

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

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

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

Passed the House March 6, 1990.

Passed the Senate March 1, 1990.

Approved by the Governor March 21, 1990.

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

CHAPTER 117

[Substitute Senate Bill No. 6701]

OIL SPILL RESPONSE SYSTEM—MARITIME COMMISSION

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

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

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

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

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

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

(1) "Business class" means a recognized trade segment of the maritime industry.

(2) "Commission" means the Washington state maritime commission.

(3) "Director" means the director of the department of ecology or their duly authorized representative.

(4) "Fishing vessel" means a vessel that commercially engages in: (a) Catching, taking, or harvesting fish; (b) preparing fish or fish products; or (c) supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish.

(5) "Foreign vessel" means a vessel of foreign registry or operated under the authority of a country, except the United States.

(6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural gas, propane, butane, oils distilled from coal, and other liquid hydrocarbons regardless of specific gravity, or any other petroleum related products.

(7) "Oceanographic research vessel" means a vessel that is employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(8) "Protection and indemnity club" means a mutual insurance organization formed by a group of shipowners or operators in order to secure cover for various risks of vessel operation, including oil spill costs, not covered by normal hull insurance.

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

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

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

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

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

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

(15) "Vessel" means every description of watercraft, other than a sea-plane on water, used or capable of being used as a means of transportation on water, carrying oil as fuel or cargo, and over three hundred gross registered tons, except oceanographic research vessels, public vessels, vessels being employed exclusively for pleasure, or vessels which, prior to entering Washington waters, have formerly arranged with an officially recognized cleanup cooperative or with a private cleanup contractor for immediate oil spill response.

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

(17) "Waters of this state" or "waters of the state of Washington" shall mean all navigable waters within the state of Washington as defined in Article 24, section 1 of the state Constitution.

NEW SECTION. Sec. 3. COMMISSION CREATED—GENERALLY—POWERS AND DUTIES. There is created a Washington state maritime commission to be known and designated and declared a corporate body. The powers and duties of the commission shall include the following:

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

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

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

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

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

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

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

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

(9) To borrow money and incur indebtedness;

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

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

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

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

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

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

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

NEW SECTION. Sec. 4. MEMBERS—ELECTION—TERMS—MEETINGS. The commission shall be comprised of nine voting members. Six persons, each representing a specific business class, shall be elected to membership in the commission and one person shall be appointed by the commission members. Two of the members shall represent steamship liner companies, one American flag and one foreign flag. One member shall represent towboat companies. One member shall represent fishing vessels. One member shall represent steamship agencies serving tramp vessels. One member shall represent protection and indemnity clubs or other marine brokers or insurers of oil spill cleanup costs for vessels operating in Washington waters. One member shall represent steamship agencies serving tramp vessels on the Columbia river. One member with maritime, marine labor, or marine spill cleanup experience and one member from the environmental community with marine experience shall be appointed from the public by the governor. In addition, the director, the

United States coast guard captain of the port for Puget Sound, the United States coast guard captain of the port for that portion of the Columbia river that runs between Washington and Oregon, and a state pilot licensed under chapter 88.16 RCW, who pilots in the waters of the state of Washington or their designees will serve as nonvoting ex officio members. The state-licensed pilot shall be selected by the Washington state board of pilotage commissioners.

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

The commission shall meet at least quarterly every year.

NEW SECTION. Sec. 5. **TERMS—VACANCIES.** The regular term of office of the members of the commission shall be three years from July 1 following their election and until their successors are elected and qualified. The commission shall hold its annual meeting during the month of October each year for the purpose of electing officers and the transaction of other business and shall hold such other meetings during the year as it shall determine.

Commission members shall be first nominated and elected in 1990 in the manner set forth in section 6 of this act and shall take office as soon as they are qualified. However, expiration of the term of the respective commission members first elected in 1990 shall be as follows:

- (1) Foreign flag liner and fishing vessel members on July 1, 1991;
- (2) Protection and indemnity club or marine member, and public member on July 1, 1992; and
- (3) All other members on July 1, 1993.

The respective terms shall end on June 30 of each third year thereafter. Any vacancies that occur on the commission shall be filled by appointment of an eligible person by the other members of the commission, and such appointee shall hold office for the remainder of the term for which they are appointed to fill, so that commission memberships shall be on a uniform staggered basis.

NEW SECTION. Sec. 6. **NOMINATION AND ELECTION PROCEDURE.** Members of the commission shall be nominated and elected by companies within the business class that the members represent in 1990 and thereafter in the year in which a commission member's term expires. Such members receiving the largest number of the votes cast in the respective business class which they represent shall be elected. The election shall be by secret mail ballot and under the supervision of the director. Each protection and indemnity association and each company and its subsidiaries within the business class shall be entitled to one vote.

Nomination for candidates to be elected to the commission shall be conducted by mail by the director. Such nomination forms shall be mailed by the director to each business class where a vacancy is about to occur. Such mailing shall be made on or after April 1st, but not later than April 10th of the year the commission vacancy will occur. The nomination form shall provide for the name of the member being nominated and the names of three affected companies nominating the nominee. The companies nominating the nominee shall affix their signatures to the form and shall further attest that the nominee meets the qualifications for that business class to serve on the commission and that they will be willing to serve on the commission if elected.

All nominations shall be returned to the director by April 30, and the director shall not accept any nomination postmarked later than midnight April 30, nor place such candidate on the election ballot. In any case where there is but one nomination for a position, a secret mail ballot shall not be conducted or required and the director shall certify the candidate to be elected.

Ballots for electing members to the commission shall be mailed by the director to all eligible companies in each business class no later than May 15th, and be returned to the director in Olympia by June 10.

Whenever affected companies fail to file any nominating petitions, the director shall nominate at least two, but not more than three, qualified members and place their names on the secret mail election ballot as nominees. Any qualified member may be elected by a write-in ballot, even though the member's name was not placed in nomination for the election. If a nominee does not receive a majority of the votes on the first ballot, a runoff election shall be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

For the first election in 1990 of commission members, all companies of an identified business class may vote in the election; for all subsequent elections, only those businesses in a business class that have a vessel covered by the commission may vote.

NEW SECTION. Sec. 7. COMPANIES' LISTS. The commission shall, prior to each election, in sufficient time, furnish the director with a list of all companies within each affected business class for which the election is being held. Any company may on their own motion file their name with the commission for the purpose of receiving notice of election.

NEW SECTION. Sec. 8. REIMBURSEMENT OF ELECTION COSTS. The commission shall reimburse the director for the necessary costs of conducting elections under the provisions of this chapter.

NEW SECTION. Sec. 9. QUORUM—COMPENSATION—TRAVEL EXPENSES—RESIGNATION—REMOVAL OF COMMISSION MEMBERS. A majority of the voting members of the commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

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

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

NEW SECTION. Sec. 10. COMMISSION RECORDS AS EVIDENCE. Copies of the proceedings, records, and acts of the commission, when certified by the secretary and authenticated by the corporate seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein.

NEW SECTION. Sec. 11. ASSESSMENTS LEVIED. There is levied on and after October 1, 1990, an assessment upon all vessels, or the owners or operators thereof, which transit upon waters of this state, except as exempted herein and not including vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon, an assessment to be set by the commission on each vessel transit, plus annual increases as are imposed pursuant to the provisions of section 12 of this act. Vessels which show proof to the commission or the department of ecology that they have previously and individually arranged with an officially recognized cleanup cooperative or with a private cleanup contractor to provide immediate response capabilities in the event of an oil spill or threatened release, are exempt from assessment under this chapter. Of those vessels assessed, the commission may set the rate. When the fund reaches one million five hundred thousand dollars, the commission shall discontinue the assessment until the fund declines to one million dollars, at which time the assessment must be reinstated. The assessment, at a minimum, must be able to generate the maximum fund level within four years. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter.

There may be levied on and after January 1, 1992, an assessment upon all vessels, or the owners or operators thereof, which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon.

NEW SECTION. Sec. 12. INCREASE IN ASSESSMENTS—
GROUND—PROCEDURE. If it appears from investigation by the commission that the revenue from the assessment levied on vessels under this chapter is inadequate to accomplish the purposes of this chapter, the commission shall adopt a resolution setting forth the necessities of the industry, the extent and probable cost of the required research, spill cleanup procedures and operations, public and industry education, administrative operations, the extent of public convenience, interest, and necessity, and probable revenue from the assessment levied. After the proper regulatory hearings, the commission may increase the assessment to a sum determined by the commission to be necessary for those purposes. An increase becomes effective ninety days after the resolution is adopted or on any other date provided for in the resolution.

NEW SECTION. Sec. 13. COLLECTION—ASSESSMENT—
LIEN. The commission shall, by rule, prescribe the method of collection for the assessment or recovery of oil spill first response system costs. If a vessel owner or operator fails to remit any assessments or recovery costs, the sum shall, in addition to penalties provided in this chapter, be a lien on the responsible vessel, which lien shall be enforced in accordance with applicable law.

NEW SECTION. Sec. 14. RECORDS KEPT BY VESSEL OWNERS, OPERATORS, OR AGENTS. Each vessel owner, operator, or agent shall keep a complete and accurate record of all vessel transits. This record shall be in such form and contain such information as the commission may by rule prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents.

NEW SECTION. Sec. 15. RIGHT TO SUBPOENA. The commission shall have the right to subpoena the records of any vessel owner, operator, or agent for the purpose of enforcing this chapter and the collection of the assessment or recovery costs.

NEW SECTION. Sec. 16. MANAGER—SECRETARY—TREASURER—TREASURER'S BOND. The commission shall elect a manager, who is not a member, and fix his or her compensation; and shall appoint a secretary and/or treasurer, who shall sign all vouchers and receipts for all moneys received by the commission. The treasurer shall file with the commission a fidelity bond in the sum of one hundred thousand dollars, executed by a surety company authorized to do business in the

state, in favor of the commission, conditioned for the faithful performance of his or her duties and strict accounting of all funds to the commission.

All money received by the commission, or by any state official on behalf of the commission, from the assessment herein levied, shall be paid to the treasurer, deposited in banks, which are approved state depositories, retained in separate commission accounts as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter.

NEW SECTION. Sec. 17. RULES—FILING—PUBLICATION. Rules and orders adopted by the commission shall be filed with the director and shall become effective pursuant to the provisions of the administrative procedure act.

NEW SECTION. Sec. 18. ENFORCEMENT. Employees and agents of the commission shall be empowered to enforce this chapter. The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter and the rules of the commission issued under this chapter.

NEW SECTION. Sec. 19. CLAIMS ENFORCEABLE AGAINST COMMISSION ASSETS—NONLIABILITY OF OTHER PERSONS AND ENTITIES—EXCEPTION. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, officer, employee, or agent of the commission in his or her individual or representative capacity. Except as otherwise provided in this chapter, neither the members of the commission, its officers, agents, nor employees nor the business entities by whom the members are regularly employed may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime.

NEW SECTION. Sec. 20. PENALTIES. Any vessel, vessel owner, or operator who violates any provision of this chapter or rule of the commission shall be subject to a civil penalty not to exceed one thousand dollars.

NEW SECTION. Sec. 21. FINANCING ASSISTANCE FOR COMMISSION. The legislature finds that, in order to permit the commission to accomplish more efficiently its important public purposes, as enumerated in section 3 of this act, the commission may issue bonds or obtain loans secured by commission funds derived from membership assessment.

NEW SECTION. Sec. 22. BONDS OR LOANS SHALL BE ISSUED ONLY AFTER CERTIFICATION OF SUFFICIENCY OF FUNDS. The bonds or loans authorized by the commission shall be issued only after the treasurer of the commission has certified that the net proceeds of the bonds or loans together with all money to be made available by the

commission for the purposes described in section 3 of this act, shall be sufficient for such purposes; and also that, based upon the treasurer's estimates of future income from assessments levied pursuant to section 11 of this act and other sources, an adequate balance will be maintained in the commission's general fund to enable the commission to pay the costs of bond issuance and retirement or loan repayment, including interests and costs.

NEW SECTION. Sec. 23. CAPTIONS NOT LAW. Section headings as used in this chapter do not constitute any part of the law.

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

NEW SECTION. Sec. 25. EFFECTIVE DATES. This act shall take effect July 1, 1990, except for section 3 (10), (12), (13), and (15) of this act which shall take effect July 1, 1991; except as otherwise provided in section 3(5), (10), and (15), and section 11 of this act.

NEW SECTION. Sec. 26. Sections 1 through 25 of this act shall constitute a new chapter in Title 88 RCW.

Passed the Senate March 5, 1990.

Passed the House March 2, 1990.

Approved by the Governor March 21, 1990.

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

CHAPTER 118

[House Bill No. 2525]

RADIO COMMUNICATIONS SERVICES REGULATION—EXCEPTIONS

AN ACT Relating to regulation of radio communications services; and amending RCW 80.36.370.

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

Sec. 1. Section 9, chapter 450, Laws of 1985 and RCW 80.36.370 are each amended to read as follows:

The commission shall not regulate the following:

(1) One way broadcast or cable television transmission of television or radio signals;

(2) Private telecommunications systems;

(3) Telegraph services;

(4) Any sale, lease, or use of customer premises equipment except such equipment as is regulated on July 28, 1985;

(5) Private shared telecommunications services, unless the commission finds, upon notice and investigation, that customers of such services have no alternative access to local exchange telecommunications companies. If the