

(i) That post-test counseling, as specified under WAC 248-100-209(4), is required if an HIV test is positive or indeterminate;

(ii) That post-test counseling occurs at the time a positive or indeterminate HIV test result is given to the tested individual;

(iii) That the applicant may designate a health care provider or health care agency to whom the insurer, the health care service contractor, or health maintenance organization will provide positive or indeterminate test results for interpretation and post-test counseling. When an applicant does not identify a designated health care provider or health care agency and the applicant's test results are either positive or indeterminate, the insurer, the health care service contractor, or health maintenance organization shall provide the test results to the local health department for interpretation and post-test counseling; and

(iv) That positive or indeterminate HIV test results shall not be sent directly to the applicant.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 18, 1989.

Passed the House April 14, 1989.

Approved by the Governor May 13, 1989.

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CHAPTER 388

[Substitute House Bill No. 1853]

OIL SPILL DAMAGE ASSESSMENT, COMPENSATION, AND PENALTIES

AN ACT Relating to oil spill damage assessment, compensation, and penalties under the state water pollution control act; amending RCW 90.48.315, 90.48.390, 90.48.400, and 90.48-.350; adding new sections to chapter 90.48 RCW; creating new sections; prescribing penalties; making an appropriation; and declaring an emergency.

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

NEW SECTION. Sec. 1. **INTENT.** The legislature finds that oil spills can cause significant damage to the environment and natural resources held in trust by and for the people of this state. Some of these damages are unquantifiable, and others cannot be quantified at a reasonable cost. Both quantifiable and unquantifiable damages often occur despite prompt containment and cleanup measures. Due to the inability to measure the exact nature and extent of certain types of damages, current damage assessment methodologies used by the state inadequately assess the damage caused by oil spills.

In light of the magnitude of environmental and natural resource damage which may be caused by oil spills, and the importance of fishing, tourism, recreation, and Washington's natural abundance and beauty to the quality of life and economic future of the people of this state, the legislature declares that compensation should be sought for those damages that cannot be quantified at a reasonable cost and for those unquantifiable damages that result from oil spills. This compensation is intended to ensure that the public does not bear substantial losses caused by oil pollution for which compensation may not otherwise be received.

NEW SECTION. Sec. 2. **COMPENSATION SCHEDULE.** By July 1, 1991, the department, in consultation with the departments of fisheries, wildlife, and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of RCW 90.48.320, by persons liable under RCW 90.48.336. The department shall establish a scientific advisory board to assist in establishing the compensation schedule. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than fifty dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the oil spill and shall take into account:

(1) Characteristics of the oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

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

(3) Actions taken by the party who spilled the oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the number of gallons spilled, or the extent of damage, including the unauthorized removal of evidence such as oiled fish or wildlife.

NEW SECTION. Sec. 3. **ASSESSMENT OF COMPENSATION.**
(1) Prior to assessing compensation under section 2 of this act, the department shall conduct a formal preassessment screening as provided in section

4 of this act. The department shall use the compensation schedule established under section 2 of this act if the preassessment screening committee determines that: (a) Restoration or enhancement of the injured resources is not technically feasible; (b) damages are not quantifiable at a reasonable cost; and (c) the restoration and enhancement projects or studies proposed by the liable parties are insufficient to adequately compensate the people of the state for damages sustained as a result of the oil spill.

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

(3) Compensation assessed under this section 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 Thurston county or any county in which damages occurred. Moneys recovered by the attorney general under this section shall be deposited in the coastal protection fund established under RCW 90.48.390, and shall only be used for the purposes stated in RCW 90.48.400.

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

NEW SECTION. Sec. 4. PREASSESSMENT SCREENING. (1) The department shall adopt rules establishing a formal process for preassessment screening of damages resulting from oil spills. The rules shall specify the conditions under which the department shall convene a preassessment screening committee. The preassessment screening process shall occur concurrently with reconnaissance activities. The committee shall use information obtained from oil spill reconnaissance activities as well as any other relevant resource and resource use information. For each oil spill, the committee shall determine whether a damage assessment investigation should be conducted under RCW 90.48.142, or alternatively, whether the compensation schedule authorized under sections 2 and 3 of this act should be used to assess damages. The committee may accept restoration or enhancement projects or studies proposed by the liable parties in lieu of some or all of: (a) The compensation schedule authorized under this chapter; or (b) the claims from damage assessment studies authorized under RCW 90.48.142.

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

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

(4) Oil spill damage assessment studies authorized under RCW 90.48.142 may only be conducted if the committee, after considering the factors enumerated in subsection (3) of this section, determines that the damages to be investigated are quantifiable at a reasonable cost and that proposed assessment studies are clearly linked to quantification of the damages incurred.

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

(6) The preassessment screening process shall provide for the ongoing involvement of persons who may be liable for damages resulting from an oil spill. The department may negotiate with a potentially liable party to perform restoration and enhancement projects or studies which may substitute for all or part of the compensation authorized under sections 2 and 3 of this act or the damage assessment studies authorized under RCW 90.48.142.

(7) For the purposes of this section and section 3 of this act, the cost of a damage assessment shall be considered "reasonable" when the anticipated cost of the damage assessment is expected to be less than the anticipated damage that may have occurred or may occur.

NEW SECTION. Sec. 5. ANNUAL REPORT. The department shall submit an annual report to the appropriate standing committees of the legislature for the next five years beginning January 1, 1990. The annual report shall cover the implementation of this act and shall include information on each oil spill for which a preassessment screening committee was convened, the outcome of each process, any compensation claims imposed or damage assessment studies conducted, and the revenues to and expenditures from the coastal protection fund.

Sec. 6. Section 10, chapter 133, Laws of 1969 ex. sess. as last amended by section 5, chapter 316, Laws of 1985 and RCW 90.48.315 are each amended to read as follows:

For purposes of RCW 90.48.315 through 90.48.365 (~~and RCW~~), 78-.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90-.48.903, 90.48.906 and 90.48.907, and sections 2 through 5 of this act, the following definitions shall apply unless the context indicates otherwise:

(1) "Board" shall mean the pollution control hearings board.

(2) "Committee" shall mean the preassessment screening committee established under section 4 of this act.

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

~~((3))~~ (4) "Director" shall mean the director of the department of ecology.

~~((4))~~ (5) "Discharge" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

~~((5))~~ (6) "Fund" shall mean the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

~~((6))~~ (7) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

~~((7))~~ (8) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; and (c) conducting actions necessary to clean up the discharge.

~~((8))~~ (9) "Oil" or "oils" shall mean oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural gas, propane, butane, oils distilled from coal, and other liquid hydrocarbons regardless of specific gravity, or any other petroleum related product.

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

~~((10))~~ (11) "Ship" shall mean any boat, ship, vessel, barge, or other floating craft of any kind.

~~((11))~~ (12) "Technical feasibility" or "technically feasible" shall mean that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

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

Sec. 7. Section 4, chapter 180, Laws of 1971 ex. sess. and RCW 90-.48.390 are each amended to read as follows:

The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of RCW 90.48.315 through 90.48.365 (~~and RCW~~), 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907, and sections 2 through 4 of this act. To this fund there shall be credited penalties, fees, and charges received pursuant to the provisions of RCW 90.48.315 through 90.48.365, compensation for damages received under sections 2 through 4 of this act, and an amount equivalent to one cent per gallon from each marine use refund claim under RCW 82.36.330.

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW 90.48.315 through 90.48.365 and *RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 shall be deposited with the state treasurer to the credit of the fund and may be invested in such manner as is provided for by law. Interest received on such investment shall be credited to the fund.

Sec. 8. Section 5, chapter 180, Laws of 1971 ex. sess. and RCW 90.48.400 are each amended to read as follows:

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

(a) All costs of the department related to the enforcement of RCW 90.48.315 through 90.48.365 (~~and RCW~~), 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907, and sections 2 through 4 of this act including but not limited to equipment rental and contracting costs.

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

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

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

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

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

(3) A steering committee consisting of representatives of the department of ecology, fisheries, wildlife, and natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under sections 2 through 4 of this act, after consulting impacted local agencies and local and tribal governments. The moneys collected under sections 2 through 4 of this act shall only be used for the following purposes:
(a) Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, or aesthetic resources for the benefit

of Washington's citizens; (b) investigations of the long-term effects of oil spills on state resources; and (c) reimbursement of agencies for reasonable reconnaissance and damage assessment costs. Agencies may not be reimbursed under this section for the salaries and benefits of permanent employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources.

Sec. 9. Section 7, chapter 133, Laws of 1969 ex. sess. as last amended by section 20, chapter 109, Laws of 1987 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, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation, and for each day ~~((of a continuing violation, said amount to))~~ the spill poses risks to the environment as determined by the director. Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to any other penalty authorized by law, a penalty of up to one hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director. The amount of the penalty shall be determined by the director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal of the oil, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall be imposed pursuant to RCW 43.21B.300.

NEW SECTION. Sec. 10. The sum of seventy-five thousand dollars, or as much thereof as may be necessary, is appropriated from the state toxics control account to the department of ecology for the biennium ending June 30, 1991, for the purpose of preparing the compensation schedule required under section 2 of this act.

NEW SECTION. Sec. 11. Sections 2 through 5 of this act are each added to chapter 90.48 RCW.

NEW SECTION. Sec. 12. This act applies prospectively only, and not retroactively. It applies only to causes of action which arise after the effective date of this act.

NEW SECTION. Sec. 13. Section headings as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 14. 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. 15. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 15, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor May 13, 1989.

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CHAPTER 389

[Substitute Senate Bill No. 6013]

WATER AND SEWER CONNECTION AND CAPACITY CHARGES

AN ACT Relating to water and sewer connection or capacity charges; amending RCW 56.08.010, 56.16.030, 57.08.010, and 57.16.010; adding a new section to chapter 35.58 RCW; adding a new chapter to Title 56 RCW; and adding a new chapter to Title 57 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.58 RCW to read as follows:

(1) A metropolitan municipal corporation that is engaged in the transmission, treatment, and disposal of sewage may impose a capacity charge on users of the metropolitan municipal corporation's sewage facilities when the user connects, reconnects, or establishes a new service. The capacity charge shall be approved by the council of the metropolitan municipal corporation and reviewed and reapproved annually.

(2) The capacity charge shall be based upon the cost of the sewage facilities' excess capacity that is necessary to provide sewerage treatment for new users to the system. The capacity charge, which may be collected over a period of fifteen years, shall not exceed:

(a) Seven dollars per month per residential customer equivalent for connections and reconnections occurring prior to January 1, 1996; and

(b) Ten dollars and fifty cents per month per residential customer equivalent for connections and reconnections occurring after January 1, 1996, and prior to January 1, 2001.

For connections and reconnections occurring after January 1, 2001, the capacity charge shall not exceed fifty percent of the basic sewer rate per residential customer equivalent established by the metropolitan municipal corporation at the time of the connection or reconnection.

(3) The capacity charge for a building other than a single-family residence shall be based on the projected number of residential customer equivalents to be represented by the building, considering its intended use.