amending RCW 90.48.390 and 88.16.090;
11 adding a new section to chapter 90.48 RCW; adding new sections to
12 chapter 88.16 RCW; adding a new chapter to Title 90 RCW; adding a new
13 chapter to Title 82 RCW; adding a new chapter to Title 43 RCW; adding
14 a new chapter to Title 88 RCW; creating new sections; recodifying RCW
15 90.48.315, 90.48.370, 90.48.365, 90.48.380, 90.48.378, 90.48.387,
16 90.48.388, 90.48.371, 90.48.372, 90.48.373, 90.48.374, 90.48.375,
17 90.48.360, 90.48.376, 90.48.377, 90.48.320, 90.48.350, 90.48.325,

1 90.48.330, 90.48.335, 90.48.336, 90.48.338, 90.48.383, 90.48.340,
2 90.48.355, 90.48.343, 90.48.907, 90.48.385, and 90.48.510; repealing
3 RCW 90.48.345, 90.48.381, 90.48.410, 88.40.010, 88.40.050, and
4 90.48.910; prescribing penalties; and declaring an emergency.

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

6 **PART I**

7 **GENERAL PROVISIONS**

8 **Sec. 101.** 1990 c 116 s 1 (uncodified) is amended to read as
9 follows:

10 (1) The legislature (~~((finds))~~) declares that the increasing reliance
11 on water borne transportation as a source of supply for oil and
12 hazardous substances poses special concern for the state of Washington.
13 Each year billions of gallons of crude oil and refined petroleum
14 products and millions of pounds of hazardous substances are transported
15 by vessel on the navigable waters of the state. These shipments are
16 expected to increase in the coming years. Vessels transporting oil and
17 hazardous substances into Washington travel on some of the most unique
18 and special marine environments in the United States. These marine
19 environments are a source of natural beauty, recreation, and economic
20 livelihood for many residents of this state. As a result, the state
21 has an obligation to assure the citizens of the state that the waters
22 of the state (~~((used for water borne transportation))~~) will be protected
23 from oil and hazardous substance spills. (~~((The legislature declares~~
24 that this act is the first step in developing a comprehensive approach
25 to protecting this important and unique resource by developing a set of
26 procedures to respond to spills of oil and hazardous substances into
27 the state's waters.))

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

12 (3) The legislature also finds that:

13 (a) Recent accidents in Washington, Alaska, southern California,
14 Texas, and other parts of the nation have shown that the
15 transportation, transfer, and storage of oil and hazardous substances
16 have caused significant damage to the marine environment;

17 (b) Even with the best efforts, it is nearly impossible to remove
18 all oil or hazardous substances that are spilled into the water;

19 (c) Washington's navigable waters are treasured environmental and
20 economic resources that the state cannot afford to place at undue risk
21 from an oil or hazardous substance spill; and

22 (d) The state has a fundamental responsibility, as the trustee of
23 the state's natural resources and the protector of public health and
24 the environment to prevent the spill of oil and hazardous substances.

25 (4) In order to establish a comprehensive prevention and response
26 program to protect Washington's waters and natural resources from
27 spills of oil, it is the purpose of this chapter:

28 (a) To establish state agency expertise in marine safety and to
29 centralize state activities in spill prevention and response
30 activities;

1 (b) To prevent spills of oil and to promote programs that reduce
2 the risk of both catastrophic and small chronic spills;

3 (c) To ensure that responsible parties are liable, and have the
4 resources and ability, to respond to spills and provide compensation
5 for all costs and damages;

6 (d) To provide for state spill response and wildlife rescue
7 planning and implementation;

8 (e) To support and complement the federal oil pollution act of 1990
9 and other federal laws relating to the prevention and response to oil
10 spills;

11 (f) To provide broad powers of regulation to the department of
12 ecology relating to spill prevention and response;

13 (g) To provide for an independent oversight board to review the
14 adequacy of spill prevention and response activities in this state; and

15 (h) To provide an adequate funding source for state response and
16 prevention programs.

17 **Sec. 102.** RCW 90.48.315 and 1990 c 116 s 2 are each amended to
18 read as follows:

19 For purposes of (~~RCW 90.48.315 through 90.48.410, 78.52.020,~~
20 ~~78.52.125, 82.36.330, 90.48.903, 90.48.906, and 90.48.907~~)) this
21 chapter, the following definitions shall apply unless the context
22 indicates otherwise:

23 (1) "Administrator" means the administrator of the office of marine
24 safety created in section 402 of this 1991 act.

25 (2) "Best achievable protection" means the highest level of
26 protection that can be achieved through the use of the best achievable
27 technology and those staffing levels, training procedures, and
28 operational methods that provide the greatest degree of protection
29 achievable. The director's determination of best achievable protection

1 shall be guided by the critical need to protect the state's natural
2 resources and waters, while considering (a) the additional protection
3 provided by the measures; (b) the technological achievability of the
4 measures; and (c) the cost of the measures. It is not the intent of
5 the legislature that the director use a cost-benefit or
6 cost-effectiveness analysis or any particular method of analysis in
7 determining which measures to require.

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

15 (4) "Board" (~~shall~~) means the pollution control hearings board.

16 (~~2~~) (5) "Cargo vessel" means a ship in commerce, other than a
17 tank vessel or a passenger vessel, of three hundred gross tons or more,
18 including but not limited to, commercial fish processing vessels and
19 freighters.

20 (~~3~~) (6) "Bulk" means material that is stored or transported in
21 a loose, unpackaged liquid, powder, or granular form capable of being
22 conveyed by a pipe, bucket, chute, or belt system.

23 (7) "Committee" (~~shall~~) means the preassessment screening
24 committee established under RCW 90.48.368.

25 (~~4~~) (8) "Covered vessel" means a tank vessel, cargo vessel, or
26 passenger vessel.

27 (~~5~~) (9) "Department" (~~shall~~) means the department of ecology.

28 (~~6~~) (10) "Director" (~~shall~~) means the director of the
29 department of ecology.

1 ~~((7))~~ (11) "Discharge" ~~((shall))~~ means any spilling, leaking,
2 pumping, pouring, emitting, emptying, or dumping.

3 ~~((8))~~ (12)(a) "Facility" means any structure, group of
4 structures, equipment, pipeline, or device, other than a vessel,
5 ~~((located on or near the navigable waters of the state that receives~~
6 ~~oil in bulk from a tank vessel,))~~ that is used for producing, storing,
7 handling, transferring, processing, or transporting oil in bulk~~((, and~~
8 ~~is capable of storing ten thousand or more gallons of oil))~~.

9 (b) A facility does not include any: (i) Railroad car, motor
10 vehicle, or other rolling stock ~~((used to transport))~~ while
11 transporting oil over the highways or rail lines of this state; (ii)
12 underground storage tank regulated by the department or a local
13 government under chapter 90.76 RCW; (iii) a motor vehicle motor fuel
14 outlet; or (iv) a facility that is operated as part of an exempt
15 agricultural activity as provided in RCW 82.04.330.

16 ~~((9))~~ (13) "Fund" ~~((shall))~~ means the state coastal protection
17 fund as provided in RCW 90.48.390 and 90.48.400 as recodified by this
18 1991 act.

19 ~~((10))~~ (14) "Having control over oil" shall include but not be
20 limited to any person using, storing, or transporting oil immediately
21 prior to entry of such oil into the waters of the state, and shall
22 specifically include carriers and bailees of such oil.

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

27 ~~((12))~~ (15) "Navigable waters of the state" means those waters of
28 the state, and their adjoining shorelines, that are subject to the ebb
29 and flow of the tide and/or are presently used, have been used in the

1 past, or may be susceptible for use to transport intrastate,
2 interstate, or foreign commerce.

3 ~~((13))~~ (16) "Necessary expenses" means the expenses incurred by
4 the department and assisting state agencies for (a) investigating the
5 source of the discharge; (b) investigating the extent of the
6 environmental damage caused by the discharge; (c) conducting actions
7 necessary to clean up the discharge; (d) conducting predamage and
8 damage assessment studies; and (e) enforcing the provisions of this
9 chapter and collecting for damages caused by a discharge.

10 ~~((14))~~ (17) "Oil" or "oils" ~~((shall))~~ means ~~((oil))~~ naturally
11 occurring liquid hydrocarbons at atmospheric temperature and pressure
12 coming from the earth, including condensate and natural gasoline, and
13 any fractionation thereof, including ~~((gasoline))~~, but not limited to,
14 crude oil, petroleum, gasoline, fuel oil, diesel oil, ~~((lubricating~~
15 oil,)) oil sludge, oil refuse, ~~((liquid natural gas, propane, butane,~~
16 oils distilled from coal, and other liquid hydrocarbons regardless of
17 specific gravity, or any other petroleum related product)) and oil
18 mixed with wastes other than dredged spoil.

19 ~~((15))~~ (18) "Offshore facility" means any facility located in,
20 on, or under any of the navigable waters of the state, but does not
21 include a facility any part of which is located in, on, or under any
22 land of the state, other than submerged land.

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

28 (20)(a) "Owner or operator" means (i) in the case of a vessel, any
29 person owning, operating, or chartering by devise, the vessel; (ii) in
30 the case of an onshore or offshore facility, any person owning or

1 operating the facility; and (iii) in the case of an abandoned vessel or
2 onshore or offshore facility, the person who owned or operated the
3 vessel or facility immediately before its abandonment.

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

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

9 ~~((16))~~ (22) "Person" ((shall)) means any political subdivision,
10 government agency, municipality, industry, public or private
11 corporation, copartnership, association, firm, individual, or any other
12 entity whatsoever ((and any owner, operator, master, officer, or
13 employee of a ship)).

14 ~~((17))~~ (23) "Ship" ((shall)) means any boat, ship, vessel, barge,
15 or other floating craft of any kind.

16 ~~((18))~~ (24) "Spill" means ((a)) an unauthorized discharge of oil
17 or hazardous substances into the waters of the state.

18 ~~((19))~~ (25) "Tank vessel" means a ship that is constructed or
19 adapted to carry, or that carries, oil in bulk as cargo or cargo
20 residue, and that:

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

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

24 ~~((20))~~ (26) "Technical feasibility" or "technically feasible"
25 shall mean that given available technology, a restoration or
26 enhancement project can be successfully completed at a cost that is not
27 disproportionate to the value of the resource prior to the injury.

28 ~~((21))~~ (27) "Waters of the state" ((shall)) includes lakes,
29 rivers, ponds, streams, inland waters, underground water, salt waters,
30 estuaries, tidal flats, beaches and lands adjoining the seacoast of the

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

3 ~~((+22))~~ (28) "Worst case spill" means: (a) In the case of a
4 vessel, a spill of the entire cargo and fuel of ((a tank)) the vessel
5 complicated by adverse weather conditions; and (b) in the case of an
6 onshore or offshore facility, the largest foreseeable spill in adverse
7 weather conditions.

8 NEW SECTION. **Sec. 103.** DIRECTOR RESPONSIBLE FOR SPILL RESPONSE.

9 Except as otherwise specifically provided in this chapter or other law,
10 the director has the primary authority, in conformance with the state-
11 wide master oil and hazardous substance spill prevention and
12 contingency plan adopted pursuant to RCW 90.48.378 as recodified by
13 this act and any applicable contingency plans prepared pursuant to this
14 chapter and chapter 88.-- RCW (sections 413 through 424 of this act),
15 to oversee prevention, abatement, response, containment, and cleanup
16 efforts with regard to any oil or hazardous substance spill in the
17 navigable waters of the state. The director is the head of the state
18 incident command system in response to a spill of oil or hazardous
19 substances and shall coordinate the response efforts of all state
20 agencies and local emergency response personnel. If a discharge of oil
21 or hazardous substances is subject to the national contingency plan, in
22 responding to the discharge, the director shall to the greatest extent
23 practicable act in accordance with the national contingency plan and
24 cooperate with the federal on-scene coordinator or other federal agency
25 or official exercising authority under the national contingency plan.

26 **Sec. 104.** RCW 90.48.370 and 1971 ex.s. c 180 s 2 are each amended
27 to read as follows:

1 The powers, duties, and functions conferred by (~~RCW 78.52.020,~~
2 ~~78.52.125,~~ ~~82.36.330,~~ ~~90.48.315,~~ ~~90.48.370~~ through ~~90.48.410,~~
3 ~~90.48.903,~~ ~~90.48.906~~ and ~~90.48.907~~) this chapter shall be exercised by
4 the department of ecology and shall be deemed an essential government
5 function in the exercise of the police power of the state. Such
6 powers, duties, and functions of the department (~~and those conferred~~
7 ~~by RCW 90.48.315 through 90.48.365~~) shall extend to all waters
8 (~~within the boundaries~~) under the jurisdiction of the state.

9 **Sec. 105.** RCW 90.48.365 and 1987 c 109 s 153 are each amended to
10 read as follows:

11 (~~RCW 90.48.315 through 90.48.365 shall~~) This chapter grants
12 authority to the department which is supplemental to and in no way
13 reduces or otherwise modifies the powers (~~heretofore~~) granted to the
14 department(~~, except as it may directly conflict therewith~~) by other
15 statutes.

16 **Sec. 106.** RCW 90.48.380 and 1971 ex.s. c 180 s 3 are each amended
17 to read as follows:

18 The department may adopt rules (~~and regulations~~) including but
19 not limited to the following matters:

20 (1) Procedures and methods of reporting discharges and other
21 occurrences prohibited by (~~RCW 90.48.315 through 90.48.365 and RCW~~
22 ~~78.52.020,~~ ~~78.52.125,~~ ~~82.36.330,~~ ~~90.48.315,~~ ~~90.48.370~~ through
23 ~~90.48.410,~~ ~~90.48.903,~~ ~~90.48.906~~ and ~~90.48.907~~) this chapter;

24 (2) Procedures, methods, means, and equipment to be used by persons
25 subject to regulation by (~~RCW 90.48.315 through 90.48.365 and RCW~~
26 ~~78.52.020,~~ ~~78.52.125,~~ ~~82.36.330,~~ ~~90.48.315,~~ ~~90.48.370~~ through
27 ~~90.48.410,~~ ~~90.48.903,~~ ~~90.48.906~~ and ~~90.48.907~~) this chapter and such

1 rules (~~((and regulations))~~) may prescribe the times, places, and methods
2 of transfer of oil;

3 (3) Coordination of procedures, methods, means, and equipment to be
4 used in the removal of oil (~~((pollutants))~~);

5 (4) Development and implementation of criteria and plans to meet
6 oil (~~((pollution occurrences))~~) spills of various kinds and degrees;

7 (5) The establishment (~~((from time to time of control districts~~
8 ~~comprising sections of the state coast and the establishment of rules~~
9 ~~and regulations to meet the particular requirements of each such~~
10 ~~district;~~

11 ~~(6))~~) of standards for spill response equipment to be maintained on
12 tank vessels;

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

16 (7) The disposal of oil recovered from a spill; and

17 (8) Such other rules and regulations as the exigencies of any
18 condition may require or such as may be reasonably necessary to carry
19 out the intent of (~~((RCW 90.48.315 through 90.48.365 and RCW 78.52.020,~~
20 ~~78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410,~~
21 ~~90.48.903, 90.48.906 and 90.48.907))~~) this chapter.

22 **Sec. 107.** RCW 90.48.378 and 1990 c 116 s 10 are each amended to
23 read as follows:

24 (1) (~~((Not later than July 1, 1991,))~~) The department shall prepare
25 and ((thereafter)) annually update a state-wide master oil and
26 hazardous substance spill prevention and contingency plan. In
27 preparing the plan, the department shall consult with an advisory
28 committee representing diverse interests concerned with oil and
29 hazardous substance spills, including the office of marine safety, the

1 United States coast guard, the federal environmental protection agency,
2 state agencies, local governments, port districts, private facilities,
3 environmental organizations, oil companies, shipping companies,
4 containment and cleanup contractors, tow companies, and hazardous
5 substance manufacturers.

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

8 (a) Take into consideration the elements of oil spill prevention
9 and contingency plans approved or submitted for approval pursuant to
10 ~~((RCW 90.48.371))~~ this chapter and chapter 88.-- RCW (sections 413
11 through 424 of this act) and oil and hazardous substance spill
12 contingency plans prepared pursuant to other state or federal law or
13 prepared by federal agencies and regional entities;

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

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

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

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

3 (f) Establish an incident command system for responding to oil and
4 hazardous substance spills.

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

7 (a) Consult with federal, provincial, municipal, and community
8 officials, other state agencies, the state of Oregon, and with
9 representatives of affected regional organizations;

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

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

14 (d) Require or schedule unannounced oil spill drills as required by
15 RCW 90.48.374 as recodified by this 1991 act to test the sufficiency of
16 oil spill contingency plans approved under RCW 90.48.371 as recodified
17 by this 1991 act.

18 NEW SECTION. Sec. 108. COORDINATION WITH FEDERAL LAW. In
19 carrying out the purposes of this chapter, including the adoption of
20 rules for contingency plans, the department shall to the greatest
21 extent practicable implement this chapter in a manner consistent with
22 federal law.

23 NEW SECTION. Sec. 109. HAZARDOUS SUBSTANCES INCIDENT RESPONSE
24 TRAINING AND EDUCATION PROGRAM. Not later than twelve months after the
25 effective date of this section, the division of emergency management
26 shall establish and manage the Washington oil and hazardous substances
27 incident response training and education program to provide approved
28 classes in hazardous substance response, taught by trained instructors,

1 and to certify students who have completed these classes. To carry out
2 this program, the division of emergency management shall:

3 (1) Adopt rules necessary to implement the program;

4 (2) Establish a training and education program by developing the
5 curriculum to be used in the program in colleges, academies, and other
6 educational institutions;

7 (3) Certify students who have successfully completed a class
8 approved as meeting the requirements of the program;

9 (4) Provide training to local oil and hazardous materials emergency
10 response personnel; and

11 (5) Establish and collect admission fees and other fees that may be
12 necessary to the program.

13 NEW SECTION. **Sec. 110.** SMALL SPILL PREVENTION EDUCATION PROGRAM.

14 (1) The Washington sea grant program, in consultation with the
15 department, shall develop and conduct a voluntary spill prevention
16 education program that targets small spills from commercial fishing
17 vessels, ferries, cruise ships, ports, and marinas. Washington sea
18 grant shall coordinate the spill prevention education program with
19 recreational boater education performed by the state parks and
20 recreation commission.

21 (2) The spill prevention education program shall illustrate ways to
22 reduce oil contamination of bilge water, accidental spills of hydraulic
23 fluid and other hazardous substances during routine maintenance, and
24 reduce spillage during refueling. The program shall illustrate proper
25 disposal of oil and hazardous substances and promote strategies to meet
26 shoreside oil and hazardous substance handling, and disposal needs of
27 the targeted groups. The program shall include a series of training
28 workshops and the development of educational materials.

1 PART II

2 FACILITY AND VESSEL PLANS

3 NEW SECTION. **Sec. 201.** PREVENTION PLANS. (1) The owner or operator
4 for each onshore and offshore facility shall prepare and submit to the
5 department an oil spill prevention plan in conformance with the
6 requirements of this chapter. The plans shall be submitted to the
7 department in the time and manner directed by the department, but not
8 later than January 1, 1993. The spill prevention plan may be
9 consolidated with a spill contingency plan submitted pursuant to RCW
10 90.48.371 as recodified by this act. The department may accept plans
11 prepared to comply with other state or federal law as spill prevention
12 plans to the extent those plans comply with the requirements of this
13 chapter. The department, by rule, shall establish standards for spill
14 prevention plans. The rules shall be adopted not later than July 1,
15 1992.

16 (2) The spill prevention plan for an onshore or offshore facility
17 shall:

18 (a) Establish compliance with the federal oil pollution act of
19 1990, if applicable, and financial responsibility requirements under
20 federal and state law;

21 (b) Certify that supervisory and other key personnel in charge of
22 transfer, storage, and handling of oil have received certification
23 pursuant to section 203 of this act;

24 (c) Certify that the facility has an operations manual required by
25 section 204 of this act;

26 (d) Certify the implementation of alcohol and drug use awareness
27 programs;

1 (e) Describe the facility's maintenance and inspection program and
2 contain a current maintenance and inspection record of the storage and
3 transfer facilities and related equipment;

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

5 (g) Describe spill prevention technology that has been installed,
6 including overflow alarms, automatic overflow cut-off switches,
7 secondary containment facilities, and storm water retention, treatment,
8 and discharge systems;

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

12 (i) Describe spill prevention technologies that are commercially
13 available but have not been installed and the reasons for the decision;

14 (j) Describe the procedures followed by the facility to contain and
15 recover any oil that spills during the transfer of oil to or from the
16 facility;

17 (k) Provide for the incorporation into the facility during the
18 period covered by the plan of those measures that will provide the best
19 achievable protection for the public health and the environment; and

20 (l) Include any other information reasonably necessary to carry out
21 the purposes of this chapter required by rules adopted by the
22 department.

23 (3) The department shall only approve a prevention plan if it
24 provides the best achievable protection from damages caused by the
25 discharge of oil into the waters of the state and if it determines that
26 the plan meets the requirements of this section and rules adopted by
27 the department.

28 (4) Upon approval of a prevention plan, the department shall
29 provide to the person submitting the plan a statement indicating that

1 the plan has been approved, the facilities covered by the plan, and
2 other information the department determines should be included.

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

10 (6) The department by rule shall require prevention plans to be
11 reviewed, updated, if necessary, and resubmitted to the department at
12 least once every five years.

13 (7) Approval of a prevention plan by the department does not
14 constitute an express assurance regarding the adequacy of the plan nor
15 constitute a defense to liability imposed under this chapter or other
16 state law.

17 (8) This section does not authorize the department to modify the
18 terms of a collective bargaining agreement.

19 **Sec. 202.** RCW 90.48.371 and 1990 c 116 s 3 are each amended to
20 read as follows:

21 (1) Each onshore and offshore facility (~~((and covered vessel))~~) shall
22 have a contingency plan for the containment and cleanup of oil spills
23 from the facility (~~((or covered vessel))~~) into the waters of the state
24 and for the protection of fisheries and wildlife, natural resources,
25 and public and private property from such spills. The department shall
26 by rule adopt and periodically revise standards for the preparation of
27 contingency plans. (~~((The rules for facilities and, except as otherwise
28 provided in this subsection, for covered vessels shall be adopted not
29 later than July 1, 1991. The department shall exclude from the rules~~

1 to be adopted by July 1, 1991, standards for tank vessels of less than
2 twenty thousand deadweight tons, cargo vessels, and passenger vessels
3 operating on the portion of the Columbia river for which the department
4 determines that Washington and Oregon should cooperate in the adoption
5 of standards for contingency plans. The department, after consultation
6 with the appropriate state agencies in Oregon, shall adopt the rules
7 for standards for contingency plans for this portion of the Columbia
8 river at the earliest possible time, but not later than July 1, 1992.)
9 The department shall require contingency plans, at a minimum, to meet
10 the following standards:

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

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

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

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

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

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

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

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

4 (g) Describe important features of the surrounding environment,
5 including fish and wildlife habitat, environmentally sensitive areas,
6 and public facilities. The departments of ecology, fisheries,
7 wildlife, and natural resources, upon request, shall provide
8 information that they have available to assist in preparing this
9 description;

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

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

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

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

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

26 (l) Until a spill prevention plan has been submitted pursuant to
27 section 201 of this 1991 act, state the measures that have been taken
28 to reduce the likelihood that a spill will occur, including but not
29 limited to, design and operation of a ((vessel or)) facility, training

1 of personnel, number of personnel, and backup systems designed to
2 prevent a spill;

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

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

10 (2)(a) (~~Contingency plans for facilities capable of storing one~~
11 ~~million gallons or more of oil and for tank vessels of twenty thousand~~
12 ~~deadweight tons or more shall be submitted to the department~~) The
13 following shall submit contingency plans to the department within six
14 months after the department adopts rules establishing standards for
15 contingency plans under subsection (1) of this section:

16 (i) Onshore facilities capable of storing one million gallons or
17 more of oil;

18 (ii) Onshore facilities capable of storing or handling hazardous
19 substances in bulk in quantities determined by the department to pose
20 a significant risk of harm to the public health or the environment; and

21 (iii) Offshore facilities.

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

28 (~~(c) Contingency plans for covered vessels which are not required~~
29 ~~to submit plans within the six month period prescribed in (a) of this~~
30 ~~subsection and which operate on the portion of the Columbia river for~~

1 ~~which the department must adopt rules not later than July 1, 1992,~~
2 ~~shall be submitted to the department not later than January 1, 1993.)~~)

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

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

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

17 (d)) A person who has contracted with a facility ~~((or covered~~
18 ~~vessel))~~ to provide containment and cleanup services and who meets the
19 standards established pursuant to RCW 90.48.372 as recodified by this
20 1991 act, may submit the plan for any facility ~~((or covered vessel))~~
21 for which the person is contractually obligated to provide services.
22 Subject to conditions imposed by the department, the person may submit
23 a single plan for more than one facility ~~((or covered vessel))~~.

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

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

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

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

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

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

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

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

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

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

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

28 (7) The approval of the contingency plan shall be valid for five
29 years. Upon approval of a contingency plan, the department shall
30 provide to the person submitting the plan a statement indicating that

1 the plan has been approved, the facilities or vessels covered by the
2 plan, and other information the department determines should be
3 included.

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

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

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

17 NEW SECTION. **Sec. 203.** FACILITY OPERATION STANDARDS. (1) The
18 department by rule shall adopt standards for onshore and offshore
19 facilities regarding the equipment and operation of the facilities with
20 respect to the transfer, storage, and handling of oil to ensure that
21 the best achievable protection of the public health and the environment
22 is employed at all times. The department shall implement a program to
23 provide for the inspection of all onshore and offshore facilities on a
24 regular schedule to ensure that each facility is in compliance with the
25 standards.

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

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

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

6 (c) Continuing education requirements.

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

10 NEW SECTION. **Sec. 204.** OPERATIONS MANUALS.(1) Each owner or
11 operator of an onshore or offshore facility shall prepare an operations
12 manual describing equipment and procedures involving the transfer,
13 storage, and handling of oil that the operator employs or will employ
14 for best achievable protection for the public health and the
15 environment and to prevent oil spills in the navigable waters. The
16 operations manual shall also describe equipment and procedures required
17 for all vessels to or from which oil is transferred through use of the
18 facility. The operations manual shall be submitted to the department
19 for approval.

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

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

1 responding to the reasons and incorporating any suggested
2 modifications.

3 (4) The approval of an operations manual shall be valid for five
4 years. The owner or operator of the facility shall notify the
5 department in writing immediately of any significant change in its
6 operations affecting its operations manual. The department may require
7 the owner or operator to modify its operations manual as a result of
8 these changes.

9 (5) All equipment and operations of an operator's onshore or
10 offshore facility shall be maintained and carried out in accordance
11 with the facility's operations manual. The owner or operator of the
12 facility shall ensure that all ships docked at an onshore or offshore
13 facility comply with the terms of the operations manual for the
14 facility.

15 **Sec. 205.** RCW 90.48.373 and 1990 c 116 s 5 are each amended to
16 read as follows:

17 The department shall annually publish an index of available, up-to-
18 date descriptions of prevention plans and contingency plans for oil
19 spills submitted and approved pursuant to section 201 of this 1991 act,
20 RCW 90.48.371 as recodified by this 1991 act, and sections 416 and 417
21 of this 1991 act and an inventory of equipment available for responding
22 to such spills.

23 **Sec. 206.** RCW 90.48.375 and 1990 c 116 s 7 are each amended to
24 read as follows:

25 (1) The provisions of contingency plans approved by the department
26 under RCW 90.48.371 as recodified by this 1991 act and prevention plans
27 approved by the department pursuant to section 201 of this 1991 act
28 shall be legally binding on those persons submitting them to the

1 department and on their successors, assigns, agents, and employees.
2 The superior court shall have jurisdiction to restrain a violation of,
3 compel specific performance of, or otherwise to enforce such plans upon
4 application by the department. The department may issue an order
5 pursuant to chapter 34.05 RCW requiring compliance with a contingency
6 plan or a prevention plan and may impose administrative penalties for
7 failure to comply with a plan. An order under this section is not
8 subject to review by the pollution control hearings board as provided
9 in RCW 43.21B.110.

10 (2)(a) Any person responsible or potentially responsible for a
11 discharge, all of the agents and employees of that person, the
12 operators of all vessels docked at an onshore or offshore facility that
13 is a source of a discharge, and all state and local agencies shall
14 carry out response and cleanup operations in accordance with applicable
15 contingency plans, unless directed otherwise by the administrator or
16 the coast guard. Except as provided in (b) of this subsection, the
17 responsible party, potentially responsible parties, their agents and
18 employees, the operators of all vessels docked at an onshore or
19 offshore facility that is the source of the discharge, and all state
20 and local agencies shall carry out whatever direction is given by the
21 administrator in connection with the response, containment, and cleanup
22 of the spill, if the directions are not in direct conflict with the
23 directions of the coast guard.

24 (b) If a responsible party or potentially responsible party
25 reasonably, and in good faith, believes that the directions or orders
26 given by the administrator pursuant to (a) of this subsection will
27 substantially endanger the public safety or the environment, the party
28 may refuse to act in compliance with the orders or directions of the
29 administrator. The responsible party or potentially responsible party
30 shall state, at the time of the refusal, the reasons why the party

1 refuses to follow the orders or directions of the administrator. The
2 responsible party or potentially responsible party shall give the
3 administrator written notice of the reasons for the refusal within
4 forty-eight hours of refusing to follow the orders or directions of the
5 administrator. In any civil or criminal proceeding commenced pursuant
6 to this section, the burden of proof shall be on the responsible party
7 or potentially responsible party to demonstrate, by clear and
8 convincing evidence, why the refusal to follow the orders or directions
9 of the administrator was justified under the circumstances.

10 **PART III**

11 **ENFORCEMENT**

12 **Sec. 301.** RCW 90.48.376 and 1990 c 116 s 8 are each amended to
13 read as follows:

14 (1) Except as provided in subsection (2) of this section, it shall
15 be unlawful for ~~((any person))~~ the owner or operator to knowingly and
16 intentionally operate in this state or on the waters of this state
17 ~~((a))~~ an onshore or offshore facility ~~((or covered vessel))~~ without an
18 approved contingency plan or an approved prevention plan as required by
19 ~~((RCW 90.48.371))~~ this chapter, or financial responsibility in
20 compliance with chapter 88.40 RCW and the federal oil pollution act of
21 1990. The first conviction under this section shall be a gross
22 misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction
23 shall be a class C felony under chapter 9A.20 RCW.

24 (2) It shall not be unlawful for ~~((a person))~~ the owner or operator
25 to operate ~~((a))~~ an onshore or offshore facility ~~((or covered vessel))~~
26 if:

1 (a) The facility (~~(or covered vessel)~~) is not required to have a
2 contingency plan, spill prevention plan, or financial responsibility;
3 or

4 (b) (~~(A)~~) All required plans (~~(has)~~) have been submitted to the
5 department as required by RCW 90.48.371 as recodified by this 1991 act
6 and rules adopted by the department and the department is reviewing the
7 plan and has not denied approval(~~(; or~~

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

10 (3) A (~~(facility)~~) person may rely on a copy of the statement
11 issued by the department pursuant to RCW 90.48.371(7) as recodified by
12 this 1991 act as evidence that (~~(the vessel)~~) a facility has an
13 approved contingency plan and the statement issued pursuant to section
14 201(5) of this 1991 act that a facility has an approved prevention
15 plan.

16 **Sec. 302.** RCW 90.48.377 and 1990 c 116 s 9 are each amended to
17 read as follows:

18 (~~(1) ((Except as provided in subsection (4) of this section, it~~
19 ~~shall be unlawful for a covered vessel to enter the waters of the state~~
20 ~~without an approved contingency plan as provided in RCW 90.48.371. The~~
21 ~~department may deny entry onto the waters of the state to any covered~~
22 ~~vessel that does not have a contingency plan and is so required.~~

23 ~~(2))~~ Except as provided in subsection (~~(4)~~) (3) of this section,
24 it shall be unlawful:

25 (a) For (~~(a)~~) an onshore or offshore facility to operate without an
26 approved contingency plan as required under RCW 90.48.371 as recodified
27 by this 1991 act, a spill prevention plan required by section 201 of
28 this 1991 act, or financial responsibility in compliance with chapter
29 88.40 RCW and the federal oil pollution act of 1990; or

1 (b) For ((a)) an onshore or offshore facility or any other person
2 to accept cargo or passengers from a covered vessel that does not have
3 an approved contingency plan or an approved prevention plan required
4 under ((RCW 90.48.371)) chapter 88.-- RCW (sections 413 through 424 of
5 this 1991 act) or financial responsibility in compliance with chapter
6 88.40 RCW and the federal oil pollution act of 1990.

7 ((+3)) (2) The department may notify the ((department of
8 licensing)) secretary of state to suspend the business license of any
9 onshore or offshore facility or other person that is in violation of
10 this section. The department may assess a civil penalty of up to one
11 hundred thousand dollars against any person who is in violation of this
12 section. Each day that a facility((,)) or person((, or covered
13 vessel)) is in violation of this section shall be considered a separate
14 violation.

15 ((+4)) (3) It shall not be unlawful for a ((covered vessel to
16 operate on the waters of the state or a)) facility or other person to
17 operate or accept cargo or passengers from a covered vessel if:

18 (a) A contingency plan, a prevention plan, or financial
19 responsibility is not required for the facility ((or covered vessel));
20 or

21 (b) A contingency and prevention plan has been submitted to the
22 department as required by ((RCW 90.48.371)) this chapter and rules
23 adopted by the department and the department is reviewing the plan and
24 has not denied approval((, or

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

27 ((+5)) (4) Any person may rely on a copy of the statement issued
28 by the department pursuant to RCW 90.48.371(7) as recodified by this
29 1991 act as evidence that the ((vessel)) facility has an approved
30 contingency plan and the statement issued pursuant to section 201(5) of

1 this 1991 act as evidence that the facility has an approved spill
2 prevention plan.

3 **Sec. 303.** RCW 90.48.350 and 1990 c 116 s 20 are each amended to
4 read as follows:

5 (1) Except as otherwise provided in RCW 90.48.383 as recodified by
6 this 1991 act, any person who, in violation of RCW 90.48.320 as
7 recodified by this 1991 act, negligently discharges oil, or causes or
8 permits the entry of the same into the waters of the state, shall
9 incur, in addition to any other penalty as provided by law, a penalty
10 in an amount of up to (~~twenty~~) one hundred thousand dollars for every
11 such violation, and for each day the spill poses risks to the
12 environment as determined by the director.

13 (2) Any person who intentionally or recklessly discharges or causes
14 or permits the entry of oil into the waters of the state shall incur,
15 in addition to any other penalty authorized by law, a penalty of up to
16 one (~~hundred thousand~~) million dollars for every such violation and
17 for each day the spill poses risks to the environment as determined by
18 the director.

19 (3) The amount of the penalty imposed under this section shall be
20 determined by the director after taking into consideration the gravity
21 of the violation, the previous record of the violator in complying, or
22 failing to comply, with the provisions of this chapter and chapter
23 90.48 RCW, the speed and thoroughness of the collection and removal of
24 the oil, and such other considerations as the director deems
25 appropriate. Every act of commission or omission which procures, aids
26 or abets in the violation shall be considered a violation under the
27 provisions of this section and subject to the penalty herein provided
28 for. The penalty herein provided for shall be imposed pursuant to RCW
29 43.21B.300.

1 **Sec. 304.** RCW 90.48.325 and 1970 ex.s. c 88 s 3 are each amended
2 to read as follows:

3 It shall be the obligation of any person owning or having control
4 over oil entering waters of the state in violation of RCW 90.48.320 as
5 recodified by this 1991 act to immediately collect and remove the same.
6 If it is not feasible to collect and remove, said person shall take all
7 practicable actions to contain, treat and disperse the same. The
8 director shall prohibit or restrict the use of any chemicals or other
9 dispersant or treatment materials proposed for use under this section
10 whenever it appears to ~~((him))~~ the director that use thereof would be
11 detrimental to the public interest.

12 **Sec. 305.** RCW 90.48.383 and 1990 c 116 s 25 are each amended to
13 read as follows:

14 (1) The following persons shall not be liable for necessary
15 expenses, removal costs, or ~~((property))~~ damages of any kind, other
16 than personal injury or wrongful death, caused by an act or omission of
17 that person during the ~~((cleanup))~~ response to a spill or threatened
18 spill of oil ~~((spilled))~~ into the navigable waters of the state, unless
19 the act or omission was performed in bad faith or with gross
20 negligence:

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

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

24 (c) A person ~~((meeting the standards of RCW 90.48.372))~~ rendering
25 care, assistance, or advice consistent with the national contingency
26 plan, or as otherwise directed by the federal on-scene coordinator or
27 by the state official with responsibility for oil spill response.

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

4 **Sec. 306.** RCW 90.48.340 and 1987 c 109 s 148 are each amended to
5 read as follows:

6 The department shall investigate each activity or project conducted
7 under RCW 90.48.330 as recodified by this 1991 act to determine, if
8 possible, the circumstances surrounding the entry of oil into waters of
9 the state and the person or persons allowing said entry or responsible
10 for the act or acts which result in said entry. Whenever it appears to
11 the department, after investigation, that a specific person or persons
12 are responsible for the necessary expenses incurred by the state
13 pertaining to a project or activity as specified in RCW 90.48.335 as
14 recodified by this 1991 act, the department shall notify said person or
15 persons by appropriate order(~~(:—PROVIDED, That no order may be~~
16 ~~issued)).~~ The department may not issue an order pertaining to a
17 project or activity which was completed more than five years prior to
18 the date of the proposed issuance of the order. ~~((Said))~~ The order
19 shall state the findings of the department, the amount of necessary
20 expenses incurred ~~((by the department))~~ in conducting the project or
21 activity, and a notice that said amount is due and payable immediately
22 upon receipt of said order. The department may, upon application from
23 the recipient of an order received within thirty days from the receipt
24 of the order, reduce or set aside in its entirety the amount due and
25 payable, when it appears from the application, and from any further
26 investigation the department may desire to undertake, that a reduction
27 or setting aside is just and fair under all the circumstances. If the
28 amount specified in the order issued by the department notifying said
29 person or persons is not paid within thirty days after receipt of

1 notice imposing the same, or if an application has been made within
2 thirty days as herein provided and the amount provided in the order
3 issued by the department subsequent to such application is not paid
4 within fifteen days after receipt thereof, the attorney general, upon
5 request of the department, shall bring an action on behalf of the state
6 in the superior court of Thurston county or any county in which the
7 person to which the order is directed does business, or in any other
8 court of competent jurisdiction, to recover the amount specified in the
9 final order of the department. No order issued under this section
10 shall be construed as an order within the meaning of RCW 43.21B.310 and
11 shall not be appealable to the hearings board. In any action to
12 recover necessary expenses as herein provided said person shall be
13 relieved from liability for necessary expenses if ((he)) the person can
14 prove that the oil to which the necessary expenses relate entered the
15 waters of the state by causes set forth in RCW ((90.48.320(3)))
16 90.48.320(2) as recodified by this 1991 act.

17 **PART IV**

18 **OFFICE OF MARINE SAFETY**

19 NEW SECTION. **Sec. 401.** The legislature declares that Washington's
20 waters have irreplaceable value for the citizens of the state. These
21 waters are vital habitat for numerous and diverse marine life and
22 wildlife and the source of recreation, aesthetic pleasure, and pride
23 for Washington's citizens. These waters are also vital for much of
24 Washington's economic vitality.

25 The legislature finds that the transportation of oil and hazardous
26 substances on these waters creates a great potential hazard to these
27 important natural resources. The legislature also finds that there is

1 no state agency responsible for maritime safety to ensure this state's
2 interest in preserving these resources.

3 The legislature therefore finds that in order to protect these
4 waters it is necessary to establish an office of marine safety which
5 will have the responsibility to promote the safety of marine
6 transportation in Washington.

7 NEW SECTION. **Sec. 402.** (1) There is hereby created an agency of
8 state government to be known as the office of marine safety. The
9 office shall be vested with all powers and duties transferred to it and
10 such other powers and duties as may be authorized by law. The main
11 administrative office of the office shall be located in the city of
12 Olympia. The administrator may establish administrative facilities in
13 other locations, if deemed necessary for the efficient operation of the
14 office, and if consistent with the principles set forth in subsection
15 (2) of this section.

16 (2) The office of marine safety shall be organized consistent with
17 the goals of providing state government with a focus in marine
18 transportation and serving the people of this state. The legislature
19 recognizes that the administrator needs sufficient organizational
20 flexibility to carry out the office's various duties. To the extent
21 practical, the administrator shall consider the following
22 organizational principles:

23 (a) Clear lines of authority which avoid functional duplication
24 within and between subelements of the office;

25 (b) A clear and simplified organizational design promoting
26 accessibility, responsiveness, and accountability to the legislature,
27 the consumer, and the general public; and

28 (c) Maximum span of control without jeopardizing adequate
29 supervision.

1 (3) The office shall provide leadership and coordination in
2 identifying and resolving threats to the safety of marine
3 transportation and the impact of marine transportation on the
4 environment:

5 (a) Working with other state agencies and local governments to
6 strengthen the state and local governmental partnership in providing
7 public protection;

8 (b) Providing expert advice to the executive and legislative
9 branches of state government;

10 (c) Providing active and fair enforcement of rules;

11 (d) Working with other federal, state, and local agencies and
12 facilitating their involvement in planning and implementing marine
13 safety measures;

14 (e) Providing information to the public; and

15 (f) Carrying out such other related actions as may be appropriate
16 to this purpose.

17 (4) In accordance with the administrative procedure act, chapter
18 34.05 RCW, the office shall ensure an opportunity for consultation,
19 review, and comment before the adoption of standards, guidelines, and
20 rules.

21 (5) Consistent with the principles set forth in subsection (2) of
22 this section, the administrator may create such administrative
23 divisions, offices, bureaus, and programs within the office as the
24 administrator deems necessary. The administrator shall have complete
25 charge of and supervisory powers over the office, except where the
26 administrator's authority is specifically limited by law.

27 (6) The administrator shall appoint such personnel as are necessary
28 to carry out the duties of the office in accordance with chapter 41.06
29 RCW.

1 NEW SECTION. **Sec. 403.** The executive head and appointing
2 authority of the office shall be the administrator of marine safety.
3 The administrator shall be appointed by, and serve at the pleasure of,
4 the governor in accordance with RCW 43.17.020. The administrator
5 shall be paid a salary to be fixed by the governor in accordance with
6 RCW 43.03.040.

7 NEW SECTION. **Sec. 404.** In addition to any other powers granted
8 the administrator, the administrator may:

9 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to
10 carry out the provisions of this chapter;

11 (2) Appoint such advisory committees as may be necessary to carry
12 out the provisions of this chapter. Members of such advisory
13 committees are authorized to receive travel expenses in accordance with
14 RCW 43.03.050 and 43.03.060. The administrator shall review each
15 advisory committee within the jurisdiction of the office and each
16 statutory advisory committee on a biennial basis to determine if such
17 advisory committee is needed. The criteria specified in RCW 43.131.070
18 shall be used to determine whether or not each advisory committee shall
19 be continued;

20 (3) Undertake studies, research, and analysis necessary to carry
21 out the provisions of this chapter;

22 (4) Delegate powers, duties, and functions of the department to
23 employees of the department as the secretary deems necessary to carry
24 out the provisions of this chapter;

25 (5) Enter into contracts on behalf of the department to carry out
26 the purposes of this chapter;

27 (6) Act for the state in the initiation of, or the participation
28 in, any intergovernmental program for the purposes of this chapter; or

29 (7) Accept gifts, grants, or other funds.

1 NEW SECTION. **Sec. 405.** The powers and duties of the department of
2 ecology and the director of ecology under chapter 90.48 RCW relating to
3 adoption of rules and approval of contingency plans for vessels and
4 adoption of model tow cable standards for tug boats and barges are
5 hereby transferred to the office of marine safety and the administrator
6 of the office of marine safety.

7 NEW SECTION. **Sec. 406.** (1) The administrator shall have full
8 authority to administer oaths and take testimony thereunder, to issue
9 subpoenas requiring the attendance of witnesses before the
10 administrator together with all books, memoranda, papers, and other
11 documents, articles or instruments, and to compel the disclosure by
12 such witnesses of all facts known to them relative to the matters under
13 investigation.

14 (2) Subpoenas issued in adjudicative proceedings shall be governed
15 by chapter 34.05 RCW.

16 (3) Subpoenas issued in the conduct of investigations required or
17 authorized by other statutory provisions or necessary in the
18 enforcement of other statutory provisions shall be governed by chapter
19 34.05 RCW.

20 NEW SECTION. **Sec. 407.** All reports, documents, surveys, books,
21 records, files, papers, or written material in the possession of the
22 department of ecology pertaining to the powers, functions, and duties
23 transferred shall be delivered to the custody of the office of marine
24 safety. All cabinets, furniture, office equipment, motor vehicles, and
25 other tangible property employed by the department of ecology in
26 carrying out the powers, functions, and duties transferred shall be
27 made available to the office of marine safety. All funds, credits, or

1 other assets held in connection with the powers, functions, and duties
2 transferred shall be assigned to the office of marine safety.

3 Any appropriations made to the department of ecology for carrying
4 out the powers, functions, and duties transferred shall, on the
5 effective date of this section, be transferred and credited to the
6 office of marine safety.

7 Whenever any question arises as to the transfer of any personnel,
8 funds, books, documents, records, papers, files, equipment, or other
9 tangible property used or held in the exercise of the powers and the
10 performance of the duties and functions transferred, the director of
11 financial management shall make a determination as to the proper
12 allocation and certify the same to the state agencies concerned.

13 NEW SECTION. **Sec. 408.** All employees of the department of ecology
14 engaged in performing the powers, functions, and duties transferred are
15 transferred to the jurisdiction of the office of marine safety. All
16 employees classified under chapter 41.06 RCW, the state civil service
17 law, are assigned to the office of marine safety to perform their usual
18 duties upon the same terms as formerly, without any loss of rights,
19 subject to any action that may be appropriate thereafter in accordance
20 with the laws and rules governing state civil service.

21 NEW SECTION. **Sec. 409.** All rules and all pending business before
22 the department of ecology pertaining to the powers, functions, and
23 duties transferred shall be continued and acted upon by the office of
24 marine safety. All existing contracts and obligations shall remain in
25 full force and shall be performed by the office of marine safety.

26 NEW SECTION. **Sec. 410.** The transfer of the powers, duties,
27 functions, and personnel of the department of ecology shall not affect

1 the validity of any act performed prior to the effective date of this
2 section.

3 NEW SECTION. **Sec. 411.** If apportionments of budgeted funds are
4 required because of the transfers directed by sections 407 through 410
5 of this act, the director of financial management shall certify the
6 apportionments to the agencies affected, the state auditor, and the
7 state treasurer. Each of these shall make the appropriate transfer and
8 adjustments in funds and appropriation accounts and equipment records
9 in accordance with the certification.

10 NEW SECTION. **Sec. 412.** Nothing contained in sections 405 and 407
11 through 411 of this act may be construed to alter any existing
12 collective bargaining unit or the provisions of any existing collective
13 bargaining agreement until the agreement has expired or until the
14 bargaining unit has been modified by action of the personnel board as
15 provided by law.

16 NEW SECTION. **Sec. 413.** DEFINITIONS. Unless the context clearly
17 requires otherwise, the definitions in this section apply throughout
18 this chapter.

19 (1) "Administrator" means the administrator of the office of marine
20 safety created in section 402 of this act.

21 (2) "Best achievable protection" means the highest level of
22 protection that can be achieved through the use of the best achievable
23 technology and those staffing levels, training procedures, and
24 operational methods that provide the greatest degree of protection
25 achievable. The administrator's determination of best achievable
26 protection shall be guided by the critical need to protect the state's
27 natural resources and waters, while considering (a) the additional

1 protection provided by the measures; (b) the technological
2 achievability of the measures; and (c) the cost of the measures. It is
3 not the intent of the legislature that the administrator use a cost-
4 benefit or cost-effectiveness analysis or any particular method of
5 analysis in determining which measures to require.

6 (3) "Best achievable technology" means the technology that provides
7 the greatest degree of protection taking into consideration (a)
8 processes that are being developed, or could feasibly be developed,
9 given overall reasonable expenditures on research and development, and
10 (b) processes that are currently in use. In determining what is best
11 achievable technology, the administrator shall consider the
12 effectiveness, engineering feasibility, and commercial availability of
13 the technology.

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

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

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

23 (7) "Department" means the department of ecology.

24 (8) "Director" means the director of the department of ecology.

25 (9) "Discharge" means any spilling, leaking, pumping, pouring,
26 emitting, emptying, or dumping.

27 (10)(a) "Facility" means any structure, group of structures,
28 equipment, pipeline, or device, other than a vessel that is used for
29 producing, storing, handling, transferring, processing, or transporting
30 oil in bulk.

1 (b) A facility does not include any: (i) Railroad car, motor
2 vehicle, or other rolling stock while transporting oil over the
3 highways or rail lines of this state; (ii) retail motor vehicle motor
4 fuel outlet; (iii) facility that is operated as part of an exempt
5 agricultural activity as provided in RCW 82.04.330; or (iv) underground
6 storage tank regulated by the department or a local government under
7 chapter 90.76 RCW.

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

13 (12) "Office" means the office of marine safety established by
14 section 402 of this act.

15 (13) "Oil" or "oils" means any naturally occurring liquid
16 hydrocarbons at atmospheric temperature and pressure coming from the
17 earth, including condensate and natural gasoline, and any fractionation
18 thereof, including, but not limited to, crude oil, petroleum, gasoline,
19 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
20 other than dredged spoil.

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

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

1 (16)(a) "Owner or operator" means (i) in the case of a vessel, any
2 person owning, operating, or chartering by devise, the vessel; (ii) in
3 the case of an onshore or offshore facility, any person owning or
4 operating the facility; and (iii) in the case of an abandoned vessel or
5 onshore or offshore facility, the person who owned or operated the
6 vessel or facility immediately before its abandonment.

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

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

12 (18) "Person" means any political subdivision, government agency,
13 municipality, industry, public or private corporation, copartnership,
14 association, firm, individual, or any other entity whatsoever.

15 (19) "Ship" means any boat, ship, vessel, barge, or other floating
16 craft of any kind.

17 (20) "Spill" means an unauthorized discharge of oil or hazardous
18 substances into the waters of the state.

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

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

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

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

1 (23) "Worst case spill" means: (a) In the case of a vessel, a
2 spill of the entire cargo and fuel of the vessel complicated by adverse
3 weather conditions; and (b) in the case of an onshore or offshore
4 facility, the largest foreseeable spill in adverse weather conditions.

5 NEW SECTION. **Sec. 414.** COORDINATION WITH FEDERAL LAW. In
6 carrying out the purposes of this chapter, including the adoption of
7 rules for contingency plans, the administrator shall to the greatest
8 extent practicable implement this chapter in a manner consistent with
9 federal law.

10 NEW SECTION. **Sec. 415.** TANK VESSEL INSPECTIONS. (1) All tank
11 vessels entering the navigable waters of the state shall be subject to
12 inspection to assure that they comply with all applicable federal and
13 state standards.

14 (2) The office shall review the tank vessel inspection programs
15 conducted by the United States coast guard and other federal agencies
16 to determine if the programs as actually operated by those agencies
17 provide the best achievable protection to the waters of the state. If
18 the office determines that the tank vessel inspection programs
19 conducted by these agencies are not adequate to protect the state's
20 waters, it shall adopt rules for a state tank vessel inspection
21 program. The office shall adopt rules providing for a random review of
22 individual tank vessel inspections conducted by federal agencies. The
23 office may accept a tank vessel inspection report issued by another
24 state if that state's tank vessel inspection program is determined by
25 the office to be at least as protective of the public health and the
26 environment as the program adopted by the office.

27 (3) The state tank vessel inspection program shall ensure that all
28 tank vessels entering state waters are inspected at least annually. To

1 the maximum extent feasible, the state program shall consist of the
2 monitoring of existing tank vessel inspection programs conducted by the
3 federal government. The office shall consult with the coast guard
4 regarding the tank vessel inspection program. Any tank vessel
5 inspection conducted pursuant to this section shall be performed during
6 the vessel's scheduled stay in port.

7 (4) Any violation of coast guard or other federal regulations
8 uncovered during a state tank vessel inspection shall be immediately
9 reported to the appropriate agency.

10 NEW SECTION. **Sec. 416.** PREVENTION PLANS. (1) The owner or
11 operator for each covered vessel shall prepare and submit to the office
12 an oil spill prevention plan in conformance with the requirements of
13 this chapter. The plans shall be submitted to the office in the time
14 and manner directed by the office, but not later than January 1, 1993.
15 The spill prevention plan may be consolidated with a spill contingency
16 plan submitted pursuant to section 417 of this act. The office may
17 accept plans prepared to comply with other state or federal law as
18 spill prevention plans to the extent those plans comply with the
19 requirements of this chapter. The office, by rule, shall establish
20 standards for spill prevention plans. The rules shall be adopted not
21 later than July 1, 1992.

22 (2) The spill prevention plan for a covered vessel or a fleet of
23 covered vessels operated by the same operator shall:

24 (a) Establish compliance with the federal oil pollution act of 1990
25 and state and federal financial responsibility requirements, if
26 applicable;

27 (b) State all discharges of oil of more than twenty-five barrels
28 from the vessel within the prior five years and what measures have been
29 taken to prevent a reoccurrence;

1 (c) Describe all accidents, collisions, groundings, and near miss
2 incidents in which the vessel has been involved in the prior five
3 years, analyze the causes, and state the measures that have been taken
4 to prevent a reoccurrence;

5 (d) Describe the vessel operations with respect to staffing
6 standards;

7 (e) Describe the vessel inspection program carried out by the owner
8 or operator of the vessel;

9 (f) Describe the training given to vessel crews with respect to
10 spill prevention;

11 (g) Establish compliance with federal drug and alcohol programs;

12 (h) Describe all spill prevention technology that has been
13 incorporated into the vessel;

14 (i) Describe the procedures used by the vessel owner or operator to
15 ensure English language proficiency of at least one bridge officer
16 while on duty in waters of the state;

17 (j) Describe relevant prevention measures incorporated in any
18 applicable regional marine spill safety plan that have not been adopted
19 and the reasons for that decision; and

20 (k) Include any other information reasonably necessary to carry out
21 the purposes of this chapter required by rules adopted by the office.

22 (3)(a) The administrator by rule may specify those cargo vessels
23 and passenger vessels which may be exempt from the provisions of
24 subsection (2) of this section. In determining which vessels shall not
25 be required to prepare prevention plans, the administrator shall
26 consider the length of time the vessel has been under the current
27 ownership, the number of visits the vessel makes to Washington ports
28 within a two-year period, and any other information deemed relevant by
29 the administrator.

1 (b) In addition to the certification made pursuant to RCW
2 88.16.155(1) (a) through (c), the master of any cargo vessel or
3 passenger vessel not required to have a prevention plan pursuant to (a)
4 of this subsection which employs a Washington licensed pilot shall
5 certify that the:

6 (i) Vessel complies with safety of life at sea certificate
7 requirements;

8 (ii) Vessel complies with current international agreements
9 concerning safety and radio equipment;

10 (iii) Engine is able to maneuver and all related equipment is in
11 good order;

12 (iv) Vessel is not leaking oil;

13 (v) Vessel is not experiencing propulsion or maneuvering
14 difficulties;

15 (vi) The master has notified the United States coast guard captain
16 for the port of any deficiencies and has received authorization for the
17 vessel to proceed, and that any deficiencies will be corrected before
18 the vessel is scheduled to leave the waters of the state.

19 (4) The office shall only approve a prevention plan if it provides
20 the best achievable protection from damages caused by the discharge of
21 oil into the waters of the state and if it determines that the plan
22 meets the requirements of this section and rules adopted by the office.

23 (5) Upon approval of a prevention plan, the office shall provide to
24 the person submitting the plan a statement indicating that the plan has
25 been approved, the vessels covered by the plan, and other information
26 the office determines should be included.

27 (6) The approval of a prevention plan shall be valid for five
28 years. An owner or operator of a covered vessel shall notify the
29 office in writing immediately of any significant change of which it is
30 aware affecting its prevention plan, including changes in any factor

1 set forth in this section or in rules adopted by the office. The
2 office may require the owner or operator to update a prevention plan as
3 a result of these changes.

4 (7) The office by rule shall require prevention plans to be
5 reviewed, updated, if necessary, and resubmitted to the office at least
6 once every five years.

7 (8) Approval of a prevention plan by the office does not constitute
8 an express assurance regarding the adequacy of the plan nor constitute
9 a defense to liability imposed under this chapter or other state law.

10 (9) This section does not authorize the office to modify the terms
11 of a collective bargaining agreement.

12 NEW SECTION. **Sec. 417.** CONTINGENCY PLANS. (1) Each covered
13 vessel shall have a contingency plan for the containment and cleanup of
14 oil spills from the covered vessel into the waters of the state and for
15 the protection of fisheries and wildlife, natural resources, and public
16 and private property from such spills. The office shall by rule adopt
17 and periodically revise standards for the preparation of contingency
18 plans. The office shall require contingency plans, at a minimum, to
19 meet the following standards:

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

22 (b) Be designed to be capable in terms of personnel, materials, and
23 equipment, of promptly and properly, to the maximum extent practicable,
24 as defined by the office removing oil and minimizing any damage to the
25 environment resulting from a worst case spill;

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

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

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

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

10 (g) Describe important features of the surrounding environment,
11 including fish and wildlife habitat, environmentally sensitive areas,
12 and public facilities. The departments of ecology, fisheries,
13 wildlife, and natural resources, upon request, shall provide
14 information that they have available to assist in preparing this
15 description;

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

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

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

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

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

3 (m) Until a spill prevention plan has been submitted pursuant to
4 section 416 of this act, state the measures that have been taken to
5 reduce the likelihood that a spill will occur, including but not
6 limited to, design and operation of a vessel, training of personnel,
7 number of personnel, and backup systems designed to prevent a spill;

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

11 (o) If the department of ecology has adopted rules permitting the
12 use of dispersants, the circumstances, if any, and the manner for the
13 application of the dispersants in conformance with the department's
14 rules.

15 (2)(a) The owner or operator of a tank vessel of three thousand
16 gross tons or more shall submit a contingency plan to the office within
17 six months after the office adopts rules establishing standards for
18 contingency plans under subsection (1) of this section.

19 (b) Contingency plans for all other covered vessels shall be
20 submitted to the office within eighteen months after the office has
21 adopted rules under subsection (1) of this section. The office may
22 adopt a schedule for submission of plans within the eighteen-month
23 period.

24 (3)(a) The owner or operator of a tank vessel or of the facilities
25 at which the vessel will be unloading its cargo shall submit the
26 contingency plan for the tank vessel. Subject to conditions imposed by
27 the office, the owner or operator of a facility may submit a single
28 contingency plan for tank vessels of a particular class that will be
29 unloading cargo at the facility.

1 (b) The contingency plan for a cargo vessel or passenger vessel may
2 be submitted by the owner or operator of the cargo vessel or passenger
3 vessel or by the agent for the vessel resident in this state. Subject
4 to conditions imposed by the office, the owner, operator, or agent may
5 submit a single contingency plan for cargo vessels or passenger vessels
6 of a particular class.

7 (c) A person who has contracted with a covered vessel to provide
8 containment and cleanup services and who meets the standards
9 established pursuant to RCW 90.48.372 as recodified by this act, may
10 submit the plan for any covered vessel for which the person is
11 contractually obligated to provide services. Subject to conditions
12 imposed by the office, the person may submit a single plan for more
13 than one covered vessel.

14 (4) A contingency plan prepared for an agency of the federal
15 government or another state that satisfies the requirements of this
16 section and rules adopted by the office may be accepted by the office
17 as a contingency plan under this section. The office shall assure that
18 to the greatest extent possible, requirements for contingency plans
19 under this section are consistent with the requirements for contingency
20 plans under federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 418.** The provisions of prevention plans and
9 contingency plans approved by the office pursuant to this chapter shall
10 be legally binding on those persons submitting them to the office and
11 on their successors, assigns, agents, and employees. The superior
12 court shall have jurisdiction to restrain a violation of, compel
13 specific performance of, or otherwise to enforce such plans upon
14 application by the office. The office may issue an order pursuant to
15 chapter 34.05 RCW requiring compliance with a contingency plan or a
16 prevention plan and may impose administrative penalties for failure to
17 comply with a plan.

18 NEW SECTION. **Sec. 419.** (1) Except as provided in subsection (2)
19 of this section, it shall be unlawful for the owner or operator to
20 knowingly and intentionally operate in this state or on the waters of
21 this state a covered vessel without an approved contingency plan or an
22 approved prevention plan as required by this chapter, or financial
23 responsibility in compliance with this chapter and the federal oil
24 pollution act of 1990. The first conviction under this section shall
25 be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent
26 conviction shall be a class C felony under chapter 9A.20 RCW.

27 (2) It shall not be unlawful for the owner or operator to operate
28 a covered vessel if:

1 (a) The covered vessel is not required to have a contingency plan,
2 spill prevention plan, or financial responsibility;

3 (b) All required plans have been submitted to the office as
4 required by this chapter and rules adopted by the office and the office
5 is reviewing the plan and has not denied approval; or

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

8 (3) A person may rely on a copy of the statement issued by the
9 department pursuant to section 417 of this act as evidence that a
10 vessel has an approved contingency plan and the statement issued
11 pursuant to section 416 of this act that a vessel has an approved
12 prevention plan.

13 NEW SECTION. **Sec. 420.** (1) Except as provided in subsection (4)
14 of this section, it shall be unlawful for a covered vessel to enter the
15 waters of the state without an approved contingency plan required by
16 section 417 of this act, a spill prevention plan required by section
17 416 of this act, or financial responsibility in compliance with chapter
18 88.40 RCW and the federal oil pollution act of 1990. The office may
19 deny entry onto the waters of the state to any covered vessel that does
20 not have a required contingency or spill prevention plan or financial
21 responsibility.

22 (2) Except as provided in subsection (4) of this section, it shall
23 be unlawful for a covered vessel to transfer oil to an onshore or
24 offshore facility that does not have an approved contingency plan
25 required under RCW 90.48.371 as recodified by this act, a spill
26 prevention plan required by section 201 of this act, or financial
27 responsibility in compliance with chapter 88.40 RCW and the federal oil
28 pollution act of 1990.

1 (3) The administrator may assess a civil penalty of up to one
2 hundred thousand dollars against the owner or operator of a vessel who
3 is in violation of this section. Each day that the owner or operator
4 of a covered vessel is in violation of this section shall be considered
5 a separate violation.

6 (4) It shall not be unlawful for a covered vessel to operate on the
7 waters of the state if:

8 (a) A contingency plan, a prevention plan, or financial
9 responsibility is not required for the covered vessel;

10 (b) A contingency plan and prevention plan has been submitted to
11 the office as required by this chapter and rules adopted by the office
12 and the office is reviewing the plan and has not denied approval; or

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

15 (5) Any person may rely on a copy of the statement issued by the
16 office to section 417 of this act as evidence that the vessel has an
17 approved contingency plan and the statement issued pursuant to section
18 416 of this act as evidence that the vessel has an approved spill
19 prevention plan.

20 NEW SECTION. **Sec. 421.** NOTIFICATION OF ACCIDENTS AND NEAR MISS
21 INCIDENTS. (1) In order to assist the state in identifying areas of
22 the navigable waters of the state needing special attention, the owner
23 or operator of a covered vessel shall notify the coast guard within one
24 hour:

25 (a) Of the disability of the covered vessel if the disabled vessel
26 is within twelve miles of the shore of the state; and

27 (b) Of a collision or a near miss incident within twelve miles of
28 the shore of the state.

1 (2) The division of emergency management of the department of
2 community development and the office shall request the coast guard to
3 notify the division of emergency management as soon as possible after
4 the coast guard receives notice of a disabled covered vessel or of a
5 collision or near miss incident within twelve miles of the shore of the
6 state. The office shall negotiate an agreement with the coast guard
7 governing procedures for coast guard notification to the state
8 regarding disabled covered vessels and collisions and near miss
9 incidents.

10 (3) The office shall prepare a summary of the information collected
11 under this section and provide the summary to the regional marine
12 safety committees, the coast guard, and others in order to identify
13 problems with the marine transportation system.

14 (4) For the purposes of this section:

15 (a) A tank vessel or cargo vessel is considered disabled if any of
16 the following occur:

17 (i) Any accidental or intentional grounding;

18 (ii) The total or partial failure of the main propulsion or primary
19 steering or any component or control system that causes a reduction in
20 the maneuvering capabilities of the vessel;

21 (iii) An occurrence materially and adversely affecting the vessel's
22 seaworthiness or fitness for service, including but not limited to,
23 fire, flooding, or collision with another vessel;

24 (iv) Any other occurrence that creates the serious possibility of
25 an oil or hazardous substance spill or an occurrence that may result in
26 such a spill.

27 (b) A barge is considered disabled if any of the following occur:

28 (i) The towing mechanism becomes disabled;

29 (ii) The towboat towing the barge becomes disabled through
30 occurrences defined in (a) of this subsection.

1 (c) A near miss incident is an incident that requires the pilot or
2 master of a covered vessel to take evasive actions or make significant
3 course corrections in order to avoid a collision with another ship or
4 to avoid a grounding as required by the inland rules of the road.

5 (5) Failure of any person to make a report under this section shall
6 not be used as the basis for the imposition of any fine or penalty.

7 NEW SECTION. **Sec. 422.** REGIONAL MARINE SAFETY COMMITTEES. (1)

8 The office shall establish regional marine safety committees at least
9 for the Strait of Juan de Fuca/Puget Sound and Grays Harbor/Pacific
10 coast. It is the intent of the legislature that the office also
11 establish a regional marine safety committee jointly with the state of
12 Oregon for the Columbia river. The office by rule shall establish the
13 boundaries of the committees.

14 (2) The administrator shall appoint to each regional committee for
15 a term of three years six persons representing a cross section of
16 interests and the public with an interest in maritime transportation
17 and environmental issues.

18 (3) The administrator or his or her designee shall chair each of
19 the regional committees. Each member of the committee shall be
20 reimbursed for actual and necessary expenses incurred in the
21 performance of committee duties in accordance with RCW 43.03.250.

22 (4) Each regional committee shall be responsible for planning for
23 the safe navigation and operation of tankers, barges, and other vessels
24 within each region. Each committee shall prepare a regional marine
25 safety plan, encompassing all vessel traffic within the region. The
26 coast guard, the federal environmental protection agency, the army
27 corps of engineers, and the navy shall be invited to attend the
28 meetings of each marine regional safety committee.

1 (5) The administrator shall adopt rules and guidelines for regional
2 marine safety plans in consultation with affected parties. The rules
3 shall require the committees to establish subcommittees to involve all
4 interested parties in the development of the plans and to require the
5 committees to include a summary of public comments and any minority
6 reports with recommendations submitted to the administrator. The rules
7 shall also require the plans to consider all of the following:

8 (a) Requirements for tug escorts of tankers and other commercial
9 vessels, and speed limits for tankers and other vessels in addition to
10 the requirements imposed by statute;

11 (b) A review and evaluation of the adequacy of and any changes
12 needed in:

13 (i) Anchorage designations and sounding checks;

14 (ii) Communications systems;

15 (iii) Commercial and recreational fishing, recreational boaters,
16 and other small vessel congestion in shipping lanes; and

17 (iv) Placement and effectiveness of navigational aids, channel
18 design plans, and the traffic and routings from port construction and
19 dredging projects;

20 (c) Procedures for routing vessels during emergencies that impact
21 navigation;

22 (d) Management requirements for control bridges;

23 (e) Special protection for environmentally sensitive areas;

24 (f) Suggested mechanisms to ensure that the provisions of the plan
25 are fully and regularly enforced; and

26 (g) A recommendation as to whether establishing or expanding vessel
27 traffic safety systems within the regions is desirable.

28 (6) Each regional marine safety plan shall be submitted to the
29 office for approval within one year after the regional marine safety
30 committee is established. The office shall review the plans for

1 consistency with the rules and guidelines and shall approve the plans
2 or give reasons for their disapproval. If a regional marine safety
3 committee does not submit a regional marine safety plan to the office
4 within one year after the committee is established, the office, after
5 consulting with affected interests, may adopt a plan for the region
6 that meets the requirements of subsection (5) of this section.

7 (7) Upon approval of a plan, the office shall implement those
8 elements of the plan over which the state has authority. If federal
9 authority or action is required, the office shall petition the
10 appropriate agency or congress.

11 (8) Not later than July 1st of each even-numbered year each
12 regional marine safety committee shall report its findings and
13 recommendations to the marine oversight board established in section
14 501 of this act and the office concerning vessel traffic safety in its
15 region and any recommendations for improving tanker, barge, and other
16 vessel safety in the region by amending the regional marine safety
17 plan. The regional committees shall also provide technical assistance
18 to the marine oversight board.

19 NEW SECTION. **Sec. 423.** EMERGENCY RESPONSE SYSTEM. An emergency
20 response system for the Strait of Juan de Fuca shall be established by
21 July 1, 1992. In establishing the emergency response system, the
22 administrator shall consider the recommendations of the regional marine
23 safety committees. The administrator shall also consult with the
24 province of British Columbia regarding its participation in the
25 emergency response system.

26 NEW SECTION. **Sec. 424.** CAPTIONS NOT LAW. Section headings as
27 used in this chapter do not constitute any part of the law.

1 **Sec. 425.** RCW 90.48.385 and 1990 c 116 s 16 are each amended to
2 read as follows:

3 (~~The department of ecology shall study standards for the manner in~~
4 ~~which, and the equipment with which, tow boats may tow barges carrying~~
5 ~~oil or hazardous substances as cargo or cargo residue.~~) The regional
6 marine safety committees established pursuant to section 422 of this
7 1991 act shall study federal requirements for tow equipment for barges
8 carrying oil in bulk. The committees shall review standards ((shall
9 ~~address but are not limited to)) for: Wire rope specifications,
10 catenary, the design of related on-board equipment, number of cables,
11 ~~((and)) back-up or barge retrieval systems in case of cable break, and~~
12 the operation, maintenance, and inspection of cables and other tow
13 equipment.~~

14 (~~The department shall seek voluntary compliance with such~~
15 ~~standards.~~)

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

21 The committees shall submit their report to the office within one
22 year after the committees are established. The report shall include a
23 recommendation on whether the office should adopt standards for tow
24 equipment and its maintenance, operation, and inspection. If there is
25 a recommendation that the office adopt standards, the recommended
26 standards shall also be included in the report.

27 **Sec. 426.** RCW 90.48.510 and 1987 c 479 s 2 are each amended to
28 read as follows:

1 independent oversight of the actions of the federal government,
2 industry, the department, the office, and other state agencies with
3 respect to oil and hazardous substance spill prevention and response.

4 (2)(a) The board may, at its own discretion, study any aspect of
5 oil and hazardous substance spill prevention and response in the state.
6 The board shall report to the governor and make recommendations to the
7 department and the office on activities of the federal government and
8 industry with respect to oil and hazardous substance spill prevention
9 and response, including recommendations for the state's response to
10 those actions. The board shall specifically review the need for, and
11 the structure and design of an emergency response system for the Strait
12 of Juan de Fuca and the Pacific coast. The board shall also make
13 recommendations to the legislature and other state agencies on any
14 provision of this chapter, other state laws, and rules, policies, and
15 guidelines adopted by the department, the office, or, other state
16 agencies relating to the prevention and cleanup of oil and hazardous
17 substance spills into the waters of the state.

18 (b) To minimize duplication of effort, reviews conducted by the
19 board shall be coordinated with related activities of the federal
20 government, the department, the office, and other appropriate state and
21 international entities.

22 (c) The board shall evaluate and report at least annually to the
23 governor and the appropriate standing committees of the legislature on
24 oil and hazardous substance spill prevention, response, and
25 preparedness programs within the state.

26 (3) There shall be five members of the board appointed by the
27 governor for terms of five years. Members' terms shall be staggered.
28 The members of the board shall be representative of the public and
29 shall have demonstrable knowledge of environmental protection and the
30 study of marine ecosystems, or have familiarity with marine

1 transportation systems. No member of the board may be in the business
2 of, or be employed by, or under contract with, any person or entity
3 that is in the business of transporting, storing, or handling oil or
4 hazardous substances or be employed by a recognized environmental
5 organization.

6 (4) A chair shall be selected by majority vote of the board. The
7 board shall meet as often as required, but at least four times per
8 year. Members shall be reimbursed for travel and expenses for
9 attending meetings as provided in RCW 43.03.050 and 43.03.060.

10 (5) The chair may hire staff as necessary for the board to fulfill
11 its responsibilities.

12 PART VI

13 TANKER REQUIREMENTS

14 **Sec. 601.** RCW 88.16.170 and 1975 1st ex.s. c 125 s 1 are each
15 amended to read as follows:

16 Because of the danger of spills, the legislature finds that the
17 transportation of crude oil and refined petroleum products by tankers
18 on the Columbia river and on Puget Sound and adjacent waters creates a
19 great potential hazard to important natural resources of the state and
20 to jobs and incomes dependent on these resources.

21 The legislature recognizes that the Columbia river has many natural
22 obstacles to navigation and shifting navigation channels that create
23 the risk of an oil spill. The legislature also recognizes Puget Sound
24 and adjacent waters are a relatively confined salt water environment
25 with irregular shorelines and therefore there is a greater than usual
26 likelihood of long-term damage from any large oil spill.

27 The legislature further recognizes that certain areas of the
28 Columbia river and Puget Sound and adjacent waters have limited space

1 for maneuvering a large oil tanker and that these waters contain many
2 natural navigational obstacles as well as a high density of commercial
3 and pleasure boat traffic.

4 For these reasons, it is important that large oil tankers be
5 piloted by highly skilled persons who are familiar with local waters
6 and that such tankers have sufficient capability for rapid maneuvering
7 responses.

8 It is therefore the intent and purpose of RCW 88.16.180 as
9 recodified by this 1991 act and 88.16.190 as recodified by this 1991
10 act to decrease the likelihood of oil spills on the Columbia river and
11 on Puget Sound and its shorelines by requiring all oil tankers above a
12 certain size to employ (~~Washington state~~) licensed pilots and(~~if~~
13 ~~lacking certain safety and maneuvering capability requirements,~~) to be
14 escorted by a tug or tugs while navigating on certain areas of Puget
15 Sound and adjacent waters.

16 **Sec. 602.** RCW 88.16.180 and 1983 c 3 s 231 are each amended to
17 read as follows:

18 Notwithstanding the provisions of RCW 88.16.070, any registered oil
19 tanker(~~whether enrolled or registered,~~) of (~~fifty~~) five thousand
20 (~~deadweight~~) gross tons or greater, shall be required:

21 (1) To take a Washington state licensed pilot while navigating
22 Puget Sound and adjacent waters and shall be liable for and pay
23 pilotage rates pursuant to RCW 88.16.035; and

24 (2) To take a licensed pilot while navigating the Columbia river.

25 **Sec. 603.** RCW 88.16.200 and 1977 ex.s. c 337 s 16 are each amended
26 to read as follows:

27 Any vessel designed for the purpose of carrying as its cargo
28 liquefied natural or propane gas shall adhere to the provisions of RCW

1 88.16.190(2) as recodified by this 1991 act as though it ((~~was~~)) were
2 an oil tanker.

3 NEW SECTION. Sec. 604. RECKLESS OPERATION OF A VESSEL. (1) A
4 person commits the crime of reckless operation of a vessel if, while
5 operating, navigating, or piloting a covered vessel, the person, with
6 recklessness as defined in RCW 9A.08.010, causes a release of oil.

7 (2) Reckless operation of a vessel is a class B felony under
8 chapter 9A.20 RCW.

9 NEW SECTION. Sec. 605. NEGLIGENT OPERATION OF A VESSEL. (1) A
10 person commits the crime of negligent operation of a vessel if, while
11 operating, navigating, or piloting a covered vessel, the person, with
12 criminal negligence, as defined in RCW 9A.08.010, causes a release of
13 oil.

14 (2) Negligent operation of a vessel is a class C felony under
15 chapter 9A.20 RCW.

16 NEW SECTION. Sec. 606. OPERATION OF A VESSEL WHILE UNDER
17 INFLUENCE OF LIQUOR OR DRUGS. (1) A person is guilty of operating a
18 vessel while under the influence of intoxicating liquor or drugs if the
19 person operates a covered vessel within this state while:

20 (a) The person has 0.06 grams or more of alcohol per two hundred
21 ten liters of breath, as shown by analysis of the person's breath made
22 under section 607 of this act; or

23 (b) The person has 0.06 percent or more by weight of alcohol in the
24 person's blood as shown by analysis of the person's blood made under
25 section 607 of this act; or

26 (c) The person is under the influence of or affected by
27 intoxicating liquor or drugs; or

1 (d) The person is under the combined influence of or affected by
2 intoxicating liquor or drugs.

3 (2) The fact that any person charged with a violation of this
4 section is or has been entitled to use such drug under the laws of this
5 state shall not constitute a defense against any charge of violating
6 this section.

7 (3) Operating a vessel while intoxicated is a class C felony under
8 chapter 9A.20 RCW.

9 NEW SECTION. **Sec. 607.** BREATH OR BLOOD ANALYSIS. (1) Upon the
10 trial of any civil or criminal action or proceeding arising out of acts
11 alleged to have been committed by a person while operating a vessel
12 while under the influence of intoxicating liquor or drugs, if the
13 amount of alcohol in the person's blood or breath at the time alleged
14 as shown by analysis of his blood or breath is less than 0.06 percent
15 by weight of alcohol in his blood or 0.06 grams of alcohol per two
16 hundred ten liters of the person's breath, it is evidence that may be
17 considered with other competent evidence in determining whether the
18 person was under the influence of intoxicating liquor or drugs.

19 (2) The breath analysis shall be based upon grams of alcohol per
20 two hundred ten liters of breath. The foregoing provisions of this
21 section shall not be construed as limiting the introduction of any
22 other competent evidence bearing upon the question whether the person
23 was under the influence of intoxicating liquor or any drug.

24 (3) Analysis of the person's blood or breath to be considered valid
25 under this section shall have been performed according to methods
26 approved by the state toxicologist and by an individual possessing a
27 valid permit issued by the state toxicologist for this purpose. The
28 state toxicologist shall approve satisfactory techniques or methods, to
29 supervise the examination of individuals to ascertain their

1 qualifications and competence to conduct such analyses, and to issue
2 permits that are subject to termination or revocation at the discretion
3 of the state toxicologist.

4 (4) If a blood test is administered under this section, the
5 withdrawal of blood for the purpose of determining its alcoholic
6 content may be performed only by a physician, a registered nurse, or a
7 qualified technician. This limitation shall not apply to the taking of
8 breath specimens.

9 (5) The person tested may have a physician, or a qualified
10 technician, chemist, registered nurse, or other qualified person of his
11 or her own choosing administer one or more tests in addition to any
12 administered at the direction of a law enforcement officer. The
13 failure or inability to obtain an additional test by a person shall not
14 preclude the admission of evidence relating to the test or tests taken
15 at the direction of a law enforcement officer.

16 (6) Upon the request of the person who submits to a test or tests
17 at the request of a law enforcement officer, full information
18 concerning the test or tests shall be made available to the person or
19 his or her attorney.

20 NEW SECTION. **Sec. 608.** LIMITED IMMUNITY FOR BLOOD WITHDRAWAL. No
21 physician, registered nurse, qualified technician, or hospital, or duly
22 licensed clinical laboratory employing or using services of the
23 physician, registered nurse, or qualified technician, may incur any
24 civil or criminal liability as a result of the act of withdrawing blood
25 from any person when directed by a law enforcement officer to do so for
26 the purpose of a blood test under section 607 of this act. This
27 section shall not relieve any physician, registered nurse, qualified
28 technician, or hospital or duly licensed clinical laboratory from civil

1 liability arising from the use of improper procedures or failing to
2 exercise the required standard of care.

3 **PART VII**

4 **FINANCIAL RESPONSIBILITY**

5 **Sec. 701.** RCW 88.40.005 and 1990 c 116 s 29 are each amended to
6 read as follows:

7 The legislature recognizes that oil and hazardous substance spills
8 and other forms of incremental pollution present serious danger to the
9 fragile marine environment of Washington state. It is the intent and
10 purpose of this chapter to define and prescribe financial
11 responsibility requirements for vessels that transport petroleum
12 products and hazardous substances as cargo or as fuel across the waters
13 of the state of Washington and for facilities that store, handle, or
14 transfer oil or hazardous substances in bulk on or near the navigable
15 waters.

16 NEW SECTION. **Sec. 702.** DEFINITIONS. Unless the context clearly
17 requires otherwise, the definitions in this section apply throughout
18 this chapter.

19 (1) "Administrator" means the administrator of the office of marine
20 safety created in section 402 of this act.

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

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

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

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

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

5 (7)(a) "Facility" means any structure, group of structures,
6 equipment, pipeline, or device, other than a vessel that is used for
7 producing, storing, handling, transferring, processing, or transporting
8 oil in bulk.

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

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

21 (9) "Office" means the office of marine safety established by
22 section 402 of this act.

23 (10) "Oil" or "oils" means any naturally occurring liquid
24 hydrocarbons at atmospheric temperature and pressure coming from the
25 earth, including condensate and natural gasoline, and any fractionation
26 thereof, including, but not limited to, crude oil, petroleum, gasoline,
27 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
28 other than dredged spoil.

29 (11) "Offshore facility" means any facility located in, on, or
30 under any of the navigable waters of the state, but does not include a

1 facility any part of which is located in, on, or under any land of the
2 state, other than submerged land.

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

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

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

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

19 (15) "Ship" means any boat, ship, vessel, barge, or other floating
20 craft of any kind.

21 (16) "Spill" means an unauthorized discharge of oil or hazardous
22 substances into the waters of the state.

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

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

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

29 (18) "Waters of the state" includes lakes, rivers, ponds, streams,
30 inland waters, underground water, salt waters, estuaries, tidal flats,

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

4 **Sec. 703.** RCW 88.40.020 and 1990 c 116 s 31 are each amended to
5 read as follows:

6 ~~((Any vessel over three hundred gross tons, that transports
7 petroleum products as cargo, and any inland barge that transports oil
8 or hazardous substances as cargo, using any port or place in the state
9 of Washington or the navigable waters of the state shall establish,
10 under rules prescribed by the director of the department of ecology,
11 evidence of financial responsibility in the amount of the greater of
12 one million dollars, or one hundred fifty dollars per gross ton of such
13 vessel, to meet the liability to the state of Washington for the
14 following: (1) The actual costs for removal of spills of petroleum
15 products or hazardous substances; (2) civil penalties and fines; and
16 (3) natural resource damages.))~~ (1)(a) A tank vessel that carries oil
17 as cargo in bulk shall demonstrate financial responsibility to pay at
18 least five hundred million dollars.

19 (b) The department by rule may establish a lesser standard of
20 financial responsibility for barges of three thousand gross tons or
21 less. The standard shall set the level of financial responsibility
22 based on the quantity of cargo the barge is capable of carrying. The
23 department shall not set the standard for barges of three thousand
24 gross tons or less below that required under federal law.

25 (2) A cargo vessel or passenger vessel that carries oil as fuel
26 shall demonstrate financial responsibility to pay the greater of at
27 least six hundred dollars per gross ton or five hundred thousand
28 dollars.

1 (3) The certificate of financial responsibility shall meet the
2 liability of the certificate holder for the actual costs for removal of
3 spills of oil and necessary expenses.

4 (4) The office may by rule set a lesser amount of financial
5 responsibility for a tank vessel that meets standards for construction,
6 propulsion, equipment, and personnel established by the office. The
7 office shall require as a minimum level of financial responsibility
8 under this subsection the same level of financial responsibility
9 required under federal law.

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

12 NEW SECTION. Sec. 704. An onshore or offshore facility shall
13 demonstrate financial responsibility in an amount determined by the
14 department as necessary to compensate the state for damages that might
15 occur during a reasonable worst case spill of oil from that facility
16 into the navigable waters of the state. The department shall consider
17 such matters as the amount of oil that could be spilled into the
18 navigable waters from the facility, the cost of cleaning up the spilled
19 oil, the frequency of operations at the facility, the damages that
20 could result from the spill and the commercial availability and
21 affordability of financial responsibility. This section shall not
22 apply to an onshore or offshore facility owned or operated by the
23 federal government or by the state or local government.

24 **Sec. 705.** RCW 88.40.030 and 1990 c 116 s 32 are each amended to
25 read as follows:

26 Financial responsibility required by this chapter may be
27 established by any one of, or a combination of, the following methods
28 acceptable to the ~~((director of))~~ office of marine safety or the

1 department of ecology: (1) Evidence of insurance; (2) surety bonds;
2 (3) qualification as a self-insurer; or (4) other evidence of financial
3 responsibility. Any bond filed shall be issued by a bonding company
4 authorized to do business in the United States. Documentation of such
5 financial responsibility shall be kept on any (~~barge or tank~~) covered
6 vessel (~~((transporting petroleum products or hazardous substances as~~
7 ~~cargo))~~) and filed with the (~~(department)~~) office at least twenty-four
8 hours before entry of the vessel into the navigable waters of the
9 state. (~~((The owner or operator of any other vessel shall maintain on~~
10 ~~the vessel a certificate issued by the United States coast guard~~
11 ~~evidencing compliance with the requirements of section 311 of the~~
12 ~~federal clean water act, 33 U.S.C. Sec. 1251 et seq.))~~) The owner or
13 operator of the vessel may file with the office a certificate
14 evidencing compliance with the requirements of another state's or
15 federal financial responsibility requirements if the state or federal
16 government requires a level of financial responsibility at least as
17 high as that required under this chapter.

18 **Sec. 706.** RCW 88.40.040 and 1989 1st ex.s. c 2 s 5 are each
19 amended to read as follows:

20 (1) The office shall deny entry to the waters of the state to any
21 vessel that does not meet the financial responsibility requirements of
22 this chapter. Any vessel owner or operator that does not meet the
23 financial responsibility requirements of this chapter and any rules
24 prescribed thereunder or the federal oil pollution act of 1990 shall be
25 reported by the office to the (~~((secretary of transportation who shall~~
26 ~~suspend the privilege of operating said vessel until financial~~
27 ~~responsibility is demonstrated))~~) United States coast guard.

28 (2) The office shall enforce section 1016 of the federal oil
29 pollution act of 1990 as authorized by section 1019 of the federal act.

1 fuel blendstock, including, but not limited to, gasoline, diesel fuel,
2 aviation fuel, bunker fuel, and fuels containing a blend of alcohol and
3 petroleum.

4 NEW SECTION. **Sec. 802.** OIL SPILL PREVENTION AND RESPONSE FEE. (1)
5 An oil spill response fee in the amount of ... per barrel shall be
6 imposed on every person owning crude oil or petroleum products at the
7 time that the crude oil or petroleum products are received at a marine
8 terminal within this state. The fee shall not apply to any petroleum
9 products received from a point of origin within this state. The fee
10 shall be collected by the marine terminal operator from the owner of
11 the crude oil or petroleum products received at the marine terminal.
12 If the owner of the crude oil or petroleum products is an integrated
13 oil company, the owner may pay the fee directly to the department. The
14 department shall prescribe rules for the direct payment of fees by
15 integrated oil companies. Good faith acceptance of a direct payment
16 certificate by a marine terminal operator shall relieve the marine
17 terminal operator from any liability for collection or payment of the
18 fee. The fee may be paid to the department on the twenty-fifth day of
19 each month based on the number of barrels received during the preceding
20 month. Every owner of crude oil or petroleum products shall be liable
21 for the fee until it is paid to the department. The payment by the
22 owner to the marine terminal operator shall relieve the owner from
23 further liability for the fee. No fee may be imposed pursuant to this
24 section with respect to any crude oil or petroleum products if the
25 person who would be liable for that fee, or responsible for its
26 collection, establishes that the fee has been collected by a marine
27 terminal operator registered under this chapter or paid to the
28 department with respect to the crude oil or petroleum products.

1 (2) The fee imposed by this section shall not apply to any crude
2 oil or petroleum products received at a marine terminal and
3 subsequently exported from or sold for export from the state, whether
4 exported in the form received at the marine terminal or after refining
5 or other processing in this state. Any owner of crude oil or petroleum
6 products either exporting or selling for export crude oil or petroleum
7 products may register with the department as an exporter and obtain an
8 oil spill response fee exporter's registration number. In lieu of
9 paying the marine terminal operator the fee imposed by this section, an
10 owner of crude oil or petroleum products may provide a marine terminal
11 operator with an exporter's certificate containing the owner's
12 exporter's registration number and certifying that the crude oil or
13 petroleum products received at the marine terminal will be exported or
14 sold for export from this state. An exporter's certificate may also be
15 issued where it is unknown, at the time of receipt at the marine
16 terminal, what quantity of crude oil or petroleum products will
17 subsequently be exported from or sold for export from this state. Good
18 faith acceptance of an exporter's certificate by a marine terminal
19 operator shall relieve the marine terminal operator from any liability
20 for collection or payment of the fee. If the fee is not paid at the
21 time of receipt at the marine terminal, the owner of the crude oil or
22 petroleum products shall be directly liable to the department for the
23 payment of any fee on crude oil or petroleum products not actually
24 exported or sold for export from the state. The department shall adopt
25 rules implementing the requirements of this section.

26 (3) The fees collected under this section shall be deposited into
27 the state oil spill response account.

28 (4) The fee imposed by this section shall take effect January 1,
29 1992.

1 NEW SECTION. **Sec. 803.** ADMINISTRATION OF TAX. (1) The department
2 shall collect the fees imposed by this chapter.

3 (2) Chapter 82.32 RCW shall apply to the administration of the fees
4 imposed under this chapter. In interpreting this section and chapter
5 82.32 RCW for the purpose of this chapter, the terms "tax" and "taxes"
6 shall include the fees imposed by this chapter. The interest, penalty,
7 and collection procedures of chapter 82.32 RCW are specifically made
8 applicable to the fees. RCW 82.04.300 shall not apply to these fees.

9 (3) The department shall have rule-making authority with regard to
10 the interpretation, administration, and collection of the fees imposed
11 in this chapter.

12 NEW SECTION. **Sec. 804.** PROVISIONS FOR OIL SPILL PREVENTION AND
13 RESPONSE ACCOUNT. (1) The state oil spill prevention and response
14 account is hereby created in the state treasury. This account shall be
15 composed of a spill administration fund, an oil spill administration
16 fund, and an oil spill response fund. These funds shall be composed of
17 the fees collected under this chapter, all interest earned through the
18 investment of the proceeds of the account, and any other amounts
19 collected pursuant to this chapter.

20 (2) Within thirty days of the due date for the returns required
21 under this chapter, the state treasurer shall determine the total
22 amount of fees collected and deposited in the oil spill prevention and
23 response account and publish that determination. When the total amount
24 of the fees collected equals or exceeds the annually determined maximal
25 account balance, the collection of the fee imposed by this chapter
26 shall be suspended beginning the first day of the second calendar month
27 following the state treasurer's determination, and the department shall
28 notify each registered taxpayer of the suspension at least thirty days
29 prior to the suspension. When the total amount of fees collected is

1 less than or equal to the annually determined minimum account balance,
2 the collection of the fees imposed by this chapter shall resume
3 beginning the first day of the second calendar month following the
4 state treasurer's determination. The department shall notify each
5 registered taxpayer at least thirty days prior to the resumption of
6 collection.

7 (3) For the purposes of subsections (1) and (2) of this section,
8 the annually determined maximum account balance shall be ... dollars
9 and the annually determined minimum account balance shall be ...
10 dollars.

11 (4)(a) The annually determined maximum account balance shall be
12 divided into two separate funds as follows:

13 (i) The oil spill response fund which shall not exceed ... dollars;
14 and

15 (ii) The oil spill administration fund which shall not exceed ...
16 dollars. Moneys in the oil spill administration fund shall be expended
17 only pursuant to appropriation.

18 (b) Subject to the refund provisions in subsection (5) of this
19 section, all payments received by the department pursuant to section
20 802 of this act shall be applied to the administration and response
21 funds as follows:

22 (i) Until the oil spill response fund equals ... dollars, seventy-
23 five percent of the total payments received in each month pursuant to
24 section 802 of this act shall be applied to the oil spill response fund
25 and twenty-five percent of the total payments shall be applied to the
26 oil spill administration fund;

27 (ii) When the oil spill response fund equals ... dollars, all
28 payments received pursuant to section 802 of this act shall be
29 deposited in the oil spill administration fund.

1 (5) If the balance of the oil and hazardous substance spill
2 prevention and response account exceeds the annually determined maximum
3 account balance, the excess shall be refunded to each owner of crude
4 oil or petroleum products who has paid the fees imposed under this
5 chapter. The refunds shall be paid in proportion to the ratio of the
6 total payments made by the owner to the total fees paid by all
7 taxpayers pursuant to this chapter. An owner of crude oil or petroleum
8 products shall be entitled to a refund only if the owner has submitted
9 a refund claim to the department within six months from the date of the
10 department's notification under subsection (2) of this section. The
11 department shall adopt rules for the administration of refunds,
12 including requirements for the form and substantiation of refund
13 claims.

14 NEW SECTION. **Sec. 805.** FACILITIES TO REGISTER. Every person who
15 operates a marine terminal in this state and who is required to collect
16 or pay any of the fees imposed pursuant to this chapter, shall register
17 as a taxpayer with the department.

18 NEW SECTION. **Sec. 806.** EXPENDITURES FROM OIL SPILL PREVENTION AND
19 RESPONSE ACCOUNT. (1) The oil spill administration fund may be used
20 for direct and indirect costs associated with the development,
21 administration, and implementation of the oil related provisions of
22 chapters 90.56 and 88.-- RCW (sections 413 through 424 of this act),
23 including but not limited to:

24 (a) Routine responses not covered under subsection (2) of this
25 section;

26 (b) Management and staff development activities;

27 (c) Development of rules and policies and the state-wide plan
28 provided for in RCW 90.48.378 as recodified by this act;

1 (d) Facility and vessel plan review and approval, drills,
2 inspections, investigations, enforcement, and litigation;

3 (e) Interagency coordination and public outreach and education;

4 (f) Collection and administration of the fee provided for in this
5 chapter; and

6 (g) Appropriate travel, goods and services, contracts, and
7 equipment consistent with activities provided for in chapters 90.56 and
8 88.-- RCW (sections 413 through 424 of this act).

9 (2) The significant oil spill response account shall only be used
10 for spills of crude oil or petroleum products where the expenditures
11 from the fund are anticipated to exceed twenty-five thousand dollars.
12 The fund may be used for direct and indirect costs associated with the
13 response to spills of crude oil or petroleum products, and other costs
14 associated with this state's responsibilities with respect to
15 significant spills of crude oil and petroleum products. The fund may
16 be used in the exercise of the following responsibilities:

17 (a) Natural resource damage assessment and related activities;

18 (b) Spill related response, containment, wildlife rescue, cleanup,
19 disposal, and associated costs;

20 (c) Interagency coordination and public outreach and education;

21 (d) Collection and administration of the fee provided for in this
22 chapter; and

23 (e) Appropriate travel, goods and services, contracts, and
24 equipment consistent with activities provided for in chapters 90.56 and
25 88.-- RCW (sections 413 through 424 of this act).

26 **Sec. 807.** RCW 90.48.142 and 1989 c 262 s 2 are each amended to
27 read as follows:

28 (1) Any person who:

1 (a)(i) Violates any of the provisions of this chapter((~~7~~)) or
2 chapter 90.56 RCW;

3 (ii) Fails to perform any duty imposed by this chapter((~~7~~)) or
4 chapter 90.56 RCW;

5 (iii) Violates an order or other determination of the department or
6 the director made pursuant to the provisions of this chapter((~~7~~
7 including)) or chapter 90.56 RCW;

8 (iv) Violates the conditions of a waste discharge permit issued
9 pursuant to RCW 90.48.160((~~7~~ and in the course thereof causes the death
10 of, or injury to, fish, animals, vegetation or other resources of the
11 state,))i or

12 (v) Otherwise causes a reduction in the quality of the state's
13 waters below the standards set by the department or, if no standards
14 have been set, causes significant degradation of water quality, thereby
15 damaging the same((~~7~~))i and

16 (b) Causes the death of, or injury to, fish, animals, vegetation,
17 or other resources of the state;

18 shall be liable to pay the state damages in an amount ((~~equal to the~~
19 ~~sum of money necessary to:~~—(a) ~~Restore any damaged resource to its~~
20 ~~condition prior to the injury, to the extent technically feasible, and~~
21 ~~compensate for the lost value incurred during the period between injury~~
22 ~~and restoration; or (b) compensate for the lost value throughout the~~
23 ~~duration of the injury that the resource previously provided if~~
24 ~~restoration is not technically feasible and, when only partial~~
25 ~~restoration is technically feasible, compensate for the remaining lost~~
26 ~~value. "Technical feasibility" or "technically feasible" shall mean~~
27 ~~for the purposes of this subsection, that given available technology,~~
28 ~~a restoration or enhancement project can be successfully completed at~~
29 ~~a cost that is not disproportionate to the value of the resource prior~~
30 ~~to the injury.~~

1 ~~(2) Restoration shall include the cost to restock such waters,~~
2 ~~replenish or replace such resources, and otherwise restore the stream,~~
3 ~~lake or other waters of the state, including any estuary, ocean area,~~
4 ~~submerged lands, shoreline, bank, or other lands adjoining such waters~~
5 ~~to its condition prior to the injury, as such condition is determined~~
6 ~~by the department. The lost value of a damaged resource shall be equal~~
7 ~~to the sum of consumptive, nonconsumptive, and indirect use values, as~~
8 ~~well as lost taxation, leasing, and licensing revenues. Indirect use~~
9 ~~values may include existence, bequest, option, and aesthetic values.~~
10 ~~Damages shall be determined by generally accepted and cost-effective~~
11 ~~procedures.~~

12 ~~(3) Such damages shall be recoverable in an action brought by the~~
13 ~~attorney general on behalf of the people of the state of Washington in~~
14 ~~the superior court of Thurston county or the county in which such~~
15 ~~damages occurred: PROVIDED, That if damages occurred in more than one~~
16 ~~county the attorney general may bring action in any of the counties~~
17 ~~where the damages occurred. Any money so recovered by the attorney~~
18 ~~general shall be transferred to the coastal protection fund established~~
19 ~~under RCW 90.48.390. A steering committee consisting of~~
20 ~~representatives of the departments of ecology, fisheries, wildlife,~~
21 ~~natural resources, and the parks and recreation commission shall~~
22 ~~authorize the expenditure of the moneys collected under this section~~
23 ~~after consulting impacted local agencies and local and tribal~~
24 ~~governments. The department shall chair the steering committee. The~~
25 ~~moneys collected under this section shall only be used for the~~
26 ~~following purposes: (a) Environmental restoration and enhancement~~
27 ~~projects intended to restore or enhance environmental, recreational, or~~
28 ~~aesthetic resources for the benefit of Washington's citizens; (b)~~
29 ~~investigations of the long-term effects of discharges, including sewer~~
30 ~~sludge, on state resources; and (c) reimbursement of agencies for~~

1 reasonable reconnaissance and damage assessment costs under this
2 chapter. Agencies may not be reimbursed under this section for the
3 salaries and benefits of permanent employees for routine operational
4 support. Agencies may only be reimbursed under this section if money
5 for reconnaissance and damage assessment activities is unavailable from
6 other sources. In authorizing restoration or enhancement projects,
7 preference shall be given to projects within counties where the injury
8 occurred)) determined pursuant to RCW 90.48.367.

9 (2) No action shall be authorized under this section against any
10 person operating in compliance with the conditions of a waste discharge
11 permit issued pursuant to RCW 90.48.160.

12 NEW SECTION. **Sec. 808.** A new section is added to chapter 90.48
13 RCW to read as follows:

14 For the purposes of this chapter, "technical feasibility" or
15 "technically feasible" means that given available technology, a
16 restoration or enhancement project can be successfully completed at a
17 cost that is not disproportionate to the value of the resource before
18 the injury.

19 **Sec. 809.** RCW 90.48.366 and 1989 c 388 s 2 are each amended to
20 read as follows:

21 By July 1, 1991, the department, in consultation with the
22 departments of fisheries, wildlife, and natural resources, and the
23 parks and recreation commission, shall adopt rules establishing a
24 compensation schedule for the discharge of oil or hazardous substances
25 in violation of ((RCW 90.48.320, by persons liable under RCW
26 90.48.336)) this chapter and chapter 90.56 RCW. The department shall
27 establish a scientific advisory board to assist in establishing the
28 compensation schedule. The amount of compensation assessed under this

1 schedule shall be no less than one dollar per gallon of oil spilled and
2 no greater than fifty dollars per gallon of oil spilled. The
3 compensation schedule shall reflect adequate compensation for
4 unquantifiable damages or for damages not quantifiable at reasonable
5 cost for any adverse environmental, recreational, aesthetic, or other
6 effects caused by the (~~oil~~) spill and shall take into account:

7 (1) Characteristics of (~~the~~) any oil or hazardous substance
8 spilled, such as toxicity, dispersibility, solubility, and persistence,
9 that may affect the severity of the effects on the receiving
10 environment, living organisms, and recreational and aesthetic
11 resources;

12 (2) The sensitivity of the affected area as determined by such
13 factors as: (a) The location of the spill; (b) habitat and living
14 resource sensitivity; (c) seasonal distribution or sensitivity of
15 living resources; (d) areas of recreational use or aesthetic
16 importance; (e) the proximity of the spill to important habitats for
17 birds, aquatic mammals, fish, or to species listed as threatened or
18 endangered under state or federal law; and (f) other areas of special
19 ecological or recreational importance, as determined by the department;
20 and

21 (3) Actions taken by the party who spilled (~~the~~) oil or hazardous
22 substances or any party liable for the spill that: (a) Demonstrate a
23 recognition and affirmative acceptance of responsibility for the spill,
24 such as the immediate removal of oil or hazardous substances and the
25 amount of oil removed from the environment; or (b) enhance or impede
26 the detection of the spill, the determination of the (~~number of~~
27 ~~gallons~~) quantity of oil or hazardous substances spilled, or the
28 extent of damage, including the unauthorized removal of evidence such
29 as (~~oiled~~) injured fish or wildlife.

1 **Sec. 810.** RCW 90.48.367 and 1989 c 388 s 3 are each amended to
2 read as follows:

3 (1) ~~((Prior to assessing compensation under RCW 90.48.366))~~ After
4 a spill or other incident causing damages to the natural resources of
5 the state, the department shall conduct a formal preassessment
6 screening as provided in RCW 90.48.368.

7 (2) The department shall use the compensation schedule established
8 under RCW 90.48.366 to determine the amount of damages if the
9 preassessment screening committee determines that: (a) Restoration or
10 enhancement of the injured resources is not technically feasible; (b)
11 damages are not quantifiable at a reasonable cost; and (c) the
12 restoration and enhancement projects or studies proposed by the liable
13 parties are insufficient to adequately compensate the people of the
14 state for damages ~~((sustained as a result of the oil spill.~~

15 ~~(2) Compensation shall not be assessed under this section for oil~~
16 ~~spills for which damages have been or will be assessed under RCW~~
17 ~~90.48.142)).~~

18 (3) If the preassessment screening committee determines that the
19 compensation schedule should not be used, compensation shall be
20 assessed for the amount of money necessary to restore any damaged
21 resource to its condition before the injury, to the extent technically
22 feasible, and compensate for the lost value incurred during the period
23 between injury and restoration.

24 (4) Restoration shall include the cost to restock such waters,
25 replenish or replace such resources, and otherwise restore the stream,
26 lake, or other waters of the state, including any estuary, ocean area,
27 submerged lands, shoreline, bank, or other lands adjoining such waters
28 to its condition before the injury, as such condition is determined by
29 the department. The lost value of a damaged resource shall be equal to
30 the sum of consumptive, nonconsumptive, and indirect use values, as

1 well as lost taxation, leasing, and licensing revenues. Indirect use
2 values may include existence, bequest, option, and aesthetic values.
3 Damages shall be determined by generally accepted and cost-effective
4 procedures, including, but not limited to, contingent valuation method
5 studies.

6 (5) Compensation assessed under this section shall be recoverable
7 in an action brought by the attorney general on behalf of the people of
8 the state of Washington in the superior court of Thurston county or any
9 county in which damages occurred. Moneys recovered by the attorney
10 general under this section shall be deposited in the coastal protection
11 fund established under RCW 90.48.390, and shall only be used for the
12 purposes stated in RCW 90.48.400.

13 (~~(4)~~) (6) Compensation assessed under this section (~~for a~~
14 ~~particular oil spill~~) shall preclude claims under this chapter by
15 local governments for compensation for damages to publicly owned
16 resources resulting from the same (~~spill~~) incident.

17 **Sec. 811.** RCW 90.48.368 and 1989 c 388 s 4 are each amended to
18 read as follows:

19 (1) The department shall adopt rules establishing a formal process
20 for preassessment screening of damages resulting from (~~oil~~) spills to
21 the waters of the state causing the death of, or injury to, fish,
22 animals, vegetation, or other resources of the state. The rules shall
23 specify the conditions under which the department shall convene a
24 preassessment screening committee. The preassessment screening process
25 shall occur concurrently with reconnaissance activities. The committee
26 shall use information obtained from (~~oil spill~~) reconnaissance
27 activities as well as any other relevant resource and resource use
28 information. For each (~~oil spill~~) incident, the committee shall
29 determine whether a damage assessment investigation should be conducted

1 ((under RCW 90.48.142)), or ((alternatively)), whether the compensation
2 schedule authorized under RCW 90.48.366 and 90.48.367 should be used to
3 assess damages. The committee may accept restoration or enhancement
4 projects or studies proposed by the liable parties in lieu of some or
5 all of: (a) The compensation schedule authorized under ((this
6 chapter)) RCW 90.48.366 and 90.48.367; or (b) the claims from damage
7 assessment studies authorized under RCW 90.48.142 as recodified by this
8 1991 act.

9 (2) A preassessment screening committee may consist of
10 representatives of the departments of ecology, fisheries, wildlife,
11 natural resources, social and health services, and emergency
12 management, the parks and recreation commission, as well as other
13 federal, state, and local agencies, and tribal and local governments
14 whose presence would enhance the reconnaissance or damage assessment
15 aspects of ((oil)) spill response. The department shall chair the
16 committee and determine which representatives will be needed on a
17 spill-by-spill basis.

18 (3) The committee shall consider the following factors when
19 determining whether a damage assessment study authorized under RCW
20 ((90.48.142)) 90.48.367 should be conducted: (a) Whether evidence from
21 reconnaissance investigations suggests that injury has occurred or is
22 likely to occur to publicly owned resources; (b) the potential loss in
23 services provided by resources injured or likely to be injured and the
24 expected value of the potential loss; (c) whether a restoration project
25 to return lost services is technically feasible; (d) the accuracy of
26 damage quantification methods that could be used and the anticipated
27 cost-effectiveness of applying each method; (e) the extent to which
28 likely injury to resources can be verified with available
29 quantification methods; and (f) whether the injury, once quantified,

1 can be translated into monetary values with sufficient precision or
2 accuracy.

3 (4) When a resource damage assessment is required, the state
4 trustee agency responsible for the resource and habitat damaged shall
5 conduct the damage assessment and pursue all appropriate remedies with
6 the responsible party.

7 (5) Oil and hazardous substance spill damage assessment studies
8 authorized under RCW (~~90.48.142~~) 90.48.367 may only be conducted if
9 the committee, after considering the factors enumerated in subsection
10 (3) of this section, determines that the damages to be investigated are
11 quantifiable at a reasonable cost and that proposed assessment studies
12 are clearly linked to quantification of the damages incurred.

13 (~~(5)~~) (6) As new information becomes available, the committee may
14 reevaluate the scope of damage assessment using the factors listed in
15 subsection (3) of this section and may reduce or expand the scope of
16 damage assessment as appropriate.

17 (~~(6)~~) (7) The preassessment screening process shall provide for
18 the ongoing involvement of persons who may be liable for damages
19 resulting from an oil or hazardous substance spill. The department may
20 negotiate with a potentially liable party to perform restoration and
21 enhancement projects or studies which may substitute for all or part of
22 the compensation authorized under RCW 90.48.366 and 90.48.367 or the
23 damage assessment studies authorized under RCW (~~90.48.142~~) 90.48.367.

24 (~~(7)~~) (8) For the purposes of this section and RCW 90.48.367, the
25 cost of a damage assessment shall be considered "reasonable" when the
26 anticipated cost of the damage assessment is expected to be less than
27 the anticipated damage that may have occurred or may occur.

28 **Sec. 812.** RCW 90.48.390 and 1989 c 388 s 7 and 1989 c 262 s 3 are
29 each reenacted and amended to read as follows:

1 The coastal protection fund is established to be used by the
2 department as a revolving fund for carrying out the purposes of
3 restoration of natural resources under this chapter and chapter 90.56
4 RCW (~~90.48.315 through 90.48.365, 78.52.020, 78.52.125, 82.36.330,~~
5 ~~90.48.142, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906~~
6 ~~and 90.48.907, and 90.48.366 through 90.48.368~~). To this fund there
7 shall be credited penalties, fees, damages, (~~and~~) charges received
8 pursuant to the provisions of this chapter and chapter 90.56 RCW
9 (~~90.48.142 and 90.48.315 through 90.48.365~~), compensation for damages
10 received under this chapter and chapter 90.56 RCW (~~90.48.366 through~~
11 ~~90.48.368~~), and an amount equivalent to one cent per gallon from each
12 marine use refund claim under RCW 82.36.330.

13 Moneys in the fund not needed currently to meet the obligations of
14 the department in the exercise of its powers, duties, and functions
15 under RCW (~~90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125,~~
16 ~~82.36.330,~~) 90.48.142, (~~90.48.315, 90.48.370 through 90.48.410,~~
17 ~~90.48.903, 90.48.906 and 90.48.907~~) 90.48.366, 90.48.367, and
18 90.48.368 shall be deposited with the state treasurer to the credit of
19 the fund and may be invested in such manner as is provided for by law.
20 Interest received on such investment shall be credited to the fund.

21 **Sec. 813.** RCW 90.48.400 and 1990 c 116 s 14 are each amended to
22 read as follows:

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

25 (a) (~~All costs of the department related to the enforcement of RCW~~
26 ~~90.48.315 through 90.48.365, 90.48.371 through 90.48.378, 90.48.381,~~
27 ~~90.48.383, 90.48.385, 90.48.387, 90.48.388, 78.52.020, 78.52.125,~~
28 ~~82.36.330, 90.48.142, 90.48.903, 90.48.906, and 90.48.907 including but~~
29 ~~not limited to equipment rental and contracting costs.~~

1 ~~(b) All costs involved in the abatement of pollution related to the~~
2 ~~discharge of oil and other hazardous substances))~~ Environmental
3 restoration and enhancement projects intended to restore or enhance
4 environmental, recreational, or aesthetic resources for the benefit of
5 Washington's citizens; and

6 (b) Investigations of the long-term effects of oil spills and the
7 release of other hazardous substances on state resources.

8 ~~((e))~~ (2) The director may allocate a portion of the fund to be
9 devoted to research and development in the causes, effects, and removal
10 of pollution caused by the discharge of oil or other hazardous
11 substances.

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

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

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

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

22 ~~(4))~~ (3) A steering committee consisting of representatives of the
23 department of ecology, fisheries, wildlife, and natural resources, and
24 the parks and recreation commission shall authorize the expenditure of
25 the moneys collected under RCW 90.48.366 through 90.48.368, after
26 consulting impacted local agencies and local and tribal governments.

27 ~~((The moneys collected under RCW 90.48.366 through 90.48.368 shall only~~
28 ~~be used for the following purposes:—(a) Environmental restoration and~~
29 ~~enhancement projects intended to restore or enhance environmental,~~
30 ~~recreational, or aesthetic resources for the benefit of Washington's~~

1 citizens; (b) investigations of the long term effects of oil spills and
2 the release of other hazardous substances on state resources; (c)
3 reimbursement of agencies for reasonable reconnaissance and damage
4 assessment costs; and (d) wildlife rescue and rehabilitation.)

5 (4) Agencies may not be reimbursed ((under this section)) from the
6 coastal protection fund for the salaries and benefits of permanent
7 employees for routine operational support. Agencies may only be
8 reimbursed under this section if money for reconnaissance and damage
9 assessment activities is unavailable from other sources.

10 **Sec. 814.** RCW 90.48.369 and 1989 c 388 s 5 are each amended to
11 read as follows:

12 The department shall submit an annual report to the appropriate
13 standing committees of the legislature for the next five years
14 beginning January 1, 1990. The annual report shall cover the
15 implementation of ((this act)) RCW 90.48.366, 90.48.367, 90.48.368, and
16 90.48.369 and shall include information on each ((oil)) spill for which
17 a preassessment screening committee was convened, the outcome of each
18 process, any compensation claims imposed or damage assessment studies
19 conducted, and the revenues to and expenditures from the coastal
20 protection fund.

21 **PART IX**

22 **MARINE SPILL RESPONSE COMMISSION**

23 **Sec. 901.** RCW 88.44.010 and 1990 c 117 s 2 are each amended to
24 read as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

- 1 (1) "Administrator" means the administrator of the office of marine
2 safety created by section 402 of this 1991 act.
- 3 (2) "Business class" means a recognized trade segment of the
4 maritime industry.
- 5 ~~((2))~~ (3) "Commission" means the Washington state ~~((maritime))~~
6 marine spill response commission.
- 7 ~~((3) "Director" means the director of the department of ecology or
8 their duly authorized representative.)~~
- 9 (4) "Fishing vessel" means a vessel ~~((that))~~ (a) on which persons
10 commercially engage~~((s))~~ in: ~~((a))~~ (i) Catching, taking, or
11 harvesting fish; ~~((b))~~ (ii) preparing fish or fish products; or
12 ~~((e))~~ (b) that supplies, stores, refrigerates, or transports fish,
13 fish products, or materials directly related to fishing or the
14 preparation of fish.
- 15 (5) "Foreign vessel" means a vessel of foreign registry or operated
16 under the authority of a country, except the United States.
- 17 (6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel
18 oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural
19 gas, propane, butane, oils distilled from coal, and other liquid
20 hydrocarbons regardless of specific gravity, or any other petroleum
21 related products.
- 22 (7) "Oceanographic research vessel" means a vessel that is employed
23 only in instruction in oceanography or limnology, or both, or only in
24 oceanographic or limnological research, including those studies about
25 the sea such as seismic, gravity meter, and magnetic exploration and
26 other marine geophysical or geological surveys, atmospheric research,
27 and biological research.
- 28 (8) "Protection and indemnity club" means a mutual insurance
29 organization formed by a group of shipowners or operators in order to

1 secure cover for various risks of vessel operation, including oil spill
2 costs, not covered by normal hull insurance.

3 (9) "Public vessel" means a vessel that is owned, or chartered and
4 operated by the United States government, by a state of the United
5 States, or a government of a foreign country and is not engaged in
6 commercial service.

7 (10) "State" means a state of the United States, Guam, Puerto Rico,
8 the Virgin Islands, American Samoa, the District of Columbia, the
9 Northern Mariana Islands, and any other territory or possession of the
10 United States.

11 (11) "Steamship agent or agency" means an agent or agency appointed
12 by a vessel owner or operator to enter or clear vessels at ports within
13 the state of Washington and to conduct onshore activities, or contract
14 on behalf of the owner or operator for whatever is required for the
15 efficient operation of the vessel.

16 (12) "Steamship liner company" means a steamship company
17 maintaining a regular schedule of calls at designated ports of the
18 state of Washington.

19 (13) "Towboat" means a commercial vessel engaged in, or intending
20 to engage in, the service of pulling, pushing, or hauling along side,
21 or any combination of pulling, pushing, or hauling along side.

22 (14) "United States flag vessel" means a vessel documented under
23 the laws of the United States or registered under the laws of any state
24 of the United States.

25 (15) "Vessel" means every description of watercraft, other than a
26 seaplane on water, used or capable of being used as a means of
27 transportation on water, carrying oil as fuel or cargo, and over three
28 hundred gross registered tons, except oceanographic research vessels,
29 public vessels, vessels being employed exclusively for pleasure, or
30 vessels which, prior to entering Washington waters, have formerly

1 arranged with an officially recognized cleanup cooperative or with a
2 private cleanup contractor for immediate oil spill response.

3 (16) "Vessel owner or operator" means the legal owner of a vessel
4 and/or the charterer or other person in charge of the day-to-day
5 operation.

6 (17) "Waters of this state" or "waters of the state of Washington"
7 (~~shall mean all navigable waters within the state of Washington as~~
8 ~~defined in Article 24, section 1 of the state Constitution~~) has the
9 meaning in RCW 90.48.315 as recodified by this 1991 act.

10 **Sec. 902.** RCW 88.44.020 and 1990 c 117 s 3 are each amended to
11 read as follows:

12 There is created ((a)) the Washington (~~state maritime~~) marine
13 spill response commission to be known and designated and declared a
14 corporate body. The powers and duties of the commission shall include
15 the following:

16 (1) To (~~elect a chairperson and such other officers as it deems~~
17 ~~advisable; and to~~) adopt, rescind, and amend rules and orders for the
18 exercise of its powers, which shall have the force and effect of the
19 law when not inconsistent with existing laws;

20 (2) To administer and enforce the provisions of this chapter, and
21 do all things reasonably necessary to effectuate the purposes of this
22 chapter;

23 (3) To employ, and at its pleasure discharge, a manager, secretary,
24 agents, attorneys, consultants, companies, organizations, and employees
25 as it deems necessary, and to prescribe their duties and powers and fix
26 their compensation;

27 (4) To establish offices, incur expenses, enter into contracts, and
28 create such liabilities as may be reasonable for the proper
29 administration and enforcement of this chapter;

1 (5) To assess vessels transiting the waters of this state, to
2 collect such assessments, investigate violations, and enforce the
3 provisions of this chapter, except for vessels which transit upon the
4 portion of the Columbia river that runs between the states of
5 Washington and Oregon;

6 (6) To keep accurate record of all of its dealings, which shall be
7 open to inspection and audit by the state auditor;

8 (7) To sue and be sued, adopt a corporate seal, and have all of the
9 powers of a corporation;

10 (8) To expend funds for commission-related education and training
11 programs as the commission deems appropriate;

12 (9) To borrow money and incur indebtedness;

13 (10) To establish an oil spill first response system, except for
14 vessels which transit upon the portion of the Columbia river that runs
15 between the states of Washington and Oregon. This system will provide
16 a mandatory emergency response communications network for vessels
17 involved in commerce in Washington waters, and provide an immediate
18 response to such vessels which, for whatever reason, discharge oil into
19 the state's waters. In the event of an oil spill or threatened oil
20 spill, the system must be able to provide a complete response for the
21 first twenty-four hours after the initial report, which may include,
22 but not be limited to, as needed, response vessel or vessels, boom
23 equipment, skimmers, qualified personnel, and wildlife care centers.

24 The commission may establish, by or before July 1, 1992, an oil
25 spill first response system for vessels which transit upon the portion
26 of the Columbia river that runs between the states of Washington and
27 Oregon;

28 (11) To enter into contracts with cleanup contractors to provide
29 spill response, or with other organizations or companies for
30 communication services;

1 (12) To recover oil spill first response system costs from a
2 responsible vessel owner or operator in the event of a spill or
3 threatened release;

4 (13) To hold response readiness drills with state and federal
5 agencies;

6 (14) To work with other states' and countries' maritime
7 organizations, cleanup cooperatives, and governmental response
8 agencies; ~~((and))~~

9 (15) To develop an oil spill contingency plan to comply with state
10 statutes and rules for those vessels covered by the commission, except
11 for vessels operating on the portion of the Columbia river that runs
12 between the states of Washington and Oregon. The commission shall
13 develop an oil spill contingency plan for vessels which transit upon
14 the portion of the Columbia river that runs between the states of
15 Washington and Oregon, not later than January 1, 1993; and

16 (16) To report annually to the governor, the office of marine
17 safety, and the appropriate standing committees of the legislature on
18 the commission's work and the number of incidents to which the
19 commission's first response system has responded, and make
20 recommendations to improve the safety of maritime transportation.

21 **Sec. 903.** RCW 88.44.030 and 1990 c 117 s 4 are each amended to
22 read as follows:

23 The commission shall be comprised of nine voting members. ~~((Six))~~
24 Seven persons ~~((, each representing a))~~ shall be appointed by the
25 governor to represent specific business classes ~~((, shall be elected to~~
26 ~~membership in the commission and one person shall be appointed by the~~
27 ~~commission members))~~. Two of the members shall represent steamship
28 liner companies, one American flag and one foreign flag. One member
29 shall represent towboat companies. One member shall represent fishing

1 vessels. One member shall represent steamship agencies serving tramp
2 vessels. One member shall represent protection and indemnity clubs or
3 other marine brokers or insurers of oil spill cleanup costs for vessels
4 operating in Washington waters. One member shall represent steamship
5 agencies serving tramp vessels on the Columbia river. The governor
6 shall also appoint one member with maritime, marine labor, or marine
7 spill cleanup experience and one member from the environmental
8 community with marine experience (~~shall be appointed from the public~~
9 ~~by the governor~~). In addition, the (~~director, the United States~~
10 ~~coast guard captain of the port for Puget Sound, the United States~~
11 ~~coast guard captain of the port for that portion of the Columbia river~~
12 ~~that runs between Washington and Oregon,~~) administrator and a state
13 pilot licensed under chapter 88.16 RCW(~~(7)~~) who pilots in the waters of
14 the state of Washington, or their designees, will serve as nonvoting
15 (~~ex-officio~~) members. The United States coast guard captain of the
16 port for Puget Sound and the United States coast guard captain of the
17 port for that portion of the Columbia river that runs between
18 Washington and Oregon shall be invited to attend meetings of the
19 commission. The state-licensed pilot shall be selected by the
20 Washington state board of pilotage commissioners.

21 Members of the commission must have had a minimum of five years'
22 experience in their business class and be actively employed by or on
23 behalf of a company within the business class for whom they shall
24 represent. However, the protection and indemnity or insurance member
25 may be a designee of the international group of protection and
26 indemnity clubs, or any such marine insurers engaged in business within
27 the state.

28 The commission shall meet at least (~~quarterly every~~) twice each
29 year.

1 **Sec. 904.** RCW 88.44.040 and 1990 c 117 s 5 are each amended to
2 read as follows:

3 ~~((The regular term of office of the members of the commission shall
4 be three years from July 1 following their election and until their
5 successors are elected and qualified. The commission shall hold its
6 annual meeting during the month of October each year for the purpose of
7 electing officers and the transaction of other business and shall hold
8 such other meetings during the year as it shall determine.~~

9 ~~Commission members shall be first nominated and elected in 1990 in
10 the manner set forth in RCW 88.44.050 and shall take office as soon as
11 they are qualified. However, expiration of the term of the respective
12 commission members first elected in 1990 shall be as follows:~~

13 ~~(1) Foreign flag liner and fishing vessel members on July 1, 1991;~~

14 ~~(2) Protection and indemnity club or marine member, and public
15 member on July 1, 1992; and~~

16 ~~(3) All other members on July 1, 1993.)~~ The governor shall
17 appoint members of the commission for three-year terms. The governor
18 shall appoint the chairperson. The members of the commission elected
19 before the effective date of this section shall continue as members
20 until their terms would have expired under section 5, chapter 117, Laws
21 of 1990.

22 The respective terms shall end on June 30 of each third year
23 thereafter. Any vacancies that occur on the commission shall be filled
24 by ~~((appointment of an eligible person by the other members of the
25 commission, and such appointee shall hold office for the remainder of
26 the term for which they are appointed to fill, so that commission
27 memberships shall be on a uniform staggered basis))~~ the governor to
28 serve out the remainder of the unexpired term. The members of the
29 commission are subject to the public disclosure act, chapter 42.17 RCW.

1 **Sec. 905.** RCW 88.44.080 and 1990 c 117 s 9 are each amended to
2 read as follows:

3 A majority of the voting members of the commission shall constitute
4 a quorum for the transaction of all business and the carrying out of
5 the duties of the commission.

6 Each member of the commission shall be compensated in accordance
7 with RCW 43.03.240 and shall be reimbursed for actual travel expenses
8 incurred in carrying out the provisions of this chapter. Employees of
9 the commission may also be reimbursed for actual travel expenses when
10 out-of-state on official commission business. Compensation and
11 reimbursement shall be from commission funds only.

12 ~~((Resignations of commission members will be filled by a majority
13 of the remaining commission members. The appointed commission members
14 shall serve out the remaining term. If a commission member leaves the
15 employment of their respective business class for more than one hundred
16 twenty days, the commission member must resign from that position. A
17 commission member may be removed from the commission for just cause by
18 a two-thirds majority vote of commission members.))~~

19 **Sec. 906.** RCW 88.44.110 and 1990 c 117 s 12 are each amended to
20 read as follows:

21 If it appears from investigation by the commission that the revenue
22 from the assessment levied on vessels under this chapter is inadequate
23 to accomplish the purposes of this chapter, the commission by rule
24 shall ~~((adopt a resolution setting forth the necessities of the
25 industry, the extent and probable cost of the required research, spill
26 cleanup procedures and operations, public and industry education,
27 administrative operations, the extent of public convenience, interest,
28 and necessity, and probable revenue from the assessment levied. After
29 the proper regulatory hearings, the commission may))~~ increase the

1 assessment to a sum determined by the commission to be necessary for
2 those purposes. The rule adopting the increase shall be filed with the
3 administrator. An increase ((becomes effective)) shall not take effect
4 earlier than ninety days after the ((resolution)) rule is adopted ((or
5 on any other date provided for in the resolution)) and filed with the
6 administrator, unless the administrator determines that the increase is
7 not justified.

8 **Sec. 907.** RCW 88.44.160 and 1990 c 117 s 17 are each amended to
9 read as follows:

10 Rules and orders adopted by the commission shall be filed with the
11 ((director)) administrator and shall become effective pursuant to the
12 provisions of the administrative procedure act.

13 **PART X**

14 **PILOTAGE**

15 **Sec. 1001.** RCW 88.16.010 and 1987 c 485 s 1 are each amended to
16 read as follows:

17 (1) The board of pilotage commissioners of the state of Washington
18 is hereby created and shall consist of the assistant secretary of
19 marine transportation of the department of transportation of the state
20 of Washington, or the assistant secretary's designee who shall be an
21 employee of the marine division, who shall be chairperson, the
22 administrator of the office of marine safety, or the administrator's
23 designee, and six members appointed by the governor and confirmed by
24 the senate. Each of ((said)) the appointed commissioners shall be
25 appointed for a term of four years from the date of ((said)) the
26 member's commission. No person shall be eligible for appointment to
27 ((said)) the board unless that person is at the time of appointment

1 eighteen years of age or over and a citizen of the United States and of
2 the state of Washington. Two of (~~said~~) the appointed commissioners
3 shall be pilots licensed under this chapter and actively engaged in
4 piloting upon the waters covered by this chapter for at least three
5 years immediately preceding the time of appointment and while serving
6 on the board. One pilot shall be from the Puget Sound pilotage
7 district and one shall be from the Grays Harbor pilotage district. Two
8 of (~~said~~) the appointed commissioners shall be actively engaged in
9 the ownership, operation, or management of deep sea cargo and/or
10 passenger carrying vessels for at least three years immediately
11 preceding the time of appointment and while serving on the board. One
12 of said shipping commissioners shall be a representative of American
13 and one of foreign shipping. At least one of the commissioners shall
14 be a representative from a recognized environmental organization
15 concerned with marine waters. The remaining commissioner(~~s~~) shall be
16 (~~persons~~) interested in and concerned with pilotage, maritime safety,
17 and marine affairs, with broad experience related to the maritime
18 industry exclusive of experience as either a state licensed pilot or as
19 a shipping representative.

20 (2) Any vacancy in an appointed position on the board shall be
21 filled by the governor for the remainder of the unfilled term, subject
22 to confirmation by the senate.

23 (3) Four members of the board shall constitute a quorum. At least
24 one pilot, one shipping representative, and one public member must be
25 present at every meeting. All commissioners and the chairperson shall
26 have a vote.

27 **Sec. 1002.** RCW 88.16.090 and 1990 c 116 s 27 and 1990 c 112 s 1
28 are each reenacted and amended to read as follows:

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

5 (2) A person is eligible to be appointed a pilot if the person is
6 a citizen of the United States, over the age of twenty-five years and
7 under the age of seventy years, a resident of the state of Washington
8 at the time of appointment and only if the pilot applicant holds as a
9 minimum, a United States government license as a master of ocean or
10 near coastal steam or motor vessels of not more than one thousand six
11 hundred gross tons or as a master of inland steam or motor vessels of
12 not more than one thousand six hundred gross tons, such license to have
13 been held by the applicant for a period of at least two years prior
14 such license to have been held by the applicant for a period of at
15 least two years prior to taking the Washington state pilotage
16 examination and a first class United States endorsement without
17 restrictions on that license to pilot in the pilotage districts for
18 which the pilot applicant desires to be licensed, and if the pilot
19 applicant meets such other qualifications as may be required by the
20 board. A person applying for a license under this section shall not
21 have been convicted of an offense involving drugs or the personal
22 consumption of alcohol in the twelve months prior to the date of
23 application. This restriction does not apply to license renewals under
24 this section.

25 (3) Pilots shall be licensed hereunder for a term of five years
26 from and after the date of the issuance of their respective state
27 licenses. Such licenses shall thereafter be renewed as of course,
28 unless the board shall withhold same for good cause. Each pilot shall
29 pay to the state treasurer an annual license fee established by the
30 board of pilotage commissioners pursuant to chapter 34.05 RCW, but not

1 to exceed one thousand five hundred dollars, to be placed in the state
2 treasury to the credit of the pilotage account. The board may assess
3 partially active or inactive pilots a reduced fee.

4 (4) Pilot applicants shall be required to pass a written and oral
5 examination administered and graded by the board which shall test such
6 applicants on this chapter, the rules of the board, local harbor
7 ordinances, and such other matters as may be required to compliment the
8 United States examinations and qualifications. The board shall
9 ~~((conduct the examination on a regular date, as prescribed by rule, at
10 least once every two years))~~ hold examinations at such times as will,
11 in the judgment of the board, ensure the maintenance of an efficient
12 and competent pilotage service. An examination shall be scheduled for
13 the Puget Sound pilotage district if there are three or fewer
14 successful candidates from the previous examination who are waiting to
15 become pilots in that district.

16 (5) The board shall ~~((have developed five examinations and grading
17 sheets for the Puget Sound pilotage district, and two for each other))~~
18 develop an examination and grading sheet for each pilotage district,
19 for the testing and grading of pilot applicants. The examinations
20 shall be administered to pilot applicants ((on a random basis)) and
21 shall be updated as required to reflect changes in law, rules,
22 policies, or procedures. The board may appoint a special independent
23 examination committee or may contract with a firm knowledgeable and
24 experienced in the development of professional tests for development of
25 said examinations. Active licensed state pilots may be consulted for
26 the general development of examinations but shall have no knowledge of
27 the specific questions. The pilot members of the board may participate
28 in the grading of examinations. If the board does appoint a special
29 examination development committee it is authorized to pay the members
30 of said committee the same compensation and travel expenses as received

1 by members of the board. When grading examinations the board shall
2 carefully follow the grading sheet prepared for that examination. The
3 board shall develop a "sample examination" which would tend to indicate
4 to an applicant the general types of questions on pilot examinations,
5 but such sample questions shall not appear on any actual examinations.
6 Any person who willfully gives advance knowledge of information
7 contained on a pilot examination is guilty of a gross misdemeanor.

8 (6) All pilots and applicants are subject to an annual physical
9 examination by a physician chosen by the board. The physician shall
10 examine the applicant's heart, blood pressure, circulatory system,
11 lungs and respiratory system, eyesight, hearing, and such other items
12 as may be prescribed by the board. After consultation with a physician
13 and the United States coast guard, the board shall establish minimum
14 health standards to ensure that pilots licensed by the state are able
15 to perform their duties. Within ninety days of the date of each annual
16 physical examination, and after review of the physician's report, the
17 board shall make a determination of whether the pilot or candidate is
18 fully able to carry out the duties of a pilot under this chapter. The
19 board may in its discretion check with the appropriate authority for
20 any convictions of offenses involving drugs or the personal consumption
21 of alcohol in the prior twelve months.

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

28 (8) The board may (~~prescribe~~) require vessel simulator training
29 for a pilot applicant(~~, or~~) and shall require vessel simulator
30 training for a pilot subject to RCW 88.16.105(~~, as it deems~~

1 appropriate, taking into consideration the economic cost of such
2 training, to enhance that person's ability to perform pilotage duties
3 under this chapter)). The board shall also require vessel simulator
4 training in the first year of active duty for a new pilot and at least
5 once every five years for all active pilots.

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

12 (10) The board shall adopt rules to establish time periods and
13 procedures for additional training trips and retesting as necessary for
14 pilots who at the time of their licensing are unable to become active
15 pilots.

16 **Sec. 1003.** RCW 88.16.105 and 1987 c 264 s 3 are each amended to
17 read as follows:

18 The board shall prescribe, pursuant to chapter 34.05 RCW, rules
19 governing the size and type of vessels which a newly licensed pilot may
20 be assigned to pilot on the waters of this state and whether the
21 assignment involves docking or undocking a vessel. The rules shall
22 also prescribe required familiarization trips before a newly licensed
23 pilot may pilot a larger or different type of vessel. Such rules shall
24 be for the first ((three)) five-year period in which pilots are
25 actually employed.

26 **Sec. 1004.** RCW 88.16.110 and 1935 c 18 s 7 are each amended to
27 read as follows:

1 (1) Every pilot licensed under this chapter shall file with the
2 board not later than the tenth day of January, April, July and October
3 of each year a report for the preceding quarter. Said report shall
4 contain an account of all moneys received for pilotage by him or her or
5 by any other person for ~~((him))~~ the pilot or on ~~((his))~~ the pilot's
6 account or for his or her benefit. Said report shall state the name of
7 each vessel piloted, the amount charged to and/or collected from each
8 vessel, the port of registry of such vessel, its dead weight tonnage,
9 whether it was inward or outward bound, whether the amount so received,
10 collected or charged is in full payment of pilotage and such other
11 information as the board shall by regulation prescribe.

12 (2) The report shall include information for each vessel that
13 suffers a grounding, collision, or other major marine casualty that
14 occurred while the pilot was on duty during the reporting period. The
15 report shall also include information on near miss incidents as defined
16 in section 421 of this 1991 act. Information concerning near miss
17 incidents provided pursuant to this section shall not be used for
18 imposing any sanctions or penalties. The board shall forward
19 information provided under this subsection to the office of marine
20 safety for inclusion in the collision reporting system established
21 under section 421 of this 1991 act.

22 **Sec. 1005.** RCW 88.16.155 and 1977 ex.s. c 337 s 11 are each
23 amended to read as follows:

24 (1) The master of any vessel which employs a Washington licensed
25 pilot shall certify on a form prescribed by the board of pilotage
26 commissioners that the vessel complies with:

27 (a) Such provisions of the United States coast guard regulations
28 governing the safety and navigation of vessels in United States waters,

1 as codified in Title 33 of the code of federal regulations, as the
2 board may prescribe; ((and))

3 (b) The provisions of current international agreements governing
4 the safety, radio equipment, and pollution of vessels and other matters
5 as ratified by the United States Senate and prescribed by the board;

6 (c) The federal oil pollution act of 1990; and

7 (d) If applicable, the certification provided for in section 416(4)
8 of this 1991 act.

9 (2) The master of any vessel which employs a Washington licensed
10 pilot shall be prepared to produce, and any Washington licensed pilot
11 employed by a vessel shall request to see, certificates of the vessel
12 which certify and indicate that the vessel complies with subsection (1)
13 of this section and the rules of the board ((promulgated)) adopted
14 pursuant to subsection (1) of this section.

15 (3) If the master of a vessel which employs a Washington licensed
16 pilot cannot certify that the vessel complies with subsection (1) of
17 this section and the rules of the board adopted pursuant to subsection
18 (1) of this section, the master shall certify that:

19 (a) The vessel will comply with subsection (1) of this section
20 before the time the vessel is scheduled to leave the waters of
21 Washington state; and

22 (b) The coast guard captain of the port was notified of the
23 noncomplying items when they were determined; and

24 (c) The coast guard captain of the port has authorized the vessel
25 to proceed under such conditions as prescribed by the coast guard
26 pursuant to its authority under federal statutes and regulations.

27 (4) After the board has prescribed the form required under
28 subsection (1) of this section, no Washington licensed pilot shall
29 offer pilotage services to any vessel on which the master has failed to

1 make a certification required by this section. If the master fails to
2 make a certification the pilot shall:

3 (a) Disembark from the vessel as soon as practicable; and

4 (b) Immediately inform the port captain of the conditions and
5 circumstances by the best possible means; and

6 (c) Forward a written report to the board no later than twenty-four
7 hours after disembarking from the vessel.

8 (5) Any Washington licensed pilot who offers pilotage services to
9 a vessel on which the master has failed to make a certification
10 required by this section or the rules of the board adopted under this
11 section shall be subject to RCW 88.16.150, as now or hereafter amended,
12 and RCW 88.16.100, as now or hereafter amended.

13 (6) The board shall revise the requirements enumerated in this
14 section as necessary to reflect changes in coast guard regulations,
15 federal statutes, and international agreements. All actions of the
16 board under this section shall comply with chapters 34.05 and 42.30
17 RCW. The board shall prescribe the time of and method for retention of
18 forms which have been signed by the master of a vessel in accordance
19 with the provisions of this section.

20 (7) This section shall not apply to the movement of dead ships.
21 The board shall prescribe pursuant to chapter 34.05 RCW, after
22 consultation with the coast guard and interested persons, for the
23 movement of dead ships and the certification process thereon.

24 **PART XI**

25 **MISCELLANEOUS PROVISIONS**

26 NEW SECTION. **Sec. 1101.** DEPARTMENT OF NATURAL RESOURCES LEASES.
27 After the effective date of this section, the department of natural

1 resources shall include in its leases for onshore and offshore
2 facilities the following provisions:

3 (1) Require those wishing to lease, sublease, or re-lease state-
4 owned aquatic lands to comply with the provisions of this chapter;

5 (2) Require lessees and sublessees to operate according to the plan
6 of operations and to keep the plan current in compliance with this
7 chapter; and

8 (3) Include in its leases provisions that a violation by the lessee
9 or sublessee of the provisions of this chapter may be grounds for
10 termination of the lease.

11 **Sec. 1102.** RCW 90.48.037 and 1987 c 109 s 125 are each amended to
12 read as follows:

13 The department, with the assistance of the attorney general, is
14 authorized to bring any appropriate action at law or in equity,
15 including action for injunctive relief, in the name of the people of
16 the state of Washington as may be necessary to carry out the provisions
17 of this chapter or chapter 90.56 RCW.

18 **Sec. 1103.** RCW 90.48.095 and 1987 c 109 s 128 are each amended to
19 read as follows:

20 In carrying out the purposes of this chapter or chapter 90.56 RCW
21 the department shall, in conjunction with either the ((~~promulgation~~))
22 adoption of rules ((~~and regulations~~)), consideration of an application
23 for a waste discharge permit or the termination or modification of such
24 permit, or proceedings in ((~~contested cases~~)) adjudicative hearings,
25 have the authority to issue process and subpoena witnesses effective
26 throughout the state on its own behalf or that of an interested party,
27 compel their attendance, administer oaths, take the testimony of any
28 person under oath and, in connection therewith require the production

1 for examination of any books or papers relating to the matter under
2 consideration by the department. In case of disobedience on the part
3 of any person to comply with any subpoena issued by the department, or
4 on the refusal of any witness to testify to any matters regarding which
5 he may be lawfully interrogated, it shall be the duty of the superior
6 court of any county, or of the judge thereof, on application of the
7 department, to compel obedience by proceedings for contempt, as in the
8 case of disobedience of the requirements of a subpoena issued from such
9 court or a refusal to testify therein. In connection with the
10 authority granted under this section no witness or other person shall
11 be required to divulge trade secrets or secret processes. Persons
12 responding to a subpoena as provided herein shall be entitled to fees
13 as are witnesses in superior court.

14 **Sec. 1104.** RCW 90.48.100 and 1987 c 109 s 129 are each amended to
15 read as follows:

16 The department shall have the right to request and receive the
17 assistance of any educational institution or state agency when it is
18 deemed necessary by the department to carry out the provisions of this
19 chapter or chapter 90.56 RCW.

20 **Sec. 1105.** RCW 90.48.156 and 1987 c 109 s 134 are each amended to
21 read as follows:

22 The department is authorized to cooperate with appropriate agencies
23 of neighboring states and neighboring provinces, to enter into
24 contracts, and make contributions toward interstate and state-
25 provincial projects to carry out the purposes of this chapter and
26 chapter 90.56 RCW.

1 **Sec. 1106.** RCW 90.48.240 and 1987 c 109 s 15 are each amended to
2 read as follows:

3 Notwithstanding any other provisions of this chapter or chapter
4 90.56 RCW, whenever it appears to the director that water quality
5 conditions exist which require immediate action to protect the public
6 health or welfare, or that a person required by RCW 90.48.160 to obtain
7 a waste discharge permit prior to discharge is discharging without the
8 same, or that a person conducting an operation which is subject to a
9 permit issued pursuant to RCW 90.48.160 conducts the same in violation
10 of the terms of said permit, causing water quality conditions to exist
11 which require immediate action to protect the public health or welfare,
12 the director may issue a written order to the person or persons
13 responsible without prior notice or hearing, directing and affording
14 the person or persons responsible the alternative of either (1)
15 immediately discontinuing or modifying the discharge into the waters of
16 the state, or (2) appearing before the department at the time and place
17 specified in said written order for the purpose of providing to the
18 department information pertaining to the violations and conditions
19 alleged in said written order. The responsible person or persons shall
20 be afforded not less than twenty-four hours notice of such an
21 information meeting. If following such a meeting the department
22 determines that water quality conditions exist which require immediate
23 action as described herein, the department may issue a written order
24 requiring immediate discontinuance or modification of the discharge
25 into the waters of the state. In the event an order is not immediately
26 complied with the attorney general, upon request of the department,
27 shall seek and obtain an order of the superior court of the county in
28 which the violation took place directing compliance with the order of
29 the department. Such an order is appealable pursuant to RCW 43.21B.310.

1 **Sec. 1107.** RCW 90.48.907 and 1971 ex.s. c 180 s 10 are each
2 amended to read as follows:

3 (~~RCW 90.48.315 through 90.48.365 and this 1971 amendatory act~~)
4 This chapter, being necessary for the general welfare, the public
5 health, and the public safety of the state and its inhabitants, shall
6 be liberally construed to effect their purposes. No rule, regulation,
7 or order of the department shall be stayed pending appeal under (~~the~~
8 ~~provisions of RCW 90.48.315 through 90.48.365 and this 1971 amendatory~~
9 ~~act~~) this chapter.

10 NEW SECTION. **Sec. 1108.** The department of ecology, the office of
11 marine safety, and the marine oversight board shall study issues
12 related to the transportation and storage of bulk hazardous substances
13 on or near the navigable waters of the state. The study shall develop
14 information on the types, hazards, and quantity of bulk hazardous
15 substances shipped on or stored near the navigable waters, the types of
16 vessels used to transport the substances, the types of facilities at
17 which the substances are transferred or stored, the methods for
18 responding to spills of the substances. The study shall also examine
19 existing regulation of the transporters and facilities, including an
20 examination of requirements for prevention and response planning. The
21 study shall incorporate any recommendations for changes in state laws
22 which the department, office, and board determine are necessary to
23 protect the navigable waters of the state. An interim report shall be
24 completed not later than December 1, 1991, and the final study shall be
25 completed and a report made to the appropriate standing committees of
26 the legislature not later than November 1, 1992.

27 NEW SECTION. **Sec. 1109.** The department of ecology shall report to
28 the appropriate standing committees on the effectiveness of chapter

1 90.56 RCW, and in particular as to how the chapter has been implemented
2 to complement federal law. A report shall be submitted not later than
3 December 1, 1992, and a second report not later than December 1, 1994.

4 NEW SECTION. **Sec. 1110.** TIMING FOR STATE MASTER PREVENTION AND
5 CONTINGENCY PLANS. The state-wide master plan required by section 10,
6 chapter 116, Laws of 1990 to be completed by July 1, 1991, shall be
7 completed by July 1, 1991. The additional requirements to the state-
8 wide master plan concerning prevention plans, and an incident command
9 system shall be added to the first annual update submitted to the
10 legislature not later than November 1, 1992.

11 NEW SECTION. **Sec. 1111.** TIMING OF CONTINGENCY PLAN RULES. The
12 rules required by RCW 90.48.371 as recodified by this act for
13 facilities and, except as otherwise provided in this section for
14 covered vessels, shall be adopted not later than July 1, 1991. The
15 department shall exclude from the rules to be adopted by July 1, 1991,
16 standards for tank vessels of less than twenty thousand deadweight
17 tons, cargo vessels, and passenger vessels operating on the portion of
18 the Columbia river for which the department determines that Washington
19 and Oregon should cooperate in the adoption of standards for
20 contingency plans. The department, after consultation with the
21 appropriate state agencies in Oregon, shall adopt the rules for
22 standards for contingency plans for this portion of the Columbia river
23 at the earliest possible time, but not later than July 1, 1992.

24 NEW SECTION. **Sec. 1112.** CAPTIONS NOT LAW. Section headings and
25 part headings as used in this chapter shall constitute no part of the
26 law.

1 NEW SECTION. **Sec. 1113.** Sections 101, 103, 108 through 110, 201,
2 203, 204, 501, 806, and 1111 of this act are each added to a new
3 chapter in Title 90 RCW to be codified as provided for in section 1114
4 of this act.

5 NEW SECTION. **Sec. 1114.** CODIFICATION INSTRUCTIONS. (1) Parts I
6 through III and V, and sections 806 and 1111 of this act shall
7 constitute a new chapter in Title 90 RCW to be codified as chapter
8 90.56 RCW, and shall be codified and recodified as provided for in this
9 section. The code reviser shall correct all statutory references to
10 these sections to reflect this recodification.

11 The following sections shall be codified and recodified in the
12 following order:

13 Section 101 of this act

14 RCW 90.48.315

15 Section 103 of this act

16 RCW 90.48.370

17 RCW 90.48.365

18 RCW 90.48.380

19 RCW 90.48.378

20 Section 108 of this act

21 Section 109 of this act

22 Section 110 of this act

23 RCW 90.48.387

24 RCW 90.48.388

25 Section 201 of this act

26 RCW 90.48.371

27 Section 203 of this act

28 Section 204 of this act

29 RCW 90.48.372

1 RCW 90.48.373

2 RCW 90.48.374

3 RCW 90.48.375

4 RCW 90.48.360

5 RCW 90.48.376

6 RCW 90.48.377

7 RCW 90.48.320

8 RCW 90.48.350

9 RCW 90.48.325

10 RCW 90.48.330

11 RCW 90.48.335

12 RCW 90.48.336

13 RCW 90.48.338

14 RCW 90.48.383

15 RCW 90.48.340

16 RCW 90.48.355

17 RCW 90.48.343

18 Section 501 of this act

19 Section 806 of this act

20 RCW 90.48.907

21 Section 1201 of this act

22 Section 1212 of this act.

23 (2) Sections 801 through 805 of this act shall constitute a new
24 chapter in Title 82 RCW.

25 (3) Sections 402 through 404 and 406 of this act shall constitute
26 a new chapter in Title 43 RCW.

27 (4)(a) Sections 413 through 424 of this act shall constitute a new
28 chapter in Title 88 RCW.

29 (b) RCW 90.48.385 and 90.48.510 are recodified as sections in the
30 new chapter created in (a) of this subsection.

1 (5) Sections 604 through 608 of this act are each added to chapter
2 88.16 RCW.

3 NEW SECTION. **Sec. 1115.** REPEALER. The following acts or parts of
4 acts are each repealed:

5 (1) RCW 90.48.345 and 1987 c 109 s 150 & 1969 ex.s. c 133 s 6;

6 (2) RCW 90.48.381 and 1990 c 116 s 15;

7 (3) RCW 90.48.410 and 1971 ex.s. c 180 s 6;

8 (4) RCW 88.40.010 and 1990 c 116 s 30 & 1989 1st ex.s. c 2 s 2;

9 (5) RCW 88.40.050 and 1989 1st ex.s. c 2 s 6; and

10 (6) RCW 90.48.910 and 1967 c 13 s 25.

11 NEW SECTION. **Sec. 1116.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 1117.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and shall take
18 effect immediately.