

chapter 249, Laws of 1963.

NEW SECTION. Sec. 14. The department of revenue of the state of Washington shall make such rules and regulations consistent with the provisions of this act as shall be necessary or desirable to permit its effective administration.

NEW SECTION. Sec. 15. 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. 16. The provisions of this act shall take effect on January 1, 1971.

NEW SECTION. Sec. 17. There is added to chapter 15, Laws of 1961 and to Title 84 RCW a new chapter to consist of sections 1 through 17 of this act.

Passed the House February 10, 1970
Passed the Senate February 10, 1970
Approved by the Governor February 20, 1970
Filed in Office of Secretary of State February 24, 1970

CHAPTER 88
[Engrossed Substitute House Bill No. 51]
WATER POLLUTION--
OIL DISCHARGES--LIABILITY--PENALTIES

AN ACT Relating to water pollution; amending section 1, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.320; amending section 2, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.325; amending section 3, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.330; amending section 4, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.335; amending section 7, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.350; amending section 10, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.315; amending section 5, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.340; amending section 11, chapter 216, Laws of 1945 as amended by section 6, chapter 13, Laws of 1967 and RCW 90.48.035; amending sections 13 and 14, chapter 139, Laws of 1967 ex. sess. and RCW 90.48.142 and 90.48.144; amending section 6,

chapter 71, Laws of 1955 as amended by section 20, chapter 13, Laws of 1967 and RCW 90.48.210; adding new sections to chapter 133, Laws of 1969 ex. sess. and to chapter 90.48 RCW; providing penalties; and declaring an emergency.

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

Section 1. Section 10, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.315 are each amended to read as follows:

For purposes of RCW 90.48.315 through 90.48.365 the following definitions shall apply:

(1) "Oils" or "oil" shall mean oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(2) "Person" shall mean "person" as defined in *[by] RCW 90.48.020 and in addition shall include any owner, operator, master, officer or employee of a ship.

(3) "Waters of the state" shall mean "waters of the state" as defined in RCW 90.48.020.

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

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

Sec. 2. Section 1, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.320 are each amended to read as follows:

~~((No person shall intentionally or negligently discharge oil or cause or permit the entry of the same into))~~ It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent con-

duct, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:

(1) The person discharging was expressly authorized to do so by the water pollution control commission prior to the entry of the oil into state waters;

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

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

(a) an act of war or sabotage, or

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

Sec. 3. Section 2, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.325 are each amended to read as follows:

It shall be the obligation of any person (~~discharging-or-causing-or-permitting-the-entry-of-the-same-into~~) owning or having control over oil entering waters of the state in violation of RCW 90.48.320 to immediately collect and remove the same. If it is not feasible to collect and remove, said person shall take all practicable actions to contain, treat and disperse the same. The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to him that use thereof would be detrimental to the public interest.

Sec. 4. Section 3, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.330 are each amended to read as follows:

The water pollution control commission is authorized, with the staff, equipment and material under its control, or by contract with others, to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil discharged into waters of the state. The director of the commission shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section.

including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized. The authority granted hereunder shall be limited to projects and activities which are designed to protect the public interest or public property.

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

Any person who fails to immediately collect, remove, contain, treat or disperse oil when under an obligation to do so as provided in RCW 90.48.325, shall be responsible for the necessary expenses incurred by the state in carrying out a project or activity authorized under RCW 90.48.330.

NEW SECTION. Sec. 6. There is added to chapter 133, Laws of 1969 ex. sess. and to chapter 90.48 RCW a new section to read as follows:

Any person owning oil or having control over the same which enters the waters of the state in violation of section 2 of this 1970 amendatory act shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. In any action to recover such damages, said person shall be relieved from strict liability, without regard to fault, if he can prove that the oil to which the damages relate entered the waters of the state by causes set forth in section 2, subsection (3) of this 1970 amendatory act.

NEW SECTION. Sec. 7. There is added to chapter 133, Laws of 1969 ex. sess. and to chapter 90.48 RCW a new section to read as follows:

In addition to any cause of action the state may have to recover necessary expenses for the cleanup of oil pursuant to sections 3 and 9 of this 1970 amendatory act, any other person causing the entry of oil shall be directly liable to the state for the necessary expenses of oil cleanup arising from such entry and the state shall have a cause of action to recover from any or all of said person. Any

person liable for cost of oil cleanup as provided in sections 3 and 9 of this 1970 amendatory act shall have a cause of action to recover for costs of cleanup from any other person causing the entry of oil into the waters of the state including any amount recoverable by the state as necessary expenses under section 9 of this 1970 amendatory act.

NEW SECTION. Sec. 8. There is added to chapter 133, Laws of 1969 ex. sess. and to chapter 90.48 RCW a new section to read as follows:

Any person who proposes to discharge oil or cause or permit the entry of same into waters of the state shall prior to such discharge obtain permission from the director of the water pollution control commission. The director is authorized to permit the discharge of oil into waters of the state consistent with the pertinent effluent and receiving water standards and treatment requirements established by the commission. Permission for industrial or commercial discharges shall be given through the terms of a waste discharge permit issued pursuant to RCW 90.48.180. Permission shall be given in all other cases on a form prescribed by the director.

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

Any person who intentionally or negligently discharges oil, or causes or permits the entry of the same (~~(in violation of RCW 90-48-320)~~), shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation; said amount to be determined by the director of the commission after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty

herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the director of the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The director may, upon written application therefor, received within fifteen days, and when deemed in the best interest of the state in carrying out the purposes of this chapter, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as he in his discretion shall deem proper, and shall have the authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after the receipt of notice imposing the same, or if an application for remission or mitigation has been made within fifteen days as herein provided and the amount provided in the order issued by the director subsequent to such application is not paid within fifteen days after the receipt thereof, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or any other county in which such violator may do business, to recover the amount specified in the final order of the director. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. No order issued under this section shall be construed as an order within the meaning of RCW 90.48.135.

Sec. 10. Section 5, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.340 are each amended to read as follows:

The director shall investigate each activity or project conducted under RCW 90.48.330 to determine, if possible, the circumstances surrounding the entry of oil into waters of the state and the person or persons allowing said entry or responsible for the act or

acts which result in said entry. Whenever it appears to the director, after investigation, that a specific person or persons are responsible for the necessary expenses incurred by the state pertaining to a project or activity as specified in RCW 90.48.335, the director shall notify said person or persons by appropriate order: PROVIDED, That no order may be issued pertaining to a project or activity which was completed more than five years prior to the date of the proposed issuance of the order. Said order shall state the findings of the director, the amount of necessary expenses incurred by the commission in conducting the project or activity, and a notice that said amount is due and payable immediately upon receipt of said order. The commission may, upon application from the recipient of an order received within thirty days from the receipt of the order, reduce or set aside in its entirety the amount due and payable, when it appears from the application, and from any further investigation the commission may desire to undertake, that a reduction or setting aside is just and fair under all the circumstances. If the amount specified in the order issued by the director notifying said person or persons is not paid within thirty days after receipt of notice imposing the same, or if an application has been made within thirty days as herein provided and the amount provided in the order issued by the commission subsequent to such application is not paid within fifteen days after receipt thereof, the attorney general, upon request of the director, shall bring an action on behalf of the state in the superior court of Thurston county or any county in which the person to which the order is directed does business to recover the amount specified in the final order of the director or the commission, as appropriate. No order issued under this section shall be construed as an order within the meaning of RCW 90.48.135. In any action to recover necessary expenses as herein provided said person shall be relieved from liability for necessary expenses if he can prove that the oil to which the necessary expenses relate entered the waters of the state by causes set forth in section 2, subsection (3)

of this 1970 amendatory act. For purposes of this section "necessary expenses" shall not include expenses relating to investigation or the performance of surveillance.

Sec. 11. Section 11, chapter 216, Laws of 1945 as amended by section 6, chapter 13, Laws of 1967 and RCW 90.48.035 are each amended to read as follows:

The commission shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW 90.48-.010 (~~(7-as-such-substances-relate-to-the-characteristics-of-the-receiving-waters)~~).

Sec. 12. Section 13, chapter 139, Laws of 1967 ex. sess. and RCW 90.48.142 are each amended to read as follows:

Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the commission or the director made pursuant to the provisions of this chapter, including the conditions of a waste discharge permit issued pursuant to RCW 90.48.160, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, or otherwise causes a reduction in the quality of the state's waters below the standards set by the commission, thereby damaging the same, shall be liable to pay the state damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake or other water source to its condition prior to the injury, as such condition is determined by the commission. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such damages occurred: PROVIDED, That

if damages occurred in more than one county the attorney general may bring action in any of the counties where the damages occurred. Any money so recovered by the attorney general shall be transferred to either the state game fund (~~(fex)~~) or the department of fisheries to use for food fish or shellfish management purposes and propagation, or to any other agency of the state having jurisdiction over the resource damaged and for which said moneys were recovered, as appropriate: PROVIDED, That the agency receiving such money shall utilize not less than one-half of said money on activities or projects within the county where the action was brought by the attorney general. No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160.

Sec. 13. Section 14, chapter 139, Laws of 1967 ex. sess. and RCW 90.48.144 are each amended to read as follows:

Every person who:

- (1) Violates the terms or conditions of a waste discharge permit issued pursuant to (~~(RCW-90-48-160)~~) RCW 90.48.180, or
- (2) Conducts a commercial or industrial operation without a waste discharge permit as required by RCW 90.48.160, or
- (3) Violates the provisions of RCW 90.48.080, shall incur, in addition to any other penalty as provided by law, a penalty in the amount of one hundred dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the director of the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The director

may, upon written application therefor, received within fifteen days, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as he in his discretion shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of such application, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

Sec. 14. Section 6, chapter 71, Laws of 1955 as amended by section 20, chapter 13, Laws of 1967 and RCW 90.48.210 are each amended to read as follows:

The issuance or termination of a permit, the denial of an application for a permit, or the modification of the conditions or the terms of a permit shall be deemed to be an order for purposes of ((REW-90-48-130)) RCW 90.48.135.

NEW SECTION. Sec. 15. If any provision of this 1970 amendatory 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. 16. This 1970 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institu-

tions, and shall take effect immediately.

Passed the House February 9, 1970
Passed the Senate February 6, 1970
Approved by the Governor February 23, 1970
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CHAPTER 89
[Substitute House Bill No. 60]
PUBLIC STADIUM FACILITIES

AN ACT Relating to public recreation, sports and culture; levying taxes; amending section 11, chapter 236, Laws of 1967 and RCW 67.28.180; amending section 13, chapter 236, Laws of 1967 and RCW 67.28.200; amending section 14, chapter 236, Laws of 1967 and RCW 67.28.210 and declaring an emergency.

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

Section 1. Section 11, chapter 236, Laws of 1967, and RCW 67-.28.180 are each amended to read as follows:

The legislative body of any class AA county, and of any city of the first class having a population of one hundred fifty thousand or more not situated in a class AA county, is authorized to levy and collect, a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: PROVIDED, That it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

Sec. 2. Section 13, chapter 236, Laws of 1967, and RCW 67.28-.200 are each amended to read as follows:

The legislative body of any county or city may establish reasonable exemptions and may adopt such reasonable rules and regulations as may be necessary for the levy and collection of the taxes authorized by RCW 67.28.180. The department of revenue shall perform the collection of such taxes on behalf of such county or city at no cost to such county or city.