

Title 88

NAVIGATION AND HARBOR IMPROVEMENTS

Chapters

- 88.01 Boating offense compact.**
- 88.02 Vessel registration.**
- 88.04 Charter boat safety act.**
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Canal commission: Chapter 47.72 RCW.

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Harbor line commission: RCW 79.115.010.

Harbor line commission: State Constitution Art. 15 § 1 (Amendment 15).

Harbors and tide waters: State Constitution Art. 15 § 1 (Amendment 15).

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Lien for transportation, storage, advancements, etc.: Chapter 60.60 RCW.

Lien on vessels and equipment for labor, material, damages, and handling cargo: Chapter 60.36 RCW.

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Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.140.110.

Port districts: Title 53 RCW.

Powers of cities and towns relative to docks and other appurtenances to harbors and shipping: RCW 35.22.280, 35.23.440, and 35A.11.020.

Steamboat companies: Chapter 81.84 RCW.

Tidelands, ownership by state: State Constitution Art. 17.

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Wood debris—Removal from navigable waters: Chapter 76.42 RCW.

Chapter 88.01 RCW BOATING OFFENSE COMPACT

Sections

88.01.010 Compact provisions.

88.01.010 Compact provisions. The Boating Offense Compact is enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I

Findings and Declaration of Policy

(1) The party states find that:

(a) The safety of their waters is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of boats;

(2022 Ed.)

(b) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(2) It is the policy of each of the party states to promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of boats by their operators in each of the jurisdictions where such operators operate boats.

ARTICLE II Definition

As used in this compact, "state" means a state that has entered into this compact.

ARTICLE III Concurrent Jurisdiction

(1) If conduct is prohibited by two adjoining party states, courts and law enforcement officers in either state who have jurisdiction over boating offenses committed where waters form a common interstate boundary have concurrent jurisdiction to arrest, prosecute, and try offenders for the prohibited conduct committed anywhere on the boundary water between the two states.

(2) This compact does not authorize:

(a) Prosecution of any person for conduct that is unlawful in the state where it was committed, but lawful in the other party state;

(b) A prohibited conduct by the party state.

ARTICLE IV Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same.

ARTICLE V Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1992 c 33 § 1.]

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Chapter 88.02 RCW
VESSEL REGISTRATION

GENERAL PROVISIONS

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GENERAL PROVISIONS

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Boat trailer fee: RCW 46.17.305.

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88.02.310 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state.

(2) "Department" means the department of licensing.

(3) "Director" means the director of the department of licensing.

(4) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and means registered owner where the reference to owner may be construed as either to registered or legal owner.

(5) "Person" has the same meaning as in RCW 46.04.405.

(6) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(7) "Waters of this state" means any waters within the territorial limits of this state as described in 43 U.S.C. Sec. 1312. [2010 c 161 § 1001; 1983 c 7 § 14. Formerly RCW 88.02.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.320 Department—Powers and duties. The department:

(1) Shall provide for the issuance of vessel certificates of title and registration certificates;

(2) May appoint county auditors or other agents or subagents under chapter 46.01 RCW for collecting fees and issuing vessel registration certificates, numbers, and decals; and

(3) May adopt rules under chapter 34.05 RCW to implement this chapter. [2010 c 161 § 1002.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.330 Confidential vessel registrations—Rules.

(1) The department may issue confidential vessel registrations to units of local government and to agencies of the federal government for law enforcement purposes only.

(2) The department shall limit confidential vessel registrations owned or operated by the state of Washington or by any officer or employee of the state, to confidential, investigative, or undercover work of state law enforcement agencies.

(3) The director may adopt rules governing applications for and the use of confidential vessel registrations. [2010 c 161 § 1003; 1991 c 339 § 32. Formerly RCW 88.02.035.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.340 Inspection of registration certificates, out-of-state vessels. (1) Any person charged with the enforcement of this chapter may inspect the registration certificate of a vessel to ascertain the legal and registered ownership of the vessel. A vessel owner or operator who fails to provide the registration certificate for inspection upon the request of any person charged with enforcement of this chapter may be found to be in violation of this chapter.

(2) The department may require the inspection of vessels that are brought into this state from another state and for which a certificate of title has not been issued and for any other vessel if the department determines that inspection of the vessel will help to verify the accuracy of the information set forth on the application. [2013 c 291 § 30; 2010 c 161 § 1004.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.350 Refunds, overpayments, and underpayments—Penalty for false statement. (1) A person who has paid all or part of a vessel registration fee under this chapter is entitled to a refund if the amount was paid in error or if the vessel:

(a) Was destroyed before the new registration period began;

(b) Was permanently removed from Washington state before the new registration period began;

(c) Registration was purchased after the owner sold the vessel;

(d) Was registered in another jurisdiction after the Washington state registration had been purchased. Any full months of Washington state registration fees remaining after the application for out-of-state registration was made are refundable; or

(e) Registration was purchased before the vessel was sold and before the new registration period began. The person who paid the fee must return the unused, never-affixed decals to the department before the new registration period begins.

(2) The department shall refund overpayments of registration fees and watercraft excise tax under chapter 82.49 RCW that are ten dollars or more. A request for a refund is not required.

(3) The department shall certify refunds to the state treasurer as correct and being claimed in the time required by law. The state treasurer shall mail or deliver the amount of each refund to the person who is entitled to the refund.

(4) The department shall not authorize refunds of fees paid in error unless the claim is filed with the director within three years after the fees were paid.

(5) If, due to error, the department, county auditor or other agent, or subagent appointed by the director has failed to collect the full amount of the registration fee and watercraft excise tax due, and the underpayment is in the amount of ten dollars or more, the department shall charge and collect the additional amount to constitute full payment of the tax and fee.

(6) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [2010 c

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161 § 1005; 2003 c 53 § 413; 1997 c 22 § 2; 1996 c 31 § 2; 1989 c 68 § 5. Formerly RCW 88.02.055.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

88.02.360 Contaminated vessels. (1) A local health officer may notify the department that a vessel has been:

(a) Declared unfit and prohibited from use as authorized in chapter 64.44 RCW if the vessel has become contaminated as defined in RCW 64.44.010;

(b) Satisfactorily decontaminated and the vessel has been retested according to the written work plan approved by the local health officer.

(2) The department shall brand vessel records and certificates of title when it receives the notification from a local health officer as provided in subsection (1) of this section.

(3) A person is guilty of a gross misdemeanor if he or she advertises for sale or sells a vessel that has been declared unfit and prohibited from use by a local health officer if:

(a) The person has knowledge that the local health officer has issued an order declaring the vessel unfit and prohibiting its use; or

(b) A notification has been placed on the certificate of title under subsection (2) of this section that the vessel has been declared unfit and prohibited from use.

(4) A person may advertise or sell a vessel if a release for reuse document has been issued by a local health officer under chapter 64.44 RCW or a notification has been placed on the certificate of title under subsection (2) of this section that the vessel has been decontaminated and released for reuse. [2010 c 161 § 1016.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.370 Five business-day notice—Vessel disposition or filing of report of sale. (1) A vessel owner shall notify the department in writing within five business days after a vessel is or has been:

(a) Sold;

(b) Given as a gift to another person;

(c) Traded, either privately or to a vessel dealer;

(d) Donated to charity;

(e) Turned over to an insurance company or wrecking yard; or

(f) Disposed of.

(2) A report of sale is properly filed if it is received by the department within five business days after the date of sale or transfer and it includes:

(a) The date of sale or transfer;

(b) The owner's name and address;

(c) The name and address of the person acquiring the vessel;

(d) The vessel hull identification number and vessel registration number; and

(e) A date stamp by the department showing it was received on or before the fifth business day after the date of sale or transfer.

(3) The department shall:

- (a) Provide or approve reports of sale forms;
- (b) Provide a system enabling a vessel owner to submit reports of sale electronically;
- (c) Immediately update the department's vessel record when a report of sale has been filed;
- (d) Provide instructions on release of interest forms that allow the seller of a vessel to release their interest in a vessel at the same time a financial institution, as defined in RCW 30A.22.040, releases its lien on the vessel; and
- (e) Send a report to the department of revenue that lists vessels for which a report of sale has been received but no transfer of ownership has taken place. The department shall send the report once each quarter. [2015 c 148 § 1; 2010 c 161 § 1014.]

Effective date—2015 c 148: "This act takes effect January 1, 2017." [2015 c 148 § 2.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.375 Ten-day notice—Owner name or address change or destruction, loss, etc. of vessel or registration certificate. A vessel owner shall notify the department within ten days of any of the following:

- (1) A change of name or address of the owner, as provided in RCW 46.08.195;
- (2) Destruction, loss, abandonment, theft, or recovery of the vessel; or
- (3) Loss or destruction of a valid registration certificate issued for the vessel. [2017 c 147 § 11; 2010 c 161 § 1013.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.380 Penalties—Disposition of moneys collected—Enforcement authority. (1) Except as otherwise provided in this chapter, and, in part, in order to prevent the future potential dereliction or abandonment of a vessel, a violation of this chapter and the rules adopted by the department is a class 2 civil infraction.

(2) A civil infraction issued under this chapter must be processed under chapter 7.80 RCW.

(3) After the subtraction of court costs and administrative collection fees, moneys collected under this section must be credited to the ticketing jurisdiction and used only for the support of the enforcement agency, department, division, or program that issued the violation.

(4) All law enforcement officers may enforce this chapter and the rules adopted by the department within their respective jurisdictions. A city, town, or county may contract with a fire protection district for enforcement of this chapter, and fire protection districts may engage in enforcement activities.

(5) In order to prevent the future potential dereliction or abandonment of a vessel, derelict vessel removal program staff of the department of natural resources have authority to issue tickets by mail for the purpose of enforcing vessel registration requirements. [2020 c 324 § 5; 2013 c 291 § 29; 2010 c 161 § 1006; 2006 c 29 § 3; 1993 c 244 § 4; 1987 c 149 § 13; 1984 c 183 § 2; 1983 2nd ex.s. c 3 § 50; 1983 c 7 § 22. Formerly RCW 88.02.110.]

Findings—2020 c 324: See note following RCW 79.100.160.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Intent—1993 c 244: See note following RCW 79A.60.010.

Additional notes found at www.leg.wa.gov

88.02.390 Carbon monoxide warning sticker—Display required. (1) The department shall:

(a) Develop and approve a carbon monoxide warning sticker;

(b) Approve a carbon monoxide warning sticker that has been approved by the United States coast guard for similar uses in other states;

(c) Provide the carbon monoxide warning sticker when an application for a certificate of title is made and the ownership of the vessel is transferred between natural persons; and

(d) Notify the new vessel owner described in (c) of this subsection that the carbon monoxide sticker must be affixed to the vessel as described in subsection (2) of this section.

(2) A new or used motor-driven vessel, as defined in RCW 79A.60.010, other than a personal watercraft, as defined in RCW 79A.60.010, sold within this state must display a carbon monoxide warning sticker as provided in subsection (1) of this section.

(3) A vessel dealer shall ensure that a carbon monoxide warning sticker has been affixed to any vessel sold by the dealer before completing the sale.

(4) A carbon monoxide warning sticker already developed by a vessel manufacturer satisfies the requirements of this section if it has been approved by the department. [2010 c 161 § 1024; 2006 c 140 § 2. Formerly RCW 88.02.250.]

Reviser's note: RCW 88.02.250 was directed to be recodified under the subchapter heading "registration certificates" in chapter 88.02 RCW pursuant to 2010 c 161 § 1233, but recodification under the subchapter heading "general provisions" in chapter 88.02 RCW appears to be more appropriate.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.400 Evasive registration and excise tax evasion—Penalty. (1) It is a gross misdemeanor punishable as provided under chapter 9A.20 RCW for any person owning a vessel subject to taxation under chapter 82.49 RCW to:

(a) Register a vessel in another state to avoid Washington state vessel excise tax required under chapter 82.49 RCW; or

(b) Obtain a vessel dealer's license for the purpose of evading excise tax on vessels under chapter 82.49 RCW.

(2) For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, which may not be suspended, except as provided in RCW 10.05.180.

(3) Excise taxes owed and fines assessed must be deposited in the manner provided under RCW 46.16A.030(6). [2019 c 459 § 5; 2019 c 423 § 205; 2010 c 161 § 1007; 2003 c 53 § 414; 2000 c 229 § 6; 1999 c 277 § 10; 1996 c 184 § 4; 1993 c 238 § 4; 1987 c 149 § 7. Formerly RCW 88.02.118.]

Reviser's note: This section was amended by 2019 c 423 § 205 and by 2019 c 459 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2019 c 459: See note following RCW 10.05.180.

Finding—Intent—Effective date—2019 c 423: See notes following RCW 82.08.0273.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

88.02.410 Department and state immune from suit for administration of chapter. A suit or action may not be commenced or prosecuted against the department or the state of Washington by reason of any act done or omitted to be done in the administration of the duties and responsibilities imposed upon the department under this chapter. [2010 c 161 § 1008; 1985 c 258 § 11. Formerly RCW 88.02.200.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.420 Moorage providers—Long-term moorage—Required information. (1) A moorage provider that provides long-term moorage must obtain the following information and documentation from persons entering into long-term moorage agreements with the moorage provider:

- (a) The name of the legal owner of the vessel;
- (b) A local contact person and that person's address and telephone number, if different than the owner;
- (c) The owner's address and telephone number;
- (d) The vessel's hull identification number;
- (e) If applicable, the vessel's coast guard registration;
- (f) The vessel's home port;
- (g) The date on which the moorage began;
- (h) The vessel's country or state of registration and registration number; and
- (i) Proof of vessel registration, a written statement of the lessee's intent to register a vessel, or an affidavit in a form and manner approved by the department certifying that the vessel is exempt from state vessel registration requirements as provided by RCW 88.02.570.

(2) For moorage agreements entered into effective on or after July 1, 2014, a long-term moorage agreement for vessels not registered in this state must include, in a form and manner approved by the department and the department of revenue, notice of state vessel registration requirements as provided by this chapter and tax requirements as provided by chapters 82.08, 82.12, and 82.49 RCW and listing requirements as provided by RCW 84.40.065.

(3) A moorage provider must maintain records of the information and documents required under this section for at least two years. Upon request, a moorage provider must:

(a) Permit any authorized agent of a requesting agency to:

(i) Inspect the moorage facility for vessels that are not registered as required by this chapter or listed as required under RCW 84.40.065; and

(ii) Inspect and copy records identified in subsection (1) of this section for vessels that the requesting agency determines are not properly registered or listed as required by law; or

- (b) Provide to the requesting agency:
 - (i) Information as provided in subsection (1)(a), (c), (d), and (e) of this section; and
 - (ii) Information as provided in subsection (1)(b), (f), (g), (h), and (i) of this section for those vessels that the requesting agency subsequently determines are not registered as required by this chapter or listed as required under RCW 84.40.065.

(4) Requesting agencies must coordinate their requests to ensure that a moorage provider does not receive more than two requests per calendar year. For the purpose of enforcing vessel registration and vessel listing requirements, requesting agencies may share the results of information requests with each other.

(5) The information required to be collected under this section must be collected at the time the long-term moorage agreement is entered into and at the time of any renewals of the agreement. The moorage provider is not responsible for updating any changes in the information that occurs after the initial agreement is entered into or in the time period between agreement renewals.

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

(a) "Long-term moorage" means moorage provided for more than thirty consecutive days, unless the moorage is for a vessel that has been taken into custody under RCW 79.100.040.

(b) "Moorage facility" means any properties or facilities located in this state that are used for the moorage of vessels and are owned or operated by a moorage provider.

(c) "Moorage facility operator" has the same meaning as defined in RCW 53.08.310.

(d) "Moorage provider" means any public or private entity that owns or operates any moorage facility, including a moorage facility operator, private moorage facility operator, the state of Washington, or any other person.

(e) "Private moorage facility operator" has the same meaning as defined in RCW 88.26.010.

(f) "Requesting agency" means the department, the department of revenue, or the department of natural resources. [2014 c 195 § 501.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

88.02.430 Disclosure of vessel owner records. The disclosure of vessel owner records by the department of licensing is governed under RCW 46.12.630, 46.12.635, and 46.12.640. [2016 c 80 § 4.]

CERTIFICATES OF TITLE

88.02.500 Certificate of title system—Intent. It is the intention of the legislature:

(1) To establish a system of certificates of title for vessels similar to that in existence for motor vehicles under chapter 46.12 RCW;

(2) That certificates of title become sufficient evidence of ownership of the vessel it describes so that persons may rely upon that certificate; and

(3) That security interest in vessels be perfected solely by notation of a secured party upon the certificate of title.

[2010 c 161 § 1009; 1985 c 258 § 1. Formerly RCW 88.02.120.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.510 Application—When, by whom. (1) An application for a certificate of title must be made at the same time when a vessel is registered for the first time as required under this chapter.

(2) A person who purchases or otherwise obtains majority ownership of any vessel subject to this chapter shall, within fifteen days of purchase or obtainment, apply for a new certificate of title that shows the vessel's change of ownership.

(3) This section does not apply to a vessel that has a valid marine document as a vessel of the United States. [2010 c 161 § 1011.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.515 Application—Form and contents. (1) The application for a certificate of title of a vessel must be made by the owner or the owner's representative to the department, county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

(a) A description of the vessel, including make, model, hull identification number, and type of body;

(b) The name and address of the person who is to be the registered owner of the vessel and, if the vessel is subject to a security interest, the name and address of the secured party; and

(c) Other information the department may require.

(2) The application for a certificate of title must be signed by the person applying to be the registered owner and be sworn to by that person under penalty of the perjury laws of this state that:

(a) The applicant is the owner or an authorized agent of the owner of the vessel; and

(b) The vessel is free of any claim of lien, mortgage, conditional sale, or other security interest of any person except the person or persons on the application as secured parties.

(3) The application for a certificate of title must be accompanied by:

(a) A draft, money order, certified bank check, or cash for all fees and taxes due for the application for the certificate of title; and

(b) The most recent certificate of title or other satisfactory evidence of ownership. [2010 c 161 § 1012; 1985 c 258 § 6. Formerly RCW 88.02.180.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.520 Security interests. (1) Security interests in vessels subject to the requirements of this chapter must be perfected only by indication upon the vessel's certificate of title. The provisions of chapters 46.12 and *46.16 RCW relat-

ing to vehicle registration certificates, certificates of title, certificate issuance, ownership transfer, and perfection of security interests, and other provisions that may be applied to vessels subject to this chapter, may be so applied by rule of the department if they are not inconsistent with this chapter.

(2) Security interests may be released or acted upon as provided by the law under which they arose or were perfected. A new security interest or renewal or extension of an existing security interest is not affected except as provided under the terms of this chapter and **RCW 46.12.095. [2010 c 161 § 1010; 1996 c 315 § 5; 1991 c 339 § 31; 1985 c 258 § 4; 1983 2nd ex.s. c 3 § 46. Formerly RCW 88.02.070.]

Reviser's note: *(1) Although directed to be recodified within chapter 46.16 RCW pursuant to chapter 161, Laws of 2010, a majority of chapter 46.16 RCW was recodified under chapter 46.16A RCW pursuant to RCW 1.08.015 (2)(k) and (3).

** (2) RCW 46.12.095 was repealed by 2010 c 161 § 325, effective July 1, 2011. For later enactment, see RCW 46.12.675 (1) through (3).

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.530 Duplicate certificates of title. (1) A legal owner or the legal owner's authorized representative shall promptly apply for a duplicate certificate of title if a certificate of title is lost, stolen, mutilated, or destroyed, or becomes illegible. The application for a duplicate certificate of title must:

(a) Include information required by the department;

(b) Be accompanied by an affidavit of loss or destruction;

(c) Be accompanied by the fee required in *RCW 88.02.640(1)(k).

(2) The duplicate certificate of title must contain the word "duplicate." It must be mailed to the first priority secured party named in it or, if none, to the registered owner.

(3) A person recovering a certificate of title for which a duplicate has been issued shall promptly return the certificate of title that has been recovered to the department. [2011 c 171 § 127; 2010 c 161 § 1015; 1997 c 241 § 12; 1986 c 71 § 1. Formerly RCW 88.02.075.]

***Reviser's note:** The reference to RCW 88.02.640(1)(k) appears to be erroneous. RCW 88.02.640(1)(d) is the appropriate reference.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.540 Quick title—Application requirements—Subagents. (1) The application for a quick title of a vessel must be made by the owner or the owner's representative to the department, participating county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

(a) A description of the vessel, including make, model, hull identification number, series, and body;

(b) The name and address of the person who is to be the registered owner of the vessel and, if the vessel is subject to a security interest, the name and address of the secured party; and

(c) Other information as may be required by the department.

(2) The application for a quick title must be signed by the person applying to be the registered owner and be sworn to by that person in the manner described under chapter 5.50 RCW. The department must keep a copy of the application.

(3) The application for a quick title must be accompanied by:

(a) All fees and taxes due for an application for a certificate of title, including a quick title service fee under RCW 88.02.640(1); and

(b) The most recent certificate of title or other satisfactory evidence of ownership.

(4) All applications for quick title must meet the requirements established by the department.

(5) For the purposes of this section, "quick title" means a certificate of title printed at the time of application.

(6) A subagent may process a quick title under this section only after (a) the department has instituted a process in which blank certificates of title can be inventoried; (b) the county auditor of the county in which the subagent is located has processed quick titles for a minimum of six months; and (c) the county auditor approves a request from a subagent in its county to process quick titles. [2019 c 232 § 27; 2011 c 326 § 4.]

Additional notes found at www.leg.wa.gov

VESSEL REGISTRATION

88.02.550 Registration and display of registration number and decal required—Exemptions. (1) Except as provided in this chapter, a person may not own or operate any vessel, including a rented vessel, on the waters of this state unless the vessel has been registered and displays a registration number and a valid decal in accordance with this chapter. A vessel that has or is required to have a valid marine document as a vessel of the United States is only required to display a valid decal.

(2) A vessel numbered in this state under the federal boat safety act of 1971 (85 Stat. 213, 46 U.S.C. 4301 et seq.) is not required to be registered under this chapter until the certificate of number issued for the vessel under the federal boat safety act expires. When registering under this chapter, this type of vessel is subject to the amount of excise tax due under chapter 82.49 RCW that would have been due under chapter 82.49 RCW if the vessel had been registered at the time otherwise required under this chapter. [2013 c 291 § 31; 2010 c 161 § 1017; 2006 c 29 § 1; 1985 c 267 § 1; 1983 2nd ex.s. c 3 § 47; 1983 c 7 § 15. Formerly RCW 88.02.020.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.560 Application—Form and contents—Registration number and decal—Renewals—Marine oil refuse dump and holding tank information—Transfer. (1) An application for a vessel registration must be made by the owner or the owner's authorized representative to the department, county auditor or other agent, or subagent appointed by

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the director on a form furnished or approved by the department. The application must contain:

- (a) The name and address of each owner of the vessel;
- (b) Other information the department may require; and
- (c) The signature of at least one owner.

(2) The application for vessel registration must be accompanied by the:

(a) Vessel registration fee required under RCW 88.02.640(1)(k);

(b) Derelict vessel and invasive species removal fee under RCW 88.02.640(1)(b) and derelict vessel removal surcharge required under RCW 88.02.640(1)(c);

(c) Filing fee required under RCW 88.02.640(1)(f);

(d) License plate technology fee required under RCW 88.02.640(1)(g);

(e) License service fee required under RCW 88.02.640(1)(h);

(f) Watercraft excise tax required under chapter 82.49 RCW; and

(g) Beginning January 1, 2016, service fee required under RCW 46.17.040.

(3) Upon receipt of an application for vessel registration and the required fees and taxes, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal must be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels required in 33 C.F.R. Part 174. A valid decal affixed as prescribed must indicate compliance with the annual registration requirements of this chapter.

(4) Vessel registrations and decals are valid for a period of one year, except that the director may extend or diminish vessel registration periods and vessel decals for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period.

(5) Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the fees and taxes described in subsection (2) of this section. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

(6) When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information must be provided to the department by the state parks and recreation commission in a form ready for distribution. The form must be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

(7) A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department, county auditor or other agent, or subagent appointed by the director for transfer of the vessel registration, and the application must be accompanied by a transfer

fee as required in RCW 88.02.640(1)(o). [2015 3rd sp.s. c 44 § 215; 2011 c 171 § 129; (2011 c 171 § 128 expired June 30, 2012); 2010 c 161 § 1020; (2010 c 161 § 1019 expired June 30, 2012); 2007 c 342 § 6; (2007 c 342 § 5 expired June 30, 2012); (2005 c 464 § 2 expired June 30, 2012); 2002 c 286 § 13; 1993 c 244 § 38; 1989 c 17 § 1; 1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18. Formerly RCW 88.02.050.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Intent—2005 c 464: "The legislature finds that aquatic invasive species and freshwater aquatic algae are causing economic, environmental, and public health problems that affect the citizens and aquatic resources of our state. Many highly destructive species, such as the zebra mussel, are currently not found in Washington's waters and efforts should be made to prevent the introduction or spread of these aquatic invasive species into our state waters. Preventing new introductions is significantly less expensive and causes far less ecological damage than trying to control new infestations.

The legislature also finds that freshwater algae, particularly blue-green algae, are also seriously degrading the water quality and recreational value of a number of our lakes. Blue-green algae can produce toxins that inhibit recreational uses and pose a threat to humans and pets.

It is therefore the intent of the legislature to clarify the roles of the different state agencies involved in these issues in order to address the threat of aquatic invasive species and the problem caused by aquatic freshwater algae, and to provide a dedicated fund source to prevent and control further impacts." [2005 c 464 § 1.]

Intent—1993 c 244: See note following RCW 79A.60.010.

Additional notes found at www.leg.wa.gov

88.02.570 Exemptions. (Effective until January 1, 2029.) Vessel registration is required under this chapter except for the following:

- (1) A military vessel owned by the United States government;
- (2) A public vessel owned by the United States government, unless the vessel is a type used for recreation;
- (3) A vessel clearly identified as being:
 - (a) Owned by a state, county, or city; and
 - (b) Used primarily for governmental purposes;
- (4) A vessel either (a) registered or numbered under the laws of a country other than the United States or (b) having a valid United States customs service cruising license issued pursuant to 19 C.F.R. Sec. 4.94. Either vessel is exempt from registration only for the first sixty days of use on Washington state waters. On or before the sixty-first day of use on Washington state waters, any vessel in the state under this subsection must obtain a vessel visitor permit as required under RCW 88.02.610;
- (5) A vessel that is currently registered or numbered under the laws of the state of principal operation or that has been issued a valid number under federal law. However, either vessel must be registered in Washington state if the state of principal operation changes to Washington state by the sixty-first day after the vessel arrives in Washington state;
 - (6)(a) A vessel owned by a nonresident if:
 - (i) The vessel is located upon the waters of this state exclusively for repairs, alteration, or reconstruction, or any testing related to these services;

(ii) An employee of the facility providing these services is on board the vessel during any testing; and

(iii) The nonresident files an affidavit with the department of revenue by the sixty-first day verifying that the vessel is located upon the waters of this state for these services.

(b) The nonresident must continue to file an affidavit every sixty days thereafter, as long as the vessel is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing;

(7) A vessel equipped with propulsion machinery of less than ten horsepower that:

(a) Is owned by the owner of a vessel for which a valid vessel number has been issued;

(b) Displays the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Is used as a tender for direct transportation between the numbered vessel and the shore and for no other purpose;

(8) A vessel under sixteen feet in overall length that has no propulsion machinery of any type or that is not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(9) A vessel with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(10) A vessel primarily engaged in commerce that has or is required to have a valid marine document as a vessel of the United States. A commercial vessel that the department of revenue determines has the external appearance of a vessel that would otherwise be required to register under this chapter, must display decals issued annually by the department of revenue that indicate the vessel's exempt status;

(11) A vessel primarily engaged in commerce that is owned by a resident of a country other than the United States;

(12) A vessel owned by a nonresident person brought into the state for use or enjoyment while temporarily within the state for not more than six months in any continuous twelve-month period that (a) is currently registered or numbered under the laws of the state of principal use or (b) has been issued a valid number under federal law. This type of vessel is exempt from registration only for the first sixty days of use on Washington state waters. On or before the sixty-first day of use on Washington state waters, any vessel under this subsection must obtain a nonresident vessel permit as required under RCW 88.02.620;

(13) A vessel used in this state by a nonresident individual possessing a valid use permit issued under RCW 82.08.700 or 82.12.700;

(14) A vessel held for sale by any licensed dealer; and

(15) A vessel with propulsion machinery that draws two hundred fifty watts or less and propels the vessel no faster than ten miles per hour and is not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States. [2016 c 114 § 2; (2016 c 114 § 1 expired July 1, 2019); 2015 3rd sp.s. c 6 § 804; 2010 c 161 § 1018; 2007 c 22 § 3; 2002 c 286 § 12; 1998 c 198 § 1; 1997 c 83 § 1; 1991 c 339 § 30. Prior: 1989 c 393 § 13; 1989 c 102 § 1; 1985 c 452 § 1; 1984 c 250 § 2; 1983 2nd ex.s. c 3 § 44; 1983 c 7 § 16. Formerly RCW 88.02.030.]

Expiration date—2021 c 150; 2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.620.

Findings—Intent—Tax preference performance statement—2021 c 150; 2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.640.

Effective date—2016 c 114 § 2: "Section 2 of this act takes effect July 1, 2019." [2016 c 114 § 4.]

Expiration date—2016 c 114 § 1: "Section 1 of this act expires July 1, 2019." [2016 c 114 § 3.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Commission to adopt rules: RCW 79A.60.595.

Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 88.02.570(10): RCW 84.36.080.

Additional notes found at www.leg.wa.gov

88.02.570 Exemptions. (Effective January 1, 2029.)

Vessel registration is required under this chapter except for the following:

(1) A military vessel owned by the United States government;

(2) A public vessel owned by the United States government, unless the vessel is a type used for recreation;

(3) A vessel clearly identified as being:

(a) Owned by a state, county, or city; and

(b) Used primarily for governmental purposes;

(4) A vessel either (a) registered or numbered under the laws of a country other than the United States or (b) having a valid United States customs service cruising license issued pursuant to 19 C.F.R. Sec. 4.94. Either vessel is exempt from registration only for the first sixty days of use on Washington state waters. On or before the sixty-first day of use on Washington state waters, any vessel in the state under this subsection must obtain a vessel visitor permit as required under RCW 88.02.610;

(5) A vessel that is currently registered or numbered under the laws of the state of principal operation or that has been issued a valid number under federal law. However, either vessel must be registered in Washington state if the state of principal operation changes to Washington state by the sixty-first day after the vessel arrives in Washington state;

(6) A vessel owned by a nonresident if:

(a) The vessel is located upon the waters of this state exclusively for repairs, alteration, or reconstruction, or any testing related to these services;

(b) An employee of the facility providing these services is on board the vessel during any testing; and

(c) The nonresident files an affidavit with the department of revenue by the sixty-first day verifying that the vessel is located upon the waters of this state for these services.

The nonresident shall continue to file an affidavit every sixty days thereafter, as long as the vessel is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing;

(7) A vessel equipped with propulsion machinery of less than ten horsepower that:

(a) Is owned by the owner of a vessel for which a valid vessel number has been issued;

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(b) Displays the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Is used as a tender for direct transportation between the numbered vessel and the shore and for no other purpose;

(8) A vessel under sixteen feet in overall length that has no propulsion machinery of any type or that is not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(9) A vessel with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(10) A vessel primarily engaged in commerce that has or is required to have a valid marine document as a vessel of the United States. A commercial vessel that the department of revenue determines has the external appearance of a vessel that would otherwise be required to register under this chapter, must display decals issued annually by the department of revenue that indicate the vessel's exempt status;

(11) A vessel primarily engaged in commerce that is owned by a resident of a country other than the United States;

(12) A vessel owned by a nonresident natural person brought into the state for use or enjoyment while temporarily within the state for not more than six months in any continuous twelve-month period that (a) is currently registered or numbered under the laws of the state of principal use or (b) has been issued a valid number under federal law. This type of vessel is exempt from registration only for the first sixty days of use on Washington state waters. On or before the sixty-first day of use on Washington state waters, any vessel under this subsection must obtain a nonresident vessel permit as required under RCW 88.02.620;

(13) A vessel used in this state by a nonresident individual possessing a valid use permit issued under RCW 82.08.700 or 82.12.700;

(14) A vessel held for sale by any licensed dealer; and

(15) A vessel with propulsion machinery that draws two hundred fifty watts or less and propels the vessel no faster than ten miles per hour and is not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States. [2016 c 114 § 2; 2010 c 161 § 1018; 2007 c 22 § 3; 2002 c 286 § 12; 1998 c 198 § 1; 1997 c 83 § 1; 1991 c 339 § 30. Prior: 1989 c 393 § 13; 1989 c 102 § 1; 1985 c 452 § 1; 1984 c 250 § 2; 1983 2nd ex.s. c 3 § 44; 1983 c 7 § 16. Formerly RCW 88.02.030.]

Effective date—2016 c 114 § 2: "Section 2 of this act takes effect July 1, 2019." [2016 c 114 § 4.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Commission to adopt rules: RCW 79A.60.595.

Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 88.02.570(10): RCW 84.36.080.

Additional notes found at www.leg.wa.gov

88.02.580 Voluntary donations—Maritime historic restoration and preservation. The department shall provide an opportunity for each person registering a vessel under this chapter to make a voluntary donation to support the mar-

itime historic restoration and preservation activities of the Grays Harbor Historical Seaport and the Steamer Virginia V Foundation. All voluntary donations collected under this section must be deposited in the maritime historic restoration and preservation account created under RCW 88.02.660. [2010 c 161 § 1023; 1996 c 3 § 1. Formerly RCW 88.02.052.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.590 Duplicate registration certificates. (1) A registered owner or the registered owner's authorized representative shall promptly apply for a duplicate registration certificate when a registration certificate is lost, stolen, mutilated, or destroyed, or becomes illegible. The application for a duplicate registration certificate must:

(a) Be accompanied by an affidavit of loss or destruction;

(b) Include information required by the department; and

(c) Be accompanied by the fee required in *RCW 88.02.640(1)(d), in addition to any other fees or taxes required for the transaction.

(2) A person recovering a registration certificate for which a duplicate has been issued shall promptly return the registration certificate that has been recovered to the department. [2011 c 171 § 130; 2010 c 161 § 1021.]

***Reviser's note:** RCW 88.02.640 was amended by 2012 c 74 § 16, changing subsection (1)(d) to subsection (1)(e).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.592 Registration certificates—Manual removal of registrant's address. Beginning January 1, 2023, paper issued registration certificates for vessels must be printed to allow for the manual removal of a registrant's address, by the named registered owner, without compromising any required information on the certificate. [2022 c 36 § 3.]

Finding—2022 c 36: See note following RCW 46.16A.180.

88.02.595 Replacement decals. (1) A registered owner or the registered owner's authorized representative shall promptly apply for a pair of replacement decals when the decals are lost, stolen, mutilated, or destroyed, or become illegible. The application for replacement decals must:

(a) Be accompanied by an affidavit of loss or destruction;

(b) Include information required by the department;

(c) Be accompanied by the fee required in *RCW 88.02.640(1)(j), in addition to any other fees or taxes required for the transaction.

(2) A person recovering decals for which a replacement has been issued shall promptly return the decals that have been recovered to the department. [2011 c 171 § 131; 2010 c 161 § 1022.]

***Reviser's note:** RCW 88.02.640 was amended by 2012 c 74 § 16, changing subsection (1)(j) to subsection (1)(k).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.600 Carbon monoxide poisoning informational brochure. The department shall include an informational brochure about the dangers of carbon monoxide poisoning and vessels and the warning stickers required under RCW 88.02.390 as part of the registration materials mailed by the department for two consecutive years for registrations that are due or become due on or after January 1, 2007, upon recommendation by the director. The materials must instruct the vessel owner to affix the stickers as required under RCW 88.02.390. [2010 c 161 § 1025; 2006 c 140 § 3. Formerly RCW 88.02.260.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

PERMITS

88.02.610 Vessel visitor permit. (1) A vessel owner shall apply for a vessel visitor permit if the vessel is:

(a) Currently registered or numbered under the laws of a country other than the United States or has a valid United States customs service cruising license issued under 19 C.F.R. Sec. 4.94; and

(b) Being used on Washington state waters for the personal use of the owner for more than sixty days.

(2) A vessel visitor permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid as long as the vessel remains currently registered or numbered under the laws of a country other than the United States or the United States customs service cruising license remains valid.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required in *RCW 88.02.640(1)(m) when issuing a vessel visitor permit.

(4) The department shall adopt rules to implement this section, including rules on issuing and displaying the vessel visitor permit. [2011 c 171 § 132; 2010 c 161 § 1026.]

***Reviser's note:** The reference to RCW 88.02.640(1)(m) appears to be erroneous. RCW 88.02.640(1)(n) was apparently intended. RCW 88.02.640 was amended by 2012 c 74 § 16, changing subsection (1)(n) to subsection (1)(o). RCW 88.02.640 was subsequently amended by 2015 3rd sp.s. c 44 § 216, changing subsection (1)(o) to subsection (1)(p).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.620 Nonresident vessel permit. (Effective until January 1, 2029.) (1) A vessel owner who is a nonresident person must obtain a nonresident vessel permit on or before the sixty-first day of use in Washington state if the vessel:

(a) Is currently registered or numbered under the laws of the state or county [country] of principal operation, has been

issued a valid number under federal law, or has a valid United States customs service cruising license issued under 19 C.F.R. Sec. 4.94; and

(b) Has been brought into Washington state for not more than six months in any continuous twelve-month period, and is used:

(i) For personal use; or

(ii) For the purposes of chartering a vessel with a captain or crew, as long as individual charters are for at least three or more consecutive days in duration. The permit also applies for the purposes of necessary transit to or from the start or end point of such a charter, but that transit time is not counted toward the duration of the charter.

(2) In addition to the requirements in subsection (1) of this section, a nonresident vessel owner that is not a natural person, or a nonresident vessel owner who is a natural person who intends to charter the vessel with a captain or crew as provided in subsection (1)(b)(ii) of this section, may only obtain a nonresident vessel permit if:

(a) The vessel is at least thirty feet in length, but no more than two hundred feet in length;

(b) No Washington state resident owns the vessel or is a principal, as defined in RCW 82.32.865, of the nonresident person which owns the vessel; and

(c) The department of revenue has provided the nonresident vessel owner written approval authorizing the permit as provided in RCW 82.32.865.

(3) A nonresident vessel permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid for two months.

(4) The department, county auditor or other agent, or subagent appointed by the director must collect the fee required in RCW 88.02.640(1)(i) when issuing nonresident vessel permits.

(5) A nonresident vessel permit is not required under this section if the vessel is used in conducting temporary business activity within Washington state.

(6) For any permits issued under this section to a nonresident vessel owner that is not a natural person, or for any permits issued to a natural person who intends to charter the vessel with a captain or crew as provided in subsection (1)(b)(ii) of this section, the department must maintain a record of the following information and provide it to the department of revenue quarterly or as otherwise mutually agreed to by the department and department of revenue:

(a) The name of the record owner of the vessel;

(b) The vessel's hull identification number;

(c) The amount of the fee paid under RCW 88.02.640(5);

(d) The date the vessel first entered the waters of this state;

(e) The expiration date for the permit; and

(f) Any other information mutually agreed to by the department and department of revenue.

(7) The department must adopt rules to implement this section, including rules on issuing and displaying the nonresident vessel permit. [2021 c 150 § 1; 2015 3rd sp.s. c 6 § 802; 2011 c 171 § 133; 2010 c 161 § 1027.]

(2022 Ed.)

Expiration date—2021 c 150: "Sections 1 through 3 of this act expire January 1, 2029." [2021 c 150 § 7.]

Expiration date—2021 c 150; 2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: "(1) Sections 802 and 804, chapter 6, Laws of 2015 3rd sp. sess. expire January 1, 2029;

(2) Section 803, chapter 6, Laws of 2015 3rd sp. sess. expires January 1, 2029; and

(3) Section 805, chapter 6, Laws of 2015 3rd sp. sess. expires January 1, 2031." [2021 c 150 § 4; 2017 c 323 § 302; 2015 3rd sp.s. c 6 § 2303.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Intent—Tax preference performance statement—2021 c 150; 2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.640.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.620 Nonresident vessel permit. (Effective January 1, 2029.) (1) A vessel owner who is a nonresident natural person shall apply for a nonresident vessel permit on or before the sixty-first day of use in Washington state if the vessel:

(a) Is currently registered or numbered under the laws of the state of principal operation or has been issued a valid number under federal law; and

(b) Has been brought into Washington state for personal use for not more than six months in any continuous twelve-month period.

(2) A nonresident vessel permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid for two months.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required in *RCW 88.02.640(1)(h) when issuing nonresident vessel permits.

(4) A nonresident vessel permit is not required under this section if the vessel is used in conducting temporary business activity within Washington state.

(5) The department shall adopt rules to implement this section, including rules on issuing and displaying the nonresident vessel permit. [2011 c 171 § 133; 2010 c 161 § 1027.]

***Reviser's note:** RCW 88.02.640 was amended by 2012 c 74 § 16, changing subsection (1)(h) to subsection (1)(i).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

TITLE/REGISTRATION FEES AND DISTRIBUTION

88.02.640 Fees by type—Disposition, distribution. (Effective until January 1, 2029.) (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director must charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate certificate of title	\$1.25	RCW 88.02.530(1)(c)	General fund
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(f) Filing	RCW 46.17.005	RCW 88.02.560(2)	RCW 46.68.400
(g) License plate technology	RCW 46.17.015	RCW 88.02.560(2)	RCW 46.68.370
(h) License service	RCW 46.17.025	RCW 88.02.560(2)	RCW 46.68.220
(i) Nonresident vessel permit	Subsection (5) of this section	RCW 88.02.620(4)	Subsection (5) of this section
(j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650
(l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(m) Service fee	RCW 46.17.040	RCW 88.02.515 and 88.02.560(2)	RCW 46.17.040
(n) Title application	\$5.00	RCW 88.02.515	General fund
(o) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(p) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3) The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(a) Two dollars must be deposited in the aquatic invasive species management account created in RCW 77.135.200;

(b) One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667; and

(c) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(4) In addition to other fees required in this section, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge is to address the significant backlog of derelict vessels accumulated in Washington waters that pose a threat to the health and safety of the people and to the environment and must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5)(a) The amount of the nonresident vessel permit fee is:

(i) For a vessel owned by a nonresident natural person, twenty-five dollars; and

(ii) For a nonresident vessel owner that is not a natural person, the fee is equal to:

(A) Twenty-five dollars per foot for vessels between thirty and ninety-nine feet in length;

(B) Thirty dollars per foot for vessels between one hundred and one hundred twenty feet in length; and

(C) Thirty-seven dollars and fifty cents per foot for vessels between one hundred twenty-one and two hundred feet in length. The fee must be multiplied by the extreme length of the vessel in feet, rounded up to the nearest whole foot.

(b) The fee must be paid by the vessel owner to the department. Any moneys remaining from the fee after the payment of costs to administer the permit must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

(c) In addition to the applicable fees under this section, vessel owners who obtain a nonresident vessel permit for the purposes of chartering their vessel with a captain or crew are subject to use tax as provided in RCW 82.12.799.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(iii) If the fee is paid to a subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remaining twenty-five dollars must be distributed as follows: Twelve dollars and fifty cents must be retained by the county treasurer in the same manner as other fees col-

lected by the county auditor and twelve dollars and fifty cents must be retained by the subagent.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540.

(8) The department, county auditor or other agent, or subagent appointed by the director shall charge the service fee under subsection (1)(m) of this section beginning January 1, 2016. [2021 c 150 § 2; 2017 3rd sp.s. c 17 § 104; (2017 3rd sp.s. c 17 § 103 expired July 1, 2019). Prior: 2015 3rd sp.s. c 44 § 216; 2015 3rd sp.s. c 6 § 803; 2015 2nd sp.s. c 1 § 2; 2013 c 291 § 1; 2012 c 74 § 16; prior: 2011 c 326 § 5; 2011 c 171 § 134; 2011 c 169 § 1; 2010 c 161 § 1028.]

Expiration date—2021 c 150: See note following RCW 88.02.620.

Effective date—2017 3rd sp.s. c 17 § 104: "Section 104 of this act takes effect July 1, 2019." [2017 3rd sp.s. c 17 § 311.]

Expiration date—2017 3rd sp.s. c 17 § 103: "Section 103 of this act expires July 1, 2019." [2017 3rd sp.s. c 17 § 310.]

Findings—Intent—Tax preference performance statement—2021 c 150; 2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: "(1)(a) The legislature finds that a robust maritime industry is crucial for the state's economic vitality. The legislature further finds that:

(i) The joint task force for economic resilience of maritime and manufacturing established policy goals to continue efforts towards developing a robust maritime industry in the state;

(ii) The maritime industry has a direct and indirect impact on jobs in the state;

(iii) Many of the cities and towns impacted by the maritime industry are often small with limited resources to encourage economic growth, heavily relying on the maritime industry for local jobs and revenues in the community;

(iv) Keeping Washington competitive with other cruising destinations is essential to continue to build a robust maritime economy in the state; and

(v) Tax incentives are an imperative component to improve the state's overall competitiveness in this sector.

(b) Therefore, the legislature intends to:

(i) Bolster the maritime industry in the state by incentivizing larger vessel owners to use Washington waters for recreational boating to increase economic activity and jobs in coastal communities and inland water regions of the state;

(ii) Achieve this objective in a fiscally responsible manner and require analysis of specific metrics to ensure valuable state resources are being used to accomplish the intended goal; and

(iii) Provide limited, short-term tax relief to entity-owned nonresident vessel owners that currently are not afforded the same benefits as other nonresident vessel owners.

(2)(a) This subsection is the tax preference performance statement for the entity-owned nonresident vessel tax preference established in section 803 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes this tax preference as one intended to accomplish the purposes indicated in RCW 82.32.808(2)(c) and one intended to improve the state's competitiveness with other nearby cruising destinations.

(c) It is the legislature's specific public policy objective to increase economic activity and jobs related to the maritime industry by providing a tax preference for large entity-owned nonresident vessels to increase the length of time these vessels cruise Washington waters in turn strengthening the maritime economy in the state.

(d) To measure the effectiveness of the tax preference provided in part VIII, chapter 6, Laws of 2015 3rd sp. sess. in achieving the public policy objective in (c) of this subsection, the joint legislative audit and review committee must provide the following in a published evaluation of this tax preference by December 31, 2028:

(i) A comparison of the gross and taxable revenue generated by businesses that sell or provide maintenance or repair of vessels, prior to and after the enactment of this tax preference;

(ii) Analysis of retail sales taxes collected from the restaurant and service industries in coastal and inlet coastal jurisdictions, for both counties and cities, for periods prior to and after the enactment of this tax preference;

(iii) Employment and wage trends for businesses described in (d)(i) and (ii) of this subsection, for periods prior to and after the enactment of this tax preference;

(iv) Descriptive statistics for the number of permits sold each year in addition to the following information:

(A) The cost for each permit by strata of vessel length;

(B) The jurisdiction of ownership for the nonresident vessel; and

(C) The amount of use tax that would have been due based on the estimated value of the vessel;

(v) A comparison of the number of registered entity-owned and individually owned vessels registered in Washington prior to and after the enactment of this tax preference; and

(vi) Data and analysis for Washington's main cruising destination competitors, specifically looking at tax preferences provided in those jurisdictions, vessel industry income data, and any additional relevant information to compare Washington's maritime climate with its competitors.

(e) The provision of RCW 82.32.808(5) does not apply to this tax preference." [2021 c 150 § 5; 2017 c 323 § 303; 2015 3rd sp.s. c 6 § 801.]

Expiration date—2021 c 150; 2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.620.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Effective date—2015 2nd sp.s. c 1: See note following RCW 46.68.025.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.640 Fees by type—Disposition, distribution. (Effective January 1, 2029.) (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate certificate of title	\$1.25	RCW 88.02.530(1)(c)	General fund
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(f) Filing	RCW 46.17.005	RCW 88.02.560(2)	RCW 46.68.400
(g) License plate technology	RCW 46.17.015	RCW 88.02.560(2)	RCW 46.68.370

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(h) License service	RCW 46.17.025	RCW 88.02.560(2)	RCW 46.68.220
(i) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (5) of this section
(j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650
(l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(m) Service fee	RCW 46.17.040	RCW 88.02.515 and 88.02.560(2)	RCW 46.17.040
(n) Title application	\$5.00	RCW 88.02.515	General fund
(o) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(p) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3) The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(a) Two dollars must be deposited in the aquatic invasive species management account created in RCW 77.135.200;

(b) One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667; and

(c) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(4) In addition to other fees required in this section, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge is to address the significant backlog of derelict vessels accumulated in Washington waters that pose a threat to the health and safety of the people and to the environment and must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be

retained by the county treasurer in the same manner as other fees collected by the county auditor.

(iii) If the fee is paid to a subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remaining twenty-five dollars must be distributed as follows: Twelve dollars and fifty cents must be retained by the county treasurer in the same manner as other fees collected by the county auditor and twelve dollars and fifty cents must be retained by the subagent.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540.

(8) The department, county auditor or other agent, or subagent appointed by the director shall charge the service fee under subsection (1)(m) of this section beginning January 1, 2016. [2017 3rd sp.s. c 17 § 104. Prior: 2015 3rd sp.s. c 44 § 216; 2015 2nd sp.s. c 1 § 2; 2013 c 291 § 1; 2012 c 74 § 16; prior: 2011 c 326 § 5; 2011 c 171 § 134; 2011 c 169 § 1; 2010 c 161 § 1028.]

Effective date—2017 3rd sp.s. c 17 § 104: "Section 104 of this act takes effect July 1, 2019." [2017 3rd sp.s. c 17 § 311.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective date—2015 2nd sp.s. c 1: See note following RCW 46.68.025.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.650 Deposit of fees in general fund—Allocation for boating safety and education and law enforcement purposes.

(1) General fees for vessel registrations collected by the director must be deposited in the general fund. Except as provided in subsection (2) of this section, any amount above one million one hundred thousand dollars per fiscal year must be allocated to counties by the state treasurer for boating safety/education and law enforcement programs. Eligibility for boating safety/education and law enforcement program allocations is contingent upon approval of the local boating safety program by the state parks and recreation commission. Fund allocation must be based on the numbers of registered vessels by county of moorage. Each benefiting county is responsible for equitable distribution of such allocation to other jurisdictions with approved boating safety programs within the county. Any fees not allocated to coun-

ties due to the absence of an approved boating safety program must be allocated to the state parks and recreation commission for awards to local governments to offset law enforcement and boating safety impacts of boaters recreating in jurisdictions other than where registered. Jurisdictions receiving funds under this section shall deposit the funds into an account dedicated solely for supporting the jurisdiction's boating safety programs. These funds may not replace existing local funds used for boating safety programs.

(2) During the 2015-2017 fiscal biennium, if 2015 *Engrossed Senate Bill No. 5416 is enacted before August 1, 2015, any amount above one million three hundred fifty thousand dollars per fiscal year must be allocated to counties by the state treasurer for boating safety, education, and law enforcement programs. [2015 3rd sp.s. c 4 § 979; 2011 c 171 § 135; 2010 c 161 § 1029; 2002 c 286 § 14; 1989 c 393 § 12; 1983 c 7 § 17. Formerly RCW 88.02.040.]

*Reviser's note: Engrossed Senate Bill No. 5416 was not enacted by August 1, 2015.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Commission to adopt rules: RCW 79A.60.595.

Additional notes found at www.leg.wa.gov

88.02.660 Maritime historic restoration and preservation account. (1) The maritime historic restoration and preservation account is created in the custody of the state treasurer. All receipts from the voluntary donations made simultaneously with the registration of vessels under this chapter must be deposited into this account. These deposits are not public funds and are not subject to allotment procedures under chapter 43.88 RCW.

(2) At the end of each fiscal year, the state treasurer shall pay from this account to the department an amount equal to the reasonable administrative expenses of that agency for that fiscal year for collecting the voluntary donations and transmitting them to the state treasurer and shall pay to the state treasurer an amount equal to the reasonable administrative expenses of that agency for that fiscal year for maintaining the account and disbursing funds from the account.

(3) At the end of each fiscal year, the state treasurer shall pay one-half of the balance of the funds in the account after payment of the administrative costs provided in subsection (2) of this section, to the Grays Harbor historical seaport or its corporate successor and the remainder to the Steamer Virginia V foundation or its corporate successor.

(4) If either the Grays Harbor historical seaport and its corporate successors or the Steamer Virginia V foundation and its corporate successors legally ceases to exist, the state treasurer shall, at the end of each fiscal year, pay the balance of the funds in the account to the remaining organization.

(5) If both the Grays Harbor historical seaport and its corporate successors and the Steamer Virginia V foundation and its corporate successors legally cease to exist, the department shall discontinue the collection of the voluntary donations in conjunction with the registration of vessels under

RCW 88.02.580, and the balance of the funds in the account escheat to the state. If funds in the account escheat to the state, one-half of the fund balance must be provided to the department of archaeology and historic preservation, and the remainder must be deposited into the parks renewal and stewardship account.

(6) The secretary of state, the directors of the state historical societies, the director of the department of archaeology and historic preservation within the department of commerce, and two members representing the recreational boating community appointed by the secretary of state, shall review the success of the voluntary donation program for maritime historic restoration and preservation established under RCW 88.02.580. [2010 c 161 § 1031; 1996 c 3 § 2. Formerly RCW 88.02.053.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

DEALER REGISTRATION

88.02.710 Requirements—Surety bond—Fees. (1) Each vessel dealer in this state shall:

(a) Obtain a vessel dealer license from the department in a manner prescribed by the department in accordance with rules adopted under chapter 34.05 RCW;

(b) File a surety bond in the amount of five thousand dollars, running to the state of Washington. The surety bond must be:

(i) Issued by a surety company authorized to do business in the state of Washington;

(ii) Approved by the attorney general as to form; and

(iii) Conditioned that the vessel dealer shall conduct business as required under this chapter; and

(c) Pay the vessel dealer license and vessel dealer display decal fees as provided by rules adopted by the department. All vessel dealer license and vessel dealer display decal fees collected under this section must be deposited with the state treasurer and credited to the general fund.

(2) A vessel dealer selling fewer than sixteen vessels per year having a retail value of no more than two thousand dollars each is not required to file a bond as provided in subsection (1)(b) of this section.

(3) The director shall establish by rule vessel dealer license and vessel dealer display decal fees at a sufficient level to defray the costs of administering the vessel dealer license program.

(4) The department shall issue vessel dealer licenses with staggered annual expiration dates when:

(a) The completed vessel dealer application has been satisfactorily filed;

(b) The department determines that the applicant is eligible as determined by department rules; and

(c) No denial proceeding is in effect.

(5) A vessel consignor or purchaser who has suffered any loss or damage by reason of an act or omission by a vessel dealer that constitutes a violation of this chapter may institute an action for recovery against the vessel dealer and the surety upon the bond. Successive recoveries against the bond are permitted, but the aggregate liability of the surety to all persons may not exceed the amount of the bond. Upon

exhaustion of the penalty of the bond or cancellation of the bond by the surety, the vessel dealer license must automatically be deemed canceled.

(6) Vessel dealer license numbers are not transferable. [2010 c 161 § 1032; 1987 c 149 § 1; 1983 c 7 § 19. Formerly RCW 88.02.060.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.720 Exemptions. (1) The department may exempt from compliance with the vessel dealer requirements of this chapter, any person who is engaged in the business of selling in this state at wholesale or retail, human-powered watercraft that is: (a) Under sixteen feet in length; (b) unable to be powered by propulsion machinery or wind propulsion as designed by the manufacturer; and (c) not designed for use on commonly-used navigable waters.

(2) Any person engaged in the business of selling at wholesale or retail, exempt and nonexempt watercraft under this section is only required to comply with this chapter in regard to the sale of nonexempt watercraft.

(3) An auction company licensed under chapter 18.11 RCW and licensed as a motor vehicle dealer under chapter 46.70 RCW may sell at auction, without being licensed as a vessel dealer, all vessels that a vessel dealer is authorized to sell, so long as the sale of vessels is incidental to the auction company's primary source of business and the length of any vessel being sold is no greater than twenty-five feet. The auction company shall comply with all other vessel dealer requirements of this chapter and rules adopted by the department if the vessel dealer license fees and surety bond requirements in RCW 88.02.710 are determined to not be due.

(4) A broker licensed under chapter 18.85 RCW may sell, without being licensed as a vessel dealer, floating on-water residences, as defined in RCW 90.58.270. [2015 c 133 § 2; 2010 c 161 § 1033; 2007 c 378 § 1; 1990 c 250 § 90. Formerly RCW 88.02.230.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.730 Business address—Office—Identification of business. (1) A vessel dealer must have and maintain an office in which to conduct business at the business address of the dealer.

(2) The vessel dealer's place of business must be identified by an exterior sign with the business name. In the absence of other identifiers that the business conducted is a marine business, the sign must identify the nature of the business, such as marine sales, service, repair, or manufacturing. [2010 c 161 § 1034; 1987 c 149 § 2. Formerly RCW 88.02.078.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.740 Vessel dealer license required—Penalty. Any person engaging in vessel dealer activities without first obtaining a vessel dealer license is guilty of a gross misde-

meanor. [2010 c 161 § 1036; 1987 c 149 § 3. Formerly RCW 88.02.112.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.750 Denial, suspension, or revocation of vessel dealer license—Penalties—Subterfuge. (1) Except as otherwise provided in this chapter, the director may by order deny, suspend, or revoke a vessel dealer license, or in lieu of or in addition to, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the applicant or licensee:

(a) Is applying for a dealer's license or has obtained a dealer's license for the purpose of evading excise taxes on vessels;

(b) Has been adjudged guilty of a felony that directly relates to marine trade and the time elapsed since the adjudication is less than ten years. For purposes of this section, "adjudged guilty" means, in addition to a final conviction in court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

(c) Has failed to comply with the trust account requirements of this chapter;

(d) Has failed to transfer a certificate of title to a purchaser as required in this chapter;

(e) Has misrepresented the facts at the time of application for registration or renewal; or

(f) Has failed to comply with applicable provisions of this chapter or any rules adopted under it.

(2) The director may deny a vessel dealer license under this chapter if the application is a subterfuge that conceals the real person in interest whose vessel dealer license has been denied, suspended, or revoked for cause under this chapter and (a) the terms have not been fulfilled or a civil penalty has not been paid or (b) the director finds that the application was not filed in good faith. This subsection does not prevent the department from taking an action against a current vessel dealer licensee. [2010 c 161 § 1035; 1987 c 149 § 12. Formerly RCW 88.02.188.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.755 Vessel registration or vessel dealer license suspension—Noncompliance with support order—Reissuance. The department shall immediately suspend the vessel registration or vessel dealer's license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the registration must be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2010 c 161 § 1038; 1997 c 58 § 863. Formerly RCW 88.02.189.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

88.02.760 Evidence of ownership by vessel dealers—Sales of consigned vessels—Assignment and warranty of certificates of title. (1) A vessel dealer shall possess a certificate of title, a manufacturer's statement of origin, a carpenter's certificate, or a factory invoice or other evidence of ownership approved by the department for each vessel in the vessel dealer's inventory unless the vessel for sale is consigned or subject to an inventory security agreement. Evidence of ownership must be either in the name of the dealer or in the name of the dealer's immediate vendor properly assigned.

(2) A vessel dealer may display and sell consigned vessels or vessels subject to an inventory security agreement if there is a written and signed consignment agreement for each vessel or an inventory security agreement covering all inventory vessels. The consignment agreement must include verification by the vessel dealer that evidence of ownership by the consignor exists and its location, the name and address of the registered owner, and the legal owner, if any. Vessels that are subject to an inventory security interest must be supported with evidence of ownership that is in the dealer's possession or the possession of the inventory security party. Upon payment of the debt secured for that vessel, the secured party shall deliver the ownership document, appropriately released, to the dealer. It is the vessel dealer's responsibility to ensure that ownership documents are available for ownership transfer upon the sale of the vessel.

(3) Following the retail sale of any vessel, the dealer shall promptly make application and execute the assignment and warranty of the certificate of title. The assignment must show any secured party holding a security interest created at the time of sale. The dealer shall deliver the certificate of title and application for registration to the department, county auditor or other agent, or subagent appointed by the director. [2010 c 161 § 1043; 1994 c 262 § 27; 1987 c 149 § 8. Formerly RCW 88.02.125.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.770 Receipt of cash or negotiable instrument before delivery of vessel—Trust account. (1) A vessel dealer who receives cash or a negotiable instrument of deposit in excess of one thousand dollars, or a deposit of any amount that will be held for more than fourteen calendar days, shall place the funds in a separate trust account.

The cash or negotiable instrument must be:

(a) Set aside immediately upon receipt for the trust account, or endorsed to the trust account immediately upon receipt; and

(b) Deposited in the trust account by the close of banking hours on the day following the receipt.

(2) After delivery of the purchaser's vessel, the vessel dealer shall remove the deposited funds from the trust account.

(2022 Ed.)

(3) The dealer shall not commingle the purchaser's funds with any other funds at any time.

(4) The funds must remain in the trust account until the delivery of the purchased vessel. However, upon written agreement from the purchaser, the vessel dealer may remove and release trust funds before delivery. [2010 c 161 § 1039; 1991 c 339 § 33; 1987 c 149 § 11. Formerly RCW 88.02.220.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.780 Records of the purchase and sale of vessels.

(1) A vessel dealer shall complete and maintain for a period of at least three years a record of the purchase and sale of all vessels purchased or consigned and sold by the vessel dealer. Records must be made available for inspection by the department during normal business hours.

(2) Before renewal of the vessel dealer license, the department shall require, on the forms prescribed, a record of the number of vessels sold during the license year. Vessel dealers who assert that they qualify for the exemption provided in RCW 88.02.710(2) shall also record, on forms prescribed, the highest retail value of any vessel sold in the license year. [2010 c 161 § 1040; 1987 c 149 § 10. Formerly RCW 88.02.210.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.790 Vessel dealer display decals—Use. (1) Vessel dealer display decals must only be used:

(a) To demonstrate vessels held for sale when operated by a prospective customer holding a dated demonstration permit. The demonstration permit must be carried in the vessel at all times when it is being operated by a prospective customer;

(b) On vessels owned or consigned for sale that are available for sale and being used only for vessel dealer business purposes by an officer of the corporation, a partner, a proprietor, or by a bona fide employee of the firm. A card identifying the individual as described in this section must be carried in the vessel at all times it is being operated.

(2) A vessel held for sale by a licensed vessel dealer is not required to be registered and display a registration number and a valid vessel decal. [2010 c 161 § 1041; 1987 c 149 § 4. Formerly RCW 88.02.023.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.795 Additional penalties for unauthorized or personal use of dealer display decals. (1) In addition to other penalties imposed under this chapter for unauthorized or personal use of vessel dealer display decals, the director may:

(a) Confiscate all vessel dealer display decals for a period that the director deems appropriate; and

(b) Impose a monetary penalty not exceeding twice the amount of excise tax that should have been paid to properly register each vessel. The monetary penalty:

- (i) May be in addition to or in lieu of other sanctions; and
- (ii) Is in addition to any fees owing to properly register each vessel.

(2) Any monetary penalty imposed or vessel dealer display decals confiscated must be done in accordance with chapter 34.05 RCW. Any monetary penalty imposed by the director and the delinquent excise taxes collected must be deposited in the general fund. [2010 c 161 § 1037; 1987 c 149 § 6. Formerly RCW 88.02.115.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.800 Issuance of temporary permits—Fee. (1) The department may authorize vessel dealers properly licensed under this chapter to issue temporary permits to operate vessels under rules adopted by the department.

(2) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required under RCW 88.02.640(1)(a) for each temporary permit application sold to an authorized vessel dealer. [2010 c 161 § 1042; 1987 c 149 § 9. Formerly RCW 88.02.184.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

Chapter 88.04 RCW CHARTER BOAT SAFETY ACT

Sections

88.04.005	Purposes.
88.04.015	Definitions.
88.04.025	Operating on state waters—Conditions.
88.04.035	Inspection of charter boats—Certificate of inspection.
88.04.045	Application for inspection—Inspection fee—Deposit of fees.
88.04.055	Evidentiary hearings.
88.04.065	Reciprocal agreements—Annual operating permits—Education and enforcement programs.
88.04.075	Exemptions from chapter.
88.04.085	Application of Washington industrial safety and health act.
88.04.310	Inspection program fee.
88.04.320	Operating violations enumerated—Penalties.
88.04.330	Rule-making authority.
88.04.900	Short title.

Inspection and regulation, department of labor and industries: RCW 43.22.050.

Regulation by

first-class cities: RCW 35.22.280.

noncharter and charter code cities: RCW 35A.11.020.

second-class cities: RCW 35.23.440.

88.04.005 Purposes. The purposes of this chapter are as follows:

- (1) Regulate charter boats for the carrying of more than six passengers, which are operated on state waters and which are not regulated by the United States coast guard;
- (2) Protect the safety and health of employees, passengers, and persons utilizing charter boats;

(3) Authorize the department of labor and industries to adopt rules regulating the use of charter boats operating on state waters and to issue licenses; and

(4) Provide penalties for violations of this chapter. [1999 c 111 § 1; 1989 c 295 § 1.]

88.04.015 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of labor and industries.

(2) "Carrying passengers or cargo" means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

(3) "Charter boat" means a vessel or barge operating on state waters that is not inspected or licensed by the United States coast guard and over which the United States coast guard does not exercise jurisdiction and which is rented, leased, or chartered to carry more than six persons or cargo.

(4) "Equipment" means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

(5) "State waters" means all waters within the territorial limits of the state of Washington, and not subject to the jurisdiction of the United States coast guard.

(6) "Operate" means to start or operate any engine which propels a vessel, or to physically control the motion, direction, or speed of a vessel.

(7) "Owner" means a person who claims lawful possession of a vessel by virtue of legal title or an equitable interest in a vessel which entitles that person to possession of the vessel; but does not include charterers and lessees.

(8) "Passenger" means a person carried on board a charter boat except:

- (a) The owner of the vessel or the owner's agent; or
- (b) The captain and members of the vessel's crew.

(9) "Operator's license" means a vessel operator's license issued by the United States coast guard or department for the specified tonnage and operational waters of the vessel.

(10) "Vessel" means every description of motorized watercraft, other than a bare-boat charter boat, seaplane, or sailboat, used or capable of being used to transport more than six passengers or cargo on water for rent, lease, or hire.

(11) "Bare-boat charter" means the unconditional lease, rental, or charter of a boat by the owner, or his or her agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel. [1999 c 111 § 2; 1991 c 45 § 1; 1989 c 295 § 2.]

88.04.025 Operating on state waters—Conditions. A person shall not rent, lease, or hire out a charter boat, nor carry, advertise for the carrying of, nor arrange for the carry-

ing of, more than six passengers on a vessel for a fee or other consideration on state waters unless each of the following conditions is satisfied:

(1)(a) The department has inspected the vessel within the previous twelve months and has issued for the vessel a certificate of inspection that is still valid and current and which allows the carrying of more than six passengers; or

(b) The United States coast guard has inspected the vessel and has issued a certificate of inspection that is still valid and current and which allows the carrying of more than six passengers.

(2) The operator of the vessel is licensed as an operator by either the United States coast guard or the department. The operator must carry such license at all times while operating the vessel and must display such license upon demand by the department.

(3) The vessel has a valid and current registration certificate which is available for inspection by the department.

(4) The vessel is covered by current and valid liability insurance. Proof of such coverage must be provided to the department upon demand. [1999 c 111 § 3; 1989 c 295 § 3.]

88.04.035 Inspection of charter boats—Certificate of inspection. The department shall inspect or provide for the inspection of every charter boat once every twelve months with the vessel in the water to determine if the vessel and its equipment comply with the rules promulgated by the department and with the applicable state and federal laws and regulations. Beginning no later than January 1, 2002, the department shall also inspect or provide for the inspection of every charter boat that carries more than six passengers once every sixty months with the vessel in drydock. In addition, the department may at any time inspect or provide for the inspection of any charter boat if the department has reasonable cause to believe either that a provision of this chapter has been violated or that an inspection is necessary to ensure the safety of persons or property on the vessel.

(1) Ninety days before any certificate of inspection expires, the department shall mail written notification to the owner of the vessel that a twelve-month or sixty-month inspection must be completed before the expiration date. The department shall include with the notification an application for inspection, which must be completed and returned by the owner no later than sixty days before the expiration date of the current certificate of inspection. The owner shall include the registration fee with the completed application form. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) If, after the inspection, the department determines that the charter boat and its equipment comply with the rules promulgated by the department and with the applicable state and federal laws and regulations, the department shall issue to the owner of the charter boat a certificate of inspection. Such certificate shall specify the maximum passenger, crew, and total person capacity of the charter boat. The certificate shall be valid for one year from the date of issuance. The certificate shall be prominently displayed on the charter boat while the charter boat is operating upon state waters.

(3) The department shall determine the minimum number of crew necessary for the safe operation of the charter boat.

(4) If the department determines that the charter boat or its equipment does not comply with the rules promulgated by the department and with the applicable state and federal laws and regulations, the department shall not issue a certificate of inspection and any current certificate of inspection shall be revoked by the department. [1999 c 111 § 4; 1989 c 295 § 4.]

88.04.045 Application for inspection—Inspection fee—Deposit of fees. (1) The owner of a vessel which does not have a current certificate of inspection or which has not previously been inspected by the department and which must be inspected by the department shall file an application for inspection, accompanied by the required fee, no later than sixty days before the scheduled or requested inspection date. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) When the department inspects or provides for the inspection of any charter boat because the department has reasonable cause to believe either that a provision of this chapter has been violated or that an inspection is necessary to ensure the safety of persons or property, the owner shall not be required to pay an inspection fee for that inspection.

(3) When a twelve-month in-water inspection and a sixty-month drydock inspection are required in the same year, the owner shall only be required to pay the fee for the drydock inspection.

(4) All sums received from licenses, inspection fees, or other sources described in this chapter shall be deposited in the industrial insurance trust funds and shall be used for administrative, education, and enforcement costs associated with this chapter. [1999 c 111 § 5; 1989 c 295 § 5.]

88.04.055 Evidentiary hearings. (1) A person who has been denied a certificate of inspection or a license may petition the department for an evidentiary hearing.

(2) A person who owns a charter boat may petition the department for an evidentiary hearing regarding the determination of the maximum passengers, crew, or total capacity of the charter boat. [1989 c 295 § 9.]

88.04.065 Reciprocal agreements—Annual operating permits—Education and enforcement programs. (1) The department may enter into reciprocal agreements with other states concerning the operation and inspection of charter boats from those states that operate on the waters of the state of Washington. Reciprocity shall be granted only if a state can establish to the satisfaction of the department that their laws and standards concerning charter boats meet or exceed the laws and rules of the state of Washington. A charter boat that operates on state waters under a reciprocal agreement pursuant to this section shall obtain an annual operating permit from the department for a fee for each year the charter boat does business on the waters of the state of Washington. The department shall deposit the fees from annual operating permits issued pursuant to this section in the industrial insurance trust funds.

(2) The department shall develop an education and enforcement program designed to eliminate the operation of charter boats that have not been inspected and certified as required by this chapter, and shall provide the public with information regarding the safety features and requirements necessary for the lawful operation of charter boats. [1999 c 111 § 6; 1989 c 295 § 10.]

88.04.075 Exemptions from chapter. The provisions of this chapter shall not apply to:

(1) A vessel that is a charter boat but is being used by the documented or registered owner of the charter boat exclusively for the owner's own noncommercial or personal pleasure purposes;

(2) A vessel owned by a person or corporate entity which is donated and used by a person or nonprofit organization to transport passengers for charitable or noncommercial purposes, regardless of whether consideration is directly or indirectly paid to the owner;

(3) A vessel that is rented, leased, or hired by an operator to transport passengers for noncommercial or personal pleasure purposes;

(4) A vessel used exclusively for, or incidental to, an educational purpose; or

(5) A bare-boat charter boat. [1991 c 45 § 2; 1989 c 295 § 11.]

88.04.085 Application of Washington industrial safety and health act. Unless specifically provided by statute this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1989 c 295 § 12.]

88.04.310 Inspection program fee. The owner or operator of every vessel inspected by the department shall pay the department a fee for each inspection. The fee shall be established by rule and shall cover the full cost of the inspection program including travel, per diem, and administrative and legal support costs for the program. [1999 c 111 § 7; 1989 c 295 § 6; 1979 c 74 § 2.]

88.04.320 Operating violations enumerated—Penalties. (1) It is unlawful for any person to operate a vessel unless that person holds a valid license issued by the United States coast guard or the department to operate a vessel of that class.

(2) It is unlawful for any person to operate a vessel unless the vessel is operated in compliance with the rules of the department of labor and industries and has a current certificate of inspection posted.

(3) Any violation of the licensing and inspection provisions of this chapter is punishable pursuant to the penalties provided under the Washington industrial safety and health act, chapter 49.17 RCW. [1989 c 295 § 7; 1979 c 74 § 3.]

88.04.330 Rule-making authority. The department shall adopt by rule, under chapter 34.05 RCW:

(1) Procedures, standards, and fees for the licensing of operators of any vessel used as a charter boat, as defined

under RCW 88.04.015, operating on state waters for rent, lease, or hire;

(2) Standards and fees for the inspection of vessels;

(3) Minimum safety and health standards for passengers and crew on board charter boats consistent with the rules adopted by the United States coast guard in 46 C.F.R., subchapter T, small passenger vessels under one hundred gross tons; and

(4) Any other rules needed for the efficient administration of the purposes of this chapter. [1999 c 111 § 8; 1989 c 295 § 8; 1979 c 74 § 4.]

88.04.900 Short title. This chapter may be known and cited as the charter boat safety act. [1989 c 295 § 13.]

Chapter 88.08 RCW SPECIFIC ACTS PROHIBITED

Sections

88.08.020	Tampering with lights or signals.
88.08.030	Bringing certain foreign convicts into state.
88.08.050	Injury to lighthouses or United States light.
88.08.060	Unlicensed pilotage.

Construction projects in state waters: Chapter 77.55 RCW.

Damage by vessel to underwater cable: RCW 80.36.070.

Excessive steam in boilers, penalty: RCW 70.54.080.

Intoxication of steamship employees: RCW 9.91.020.

88.08.020 Tampering with lights or signals. Every person who, in such manner as might, if not discovered, endanger a vessel, railway engine, motor, train, or car, shall show, mask, extinguish, alter, or remove any light or signal, or exhibit any false light or signal, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 415; 1992 c 7 § 62; 1909 c 249 § 402; RRS § 2654.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

88.08.030 Bringing certain foreign convicts into state. Every person who, being the master or commander of any vessel or boat arriving from a foreign country, shall knowingly bring into this state a person who has been or is a foreign convict of any offense, which, if committed in this state would be punishable under the laws thereof, shall be guilty of a misdemeanor. [1909 c 249 § 435; RRS § 2687.]

Reviser's note: Caption for 1909 c 249 § 435 reads as follows: "Sec. 435. Master of Vessel Bringing Foreign Convict."

88.08.050 Injury to lighthouses or United States light. Every person who shall willfully break, injure, deface, or destroy any lighthouse station, post, platform, step, lamp, or other structure pertaining to such lighthouse station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished:

(1) As a class B felony punishable by imprisonment in a state correctional facility for not more than ten years whenever such act may endanger the safety of any vessel navigat-

ing such waters, or jeopardize the safety of any person or property in or upon such vessel.

(2) In all other cases by imprisonment in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both. [2011 c 96 § 58; 2003 c 53 § 416; 1992 c 7 § 63; 1909 c 249 § 403; RRS § 2655.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

88.08.060 Unlicensed pilotage. Every person not duly licensed thereto, who shall pilot or offer to pilot any vessel into, within or out of the waters of Juan de Fuca Strait or Puget Sound, shall be guilty of a misdemeanor: PROVIDED, That nothing herein shall prohibit a master of a vessel acting as his or her own pilot, nor compel a master or owner of any vessel to take out a pilot license for that purpose. [2013 c 23 § 532; 1909 c 249 § 293; RRS § 2545. Prior: 1888 p 177 § 18.]

Chapter 88.16 RCW PILOTAGE ACT

Sections

88.16.005	Legislative declaration of policy and intent.
88.16.010	Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum.
88.16.020	Board of pilotage commissioners—Office—Compensation and travel expenses of members—Employment of personnel.
88.16.035	Board of pilotage commissioners—Powers and duties.
88.16.040	Oaths and subpoenas—Compelling attendance of witnesses—Contempt.
88.16.050	Pilotage districts and waters affected.
88.16.055	Utilities and transportation commission to establish pilotage tariffs for pilotage services—Extra compensation, consideration of pilot retirement expenses incurred in prior year—Submission of statutory changes—Report.
88.16.061	Pilotage account.
88.16.070	Vessels exempted and included under chapter—Fee—Penalty.
88.16.090	Pilot and pilot trainee licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements.
88.16.100	Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review.
88.16.102	Pilots' licenses—Mandatory termination of.
88.16.103	Mandatory rest periods for pilots—Rules—Assignment refusal—Training program trips by pilot trainees—Quarterly review.
88.16.105	Size and type of vessels prescribed for newly licensed pilot—Rules.
88.16.107	Pilots or pilot trainees may testify without sanctions for doing so.
88.16.110	Pilots to file quarterly report—Contents.
88.16.115	Limiting liability of pilots and any countywide port district in Grays Harbor pilotage district—Deemed in public interest.
88.16.118	Limited liability of pilots and pilot trainees—Liability of vessel, owner, or operator not limited.
88.16.120	Failure to observe pilotage rate—Penalty.
88.16.130	Unlicensed pilot liable for payment of rates—Penalty for refusing to employ licensed pilot.
88.16.133	Deviations from state law—Duty to submit pilot's report.
88.16.135	Assignment of pilots to vessels—Request that pilot not be assigned—Hearing on request.
88.16.140	Pilot's lien for compensation.
88.16.150	General penalty—Civil penalty—Jurisdiction—Disposition of fines—Failure to inform of special directions, gross misdemeanor.
88.16.155	Vessel master to make certification before pilotage service offered—Procedure upon refusal—Rules—Penalties—Exception.
88.16.160	Severability and short title.

88.16.170	Oil tankers—Intent and purpose.
88.16.180	Oil tankers—State licensed pilot required.
88.16.190	Oil tankers—Restricted waters—Requirements.
88.16.195	Oil tankers—Not to exceed speed of escorting tug.
88.16.200	Vessel designed to carry liquefied natural or petroleum gas to adhere to oil tanker provisions.
88.16.250	Board of pilotage commissioners authorized to adopt rules—Grays Harbor pilotage district—Tug escort requirements/safety measures for certain oil tankers.
88.16.260	Board of pilotage commissioners authorized to adopt rules in consultation with other entities—Tug escorts.

Unlicensed pilotage: RCW 88.08.060.

88.16.005 Legislative declaration of policy and intent. The legislature finds and declares that it is the policy of the state of Washington to prevent the loss of human lives, loss of property and vessels, and to protect the marine environment of the state of Washington through the sound application of compulsory pilotage provisions in certain of the state waters.

The legislature further finds and declares that it is a policy of the state of Washington to have pilots experienced in the handling of vessels aboard vessels in certain of the state waters with prescribed qualifications and licenses issued by the state.

It is the intent of the legislature to ensure against the loss of lives, loss or damage to property and vessels, and to protect the marine environment through the establishment of a board of pilotage commissioners representing the interests of the people of the state of Washington.

It is the further intent of the legislature not to place in jeopardy Washington's position as an able competitor for waterborne commerce from other ports and nations of the world, but rather to continue to develop and encourage such commerce. [1977 ex.s. c 337 § 1.]

Additional notes found at www.leg.wa.gov

88.16.010 Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum. (1) The board of pilotage commissioners of the state of Washington is hereby created and shall consist of the assistant secretary of marine operations of the department of transportation of the state of Washington, or the assistant secretary's designee who shall be an employee of the marine division, who shall be chairperson, the director of the department of ecology, or the director's designee, and seven members appointed by the governor and confirmed by the senate. Each of the appointed commissioners shall be appointed for a term of four years from the date of the member's commission. No person shall be eligible for appointment to the board unless that person is at the time of appointment eighteen years of age or over and a citizen of the United States and of the state of Washington. Two of the appointed commissioners shall be pilots licensed under this chapter and actively engaged in piloting upon the waters covered by this chapter for at least three years immediately preceding the time of appointment and while serving on the board. One pilot shall be from the Puget Sound pilotage district and the other pilot shall be from either the Grays Harbor pilotage district or the Puget Sound pilotage district. Two of the appointed commissioners shall be actively engaged in the ownership, operation, or management of deep sea cargo and/or passenger-carrying vessels for at least three years immediately preceding the time of appointment and while

servicing on the board. One of the shipping commissioners shall be a representative of American and one of foreign shipping. One of the commissioners shall be a representative from a recognized environmental organization concerned with marine waters. The remaining commissioners shall be persons interested in and concerned with pilotage, maritime safety, and marine affairs, with broad experience related to the maritime industry exclusive of experience as either a state licensed pilot or as a shipping representative.

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

(3) Five members of the board shall constitute a quorum. At least one pilot, one shipping representative, and one public member must be present at every meeting. All commissioners and the chairperson shall have a vote. [2008 c 128 § 1; 2003 c 58 § 1; 2001 c 36 § 4; 1991 c 200 § 1001; 1987 c 485 § 1; 1979 ex.s. c 207 § 1; 1977 ex.s. c 337 § 2; 1977 ex.s. c 151 § 73; 1971 ex.s. c 292 § 58; 1935 c 18 § 1; RRS § 9871-1. Prior: 1888 p 175 § 1.]

Additional notes found at www.leg.wa.gov

88.16.020 Board of pilotage commissioners—Office—Compensation and travel expenses of members—Employment of personnel. The department of transportation of the state of Washington shall be the office of the board, and all records shall be kept in the office of the department. Each pilotage commissioner shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060, to be paid out of the pilotage account on vouchers approved by the chairperson of the board: PROVIDED, That the sums received under this section shall not be considered compensation earnable as defined pursuant to RCW 41.40.010(8).

The board is authorized to employ personnel, pursuant to chapter 41.06 RCW, as necessary to conduct the business of the board. [1984 c 287 § 111; 1977 ex.s. c 337 § 3; 1977 ex.s. c 151 § 74; 1975-'76 2nd ex.s. c 34 § 178; 1967 c 15 § 1; 1941 c 184 § 1; 1935 c 18 § 2; RRS § 9871-2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

88.16.035 Board of pilotage commissioners—Powers and duties. (1) The board of pilotage commissioners shall:

(a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the enforcement and administration of this chapter;

(b)(i) Issue training licenses and pilot licenses to pilot applicants meeting the qualifications provided for in RCW 88.16.090 and such additional qualifications as may be determined by the board;

(ii) Establish a comprehensive training program to assist in the training and evaluation of pilot applicants before final licensing; and

(iii) Establish additional training requirements, including a program of continuing education developed after consultation with pilot organizations, including those located within the state of Washington, as required to maintain a competent pilotage service;

(c) Maintain a register of pilots, records of pilot accidents, and other history pertinent to pilotage;

(d) Determine from time to time the number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district;

(e) Provide assistance to the utilities and transportation commission, as requested by the utilities and transportation commission, in its performance of pilotage tariff setting functions under RCW 81.116.010 through 81.116.060;

(f) File annually with the governor and the chairs of the transportation committees of the senate and house of representatives a report which includes, but is not limited to, the following: The number, names, ages, pilot license number, training license number, and years of service as a Washington licensed pilot of any person licensed by the board as a Washington state pilot or trainee; the names, employment, and other information of the members of the board; the total number of pilotage assignments by pilotage district, including information concerning the various types and sizes of vessels and the total annual tonnage; the annual earnings or stipends of individual pilots and trainees before and after deduction for expenses of pilot organizations, including extra compensation as a separate category; the annual expenses of private pilot associations, including personnel employed and capital expenditures; the status of pilotage tariffs, extra compensation, and travel; the retirement contributions paid to pilots and the disposition thereof; the number of groundings, marine occurrences, or other incidents which are reported to or investigated by the board, and which are determined to be accidents, as defined by the board, including the vessel name, location of incident, pilot's or trainee's name, and disposition of the case together with information received before the board acted from all persons concerned, including the United States coast guard; the names, qualifications, time scheduled for examinations, and the district of persons desiring to apply for Washington state pilotage licenses; summaries of dispatch records, quarterly reports from pilots, and the bylaws and operating rules of pilotage organizations; the names, sizes in deadweight tons, surcharges, if any, port of call, name of the pilot or trainee, and names and horsepower of tug boats for any and all oil tankers subject to the provisions of RCW 88.16.190 together with the names of any and all vessels for which the United States coast guard requires special handling pursuant to their authority under the Ports and Waterways Safety Act of 1972; the expenses of the board; and any and all other information which the board deems appropriate to include;

(g) Make available information that includes the pilotage act and other statutes of Washington state and the federal government that affect pilotage, including the rules of the board, together with such additional information as may be informative for pilots, agents, owners, operators, and masters;

(h) Appoint advisory committees and employ marine experts as necessary to carry out its duties under this chapter;

(i) Provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter; and do such other things as are reasonable, necessary, and expedient to insure proper and safe pilotage upon the waters

covered by this chapter and facilitate the efficient administration of this chapter.

(2) The board may pay stipends to pilot trainees under subsection (1)(b) of this section. [2018 c 107 § 3; 2009 c 496 § 1; 2008 c 128 § 2; 2006 c 53 § 1; 2005 c 26 § 1; 1987 c 264 § 1; 1977 ex.s. c 337 § 4.]

Effective date—2018 c 107: See note following RCW 88.16.055.

Additional notes found at www.leg.wa.gov

88.16.040 Oaths and subpoenas—Compelling attendance of witnesses—Contempt. Any member of the board shall have power to administer oaths in any matter before the board for consideration or inquiry and to issue subpoenas requiring witnesses to appear before the board. Such subpoenas shall be signed by a member of the board and issued in the name of the state of Washington and be served and returned, and mileage and witness fees shall be paid in like manner and effect as in a civil action. A witness wilfully disobeying such subpoena served upon the witness shall be proceeded against upon complaint of the board to the attorney general or the prosecuting attorney of the county where the attendance of the witness was demanded as for a contempt of the authority of the superior court of said county. [1987 c 485 § 2; 1967 c 15 § 9; 1935 c 18 § 14; RRS § 9871-14.]

88.16.050 Pilotage districts and waters affected. This chapter shall apply to the pilotage districts of this state as defined in this section.

(1) "Puget Sound pilotage district", whenever used in this chapter, shall be construed to mean and include all the waters of the state of Washington inside the international boundary line between the state of Washington, the United States and the province of British Columbia, Canada and east of one hundred twenty-three degrees twenty-four minutes west longitude.

(2) "Grays Harbor pilotage district" shall include all inland waters, channels, waterways, and navigable tributaries within Grays Harbor and Willapa Harbor. The boundary line between Grays Harbor and Willapa Harbor and the high seas shall be defined by the board. [1987 c 485 § 3; 1979 ex.s. c 207 § 2; 1977 ex.s. c 337 § 5; 1971 ex.s. c 297 § 2; 1967 c 15 § 2; 1935 c 18 § 3; RRS § 9871-3.]

Additional notes found at www.leg.wa.gov

88.16.055 Utilities and transportation commission to establish pilotage tariffs for pilotage services—Extra compensation, consideration of pilot retirement expenses incurred in prior year—Submission of statutory changes—Report. (1) The utilities and transportation commission shall under RCW 81.116.010 through 81.116.060 periodically, but not more frequently than annually, establish the pilotage tariffs for pilotage services provided under this chapter: PROVIDED, That the utilities and transportation commission may establish extra compensation for extra services to vessels in distress, for awaiting vessels, for all vessels in direct transit to or from a Canadian port where Puget Sound pilotage is required for a portion of the voyage, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the commission: PROVIDED FURTHER, That as an element of the Puget Sound pilotage district tariff, the utilities and transpor-

tation commission may consider pilot retirement expenses incurred in the prior year in the Puget Sound pilotage district. However, under no circumstances shall the state be obligated to fund or pay for any portion of retirement payments for pilots or retired pilots.

(2) By December 1, 2018, the utilities and transportation commission shall submit to the transportation committees of the legislature any additional statutory changes necessary to implement chapter 107, Laws of 2018.

(3) By July 1, 2020, the utilities and transportation commission shall provide a report to the governor and the transportation committees of the legislature regarding matters pertaining to establishing tariffs under this section that includes a comparison of the process and outcomes in relation to the recommendations made in the January 2018 joint transportation committee Washington state pilotage final report and recommendations. [2018 c 107 § 1.]

Effective date—2018 c 107: "Except for section 15 of this act, this act takes effect July 1, 2019." [2018 c 107 § 16.]

88.16.061 Pilotage account. The pilotage account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of the board of pilotage commissioners as prescribed under this chapter and by the utilities and transportation commission for purposes related to pilotage tariff rate setting. The account is subject to allotment procedures under chapter 43.88 RCW. [2018 c 107 § 13; (2018 c 297 § 701 repealed by 2019 c 416 § 1103); 2008 c 128 § 17; 1967 c 15 § 11.]

Effective date—2018 c 297: "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 takes effect immediately [March 27, 2018]." [2018 c 297 § 802.]

Effective date—2018 c 107: See note following RCW 88.16.055.

Additional notes found at www.leg.wa.gov

88.16.070 Vessels exempted and included under chapter—Fee—Penalty. Every vessel not exempt under this section that operates in the waters of the Puget Sound pilotage district or Grays Harbor pilotage district is subject to compulsory pilotage under this chapter.

(1) A United States vessel on a voyage in which it is operating exclusively on its coastwise endorsement, its fishery endorsement (including catching and processing its own catch outside United States waters and economic zone for delivery in the United States), and/or its recreational (or pleasure) endorsement, and all United States and Canadian vessels engaged exclusively in the coasting trade on the west coast of the continental United States (including Alaska) and/or British Columbia shall be exempt from the provisions of this chapter unless a pilot licensed under this chapter be actually employed, in which case the pilotage rates provided for in this chapter or established under RCW 81.116.010 through 81.116.060 shall apply.

(2) The board may, upon the written petition of any interested party, and upon notice and opportunity for hearing, grant an exemption from the provisions of this chapter to any vessel that the board finds is (a) a small passenger vessel that is not more than one thousand three hundred gross tons (international), does not exceed two hundred feet in overall length,

is manned by United States-licensed deck and engine officers appropriate to the size of the vessel with merchant mariner credentials issued by the United States coast guard or Canadian deck and engine officers with Canadian-issued certificates of competency appropriate to the size of the vessel, and is operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia, or (b) a yacht that is not more than one thousand three hundred gross tons (international) and does not exceed two hundred feet in overall length. Such an exemption shall not be detrimental to the public interest in regard to safe operation preventing loss of human lives, loss of property, and protecting the marine environment of the state of Washington. Such petition shall set out the general description of the vessel, the contemplated use of same, the proposed area of operation, and the name and address of the vessel's owner. The board shall annually, or at any other time when in the public interest, review any exemptions granted to this specified class of small vessels to insure that each exempted vessel remains in compliance with the original exemption. The board shall have the authority to revoke such exemption where there is not continued compliance with the requirements for exemption. The board shall maintain a file which shall include all petitions for exemption, a roster of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. Each applicant for exemption or annual renewal shall pay a fee, payable to the pilotage account. Fees for initial applications and for renewals shall be established by rule, and shall not exceed one thousand five hundred dollars. The board shall report annually to the legislature on such exemptions.

(3) Every vessel not exempt under subsection (1) or (2) of this section shall, while navigating the Puget Sound and Grays Harbor pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this chapter or under RCW 81.116.010 through 81.116.060: PROVIDED, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kellet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian

pilot and shall include the results in its annual report. [2018 c 107 § 4; 2017 c 88 § 1; 2012 c 81 § 1; 2008 c 128 § 3; 1996 c 144 § 1; 1995 c 174 § 1; 1987 c 194 § 2; 1977 ex.s. c 337 § 6; 1971 ex.s. c 297 § 3; 1967 c 15 § 3; 1935 c 18 § 4; RRS § 9871-4.]

Effective date—2018 c 107: See note following RCW 88.16.055.

Intent—1987 c 194: "The legislature intends to provide a limited exemption from the provisions of this chapter for a specified class of small vessels registered as passenger vessels or yachts. It is not the intent of the legislature that such an exemption shall be a precedent for future exemptions of other classes of vessels from the provisions of this chapter." [1987 c 194 § 1.]

Additional notes found at www.leg.wa.gov

88.16.090 Pilot and pilot trainee licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements. (1) A person may pilot any vessel subject to this chapter on waters covered by this chapter only if licensed to pilot such vessels on such waters under this chapter.

(2)(a) A person is eligible to be licensed as a pilot or a pilot trainee if the person:

(i) Is a citizen of the United States;

(ii) Is over the age of twenty-five years and under the age of seventy years;

(iii)(A) Holds at the time of application, as a minimum, a United States government license as master of steam or motor vessels of not more than one thousand six hundred gross register tons (three thousand international tonnage convention tons) upon oceans, near coastal waters, or inland waters; or the then most equivalent federal license as determined by the board; any such license to have been held by the applicant for a period of at least two years before application;

(B) Holds at the time of licensure as a pilot, after successful completion of the board-required training program, a first class United States endorsement without restrictions on the United States government license for the pilotage district in which the pilot applicant desires to be licensed; however, all applicants for a pilot examination scheduled to be given before July 1, 2008, must have the United States pilotage endorsement at the time of application; and

(C) The board may require that applicants and pilots have federal licenses and endorsements as it deems appropriate; and

(iv) Successfully completes a board-specified training program.

(b) In addition to the requirements of (a) of this subsection, a pilot applicant must meet such other qualifications as may be required by the board.

(c) A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) The board may establish such other training license and pilot license requirements as it deems appropriate.

(4) Pilot applicants shall be evaluated and may be ranked for entry into a board-specified training program in a manner specified by the board based on their performance on a written examination or examinations established by the board, performance on other evaluation exercises as may be

required by the board, and other criteria or qualifications as may be set by the board.

When the board determines that the demand for pilots requires entry of an applicant into the training program it shall issue a training license to that applicant, but under no circumstances may an applicant be issued a training license more than four years after taking the written entry examination. The training license authorizes the trainee to do such actions as are specified in the training program.

After the completion of the training program the board shall evaluate the trainee's performance and knowledge. The board, as it deems appropriate, may then issue a pilot license, delay the issuance of the pilot license, deny the issuance of the pilot license, or require further training and evaluation.

(5) The board may (a) appoint a special independent committee or (b) contract with private or governmental entities knowledgeable and experienced in the development, administration, and grading of licensing examinations or simulator evaluations for marine pilots, or (c) do both. Active, licensed pilots designated by the board may participate in the development, administration, and grading of examinations and other evaluation exercises. If the board does appoint a special examination or evaluation development committee, it is authorized to pay the members of the committee the same compensation and travel expenses as received by members of the board. Any person who willfully gives advance knowledge of information contained on a pilot examination or other evaluation exercise is guilty of a gross misdemeanor.

(6) This subsection applies to the review of a pilot applicant's written examinations and evaluation exercises to qualify to be placed on a waiting list to become a pilot trainee. Failure to comply with the process set forth in this subsection renders the results of the pilot applicant's written examinations and evaluation exercises final. A pilot applicant may seek board review, administrative review, and judicial review of the results of the written examinations and evaluation exercises in the following manner:

(a) A pilot applicant who seeks a review of the results of his or her written examinations or evaluation exercises must request from the board-appointed or board-designated examination committee an administrative review of the results of his or her written examinations or evaluation exercises as set forth by board rule.

(b) The determination of the examination committee's review of a pilot applicant's examination results becomes final after thirty days from the date of service of written notification of the committee's determination unless a full adjudicative hearing before an administrative law judge has been requested by the pilot applicant before the thirty-day period has expired, as set forth by board rule.

(c) When a full adjudicative hearing has been requested by the pilot applicant, the board shall request the appointment of an administrative law judge under chapter 34.12 RCW who has sufficient experience and familiarity with pilotage matters to be able to conduct a fair and impartial hearing. The hearing shall be governed by chapter 34.05 RCW. The administrative law judge shall issue an initial order.

(d) The initial order of the administrative law judge is final unless within thirty days of the date of service of the initial order the board or pilot applicant requests review of the initial order under chapter 34.05 RCW.

(e) The board may appoint a person to review the initial order and to prepare and enter a final order as governed by chapter 34.05 RCW and as set forth by board rule. The person appointed by the board under this subsection (6)(e) is called the board reviewing officer.

(7) Pilots are licensed under this section for a term of five years from and after the date of the issuance of their respective state licenses. Licenses must thereafter be renewed as a matter of course, unless the board withholds the license for good cause. Each pilot shall pay to the state treasurer an annual license fee in an amount set by the board by rule. Pursuant to RCW 43.135.055, the fees established under this subsection may be increased through the fiscal year ending June 30, 2011. The fees must be deposited in the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

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

(9) The board may require vessel simulator training for a pilot trainee and shall require vessel simulator training for a licensed pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(10) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims. Willful misrepresentation of such required information by a pilot applicant shall result in disqualification of the pilot applicant. [2009 c 470 § 708; 2008 c 128 § 4; 2007 c 518 § 706; 2005 c 26 § 2; 1999 sp.s. c 1 § 607; 1995 c 175 § 1; 1991 c 200 § 1002. Prior: 1990 c 116 § 27; 1990 c 112 § 1; 1987 c 264 § 2; 1986 c 122 § 1; 1981 c 303 § 1; 1979 ex.s. c 207 § 3; 1977 ex.s. c 337 § 7; 1967 c 15 § 5; 1935 c 18 § 8; RRS § 9871-8; prior: 1907 c 147 § 1; 1888 p 176 § 8.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Additional notes found at www.leg.wa.gov

88.16.100 Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review. (1) The board shall have power on its own motion or, in its discretion, upon the written request of any interested party, to investigate the per-

formance of pilotage services subject to this chapter and to issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the license of any pilot, or any combination of the above, for misconduct, incompetency, inattention to duty, intoxication, or failure to perform his duties under this chapter, or violation of any of the rules or regulations provided by the board for the government of pilots. The board may partially or totally stay any disciplinary action authorized in this subsection and subsection (2) of this section. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(2) In all instances where a pilot licensed under this chapter performs pilot services on a vessel exempt under RCW 88.16.070, the board may on its own motion, or in its discretion upon the written request of any interested party, investigate whether the services were performed in a professional manner consistent with sound maritime practices. If the board finds that the pilotage services were performed in a manner that constitutes an act of incompetence, misconduct, or negligence so as to endanger life, limb, or property, or violated or failed to comply with state laws or regulations intended to promote marine safety or to protect navigable waters, the board may issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the state pilot license, or any combination of the above. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(3) The board shall implement a system of specified disciplinary actions or corrective actions, including training or treatment, that will be taken when a state licensed pilot in a specified period of time has had multiple disciplinary actions taken against the pilot's license pursuant to subsections (1) and (2) of this section. In developing these disciplinary or corrective actions, the board shall take into account the cause of the disciplinary action and the pilot's previous record.

(4) The board shall immediately review the pilot's license of a pilot who has been charged with any offense involving drugs or the personal consumption of alcohol while on duty, including an offense of operation of a vehicle or vessel while under the influence of alcohol or drugs. After a hearing held pursuant to subsection (5) of this section:

(a) The board shall order a pilot who has been found to have been convicted of an offense involving drugs or the personal consumption of alcohol while on duty and who has not been convicted of another offense involving drugs or the personal consumption of alcohol in the previous five years to actively participate in and satisfactorily complete a specific program of treatment. The board may impose other sanctions it determines are appropriate. If the pilot does not satisfactorily complete the program of treatment, the board shall suspend, revoke, or withhold the pilot's license until the treatment is completed; and

(b) The board shall suspend for not less than one year the license of a pilot found to have been convicted of a second or subsequent offense involving drugs or the personal consumption of alcohol while on duty.

(5) When the board determines that reasonable cause exists to issue a reprimand, impose a fine, suspend, revoke, or withhold any pilot's license or require training or treatment

under subsection (1), (2), or (4) of this section, it shall prepare and personally serve upon such pilot a notice advising him or her of the board's intended action, the specific grounds for the action, and the right to request a hearing to challenge the board's action. The pilot shall have thirty days from the date on which notice is served to request a full hearing before an administrative law judge on the issue of the reprimand, fine, suspension, revocation, or withholding of his or her pilot's license, or requiring treatment or training. The board's proposed reprimand, fine, suspension, revocation, or withholding of a license, or requiring treatment or training shall become final upon the expiration of thirty days from the date notice is served, unless a hearing has been requested prior to that time. When a hearing is requested, the board shall request the appointment of an administrative law judge under chapter 34.12 RCW who has sufficient experience and familiarity with pilotage matters to be able to conduct a fair and impartial hearing. The hearing shall be governed by the provisions of Title 34 RCW. All final decisions of the administrative law judge shall be subject to review by the superior court of the state of Washington for Thurston county, by the superior court of the county in which the pilot maintains his or her residence or principal place of business, or by the superior court of the county in which the board maintains its office, to which court any case with all the papers and proceedings therein shall be immediately certified by the administrative law judge if requested to do so by any party to the proceedings at any time within thirty days after the date of any such final decision. No appeal may be taken after the expiration of thirty days after the date of final decision. Any case so certified to the superior court shall be tried de novo and after certification of the record to said superior court the proceedings shall be had as in a civil action. Moneys collected from fines under this section shall be deposited in the pilotage account.

(6) The board shall have the power, on an emergency basis, to temporarily suspend a state pilot's license: (a) When a pilot has been involved in any vessel accident where there has been major property damage, loss of life, or loss of a vessel, or (b) where there is a reasonable cause to believe that a pilot has diminished mental capacity or is under the influence of drugs, alcohol, or other substances, when in the opinion of the board, such an accident or physical or mental impairment would significantly diminish that pilot's ability to carry out pilotage duties and that the public health, safety, and welfare requires such emergency action. The board shall make a determination within seventy-two hours whether to continue the suspension. The board shall develop rules for exercising this authority including procedures for the chairperson or vice chairperson of the board to temporarily order such suspensions, emergency meetings of the board to consider such suspensions, the length of suspension, opportunities for hearings, and an appeal process. The board shall develop rules under chapter 34.05 RCW.

(7) The board shall immediately notify the United States coast guard that it has revoked or suspended a license pursuant to this section and that a suspended or revoked license has been reinstated. [2008 c 128 § 5; 1990 c 116 § 28; 1987 c 392 § 1; 1986 c 121 § 1; 1981 c 67 § 36; 1977 ex.s. c 337 § 12; 1971 ex.s. c 297 § 4; 1935 c 18 § 13; RRS § 9871-13. Prior: 1888 p 178 § 10.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Additional notes found at www.leg.wa.gov

88.16.102 Pilots' licenses—Mandatory termination of. The license of a pilot is terminated upon the pilot reaching the age of seventy. [2008 c 128 § 6; 1979 ex.s. c 207 § 4.]

88.16.103 Mandatory rest periods for pilots—Rules—Assignment refusal—Training program trips by pilot trainees—Quarterly review. (1) Pilots shall have a mandatory rest period of at least ten hours with an opportunity for eight hours of uninterrupted sleep after completion of an assignment; excluding multiple assignments within a harbor area, as defined by the board of pilotage commissioners, provided the combined total duration of assignment time does not exceed thirteen hours.

(2) Pilots shall have a mandatory rest period that mitigates fatigue caused by circadian misalignment after three consecutive night assignments, as defined by the board of pilotage commissioners.

(3) A pilot shall refuse a pilotage assignment if the pilot is physically or mentally fatigued or if the pilot has a reasonable belief that the assignment cannot be carried out in a competent and safe manner. Upon refusing an assignment under this subsection, a pilot shall submit a written explanation to the board within forty-eight hours.

(4) A pilot trainee shall not take a training program trip if the pilot trainee is physically or mentally fatigued or if the pilot trainee has reasonable belief that the training program trip cannot be carried out in a competent and safe manner.

(5) The board shall quarterly review the dispatch records of pilot organizations or pilot's quarterly reports to ensure the provisions of this section are enforced. The board may prescribe rules for rest periods pursuant to chapter 34.05 RCW. [2019 c 123 § 1; 2008 c 128 § 7; 1986 c 122 § 2; 1977 ex.s. c 337 § 9.]

Additional notes found at www.leg.wa.gov

88.16.105 Size and type of vessels prescribed for newly licensed pilot—Rules. The board shall prescribe, pursuant to chapter 34.05 RCW, rules governing the size and type of vessels which a newly licensed pilot may be assigned to pilot on the waters of this state and whether the assignment involves docking or undocking a vessel. The rules shall also prescribe required familiarization trips before a newly licensed pilot may pilot a larger or different type of vessel. [2008 c 128 § 8; 1991 c 200 § 1003; 1987 c 264 § 3; 1977 ex.s. c 337 § 10.]

Additional notes found at www.leg.wa.gov

88.16.107 Pilots or pilot trainees may testify without sanctions for doing so. Any pilot or pilot trainee licensed pursuant to this chapter may appear or testify before the legislature or board of pilotage commissioners and no person shall place any sanction against said pilot or pilot trainee for having testified or appeared. [2008 c 128 § 9; 1977 ex.s. c 337 § 15.]

Additional notes found at www.leg.wa.gov

(2022 Ed.)

88.16.110 Pilots to file quarterly report—Contents.

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

(2) The report shall include information for each vessel that suffers a grounding, collision, or other major marine casualty that occurred while the pilot was on duty during the reporting period. The report shall also include information on near miss incidents as defined in *RCW 88.46.100. Information concerning near miss incidents provided pursuant to this section shall not be used for imposing any sanctions or penalties. The board shall forward information provided under this subsection to the department of ecology for inclusion in the collision reporting system established under *RCW 88.46.100. [2008 c 128 § 10; 2001 c 36 § 5; 1991 c 200 § 1004; 1935 c 18 § 7; RRS § 9871-7. Prior: 1888 p 178 § 22.]

*Reviser's note: RCW 88.46.100 was amended by 2011 c 122 § 8, deleting the definition of "near miss incident" and also deleting the provisions relating to the collision reporting system.

Additional notes found at www.leg.wa.gov

88.16.115 Limiting liability of pilots and any county-wide port district in Grays Harbor pilotage district—Deemed in public interest. The preservation of human life and property associated with maritime commerce on the pilotage waters of this state is declared to be in the public interest, and the limitation and regulation of the liability of pilots licensed by the state of Washington, and of any county-wide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services, is necessary to such preservation and is deemed to be in the public interest. [2005 c 123 § 1; 1981 c 196 § 1.]

Additional notes found at www.leg.wa.gov

88.16.118 Limited liability of pilots and pilot trainees—Liability of vessel, owner, or operator not limited.

(1)(a) A pilot licensed to act as such by the state of Washington, and any countywide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services with pilots employed by or under contract with the port district, shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by a pilot's or pilot trainee's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of the pilot.

(b) A pilot trainee licensed to act as such by the state of Washington is not liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by

the pilot trainee's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of the pilot trainee.

(2) When a pilot or pilot trainee boards a vessel to provide pilotage services, that pilot or pilot trainee becomes a servant of the vessel and its owner and operator. Nothing in this section exempts the vessel, its owner, or its operator from liability for damage or loss occasioned by that ship to a person or property on the ground that (a) the ship was piloted by a Washington state licensed pilot or pilot trainee, or (b) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot or pilot trainee.

(3) Pilots, pilot trainees, and board members are immune from civil liability to any party for damages or other relief that is in any way based on the communication of, to a pilot or pilot trainee, to the board, or to any other appropriate governmental authority or person, any of the following: (a) Information about any incident or occurrence involving collision, allision, or grounding of any vessel, including near-miss occurrences; (b) information about any other marine occurrence that the pilot or pilot trainee believes involved or involves undue risk in the navigation of any vessel that could result in damage to any person, vessel, structure, aid to navigation, or the marine environment of this state; or (c) any report or other written, oral, or electronic evaluation of the performance of any pilot or pilot trainee. "Performance" includes, but is not limited to, professional ability, attitude, performance of duties, effort, knowledge, skills, and other relevant factors. This protection and immunity does not apply when a pilot or pilot trainee intentionally releases or discloses information known to be false. The immunity granted to a person under this section is in addition to any common law or statutory privilege or immunity enjoyed by the person, and this section is not intended to abrogate or modify any such common law or statutory privilege or immunity. The immunity from civil liability provided under this section shall be liberally construed to accomplish the purposes of this chapter and to encourage the free flow of information and opinions to the board. [2008 c 128 § 11. Prior: 2005 c 123 § 2; 2005 c 26 § 3; 1984 c 69 § 1.]

Additional notes found at www.leg.wa.gov

88.16.120 Failure to observe pilotage rate—Penalty.

No pilot shall charge, collect or receive and no person, firm, corporation or association shall pay for pilotage or other services performed hereunder any greater, less or different amount, directly or indirectly, than the rates or charges herein established or subsequently established by the utilities and transportation commission under RCW 81.116.010 through 81.116.060 and by the board under this chapter. Any pilot, person, firm, corporation or association violating the provisions of this section shall be guilty of a misdemeanor and shall be punished pursuant to RCW 88.16.150 as now or hereafter amended, said prosecution to be conducted by the attorney general or the prosecuting attorney of any county wherein the offense or any part thereof was committed. [2018 c 107 § 5; 1987 c 485 § 4; 1977 ex.s. c 337 § 13; 1967 c 15 § 4; 1935 c 18 § 6; RRS § 9871-6.]

Effective date—2018 c 107: See note following RCW 88.16.055.

Additional notes found at www.leg.wa.gov

88.16.130 Unlicensed pilot liable for payment of rates—Penalty for refusing to employ licensed pilot.

Any person not holding a license as pilot under the provisions of this chapter who pilots any vessel subject to the provisions of this chapter on waters covered by this chapter shall pay to the board the pilotage rates established by the utilities and transportation commission under RCW 81.116.010 through 81.116.060. Any master or owner of a vessel required to employ a pilot licensed under the provisions of this chapter who refuses to do so when such a pilot is available shall be punished pursuant to RCW 88.16.150 as now or hereafter amended and shall be imprisoned in the county jail of the county wherein he or she is so convicted until said fine and the costs of his or her prosecution are paid. [2018 c 107 § 6; 2013 c 23 § 533; 1977 ex.s. c 337 § 14; 1967 c 15 § 8; 1935 c 18 § 11; RRS § 9871-11. Prior: 1907 c 147 § 4.]

Effective date—2018 c 107: See note following RCW 88.16.055.

Additional notes found at www.leg.wa.gov

88.16.133 Deviations from state law—Duty to submit pilot's report.

A master, pilot, or pilot trainee who deviates from the provisions of this chapter or Title 363 WAC in order to comply with any federal or international law or treaty, such as 46 U.S.C. Sec. 2304 et seq., or any other provision of law of the state, or who deviates in order to ensure the safety of the vessel or its crew under the control of the master, pilot, or pilot trainee, shall submit a pilot's report of marine safety occurrence as prescribed by the board of pilotage commissioners in WAC 363-116-200 in the case of a near-miss occurrence. If the deviation occurred while the vessel was operating under the control of a pilot or pilot trainee licensed in this state, then the report must be submitted by the pilot or pilot trainee with input provided by the master. The report must describe the circumstances leading to the deviation from the provisions of this chapter and the consequences of that deviation. If the consequences of the deviation include an incident as defined in WAC 363-116-200, then the pilot's report of marine safety occurrence must be submitted in addition to any reports required as a result of the incident. The board shall investigate the circumstances surrounding the deviation and, if the facts of the situation so warrant, may waive enforcement action against the master, pilot, or pilot trainee if the board finds that the deviation was: Taken in order to comply with any other law that may have precedence; required by the ordinary practice of seamen; or justified by the special circumstances of the case. [2008 c 128 § 15.]

88.16.135 Assignment of pilots to vessels—Request that pilot not be assigned—Hearing on request.

Any ship operator or ship husbanding agent may submit a request in writing to the board that a particular pilot not be assigned to pilot that company's vessels. The request shall be based on specific safety concerns of the ship operator or ship husbanding agent.

The board shall notify interested persons and hold a hearing on that request, and either approve or disapprove the request. If the request is approved, the board shall notify the affected pilot and give the pilot a specific list of vessels for

which that pilot shall not provide pilotage services. [2008 c 128 § 12; 1987 c 485 § 6.]

88.16.140 Pilot's lien for compensation. Each vessel, its tackle, apparel and furniture and the owner thereof shall be jointly and severally liable for the compensation of any pilot employed thereon and such pilot shall have a lien upon such vessel, her tackle, apparel and furniture for such compensation. [1935 c 18 § 15; RRS § 9871-15. Prior: 1907 c 147 § 2; 1888 p 178 § 23.]

88.16.150 General penalty—Civil penalty—Jurisdiction—Disposition of fines—Failure to inform of special directions, gross misdemeanor. (1) In all cases where no other penalty is prescribed in this chapter, any violation of this chapter or of any rule or regulation of the board shall be punished as a gross misdemeanor, and all violations may be prosecuted in any court of competent jurisdiction in any county where the offense or any part thereof was committed. In any case where the offense was committed upon a ship, boat or vessel, and there is doubt as to the proper county, the same may be prosecuted in any county through any part of which the ship, boat or vessel passed, during the trip upon which the offense was committed. All fines collected for any violation of this chapter or any rule or regulation of the board shall within thirty days be paid by the official collecting the same to the state treasurer and shall be credited to the pilotage account: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) Notwithstanding any other penalty imposed by this section, any person who shall violate the provisions of this chapter, shall be liable to a maximum civil penalty of ten thousand dollars for each violation. The board may request the attorney general or the prosecuting attorney of the county in which any violation of this chapter occurs to bring an action for imposing the civil penalties provided for in this subsection.

Moneys collected from civil penalties shall be deposited in the pilotage account.

(3) Any master of a vessel who shall knowingly fail to inform the pilot dispatched to said vessel or any agent, owner, or operator, who shall knowingly fail to inform the pilot dispatcher, or any dispatcher who shall knowingly fail to inform the pilot actually dispatched to said vessel of any special directions mandated by the coast guard captain of the port under authority of the Ports and Waterways Safety Act of 1972, as amended, for the handling of such vessel shall be guilty of a gross misdemeanor. [1995 c 174 § 2. Prior: 1987 c 485 § 5; 1987 c 202 § 247; 1977 ex.s. c 337 § 8; 1969 ex.s. c 199 § 41; 1967 c 15 § 7; 1935 c 18 § 10; RRS § 9871-10; prior: 1888 p 179 § 27.]

Intent—1987 c 202: See note following RCW 2.04.190.

Additional notes found at www.leg.wa.gov

88.16.155 Vessel master to make certification before pilotage service offered—Procedure upon refusal—Rules—Penalties—Exception. (1) The master of any vessel which employs a Washington licensed pilot shall certify on a

form prescribed by the board of pilotage commissioners that the vessel complies with:

(a) Such provisions of the United States coast guard regulations governing the safety and navigation of vessels in United States waters, as codified in Title 33 of the Code of Federal Regulations, as the board may prescribe; and

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

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

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

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

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

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

(4) After the board has prescribed the form required under subsection (1) of this section, no Washington licensed pilot shall offer pilotage services to any vessel on which the master has failed to make a certification required by this section. If the master fails to make a certification the pilot shall:

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

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

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

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

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

(7) This section shall not apply to the movement of dead ships. The board shall prescribe pursuant to chapter 34.05 RCW, after consultation with the coast guard and interested

persons, for the movement of dead ships and the certification process thereon. [2008 c 128 § 13; 1977 ex.s. c 337 § 11.]

Additional notes found at www.leg.wa.gov

88.16.160 Severability and short title. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining provisions of this chapter. This chapter may be cited as the "Pilotage Act." [1967 c 15 § 10; 1935 c 18 § 17; RRS § 9871-16.]

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

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

The legislature further recognizes that certain areas of the Columbia river and Puget Sound and adjacent waters have limited space for maneuvering a large oil tanker and that these waters contain many natural navigational obstacles as well as a high density of commercial and pleasure boat traffic.

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

It is therefore the intent and purpose of RCW 88.16.180 and 88.16.190 to decrease the likelihood of oil spills on the Columbia river and on Puget Sound and its shorelines by requiring all oil tankers above a certain size to employ licensed pilots and to be escorted by a tug or tugs while navigating on certain areas of Puget Sound and adjacent waters. [1991 c 200 § 601; 1975 1st ex.s. c 125 § 1.]

Study authorized and directed: "The House and Senate Transportation and Utilities Committees are authorized and directed to study the feasibility, benefits, and disadvantages of requiring similar pilot and tug assistance for vessels carrying other potentially hazardous materials and to submit their findings and recommendations prior to the 45th session of the Washington legislature in January, 1977. Such study shall also include a report on the feasibility, benefits and disadvantages of requiring vessels under tug escort to observe a speed limit, and such study shall include a discussion of the impact of a speed limit on the maneuverability of the vessel, the effectiveness of the tug escort and other legal and technical considerations material and relevant to the required study. Such study shall also include an evaluation and recommendations as to whether there should be a transfer of all duties and responsibilities of the board of pilotage commissioners to the Washington utilities and transportation commission or other state agency, and alternate methods for establishing fair and equitable rates for tug escort and pilot transfer." [1975 1st ex.s. c 125 § 5.]

Discharge of oil and hazardous substances into state waters: RCW 90.56.010 through 90.56.040.

Additional notes found at www.leg.wa.gov

88.16.180 Oil tankers—State licensed pilot required. Notwithstanding the provisions of RCW 88.16.070, any reg-

istered oil tanker of five thousand gross tons or greater, shall be required:

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

(2) To take a licensed pilot while navigating the Columbia river. [1991 c 200 § 602; 1983 c 3 § 231; 1975 1st ex.s. c 125 § 2.]

Additional notes found at www.leg.wa.gov

88.16.190 Oil tankers—Restricted waters—Requirements. (1) Any oil tanker, whether enrolled or registered, of greater than one hundred twenty-five thousand deadweight tons shall be prohibited from proceeding beyond a point east of a line extending from Discovery Island light south to New Dungeness light, unless authorized by the United States coast guard, pursuant to 33 C.F.R. Sec. 165.1303.

(2)(a)(i) An oil tanker of forty to one hundred twenty-five thousand deadweight tons may operate in the waters east of a line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area, including but not limited to the San Juan Islands and connected waterways and the waters south of Admiralty Inlet, to the extent that these waters are within the territorial boundaries of Washington, only if the oil tanker is under the escort of a tug or tugs that have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of the escorted oil tanker.

(ii) Effective September 1, 2020, the following may operate in Rosario Strait and connected waterways to the east only if under the escort of a tug or tugs that have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of a forty thousand deadweight ton oil tanker: (A) Oil tankers of between five thousand and forty thousand deadweight tons; and (B) both articulated tug barges and towed waterborne vessels or barges that are: (I) Designed to transport oil in bulk internal to the hull; and (II) greater than five thousand deadweight tons.

(iii) The requirements of (a)(ii) of this subsection: (A) Do not apply to vessels providing bunkering or refueling services; (B) do not apply to a towed general cargo deck barge; and (C) may be adjusted or suspended by rule by the board of pilotage commissioners, consistent with RCW 88.16.260(1)(c).

(b) An oil tanker, articulated tug barge, or towed waterborne vessel or barge in ballast or when unladen is not required to be under the escort of a tug.

(c) A tanker assigned a deadweight of less than forty thousand deadweight tons at the time of construction or reconstruction as reported in Lloyd's Register of Ships is not subject to the provisions of RCW 88.16.170 and 88.16.180.

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

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

(b) "Oil tanker" means a self-propelled deep draft tank vessel designed to transport oil in bulk. "Oil tanker" does not include an articulated tug barge tank vessel.

(c) "Towed general cargo deck barge" means a waterborne vessel or barge designed to carry cargo on deck.

(d) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine. [2019 c 289 § 2; 1994 c 52 § 1; 1975 1st ex.s. c 125 § 3.]

Finding—Intent—2019 c 289: "The legislature finds that a variety of existing policies designed to reduce the risk of oil spills have helped contribute to a relatively strong safety record for oil moved by water, pipeline, and train in recent years in Washington state. Nevertheless, gaps exist in our safety regimen, especially deriving from shifts in the modes of overwater transportation of oil and the increased transport of oils that may submerge or sink, contributing to an unacceptable threat to Washington waters, where a catastrophic spill would inflict potentially irreversible damage on the endangered southern resident killer whales. In addition to the unique marine and cultural resources in Puget Sound that would be damaged by an oil spill, the geographic, bathometric, and other environmental peculiarities of Puget Sound present navigational challenges that heighten the risk of an oil spill incident occurring. Therefore, it is the intent of the legislature to enact certain new safety requirements designed to reduce the current, acute risk from existing infrastructure and activities of an oil spill that could eradicate our whales, violate the treaty interests and fishing rights of potentially affected federally recognized Indian tribes, damage commercial fishing prospects, undercut many aspects of the economy that depend on the Salish Sea, and otherwise harm the health and well-being of Washington residents. In enacting such measures, however, it is not the intent of the legislature to mitigate, offset, or otherwise encourage additional projects or activities that would increase the frequency or severity of oil spills in the Salish Sea. Furthermore, it is the intent of the legislature for this act to assist in coordinating enhanced international discussions among federal, state, provincial, first nation, federally recognized Indian tribe, and industry leaders in the United States and Canada to develop an agreement for an additional emergency rescue tug available to vessels in distress in the narrow Straits of the San Juan Islands and other boundary waters, which would lessen oil spill risks to the marine environment in both the United States and Canada." [2019 c 289 § 1.]

Additional notes found at www.leg.wa.gov

88.16.195 Oil tankers—Not to exceed speed of escorting tug. An oil tanker under escort of a tug or tugs pursuant to the provisions of RCW 88.16.190 shall not exceed the service speed of the tug or tugs that are escorting the oil tanker. [1990 c 116 § 26.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

88.16.200 Vessel designed to carry liquefied natural or petroleum gas to adhere to oil tanker provisions. Any vessel designed for the purpose of carrying as its cargo liquefied natural or liquefied petroleum gas shall adhere to the provisions of RCW 88.16.190(2) as though it were an oil tanker. [2008 c 128 § 14; 1991 c 200 § 603; 1977 ex.s. c 337 § 16.]

Additional notes found at www.leg.wa.gov

88.16.250 Board of pilotage commissioners authorized to adopt rules—Grays Harbor pilotage district—Tug escort requirements/safety measures for certain oil tankers. (1) The board of pilotage commissioners may adopt rules to implement this section. The rules may include tug escort requirements and other safety measures for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges within a two-mile radius of the Grays Harbor pilotage district as defined in RCW 88.16.050.

(2022 Ed.)

(2)(a) Prior to proposing a draft rule, the board of pilotage commissioners must consult with the department of ecology, the United States coast guard, the Grays Harbor safety committee, area tribes, public ports, local governments, and other appropriate entities. The board of pilotage commissioners may not adopt rules under this section unless a state agency or a local jurisdiction, for a facility within Grays Harbor that is required to have a contingency plan pursuant to chapter 90.56 RCW:

(i) Makes a final determination or issues a final permit after January 1, 2015, to site a new facility; or

(ii) Provides authority to an existing facility to process or receive crude oil for the first time.

(b) This subsection does not apply to a transmission pipeline or railroad facility.

(3) A rule adopted under this section must:

(a) Be designed to achieve best achievable protection as defined in RCW 88.46.010;

(b) Ensure that any escort tugs used have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of the escorted oil tanker or articulated tug barge; and

(c) Ensure that escort tugs have sufficient mechanical capabilities to provide for safe escort.

(4) The provisions adopted under this section may not include rules affecting pilotage. This section does not affect any existing authority to establish pilotage requirements.

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

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

(b) "Oil tanker" means a self-propelled deep draft tank vessel designed to transport oil in bulk. "Oil tanker" does not include an articulated tug barge tank vessel.

(c) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine. [2015 c 274 § 12.]

Effective date—2015 c 274: See note following RCW 90.56.005.

88.16.260 Board of pilotage commissioners authorized to adopt rules in consultation with other entities—Tug escorts. (1)(a) By December 31, 2025, the board of pilotage commissioners, in consultation with the department of ecology, must adopt rules regarding tug escorts to address the peculiarities of Puget Sound for the following:

(i) Oil tankers of between five thousand and forty thousand deadweight tons; and

(ii) Both articulated tug barges and towed waterborne vessels or barges that are: (A) Designed to transport oil in bulk internal to the hull; and (B) greater than five thousand deadweight tons.

(b) The requirements of this section do not apply to:

(i) A towed general cargo deck barge; or

(ii) A vessel providing bunkering or refueling services.

(c) The rule making pursuant to (a) of this subsection must be for operating in the waters east of the line extending

from Discovery Island light south to New Dungeness light and all points in the Puget Sound area. This rule making must address the tug escort requirements applicable to Rosario Strait and connected waterways to the east established in RCW 88.16.190(2)(a)(ii), and may adjust or suspend those requirements based on expertise developed under subsection (5) of this section.

(d) To achieve the rule adoption deadline in (a) of this subsection, the board of pilotage commissioners must adhere to the following interim milestones:

(i) By September 1, 2020, identify and define the zones, specified in subsection (3)(a) of this section, to inform the analysis required under subsection (5) of this section;

(ii) By December 31, 2021, complete a synopsis of changing vessel traffic trends; and

(iii) By September 1, 2023, consult with potentially affected federally recognized Indian treaty fishing tribes, other federally recognized treaty tribes with potentially affected interests, and stakeholders as required under subsection (6) of this section and complete the analysis required under subsection (5) of this section. By September 1, 2023, the department of ecology must submit a summary of the results of the analysis required under subsection (5) of this section to the legislature consistent with RCW 43.01.036.

(2) When developing rules, the board of pilotage commissioners must consider recommendations from potentially affected federally recognized Indian treaty fishing tribes, other federally recognized treaty tribes with potentially affected interests, and:

(a) The results of the most recently completed vessel traffic risk assessments;

(b) The report developed by the department of ecology as required under section 206, chapter 262, Laws of 2018;

(c) The recommendations included in the southern resident orca task force report, November 2018, and any subsequent research or reports on related topics;

(d) Changing vessel traffic trends, including the synopsis required under subsection (1)(d)(ii) of this section; and

(e) For any formally proposed draft rules or adopted rules, identified estimates of expected costs and benefits of the rule to:

(i) State government agencies to administer and enforce the rule; and

(ii) Private persons or businesses, by category of type of person or business affected.

(3) In the rules adopted under this section, the board of pilotage commissioners must:

(a) Base decisions for risk protection on geographic zones in the waters specified in subsection (1)(c) of this section. As the initial foci of the rules, the board of pilotage commissioners must equally prioritize geographic zones encompassing: (i) Rosario Strait and connected waterways to the east; and (ii) Haro Strait and Boundary Pass;

(b) Specify operational requirements, such as tethering, for tug escorts;

(c) Include functionality requirements for tug escorts, such as aggregate shaft horsepower for tethered tug escorts;

(d) Be designed to achieve best achievable protection, as defined in RCW 88.46.010, as informed by consideration of:

(i) Accident records in British Columbia and Washington waters;

(ii) Existing propulsion and design standards for covered tank vessels; and

(iii) The characteristics of the waterways; and

(e) Publish a document that identifies the sources of information that it relied upon in developing the rules, including any sources of peer-reviewed science and information submitted by tribes.

(4) The rules adopted under this section may not require oil tankers, articulated tug barges, or towed waterborne vessels or barges to be under the escort of a tug when these vessels are in ballast or are unladen.

(5) To inform rule making, the board of pilotage commissioners must conduct an analysis of tug escorts using the model developed by the department of ecology under RCW 88.46.250. The board of pilotage commissioners may:

(a) Develop scenarios and subsets of oil tankers, articulated tug barges, and towed waterborne vessels or barges that could preclude requirements from being imposed under the rule making for a given zone or vessel;

(b) Consider the benefits of vessel safety measures that are newly in effect on or after July 1, 2019, and prior to the adoption of rules under this section; and

(c) Enter into an interagency agreement with the department of ecology to assist with conducting the analysis and developing the rules, subject to each of the requirements of this section.

(6) The board of pilotage commissioners must consult with the United States coast guard, the Puget Sound harbor safety committee, potentially affected federally recognized Indian treaty fishing tribes, other federally recognized treaty tribes with potentially affected interests, ports, local governments, state agencies, and other appropriate entities before adopting tug escort rules applicable to any portion of Puget Sound. Considering relevant information elicited during the consultations required under this subsection, the board of pilotage commissioners must also design the rules with a goal of avoiding or minimizing additional underwater noise from vessels in the Salish Sea, focusing vessel traffic into established shipping lanes, protecting and minimizing vessel traffic impacts to established treaty fishing areas, and respecting and preserving the treaty-protected interests and fishing rights of potentially affected federally recognized Indian tribes.

(7) Rules adopted under this section must be periodically updated consistent with RCW 88.46.260.

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

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

(b) "Oil tanker" means a self-propelled deep draft tank vessel designed to transport oil in bulk. "Oil tanker" does not include an articulated tug barge tank vessel.

(c) "Towed general cargo deck barge" means a waterborne vessel or barge designed to carry cargo on deck.

(d) "Waterborne vessels or barges" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons

or more for purposes other than providing fuel for its motor or engine. [2019 c 289 § 3.]

Finding—Intent—2019 c 289: See note following RCW 88.16.190.

Chapter 88.24 RCW WHARVES AND LANDINGS

Sections

88.24.010	Right of riparian owner to construct—Rates.
88.24.020	County may authorize wharves and prescribe rates.
88.24.030	City or town may authorize wharves—Rates—Liability.
88.24.040	Construction requirements of wharves—When deemed incomplete.
88.24.070	County acquisition by condemnation of right-of-way.

Powers of cities and towns relative to docks and other appurtenances to harbors and shipping: RCW 35.22.280, 35.23.440, and 35A.11.020.

Powers of port districts as to wharves, landings, etc.: Chapter 53.08 RCW.

88.24.010 Right of riparian owner to construct—Rates. Any person owning land adjoining any navigable waters or watercourse, within or bordering upon this state, may erect upon his or her own land any wharf or wharves, and may extend them so far into said waters or watercourses as the convenience of shipping may require; and he or she may charge for wharfage such rates as shall be reasonable: PROVIDED, That he or she shall at all times leave sufficient room in the channel for the ordinary purposes of navigation. [2013 c 23 § 534; Code 1881 § 3271; 1863 p 531 § 1; 1860 p 326 § 1; 1854 p 357 § 1; RRS § 9613.]

88.24.020 County may authorize wharves and prescribe rates. (1) Whenever any person shall be desirous of erecting any wharf at the terminus of any public highway, or at any accustomed landing place, he or she may apply to the county commissioners of the proper county, who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept up for any length of time not exceeding twenty years. And they shall annually prescribe the rates of wharfage and charges thereon, but there shall be no charge for the landing of passengers or their baggage.

(2) No such authority shall be granted to any person other than the owner of the land where the wharf is proposed to be erected, unless such owner shall neglect to apply for such authority; and whenever application shall be made for such authority by any person other than such owner, the board of county commissioners shall not grant the same unless proof shall be made that the applicant caused notice in writing of his or her intention to make such application, to be given by posting up at least three notices in public places in the neighborhood where the proposed wharf is to be erected and one notice at the county courthouse, twenty days prior to any regular session of the board of county commissioners at which application shall be made and by serving a copy of said notice in writing upon such owner of the land, if residing in the county, at least ten days before the session of the board of county commissioners at which the application is made.

(3) When such application is heard, if the owner of such land applies for such authority and files his or her undertaking with one or more sureties to be approved by the county commissioners in a sum not less than one hundred dollars nor more than five hundred dollars, to be fixed by the county

commissioners, conditioned that such person will erect said wharf within the time therein limited, to be fixed by the county commissioners, and maintain the same and keep said wharf according to law; and if default shall at any time be made in the condition of such undertaking damages not exceeding the penalty may be recovered by any person aggrieved before any court having competent jurisdiction, then said county commissioners shall authorize such owner of the land to erect and keep such wharf.

(4) If such owner of the land does not apply as aforesaid the commissioners may authorize the same to be erected and kept by such applicant upon his or her entering into an undertaking as required of such owner of the land. [2013 c 23 § 535; 1893 c 49 § 1; Code 1881 § 3272; 1863 p 531 § 2; 1854 p 537 § 2; RRS § 9614.]

88.24.030 City or town may authorize wharves—Rates—Liability. Whenever any person or persons shall be desirous of erecting a wharf at the terminus of any street of any incorporated town or city in the state, he or she or they may apply to the municipal authorities of such town or city who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept in repair for any length of time not exceeding ten years; and every person building, owning or occupying a wharf in this state, upon which wharfage is charged and received, shall be held accountable to the owner or owners, consignees or agents, for any and all damage done to property stored upon, or passing over said wharf, in consequence of the unfinished, incomplete, or insufficient condition of said wharf; and every such person shall post or cause to be posted in a conspicuous place on said wharf the established rates of wharfage, noting passengers and their baggage free. [2013 c 23 § 536; Code 1881 § 3273; 1863 p 531 § 3; RRS § 9615.]

88.24.040 Construction requirements of wharves—When deemed incomplete. All wharves now standing, or hereafter to be built, in this state, shall be deemed insufficient, incomplete and unfinished unless they have good and substantial banisters or railing on the sides thereof, or a strip of hewn timber at least eight by ten inches square, well secured all around said wharves within ten inches of the outer edge thereof, except at the ends. [Code 1881 § 3274; 1863 p 532 § 4; 1860 p 327 § 2; RRS § 9616.]

88.24.070 County acquisition by condemnation of right-of-way. In cases where a person or persons, firm or corporation has acquired a right, title or interest in and to the tidelands or other lands over which it is proposed to build, construct or maintain such wharf or landing, whether such interest be a title in fee simple or as lessee or under contract of purchase or otherwise, and the board of county commissioners shall be unable to agree with the person, persons, firm or corporation claiming such interest or title as to the compensation to be paid for the taking of such strip of tidelands or other lands, then and in that case such board of county commissioners may by an order direct proceedings to procure a right-of-way over said tidelands or other lands to be brought in the superior court by the prosecuting attorney in the manner provided by law, for the taking of private property for public use, and to that end are hereby authorized to institute

and maintain in the name of the county the proceedings provided by the laws of this state for the appropriation of lands and other property by counties for public use. [1903 c 20 § 3; RRS § 9619.]

Chapter 88.26 RCW
PRIVATE MOORAGE FACILITIES

Sections

88.26.010	Definitions.
88.26.020	Securing vessels—Notice—Moving vessels ashore—Regaining possession—Abandoned vessels—Public sale.
88.26.030	Insurance requirements.

88.26.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Charges" means charges of a private moorage facility operator for moorage and storage, all other charges owing to or that become owing under a contract between a vessel owner and the private moorage facility operator, or any costs of sale and related legal expenses for implementing RCW 88.26.020.

(2) "Owner" means every natural person, firm, partnership, corporation, association, or organization, or their agent, with actual or apparent authority, who expressly or impliedly contracts for use of a moorage facility.

(3) "Private moorage facility" means any properties or facilities owned or operated by a private moorage facility operator that are capable of use for the moorage or storage of vessels.

(4) "Private moorage facility operator" means every natural person, firm, partnership, corporation, association, organization, or any other legal entity, employee, or their agent, that owns or operates a private moorage facility. Private moorage facility operation does not include a "moorage facility operator" as defined in RCW 53.08.310.

(5) "Transient vessel" means a vessel using a private moorage facility and that belongs to an owner who does not have a moorage agreement with the private moorage facility operator. Transient vessels include, but are not limited to, vessels seeking a harbor or refuge, day use, or overnight use of a private moorage facility on a space-as-available basis. Transient vessels may also include vessels taken into custody under RCW 79.100.040.

(6) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water. "Vessel" includes any trailer used for the transportation of watercraft. [2014 c 195 § 204; 1993 c 474 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

88.26.020 Securing vessels—Notice—Moving vessels ashore—Regaining possession—Abandoned vessels—Public sale. (1) Any private moorage facility operator may take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the private moorage facility so that the vessels are in the possession and control of the operator and cannot be removed from the facility. These procedures may be used if an owner

mooring or storing a vessel at the facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay charges owed or to commence legal proceedings. Notification shall be by two separate letters, one sent by first-class mail and one sent by registered mail to the owner and any lienholder of record at the last known address. In the case of a transient vessel, or where no address was furnished by the owner, the operator need not give notice prior to securing the vessel. At the time of securing the vessel, an operator shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A statement that if the account is not paid in full within ninety days from the time the notice is attached the vessel may be sold at public auction to satisfy the charges; and

(c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner and any lienholder of record by registered mail in order to give the owner the information contained in the notice.

(2) A private moorage facility operator, at his or her discretion, may move moored vessels ashore for storage within properties under the operator's control or for storage with a private person under their control as bailees of the private moorage facility, if the vessel is, in the opinion of the operator, a nuisance, in danger of sinking or creating other damage, or is owing charges. The costs of any such procedure shall be paid by the vessel's owner.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the private operator for charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the operator for the immediate removal of the vessel from the facility or for authorized moorage; and

(b) Making payment to the operator of all charges, or by posting with the operator a sufficient cash bond or other acceptable security, to be held in trust by the operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the operator shall receive so much of the bond or other security as agreed, or as is necessary, to satisfy any judgment, costs, and interest as may be awarded to the operator. The balance shall be refunded immediately to the owner at the last known address.

(4) If a vessel has been secured by the operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel is conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a private moorage facility is abandoned, the operator may authorize the public sale of the vessel by authorized personnel, consistent with this section, to the highest and best bidder for cash as follows:

(a) Before the vessel is sold, the vessel owner and any lienholder of record shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the facility is located. This notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The operator may bid all or part of its charges at the sale and may become a purchaser at the sale.

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of charges owing. This lawsuit must be commenced within sixty days of the date the notification was provided under subsection (1) of this section, or the right to a hearing is deemed waived and the owner is liable for any charges owing the operator. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall be applied first to the payment of any liens superior to the claim for charges, then to payment of the charges, then to satisfy any other liens on the vessel in the order of their priority. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the operator within one year of the date of the sale, the excess funds from the sale shall revert to the department of revenue under *chapter 63.29 RCW. If the sale is for a sum less than the applicable charges, the operator is entitled to assert a claim for deficiency, however, the deficiency judgment shall not exceed the moorage fees owed for the previous six-month period.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the operator.

(e) Either a minimum bid may be established or a letter of credit may be required from the buyer, or both, to discourage the future abandonment of the vessel.

(6) The rights granted to a private moorage facility operator under this section are in addition to any other legal rights an operator may have to hold and sell a vessel and in no manner does this section alter those rights, or affect the priority of other liens on a vessel. [2013 c 291 § 41; 1993 c 474 § 2.]

***Reviser's note:** Chapter 63.29 RCW was repealed in its entirety by 2022 c 225 § 1505, effective January 1, 2023. For later enactment, see chapter 63.30 RCW.

88.26.030 Insurance requirements. (1) Every private moorage facility operator must:

(2022 Ed.)

(a) Obtain and maintain insurance coverage for the private moorage facility;

(b) Require, as a condition of moorage, all vessels other than transient vessels to provide proof of marine insurance to the moorage facility.

(2) Unless rules adopted by the department of natural resources require otherwise, insurance maintained by private moorage facility operators and required of moored vessels must:

(a) Provide coverage at liability limits of at least three hundred thousand dollars per occurrence; and

(b) Include, at a minimum, general, legal, and pollution liability coverage.

(3) The purchaser of marine insurance under this section may satisfy the requirements of this section through the purchase of multiple policies as necessary.

(4) The requirement under this section for private moorage facility operators to require proof of marine insurance from mooring vessels applies whenever a private moorage facility operator enters an initial or renewal moorage agreement after June 12, 2014. The private moorage facility operator is not required to verify independently whether a mooring vessel's insurance policy meets the requirements of this section and is not responsible for any change in insurance coverage applicable to the vessel that occurs after the initial agreement is entered into or in the time period between agreement renewals.

(5) Any private moorage facility operator who fails to satisfy the requirements of this section incurs secondary liability under RCW 79.100.060 for any vessel located at the private moorage facility that meets the definition of derelict vessel or abandoned vessel as those terms are defined in RCW 79.100.010. [2014 c 195 § 202.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

Chapter 88.28 RCW

OBSTRUCTIONS IN NAVIGABLE WATERS

Sections

88.28.050 Obstructing navigation—Penalty.

88.28.055 Closure of Camas Slough.

88.28.060 Discharging ballast, when prohibited—Exception—City areas—Penalty.

Hours of labor of operators of power equipment in waterfront operations—Penalty: RCW 49.28.100.

Lease of beds of navigable waters for booming purposes: RCW 79.130.010 through 79.130.040.

Public lands: Title 79 RCW.

Railroad bridges over navigable streams: RCW 81.36.100 and chapter 79.110 RCW.

Relocation of harbor lines: RCW 79.115.020.

88.28.050 Obstructing navigation—Penalty. Every person who shall in any manner obstruct the navigable portion or channel of any bay, harbor, or river or stream, within or bordering upon this state, navigable and generally used for the navigation of vessels, boats, or other watercrafts, or for the floating down of logs, cord wood, fencing posts or rails, shall, on conviction thereof, be fined in any sum not exceeding three hundred dollars: PROVIDED, That the placing of any mill dam or boom across a stream used for floating saw

[Title 88 RCW—page 35]

logs, cord wood, fencing posts or rails shall not be construed to be an obstruction to the navigation of such stream, if the same shall be so constructed as to allow the passage of boats, saw logs, cord wood, fencing posts or rails without unreasonable delay: PROVIDED FURTHER, That the obstruction of navigable waters for the purpose of deploying equipment to contain or clean up a spill of oil or other hazardous material shall not be considered an obstruction. [1987 c 479 § 4; 1888 p 190 § 1; Code 1881 § 919; 1854 p 94 § 104; RRS § 9897.]

88.28.055 Closure of Camas Slough. The department of transportation may for highway purposes close off by fill or embankment all water transportation on Camas Slough, a part of the Columbia River extending from a point of land at the confluence of the left bank of the Washougal River and the right bank of the Columbia River to the land on Lady Island with the axis or center line of the embankment being more particularly described as a line bearing south seventy-six degrees (76°), fifty-one a one-half minutes (51 1/2') west from a point; said point being located on the line between section 11 and section 14 and distant approximately 520 feet westerly from the corner common to sections 11, 12, 13 and 14, all situate in township 1 north, range 3 east, W.M. The department shall construct in the fill, at or near the channel of the slough, an opening of sufficient dimensions to allow normal flow of water during the low water period or such opening as may be required or approved by the Corps of Engineers, United States Army. [1984 c 7 § 382; 1955 c 174 § 1.]

88.28.060 Discharging ballast, when prohibited—Exception—City areas—Penalty. Every master or mate, or other officer or other person, belonging to or in charge of any vessel, who shall discharge or cause to be discharged the ballast of such vessels into the navigable portions or channels of any of the inlets, bays, harbors or rivers within or bordering on this state, where the water is less than twenty fathoms deep, shall, on conviction thereof, be fined in any sum not less than seventy-five dollars, nor more than five hundred dollars: PROVIDED, That nothing in this section shall be so construed as to prevent any such person from discharging ballast from such vessel on the beach at or above ordinary high tide in all waters where the tide ebbs and flows, and that no ballast shall be discharged on any of the flats included within the boundary of any city or townsite or extension thereof: AND PROVIDED FURTHER, That in harbors within or in front of any incorporated city, where the waters are less than twenty fathoms deep, a section of said harbor may be set aside and designated by the city council of said city as a ballast ground, where ballast may be discharged under control of a harbor master to be appointed by the council. [1897 c 18 § 1; 1891 c 69 § 30; Code 1881 § 918; 1877 p 285 § 1; 1854 p 94 § 103; RRS § 9898.]

Chapter 88.32 RCW

RIVER AND HARBOR IMPROVEMENTS

Sections

88.32.010	Districts authorized.
88.32.020	Improvement commission—Appointment—Oath.
88.32.030	Improvement commission—Notification of appointment—Organization.

88.32.040	Establishment of assessment district—Assessments—State lands.
88.32.060	Assessment roll.
88.32.070	Hearing on roll—Date—Notice.
88.32.080	Hearing on roll—Objections—Certification for collection.
88.32.090	Appeal from final assessment.
88.32.100	Lien of assessment—Collection—Payment—Interest.
88.32.130	Local improvement fund—Disbursements.
88.32.140	Bonds—Issuance—Sale—Form.
88.32.160	Bonds—Execution.
88.32.170	Payment in full—Calls for bonds, notice—Bond owners' rights.
88.32.180	Improvement by counties jointly.
88.32.190	Improvement by counties jointly—Procedure.
88.32.200	Improvement by counties jointly—Joint board of equalization.
88.32.210	Improvement by counties jointly—Joint assessment roll—Filing, appeals, subsequent proceedings.
88.32.220	Improvement by counties jointly—Expenses of joint board.
88.32.230	Joint aid river and harbor improvements—Bonds—Election.
88.32.235	Joint aid river and harbor improvements—Declared county purpose.
88.32.240	Joint planning for improvement of navigable river—Development of river valley.
88.32.250	Joint planning for improvement of navigable river—Contract—Joint board to control and direct work.

Construction projects in state waters: Chapter 77.55 RCW.

Flood control: Title 86 RCW.

Harbor improvement fund abolished: RCW 43.79.330.

Harbor improvements in port districts: Chapters 53.08 and 53.20 RCW.

Harbor line commission: State Constitution Art. 15 § 1 (Amendment 15); RCW 79.115.010.

Harbors and tide waters: State Constitution Art. 15.

Joint canal construction: RCW 36.64.060.

Port districts, powers of, as to harbor improvements: Chapters 53.08 and 53.20 RCW.

Powers of

first-class cities: RCW 35.22.280.

noncharter code cities and charter code cities: RCW 35A.11.020.

second-class cities: RCW 35.23.440.

River improvement by counties: Chapters 86.12 and 86.13 RCW.

88.32.010 Districts authorized. Every county in this state is hereby authorized and empowered, by and through its county commissioners, whenever the government of the United States is intending or proposing the construction or operation of any river, lake, canal or harbor improvement, partly or wholly within such county, and whenever said board of county commissioners shall adjudge, upon a petition therefor filed with it and signed by at least one hundred freeholders of said county who each own realty of the assessed valuation of not less than five thousand dollars, situated within the limits of the improvement district sought to be created, that it is for the general benefit and welfare of the people of the county, that such river, lake, canal or harbor improvement be made and completed to define and establish an assessment district within such county and to levy an assessment upon so much of the taxable real estate of such county as shall be specially benefited by such improvement as hereinafter provided, for the purpose of paying the expenses of such improvement, or so much thereof as said board of county commissioners shall determine, not in any instance exceeding one percent of the taxable valuations of all real and personal property in the entire county as appearing on the then last assessment roll. Such improvement shall be known as river and harbor improvement. [1907 c 236 § 1; RRS § 9669. Prior: 1903 c 143 §§ 1, 2.]

Limitation of levies: RCW 84.52.050 through 84.52.056.

88.32.020 Improvement commission—Appointment—Oath. Whenever the board of county commissioners of any such county shall have adjudged as provided in RCW 88.32.010, said board shall thereupon apply to the person, who, for the time being, shall be judge of the United States district court, for the district within which the county shall be situated, to name eleven reputable citizens and freeholders of such county and file a list thereof with said board of county commissioners. The persons so named, or a majority of them, shall act as a commission, and be known as the "river and harbor improvement commission of county", and shall receive no compensation, except their actual necessary expenses, including necessary clerical assistance, to be audited by the board of county commissioners; and they shall be deemed the agents of the county in the performance of the duties imposed upon them by RCW 88.32.010 through 88.32.220. Each member of such commission shall, before entering upon his or her duties, take and subscribe an oath, substantially as follows:

"State of Washington
County of } ss.

I, the undersigned, a member of the river and harbor improvement commission of county, to define and establish the assessment district and assess the costs of the following improvement (here give the general description of the improvement), do solemnly swear (or affirm, as the case may be), that I will well and truly discharge my duties as a member of said commission." In case the person who is United States judge shall be unable or decline to act, the board of county commissioners shall name the eleven persons to act as such commission. [2013 c 23 § 537; 1907 c 236 § 2; RRS § 9670.]

88.32.030 Improvement commission—Notification of appointment—Organization. The board of county commissioners of the county, or of the oldest county in case of counties joining, shall cause the persons named for the commission to be notified of their appointment in a notice that shall name all such persons and shall designate the time and place of the first meeting of the commission. The commission, having come together pursuant to such notice, and its members having taken the oath hereinbefore prescribed, shall have full powers to organize and proceed with its business as a deliberative body. [1907 c 236 § 18; RRS § 9686.]

88.32.040 Establishment of assessment district—Assessments—State lands. It shall be the duty of such commission to define and establish an assessment district, within such county, comprising all the taxable real property, and also (with the limitations hereinafter expressed) the state shorelands, which shall be specially benefited by said river, lake, canal, or harbor improvement, and to apportion and assess the amount of separate, special, and particular benefits against each lot, block, parcel, or tract of land or shoreland within such district, by reason of such improvement. The commission in making the assessment shall include in the properties upon which the assessment is laid, all shorelands of the state, whether unsold or under contract of sale and sub-

ject to sale by it and as against all purchasers from the state or under contract to purchase such lands, the assessment shall be a charge upon such land and the purchaser's interest therein. The county auditor shall certify to the state commissioner of public lands a schedule of the state shorelands so assessed and of the assessment thereon, and the purchaser shall from time to time pay to the proper county treasurer the sums due and unpaid under such assessment, and at the time of such payment the county treasurer shall give him or her, in addition to a regular receipt for such payment, a certificate that such payment has been made, which certificate the purchaser shall immediately file with the commissioner of public lands, and no patent from the state nor deed shall issue to such purchaser, nor shall any assignment of his or her contract to purchase be approved by the commissioner of public lands until every matured installment of such assessment shall have first been fully paid and satisfied: PROVIDED, HOWEVER, That no such assessment shall create any charge against such shoreland or affect the title thereof as against the state, and the state shall be as free to forfeit or annul such contract and again sell such land as if the assessment had never been made, and in case of such forfeiture or annulment the state shall be free to sell again such land entirely disencumbered and unencumbered of all right and claim of such former purchaser, and such purchaser shall have no right, interest, or claim upon or against such land or the state or such new purchaser or at all, but every such sum paid by such former purchaser upon such assessment shall be utterly forfeited as against him or her, his or her personal representatives and assigns, and shall inure to the benefit of such new purchaser. [2013 c 23 § 538; 1907 c 236 § 3; RRS § 9671. Formerly RCW 88.32.040 and 88.32.050.]

88.32.060 Assessment roll. Such commission shall also make, or cause to be made, an assessment roll, in which shall appear the names of the owners of the property assessed, so far as known, the description of each lot, block, parcel or tract of land within such assessment district, and the amount assessed against the same, as separate, special or particular benefits, and certify such assessment roll to the board of county commissioners, of such county, within ten weeks after their appointment, or within such further time as may be allowed by the board of county commissioners of such county. [1907 c 236 § 4; RRS § 9672. Prior: 1905 c 104 § 1; 1903 c 143 § 21.]

88.32.070 Hearing on roll—Date—Notice. After the return of the assessment roll to the county legislative authority it shall make an order setting a day for the hearing upon any objections to the assessment roll by any parties affected thereby who shall be heard by the county legislative authority as a board of equalization, which date shall be at least twenty days after the filing of such roll. It shall be the duty of the county legislative authority to give, or cause to be given, notice of such assessment, and of the day fixed for the hearing, as follows:

(1) They shall send or cause to be sent, by mail, to each owner of premises assessed, whose name and place of residence is known to them, a notice, substantially in this form, to wit:

".

"Your property (here describe the property) is assessed \$. . . . for river and harbor improvement to be made in this county.

"Hearing on the assessment roll will be had before the undersigned, at the office of the county commissioners, on the . . . day of . . . (year) . . .

.
.
.
"Board of county commissioners."

But failure to send, or cause to be sent, such notice, shall not be fatal to the proceedings herein prescribed.

(2) They shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places in the county, three of which shall be in the neighborhood of the proposed improvement, and by publishing the same at least once a week for two consecutive weeks in the official newspaper of the county which notice shall be signed by the county legislative authority, and shall state the day and place of the hearing of objections to the assessment roll, and the nature of the improvement, and that all interested parties will be heard as to any objections to said assessment roll. [2016 c 202 § 51; 1985 c 469 § 95; 1907 c 236 § 5; RRS § 9673.]

88.32.080 Hearing on roll—Objections—Certification for collection. Any person interested in any real estate affected by such assessment may appear and file objections to the assessment roll, and the board of county commissioners may make an order regarding the time of filing such objections, as to them seems proper. As to all parcels, lots or blocks as to which no objections are filed within the time so fixed, the assessment thereon shall be confirmed. On the hearing, each party may offer proof and the board shall then have authority to affirm, modify, change and determine the assessment in such sum as to them appears just and right. When the assessment is finally equalized and fixed by the board of county commissioners, the clerk thereof shall certify the same to the county treasurer for collection, or if appeal has been taken from any part thereof, then so much thereof, as has not been appealed from, shall be certified. [1907 c 236 § 6; RRS § 9674.]

88.32.090 Appeal from final assessment. Any person who feels aggrieved by the final assessment made against any lot, block, or parcel of land owned by him or her may appeal therefrom to the superior court of such county. Such appeal shall be taken within the time, and substantially in the manner prescribed by the laws of this state for appeals from justice's courts. All notices of appeal shall be filed with the board of county commissioners, and served upon the prosecuting attorney of the county. The clerk of the board of county commissioners shall at appellant's expense certify to the superior court so much of the record, as appellant may request, and the cause shall be tried in the superior court de novo.

Any person aggrieved by any final order or judgment, made by the superior court concerning any assessment authorized by RCW 88.32.010 through 88.32.220, may seek appellate review of the order or judgment in accordance with the laws of this state relative to such review, except that review

shall be sought within thirty days after the entry of such judgment. [2013 c 23 § 539; 1988 c 202 § 90; 1971 c 81 § 175; 1907 c 236 § 7; RRS § 9675.]

Additional notes found at www.leg.wa.gov

88.32.100 Lien of assessment—Collection—Payment—Interest. The final assessment shall be a lien, paramount to all other liens, except liens for taxes and other special assessments, upon the property assessed, from the time the assessment roll shall be approved by said board of county commissioners and placed in the hands of the county treasurer, as collector. After said roll shall have been delivered to the county treasurer for collection, he or she shall proceed to collect the same, in the manner as other taxes are collected: PROVIDED, That such treasurer shall give at least ten days' notice in the official newspaper (and shall mail a copy of such notice to the owner of the property assessed, when the post office address of such owner is known, but failure to mail such notice shall not be fatal when publication thereof is made), that such roll has been certified to him or her for collection, and that unless payment be made within thirty days from the date of such notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged at a rate not to exceed seven percent per annum. Said interest shall be paid semiannually, and the county treasurer shall proceed to collect the amount due each year by the publication of notice as hereinabove provided. [2013 c 23 § 540; 1907 c 236 § 8; RRS § 9676. Formerly RCW 88.32.100 and 88.32.110.]

88.32.130 Local improvement fund—Disbursements. All moneys paid or collected on account of any assessments made pursuant to RCW 88.32.010 through 88.32.220, shall be kept by the county treasurer in the county depository separate and apart from the other funds of the county, in a fund to be established by the board of county commissioners and to be known as "Local Improvement Fund, District No. . . . of . . . County"; and said money shall at all times be subject to the order of the United States government engineer, having said river and harbor improvement in said county in charge, and the county treasurer shall pay said money out upon drafts, drawn upon said fund, for the cost of said improvement, by said United States government engineer. If such government engineer is unable or unauthorized to act in the premises, then the county treasurer shall pay out said money for the costs of said improvement, upon the order of the board of county commissioners. [1907 c 236 § 9; RRS § 9677.]

88.32.140 Bonds—Issuance—Sale—Form. (1) In all cases, the county, as the agent of the local improvement district, shall, by resolution of its county legislative authority, cause to be issued in the name of the county, the bonds for such local improvement district for the whole estimated cost of such improvement, less such amounts as shall have been paid within the thirty days provided for redemption, as hereinabove specified. Such bonds shall be called "Local Improvement Bonds, District No. . . . , County of . . . , State of Washington," and shall be payable not more than ten years after date, and shall be subject to annual call by the

county treasurer, in such manner and amounts as he or she may have cash on hand to pay the same in the respective local improvement fund from which such bonds are payable, interest to be paid at the office of the county treasurer. Such bonds shall be issued and delivered to the contractor for the work from month to month in such amounts as the engineer of the government, in charge of the improvement, shall certify to be due on account of work performed, or, if said county legislative authority resolves so to do, such bonds may be offered for sale after thirty days public notice thereof given, to be delivered to the highest bidder therefor, but in no case shall such bonds be sold for less than par, the proceeds to be applied in payment for such improvement: PROVIDED, That unless the contractor for the work shall agree to take such bonds in payment for his or her work at par, such work shall not be begun until the bonds shall have been sold and the proceeds shall have been paid into a fund to be called "Local Improvement Fund No., County of," and the owner or owners of such bonds shall look only to such fund for the payment of either the principal or interest of such bonds.

Such bonds shall be issued in denominations of one hundred dollars each, and shall be substantially in the following form:

"Local Improvement Bond, District Number of the County of, State of Washington.

No. N.B. \$

This bond is not a general debt of the county of and has not been authorized by the voters of said county as a part of its general indebtedness. It is issued in pursuance of an act of the legislature of the state of Washington, passed the day of A.D. 1907, and is a charge against the fund herein specified and its issuance and sale is authorized by the resolution of the county legislative authority, passed on the day of A.D. 1907. The county of, a municipal corporation of the state of Washington, hereby promises to pay to, or bearer, one hundred dollars, lawful money of the United States of America, out of the fund established by resolution of the county legislative authority on the day of, A.D. (year), and known as local improvement fund district number of county, and not otherwise.

"This bond is payable ten years after date, and is subject to annual call by the county treasurer at the expiration of any year before maturity in such manner and amounts as he or she may have cash on hand to pay the same in the said fund from which the same is payable, and shall bear interest at the rate of percent per annum, payable semiannually; both principal and interest payable at the office of the county treasurer. The county legislative authority of said county, as the agent of said local improvement district No., established by resolution No., has caused this bond to be issued in the name of said county, as the bond of said local improvement district, the proceeds thereof to be applied in part payment of so much of the cost of the improvement of the rivers, lakes, canals, or harbors of county, under resolution No., as is to be borne by the owners of property in said local improvement district, and the said local improvement fund, district No. of county, has been established

by resolution for said purpose; and the owner or owners of this bond shall look only to said fund for the payment of either the principal or interest of this bond.

"The call for the payment of this bond or any bond, issued on account of said improvement, may be made by the county treasurer by publishing the same in an official newspaper of the county for ten consecutive issues, beginning not more than twenty days before the expiration of any year from date hereof, and if such call be made, interest on this bond shall cease at the date named in such call.

"This bond is one of a series of bonds, aggregating in all the principal sum of dollars, issued for said local improvement district, all of which bonds are subject to the same terms and conditions as herein expressed.

"In witness whereof the said county of has caused these presents to be signed by its chair of its county legislative authority, and countersigned by its county auditor and sealed with its corporate seal, attested by its county clerk, this day of, in the year of our Lord

The County of
By
Chair County Legislative Authority.

Countersigned, County Auditor.
Attest, Clerk."

The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2016 c 202 § 52; 2013 c 23 § 541; 1983 c 167 § 245; 1970 ex.s. c 56 § 101; 1969 ex.s. c 232 § 60; 1907 c 236 § 10; RRS § 9678. Formerly RCW 88.32.140 and 88.32.150.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

88.32.160 Bonds—Execution. Each and every bond issued for any such improvement shall be signed by the chair of the county legislative authority and the county auditor, sealed with the corporate seal of the county, and attested by the county clerk. The bonds issued for each local improvement district shall be in the aggregate for such an amount as authorized by the resolution of the county legislative authority with reference to such river, lake, canal or harbor improvement, and each issue of such bonds shall be numbered consecutively, beginning with number 1. [2013 c 23 § 542; 1983 c 167 § 246; 1907 c 236 § 11; RRS § 9679.]

Additional notes found at www.leg.wa.gov

88.32.170 Payment in full—Calls for bonds, notice—Bond owners' rights. The owner of any lot or parcel of land charged with any assessment as provided for hereinabove, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him or her of such assessment, as herein provided, or may redeem the same at any time after the bonds above specified shall have been issued, by paying the full amount of all the principal and interest to the end of the interest year then expiring,

or next to expire. The county treasurer shall pay the interest on the bonds authorized to be issued under RCW 88.32.010 through 88.32.220 out of the respective local improvement funds from which they are payable, and whenever there shall be sufficient money in any local improvement fund, against which bonds have been issued under the provisions of RCW 88.32.010 through 88.32.220, over and above the amount necessary for the payment of interest on all unpaid bonds, and sufficient to pay the principal of one or more bonds, the county treasurer shall call in and pay such bonds, provided that such bonds shall be called in and paid in their numerical order: PROVIDED, FURTHER, That such call shall be made by publication in the county official newspaper, on the day following the delinquency of the installment of the assessment, or as soon thereafter as practicable, and shall state that bonds numbers (giving the serial number or numbers of the bonds called), will be paid on the day the interest payment on said bonds shall become due, and interest upon such bonds shall cease upon such date. If the county shall fail, neglect, or refuse to pay said bonds or promptly to collect any of said assessments when due, the owner of any such bonds may proceed in his or her own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five percent, together with the costs of such suit. Any number of owners of such bonds for any single improvement, may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [2013 c 23 § 543; 1983 c 167 § 247; 1907 c 236 § 12; RRS § 9680. Formerly RCW 88.32.120 and 88.32.170.]

Additional notes found at www.leg.wa.gov

88.32.180 Improvement by counties jointly. Two or more adjoining counties, in which are lands to be benefited by any such improvement as is hereinbefore mentioned, and as will be partly or wholly within one or more of them, may jointly take advantage of the provisions of RCW 88.32.010 through 88.32.220, and the procedure in such cases shall, as nearly as may be, conform to the procedure above prescribed, but with the modifications hereinafter expressed. [1907 c 236 § 13; RRS § 9681.]

88.32.190 Improvement by counties jointly—Procedure. In every case of such joint action, the preliminary procedure of RCW 88.32.010 having been first had in each county severally, the board of county commissioners of the several counties proposing to join shall unite in such an application as is prescribed in RCW 88.32.020, and the application shall be made to any person, who, for the time being, shall be a judge of the United States district court in any district in which such counties, or any of them, may lie, and the list mentioned in RCW 88.32.020 shall be made in as many counterparts as there are counties so joining, and one counterpart shall be filed with the board of county commissioners of each county, and if the person who is such United States judge shall decline or be unable to act, then, the board of such counties shall meet in joint session, at the county seat of such one of the counties as shall be agreed upon and shall organize as a joint board by appointing a chair and clerk, and by resolution in which a majority of all the commissioners present,

and at least one commissioner from each county, shall concur, name the eleven persons for the commission, which eleven in such case shall be citizens of the counties concerned, and as nearly as may be the same number from each county. A counterpart of such resolution shall be recorded in the minutes of the proceedings of the board of each county. The commission shall make as many assessment rolls as there are counties joining and one counterpart roll shall be certified by such chair and clerk of the joint board, and by such clerk filed with the board of each of such counties. [2013 c 23 § 544; 1907 c 236 § 14; RRS § 9682.]

88.32.200 Improvement by counties jointly—Joint board of equalization. For purposes of a board of equalization, said boards shall from time to time meet as a joint board as aforesaid, and have a chair and clerk as aforesaid, and for all purposes under RCW 88.32.070 and 88.32.080, in case of counties joining, the word board wherever occurring in said sections shall be interpreted to mean such joint board, and the word clerk shall be deemed to mean the clerk of such joint board, and the posting of notices shall be in at least ten public places in each county, and the publication of the same shall be in a newspaper of each county, and the objections mentioned in RCW 88.32.080 shall be filed with the clerk of the joint board, who shall cause a copy thereof, certified by him or her to be filed with the clerk of the board of county commissioners of the county where the real estate of the party objecting is situated. [2013 c 23 § 545; 1907 c 236 § 15; RRS § 9683.]

88.32.210 Improvement by counties jointly—Joint assessment roll—Filing, appeals, subsequent proceedings. The minutes of the proceedings of the joint board and the assessment roll as finally settled by such board shall be made up in as many counterparts as there are counties joining as aforesaid, and shall be signed by the chair and clerk of said board, and one of said counterparts so signed shall be filed by said clerk with the clerk of the board of county commissioners of each of said counties, and any appeals and subsequent proceedings under RCW 88.32.090 to 88.32.170, inclusive, as far as relates to real estate in any individual county, shall be as nearly as may be the same as if the local improvement district and bond issue concerned that county only. [2013 c 23 § 546; 1907 c 236 § 16; RRS § 9684.]

88.32.220 Improvement by counties jointly—Expenses of joint board. The joint board shall keep careful account of its necessary expenses and shall apportion and charge the same to the counties joining, and certify to the board of county commissioners of each such county an itemized statement of the entire account and of the proportionate part of such expense charged to such county and the board of county commissioners of such county shall cause the same to be paid out of the general fund of the county. [1907 c 236 § 17; RRS § 9685.]

County current expense fund: RCW 36.33.010.

88.32.230 Joint aid river and harbor improvements—Bonds—Election. Whenever the county legislative authority of any county with a population of one hundred twenty-five thousand or more deems it for the interest of the

county to engage in or to aid the United States of America, the state of Washington, or any adjoining county or any city of this state, or any of them, in construction, enlargement, improvement, modification, repair or operation of any harbor, canal, waterway, river channel, slip, dock, wharf, or other public improvement, or any of the same, for the purposes of commerce, navigation, sanitation and drainage, or any thereof, or to acquire or operate wharf sites, dock sites, or other properties, rights or interests, or any thereof, necessary or proper to be acquired or operated for public enjoyment of any such public improvement, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness, or any thereof, such county is hereby authorized and empowered, by and through its county legislative authority, to engage in or aid in any such public work or works, operation or acquisition, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount, which, together with the then existing indebtedness of such county, shall not exceed two and one-half percent of the value of the taxable property in said county, as the term "value of the taxable property" is defined in RCW 39.36.015, and to issue the negotiable bonds of the county for all or any of such indebtedness and for the payment thereof, in the manner and form and as provided in chapter 39.46 RCW, and other laws of this state which shall then be in force, and to make part or all of such payment in bonds or in moneys derived from sale or sales thereof, or partly in such bonds and partly in such money: PROVIDED, That the county legislative authority shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same. [1991 c 363 § 161; 1970 ex.s. c 42 § 37; 1911 c 3 § 1; RRS § 9666. FORMER PART OF SECTION: 1911 c 3 § 2 now codified as RCW 88.32.235.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Bonds, generally as to form, etc.: Chapter 39.44 RCW.

Additional notes found at www.leg.wa.gov

88.32.235 Joint aid river and harbor improvements—Declared county purpose. Any and every such purpose as is mentioned in the foregoing section is hereby declared to be a county purpose. [1911 c 3 § 2; RRS § 9667. Formerly RCW 88.32.230, part.]

88.32.240 Joint planning for improvement of navigable river—Development of river valley. Any county together with any port district therein and first-class city in such county may participate jointly in surveys, investigations and studies for determining the location, type and design, with cost estimates, of a project plan for the improvement of any section or sections, within or without the limits of such city, of any navigable river emptying into tidal waters in such city, in aid of commerce and navigation and in aid of the comprehensive land use and development of such river valley, including present and future industrial and manufacturing uses. [1951 c 33 § 1.]

(2022 Ed.)

88.32.250 Joint planning for improvement of navigable river—Contract—Joint board to control and direct work. The joint participation shall be under a contract in writing made in the names of the county, port district, and city, under ordinance or resolution that provides the nature and extent of the work, the extent of the participation of the parties, the division of the costs, and method of payment. The costs shall be paid from any funds of the county, city, or port district designated in the contract.

The control and direction of the work shall be under a joint board consisting of one or more representatives of each party to the contract, as may be agreed upon by the parties. The representatives of the respective parties shall be appointed by the governing body of the respective parties. The joint board shall employ such help and services as may be required and fix the compensation to be paid for the services. The joint board shall consult with the corps of engineers, department of the army, and with the state secretary of transportation and the state director of ecology in furtherance of federal and state of Washington interests in the purposes of RCW 88.32.240 and 88.32.250. [1984 c 7 § 383; 1951 c 33 § 2.]

Chapter 88.40 RCW

TRANSPORT OF PETROLEUM PRODUCTS— FINANCIAL RESPONSIBILITY

Sections

88.40.005	Intent.
88.40.011	Definitions.
88.40.020	Financial responsibility for vessels—Department may update hazardous substances.
88.40.025	Financial responsibility for onshore or offshore facilities.
88.40.030	Financial responsibility—Documentation—Qualification as self-insurer—Certificate.
88.40.040	Financial responsibility—Enforcement of federal oil pollution act—Holder of certificate, duties—Director.
88.40.060	Violations—Appealable certificate.

Ocean resources management act: Chapter 43.143 RCW.

Oil or gas exploration in marine waters: RCW 90.58.550.

88.40.005 Intent. The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters. [1991 c 200 § 701; 1990 c 116 § 29; 1989 1st ex.s. c 2 § 1.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Additional notes found at www.leg.wa.gov

88.40.011 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barge" means a vessel that is not self-propelled.

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

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(4) "Certificate of financial responsibility" means an official written acknowledgment issued by the director or the director's designee that an owner or operator of a covered vessel or facility, or the owner of the oil, has demonstrated to the satisfaction of the director or the director's designee that the relevant entity has the financial ability to pay for costs and damages caused by an oil spill.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 70A.355 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(9) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(10) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(11) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

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

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

(14) "Oil" or "oils" means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with

wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

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

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

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

(17) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

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

(19) "Spill" means an unauthorized discharge of oil into the waters of the state.

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

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

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

(21) "Waters of the state" includes 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. [2022 c 202 § 1; 2020 c 20 § 1489. Prior: 2015 c 274 § 9; 2007 c 347 § 4; 2003 c 56 § 2; 2000 c 69 § 30; 1992 c 73 § 12; 1991 c 200 § 702.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2015 c 274: See note following RCW 90.56.005.

Finding—Intent—2003 c 56: "The legislature finds that the current financial responsibility laws for vessels are in need of update and revision. The legislature intends that, whenever possible, the standards set for Washington state provide the highest level of protection consistent with other western states and to ultimately achieve a more uniform system of financial responsibility on the Pacific Coast." [2003 c 56 § 1.]

Additional notes found at www.leg.wa.gov

88.40.020 Financial responsibility for vessels—Department may update hazardous substances. (1) The owner or operator of any barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall demonstrate financial responsibility in the amount of the greater of \$5,000,000, or \$300 per gross ton of such vessel.

(2)(a) Except as provided in (b) or (c) of this subsection, the owner or operator of a tank vessel that carries oil as cargo

in bulk shall demonstrate financial responsibility to pay at least \$1,000,000,000.

(b) The director by rule may establish a lesser standard of financial responsibility for tank vessels of 300 gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the tank vessel is capable of carrying. The director shall not set the standard for tank vessels of 300 gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a tank vessel to prove membership in such an organization.

(3)(a) The owner or operator of a cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay at least \$300,000,000. However, the owner or operator of a passenger vessel that transports passengers and vehicles between Washington state and a foreign country shall demonstrate financial responsibility to pay the greater of at least \$600 per gross ton or \$500,000.

(b) The owner or operator of a cargo vessel or passenger vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a cargo vessel or passenger vessel to prove membership in such an organization.

(4) The owner or operator of a fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts: (a) For a fishing vessel carrying predominantly nonpersistent product, \$133.40 per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or \$1,334,000, whichever is greater; or (b) for a fishing vessel carrying predominantly persistent product, \$400.20 per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or \$6,670,000, whichever is greater.

(5) In order to demonstrate financial responsibility as required under this section, the owner or operator of a vessel must, effective upon a date specified in rules adopted by the department, obtain a certificate of financial responsibility from the department, except as provided in RCW 88.40.040. The certificate of financial responsibility is conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, facility, or oil for purposes of determining liability under chapter 90.48 RCW.

(6) The requirements of this section do not apply to a covered vessel owned or operated by the federal government or by a state or local government.

(7) The department may by rule update the hazardous substances subject to the requirements of this section to maintain consistency with any changes to federal regulations adopted after 2003 to the hazardous substances identified under section 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980. [2022 c 202 § 2. Prior: 2003 c 91 § 3; 2003 c 56 § 3; 2000 c

(2022 Ed.)

69 § 31; 1992 c 73 § 13; 1991 c 200 § 703; 1990 c 116 § 31; 1989 1st ex.s. c 2 § 3.]

Finding—Intent—2003 c 56: See note following RCW 88.40.011.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Additional notes found at www.leg.wa.gov

88.40.025 Financial responsibility for onshore or offshore facilities. An onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department shall adopt a rule that considers such matters as the worst case amount of oil that could be spilled, as calculated in the applicant's oil spill contingency plan approved under chapter 90.56 RCW, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility. In order to demonstrate financial responsibility as required under this section, the owner or operator of a facility must obtain a certificate of financial responsibility from the department. The requirements of this section do not apply to an onshore or offshore facility owned or operated by the federal government or by the state or local government. [2022 c 202 § 3; 1991 c 200 § 704.]

Additional notes found at www.leg.wa.gov

88.40.030 Financial responsibility—Documentation—Qualification as self-insurer—Certificate. (1) The owner or operator of a vessel or facility that is required to demonstrate financial responsibility under this chapter may do so by any one of, or a combination of, the following methods acceptable to the department:

- (a) Evidence of insurance;
- (b) Surety bonds;
- (c) Guaranty;
- (d) Letter of credit;
- (e) Certificates of deposit;
- (f) Protection and indemnity club membership;
- (g) A certificate evidencing compliance with the requirements of another state's financial responsibility requirements or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter; or
- (h) Other evidence of financial responsibility deemed acceptable by the department.

(2) In addition to the options provided in subsection (1) of this section, the owner or operator of a vessel or facility may demonstrate financial responsibility under this chapter through qualification as a self-insurer. Rules adopted by the department that provide a self-insurance option for vessels and facilities must require the applicant to thoroughly demonstrate the security of the applicant's financial position, which may include a demonstration of a combination of the applicant's assets, cash flow, equity, liabilities, and bond ratings. The department may require a certificate applicant relying on qualification as a self-insurer to demonstrate a greater monetary amount of financial responsibility than is required

of applicants relying on a form of financial responsibility described in subsection (1) of this section. In adopting rules pertaining to self-insurance requirements, the department must establish standards that are no less protective than the qualification standards for self-insurance established in other jurisdictions with similar programs as of January 1, 2022, and from which Washington imports significant volumes of oil or petroleum products or to which Washington exports significant volumes of oil or petroleum products.

(3) Upon determining that the owner or operator of a vessel or facility has adequately demonstrated financial responsibility to the department, the department must issue a certificate of financial responsibility to the owner or operator of the vessel or facility.

(4) Any bond filed with the department to demonstrate financial responsibility under this chapter must be issued by a bonding company authorized to do business in the United States.

(5) A certificate of financial responsibility, or a certificate specified in subsection (1)(g) of this section, must be kept on any covered vessel and filed with the department at least 24 hours before entry of the vessel into the navigable waters of the state. The owner or operator of a covered vessel must notify the department but is not required to file a certificate of financial responsibility 24 hours before entry of the vessel into the navigable waters of the state, if the vessel has filed documentation of financial responsibility with the federal government, and the level of financial responsibility required by the federal government is the same as or exceeds state requirements.

(6) A certificate of financial responsibility issued by the department under this chapter or otherwise used for compliance with this chapter may not have a term greater than two years. [2022 c 202 § 4; 2000 c 69 § 32; 1991 c 200 § 705; 1990 c 116 § 32; 1989 1st ex.s. c 2 § 4.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Additional notes found at www.leg.wa.gov

88.40.040 Financial responsibility—Enforcement of federal oil pollution act—Holder of certificate, duties—

Director. (1) The owner or operator of a vessel is not required to demonstrate financial responsibility under this chapter prior to using any port or place in Washington or state waters when necessary to avoid injury to the vessel's crew or passengers. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the department to the United States coast guard.

(2) The department may enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act.

(3)(a)(i) The holder of a certificate under this chapter must notify the director of an oil spill or discharge in state waters consistent with chapters 90.48 and 90.56 RCW.

(ii) The holder of a certificate of financial responsibility for more than one covered vessel or facility must notify the director if it experiences a spill or spill from a vessel or facility in another jurisdiction for which it may be liable and

which may incur damages that exceed 15 percent of the financial resources reflected by the certificate.

(b) Upon notification of an oil spill or discharge or other potential liability by the owner or operator of a vessel or facility that holds a certificate of financial responsibility under (a) of this subsection, the director may reevaluate the validity of the certificate of financial responsibility under this chapter. The director must reevaluate the validity of a certificate of financial responsibility under this chapter upon notification of a spill for which the certificate holder may be liable and which may incur damages that exceed 25 percent of the financial resources reflected by the certificate. The director may suspend or revoke a certificate of financial responsibility if the director determines that, because of a spill, discharge, or other action or potential liability, the holder of the certificate is likely to no longer have the financial resources to both pay damages for the oil spill or discharge or other action or potential liability and have resources remaining available in an amount sufficient to meet the requirements of this chapter, effective 10 days after its determination.

(c) Upon a determination by the director under (a) of this subsection that a certificate has been suspended or revoked as a result of a spill, the owner or operator of a facility or vessel required to obtain a certificate of financial responsibility under this chapter may receive a new certificate of financial responsibility from the director upon a demonstration to the satisfaction of the director the amount of financial ability required pursuant to this chapter, as well as the financial ability to pay all reasonably estimated anticipated damages that arise or have arisen from the spill or spills that have occurred. The department must expeditiously review any applications from owners or operators whose certificates have been suspended or revoked by the department under this section. The department may issue a temporary certificate of financial responsibility to an owner or operator whose certificate has previously been revoked or suspended in order to allow the owner or operator to continue to operate a facility or vessel while the department evaluates a pending application from the owner or operator for a new certificate. It is in the interest of the state to issue and manage certificates of financial responsibility in a manner that does not create or contribute to delays in commerce for vessels and facilities subject to the requirements of this chapter. The department is directed to adopt rules to implement this chapter accordingly.

(4) An owner or operator of more than one vessel subject to the requirements of this chapter, more than one facility subject to the requirements of this chapter, or more than one vessel and facility subject to the requirements of this chapter, may:

(a) Obtain a single certificate of financial responsibility that applies to all of the owner's or operator's vessels and facilities. The department must base the terms of such a certificate upon the vessel or facility that represents the greatest financial risk in the event of a spill; or

(b) Obtain separate certificates that each apply to a subset of the owner's or operator's vessels or facilities, provided that each vessel or facility of the owner or operator is covered by at least one valid certificate. [2022 c 202 § 5; 2003 c 56 § 4; 2000 c 69 § 33; 1992 c 73 § 14; 1991 c 200 § 706; 1989 1st ex.s. c 2 § 5.]

Finding—Intent—2003 c 56: See note following RCW 88.40.011.

Additional notes found at www.leg.wa.gov

88.40.060 Violations—Appealable certificate. (1) Violations of the requirements of this chapter are subject to criminal penalties as provided in RCW 90.56.300 and civil penalties as provided in RCW 90.56.310.

(2) A determination by the department to issue, modify, suspend, revoke, or terminate a certificate issued under this chapter is appealable to the pollution control hearings board, as provided in RCW 43.21B.110(1)(c). [2022 c 202 § 6.]

Chapter 88.46 RCW

VESSEL OIL SPILL PREVENTION AND RESPONSE

Sections

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88.46.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

- (a) The additional protection provided by the measures;
- (b) The technological achievability of the measures; and
- (c) The cost of the measures.

(2)(a) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration:

(i) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and

(ii) Processes that are currently in use.

(b) In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

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

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

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

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

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.

(c) Except as provided under (b) of this subsection, a facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 70A.355 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

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

(12) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not

include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(13) "Oil" or "oils" means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

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

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

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

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

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

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

(19) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessels of opportunity response system to respond when needed and available to spills in a defined geographic area.

(20) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

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

(22) "Spill" means an unauthorized discharge of oil into the waters of the state.

(23) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

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

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

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

(25) "Umbrella plan holder" means a nonprofit corporation established consistent with this chapter for the purposes of providing oil spill response and contingency plan coverage.

(26) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(27) "Vessels of opportunity response system" means nondedicated boats and operators, including fishing and other vessels, that are under contract with and equipped by contingency plan holders to assist with oil spill response activities, including on-water oil recovery in the nearshore environment and the placement of oil spill containment booms to protect sensitive habitats.

(28) "Volunteer coordination system" means an oil spill response system that, before a spill occurs, prepares for the coordination of volunteers to assist with appropriate oil spill response activities, which may include shoreline protection and cleanup, wildlife recovery, field observation, light construction, facility maintenance, donations management, clerical support, and other aspects of a spill response.

(29) "Waters of the state" includes 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.

(30) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [2020 c 20 § 1490; 2015 c 274 § 2. Prior: 2011 c 122 § 1; prior: 2009 c 11 § 7; 2007 c 347 § 5; 2000 c 69 § 1; 1992 c 73 § 18; 1991 c 200 § 414.]

Effective date—2015 c 274: See note following RCW 90.56.005.

Findings—Intent—2009 c 11: See note following RCW 88.46.130.

Additional notes found at www.leg.wa.gov

88.46.020 Coordination with federal law. In carrying out the purposes of this chapter, including the adoption of rules for contingency plans, the director shall to the greatest extent practicable implement this chapter in a manner consistent with federal law. [2000 c 69 § 2; 1991 c 200 § 415.]

88.46.030 Tank vessel inspection programs. (1) All tank vessels entering the navigable waters of the state shall be subject to inspection to assure that they comply with all applicable federal and state standards.

(2) The department shall review the tank vessel inspection programs conducted by the United States coast guard and other federal agencies to determine if the programs as actually operated by those agencies provide the best achievable protection to the waters of the state. If the department determines that the tank vessel inspection programs conducted by these agencies are not adequate to protect the state's waters, it shall adopt rules for a state tank vessel inspection program. The department shall adopt rules providing for a random review of individual tank vessel inspections conducted by federal agencies. The department may accept a tank vessel inspection report issued by another state if that

state's tank vessel inspection program is determined by the department to be at least as protective of the public health and the environment as the program adopted by the department.

(3) The state tank vessel inspection program shall ensure that all tank vessels entering state waters are inspected at least annually. To the maximum extent feasible, the state program shall consist of the monitoring of existing tank vessel inspection programs conducted by the federal government. The department shall consult with the coast guard regarding the tank vessel inspection program. Any tank vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port.

(4) Any violation of coast guard or other federal regulations uncovered during a state tank vessel inspection shall be immediately reported to the appropriate agency. [2000 c 69 § 3; 1991 c 200 § 416.]

88.46.040 Prevention plans. (1) The owner or operator for each tank vessel shall prepare and submit to the department an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the department in the time and manner directed by the department. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 88.46.060. The department may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this chapter. The department, by rule, shall establish standards for spill prevention plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) This section does not authorize the department to modify the terms of a collective bargaining agreement. [2000 c 69 § 4; 1991 c 200 § 417.]

88.46.050 Vessel screening. (1) In order to ensure the safety of marine transportation within the navigable waters of the state and to protect the state's natural resources, the department shall adopt rules for determining whether cargo vessels and passenger vessels entering the navigable waters of the state pose a substantial risk of harm to the public health and safety and the environment.

(2) The rules may include:

(a) Examining available information sources for evidence that a cargo or passenger vessel may pose a substantial risk to safe marine transportation or the state's natural resources. Information sources may include: Vessel casualty lists, United States coast guard casualty reports, maritime insurance ratings, the index of contingency plans compiled by the department of ecology, other data gathered by the maritime commission, or any other resources;

(b) Requesting the United States coast guard to deny a cargo vessel or passenger vessel entry into the navigable waters of the state, if the vessel poses a substantial environmental risk;

(c) Notifying the state's spill response system that a cargo or passenger vessel entering the state's navigable waters poses a substantial environmental risk;

(d) Inspecting a cargo or passenger vessel that may pose a substantial environmental risk, to determine whether the vessel complies with applicable state or federal laws. Any vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port; and

(e) Enforcement actions. [2000 c 69 § 5; 1992 c 73 § 19; 1991 c 200 § 418.]

Additional notes found at www.leg.wa.gov

88.46.060 Contingency plans. (1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

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

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

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

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

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

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

(g) Describe important features of the surrounding environment, including fish habitat, water column species and subsurface resources, wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities, that are: (i) Based on information documented in geographic response plans and area contingency plans, as required under RCW 90.56.210; or (ii) for areas without geographic response plans or area contingency plans, existing practices protecting these resources used for similar areas. The departments of ecology, fish and wildlife, natural resources, and archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

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

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

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

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

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

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

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

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

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

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

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

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [2018 c 262 § 201; 2011 c 122 § 6; 2005 c 78 § 2; 2000 c 69 § 6; 1995 c 148 § 3; 1992 c 73 § 20; 1991 c 200 § 419.]

Findings—Intent—Report—2018 c 262: See notes following RCW 82.23B.010.

Additional notes found at www.leg.wa.gov

(2022 Ed.)

88.46.0601 Contingency plans—Department to update rules. By December 31, 2019, consistent with the authority under RCW 88.46.060, the department must update rules for contingency plans to require:

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

(2) Standards for best achievable protection for situations involving the oils in subsection (1) of this section. [2018 c 262 § 202.]

Findings—Intent—Report—2018 c 262: See notes following RCW 82.23B.010.

88.46.062 Nonprofit corporation providing contingency plan—Findings—Termination of maritime commission. (1) The legislature finds that there is a need to continue to provide oil spill response and contingency plan coverage for vessels that do not have their own contingency plans that transit the waters of this state. A nonprofit corporation shall be established for the sole purpose of providing oil spill response and contingency plan coverage in compliance with RCW 88.46.060.

(2) The maritime commission may conduct activities and make expenditures necessary for the transition of services presently provided by the commission and its contractors to the nonprofit corporation established pursuant to this section.

(3) Once the nonprofit corporation is established and the transfers under RCW 88.46.063 are completed, the maritime commission may cease operation. [1995 c 148 § 1.]

Additional notes found at www.leg.wa.gov

88.46.063 Nonprofit corporation providing contingency plan—Transfer of functions and assets from maritime commission. All reports, documents, surveys, books, records, files, papers, written materials, tangible property, and assets, including contracts and assessment moneys held by the maritime commission shall be transferred to the nonprofit corporation created under RCW 88.46.062. Funds transferred under this section shall be used for the sole purpose of providing oil spill response and contingency plan coverage and related activities in compliance with RCW 88.46.060. No funds may be transferred under this section until all liabilities of the maritime commission have been provided for or satisfied. All liabilities not provided for or satisfied by the maritime commission before cessation of its operations shall be transferred to the nonprofit corporation at the time the maritime commission's assets are transferred to the corporation. [1995 c 148 § 2.]

Additional notes found at www.leg.wa.gov

88.46.065 Nonprofit corporation providing contingency plan—Liability limited. A nonprofit corporation established for the sole purpose of providing contingency plan coverage for any vessel in compliance with RCW 88.46.060 is entitled to liability protection as provided in this section. Obligations incurred by the corporation and any other liabilities or claims against the corporation may be enforced only against the assets of the corporation, and no liability for the debts or actions of the corporation exists against a director, officer, member, employee, incident com-

mander, agent, contractor, or subcontractor of the corporation in his or her individual or representative capacity. Except as otherwise provided in this chapter, neither the directors, officers, members, employees, incident commanders, or agents of the corporation, nor the business entities by whom they are regularly employed may be held individually responsible for discretionary decisions, errors in judgment, mistakes, or other acts, either of commission or omission, that are directly related to the operation or implementation of contingency plans, other than for acts of gross negligence or willful or wanton misconduct. The corporation may insure and defend and indemnify the directors, officers, members, employees, incident commanders, and agents to the extent permitted by chapters 23B.08 and 24.03A RCW. This section does not alter or limit the responsibility or liability of any person for the operation of a motor vehicle. [2021 c 176 § 5251; 1994 s.p.s. c 9 § 853.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

Additional notes found at www.leg.wa.gov

88.46.068 Adequacy of contingency plans—Practice drills—Rules. The department shall by rule adopt procedures to determine the adequacy of contingency plans approved under RCW 88.46.060. The rules shall require random practice drills without prior notice that will test the adequacy of the responding entities. The rules may provide for unannounced practice drills of individual contingency plans. The department shall review and publish a report on the drills, including an assessment of response time and available equipment and personnel compared to those listed in the contingency plans relying on the responding entities, and requirements, if any, for changes in the plans or their implementation. The department may require additional drills and changes in arrangements for implementing approved plans which are necessary to ensure their effective implementation. [2006 c 316 § 4.]

Additional notes found at www.leg.wa.gov

88.46.070 Enforcement of prevention plans and contingency plans—Determination of violation—Order or directive—Notice. (1) The provisions of prevention plans and contingency plans approved by the department pursuant to this chapter shall be legally binding on those persons submitting them to the department and on their successors, assigns, agents, and employees. The superior court shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the department. The department may issue an order pursuant to chapter 34.05 RCW requiring compliance with a contingency plan or a prevention plan and may impose administrative penalties for failure to comply with a plan.

(2) If the director believes a person has violated or is violating or creates a substantial potential to violate the provisions of this chapter, the director shall notify the person of the director's determination by registered mail. The determination shall not constitute an order or directive under RCW 43.21B.310. Within thirty days from the receipt of notice of the determination, the person shall file with the director a full report stating what steps have been and are being taken to comply with the determination of the director. The director shall issue an order or directive, as the director deems appro-

priate under the circumstances, and shall notify the person by registered mail.

(3) If the director believes immediate action is necessary to accomplish the purposes of this chapter, the director may issue an order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (2) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed. [2000 c 69 § 7; 1992 c 73 § 21; 1991 c 200 § 420.]

Additional notes found at www.leg.wa.gov

88.46.073 Violations of rules—Enforcement. If the director believes a person has violated or is violating or creates a substantial potential to violate the provisions of any rules adopted under this chapter, the director may institute such actions as authorized under RCW 88.46.070 (2) and (3). [2006 c 316 § 3.]

Additional notes found at www.leg.wa.gov

88.46.080 Unlawful operation of a covered vessel—Penalties—Evidence of approved contingency plan or prevention plan. (1) Except as provided in subsection (3) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state a covered vessel without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2)(a) The first conviction under this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction is a class C felony under chapter 9A.20 RCW.

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

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

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

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

(4) A person may rely on a copy of the statement issued by the department pursuant to RCW 88.46.060 as evidence that a vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 that a vessel has an approved prevention plan.

(5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the director or a court in pursuance thereof is guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation. [2011 c 96 § 59; 2003 c 53 § 417; 2000 c 69 § 8; 1992 c 73 § 22; 1991 c 200 § 421.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

88.46.090 Unlawful acts—Civil penalty. (1) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to enter the waters of the state without an approved contingency plan required by RCW 88.46.060, a spill prevention plan required by RCW 88.46.040, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The department may deny entry onto the waters of the state to any covered vessel that does not have a required contingency or spill prevention plan or financial responsibility.

(2) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to transfer oil to or from an onshore or offshore facility that does not have an approved contingency plan required under RCW 90.56.210, a spill prevention plan required by RCW 90.56.200, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

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

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

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

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

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

(5) Any person may rely on a copy of the statement issued by the department to RCW 88.46.060 as evidence that the vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 as evidence that the vessel has an approved spill prevention plan.

(6) Except for violations of subsection (1) or (2) of this section, any person who violates the provisions of this chapter or rules or orders adopted or issued pursuant thereto, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for each violation. Each violation is a separate offense, and in case of a continuing violation, every day's continuance is a separate 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 subsection and subject to penalty. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and the environment in addition to other relevant factors. The penalty shall be imposed pursuant to the procedures set forth in RCW 43.21B.300. [2000 c 69 § 9; 1992 c 73 § 23; 1991 c 200 § 422.]

(2022 Ed.)

Additional notes found at www.leg.wa.gov

88.46.100 Notification of vessel emergencies resulting in discharge of oil. In addition to any notifications that the owner or operator of a covered vessel must provide to the United States coast guard regarding a vessel emergency, the owner or operator of a covered vessel must notify the state of any vessel emergency that results in the discharge or substantial threat of discharge of oil to state waters or that may affect the natural resources of the state within one hour of the onset of that emergency. The purpose of this notification is to enable the department to coordinate with the vessel operator, contingency plan holder, and the United States coast guard to protect the public health, welfare, and natural resources of the state and to ensure all reasonable spill preparedness and response measures are in place prior to a spill occurring. [2011 c 122 § 8; 2000 c 69 § 10; 1995 c 391 § 9; 1991 c 200 § 423.]

Additional notes found at www.leg.wa.gov

88.46.120 Tank vessel response equipment standards. The department may adopt rules including but not limited to standards for spill response equipment to be maintained on tank vessels. The standards adopted under this section shall be consistent with spill response equipment standards adopted by the United States coast guard. [2000 c 69 § 11; 1991 c 200 § 425.]

88.46.125 Emergency response system—Funding—Intent—Finding. (1) It is the intent of the legislature to provide the various components of the maritime industry with the tools necessary to satisfy the requirements of RCW 88.46.130 in the most cost-effective manner. In doing, the legislature encourages, but does not mandate, the maritime industry to unite behind their mutual interests and responsibilities and identify or form a single umbrella organization that allows all affected covered vessels to equitably share the costs inherent in the implementation of RCW 88.46.130.

(2) The legislature further finds that, given the broad range of covered vessel types and sizes, an equitable sharing of the costs of implementing RCW 88.46.130 will likely mean that not all covered vessels will be responsible for providing the same amount of funding. Any umbrella organization that is identified or formed to satisfy the requirements of chapter 11, Laws of 2009 should consider the multitude of factors that comprise the risk of vessel emergencies and the likelihood of initiating a response from the emergency response vessel required by RCW 88.46.130.

(3) The legislature intends to provide the authority for any operator of a covered vessel that feels as though an umbrella organization that is identified, formed, or proposed for formation does not equitably share the costs of compliance with RCW 88.46.130 with the covered vessel in question, or the class of vessel to which the covered vessel belongs, to either contract directly with an adequate emergency response vessel or form or join a discreet umbrella organization representing the appropriate segment of the maritime industry. However, if the operator of a covered vessel chooses not to join a proposed or existing umbrella organization, or finds that negotiations leading to the formation of an umbrella organization are not progressing in an adequate

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manner, the legislature requests, but does not require, that the vessel operator contact the department and provide official notice of their concern as to how the umbrella group in question failed in establishing an equitable cost-share strategy.

(4) The department shall collect and maintain all notices received under this section and shall summarize any reports received by the operators of covered vessels and report the summation to the appropriate committees of the legislature upon request by a legislative committee. [2009 c 11 § 4.]

Findings—Intent—2009 c 11: See note following RCW 88.46.130.

88.46.130 Emergency response system. (1) By July 1, 2010, the owner or operator of a covered vessel transiting to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks light, shall establish and fund an emergency response system that provides for an emergency response towing vessel to be stationed at Neah Bay.

(2) Any emergency response towing vessel provided under this section must:

(a) Be available to serve vessels in distress in the Strait of Juan de Fuca and off of the western coast of the state from Cape Flattery light in Clallam county south to Cape Disappointment light in Pacific county; and

(b) Meet the requirements specified in RCW 88.46.135.

(3) In addition to meeting requirements specified in RCW 88.46.060, contingency plans for covered vessels operating in the Strait of Juan de Fuca must provide for the emergency response system required by this section. Documents describing how compliance with this section will be achieved must be submitted to the department by December 1, 2009. An initial contingency plan submitted to the department after December 1, 2009, must be accompanied by documents demonstrating compliance with this section.

(4) The requirements of this section are met if:

(a) Owners or operators of covered vessels provide an emergency response towing vessel that complies with subsection (2) of this section; or

(b) The United States government implements a system of protective measures that the department determines to be substantially equivalent to the requirements of this section as long as the emergency response towing vessel required by this section is stationed at Neah Bay. [2009 c 11 § 2; 1991 c 200 § 426.]

Findings—Intent—2009 c 11: "(1) The legislature finds that the northern coast of the Olympic Peninsula and Washington's west coast from Cape Flattery south to Cape Disappointment:

(a) Possess uniquely rich and highly vulnerable biological, marine, and cultural resources supporting some of the nation's most valuable commercial, sport, and tribal fisheries;

(b) Sustain endangered species and numerous species of vulnerable marine mammals; and

(c) Are internationally recognized through extraordinary designations including a world heritage site, a national park, a national marine sanctuary, national wildlife refuges, a maritime area off-limits to shipping, and tribal lands and fishing areas of federally recognized coastal Indian tribes.

(2) The legislature further finds that these coasts are periodically beset by severe storms with dangerously high seas and by strong currents, obscuring fog, and other conditions that imperil vessels and crews. When vessels suffer damage or founder, the coasts are likewise imperiled, particularly if oil is spilled into coastal waters. Oil spills pose great potential risks to treasured resources.

(3) The legislature further finds that Washington has maintained an emergency response tug at Neah Bay since 1999 to protect state waters from maritime casualties and resulting oil spills. The tug is necessary because of

the peculiarities of local waters that call for special precautionary measures. The tug has demonstrated its necessity and capability by responding to forty-two vessels in need of assistance. State funding for the tug is scheduled to end June 30, 2009.

(4) The legislature intends that the maritime industry should provide and fully fund at least one year-round emergency response tug at Neah Bay, with necessary logistical and operational support, and that any tug provided by the maritime industry pursuant to this act should meet or exceed technical performance requirements specified in the state's fiscal year 2009 contract for the Neah Bay emergency response tug." [2009 c 11 § 1.]

88.46.135 Emergency response system—Vessel planning standards. (1) An emergency response towing vessel that is a part of the emergency response system required by RCW 88.46.130 must be stationed at Neah Bay and be available to respond to vessel emergencies. The towing vessel must be able to satisfy the following minimum planning standards:

(a) Be underway within twenty minutes of a decision to deploy;

(b) Be able to deploy at any hour of any day to provide emergency assistance within the capabilities of the minimum planning standards and be safely manned to remain underway for at least forty-eight hours;

(c) In severe weather conditions, be capable of making up to, stopping, holding, and towing a drifting or disabled vessel of one hundred eighty thousand metric dead weight tons;

(d) In severe weather conditions, be capable of holding position within one hundred feet of another vessel;

(e) Be equipped with and maneuverable enough to effectively employ a ship anchor chain recovery hook and line throwing gun;

(f) Be capable of a bollard pull of at least seventy short tons; and

(g) Be equipped with appropriate equipment for:

(i) Damage control patching;

(ii) Vessel dewatering;

(iii) Air safety monitoring; and

(iv) Digital photography.

(2) The requirements of this section may be fulfilled by one or more private organizations or nonprofit cooperatives providing umbrella coverage under contract to single or multiple covered vessels.

(3)(a) The department must be authorized to contract with the emergency response towing vessel, at the discretion of the department, in response to a potentially emerging maritime casualty or as a precautionary measure during severe storms. All instances of use by the department must be paid for by the department.

(b) Covered vessels that are required to provide an emergency response towing vessel under RCW 88.46.130 may not restrict the emergency response towing vessel from responding to distressed vessels that are not covered vessels.

(4) Nothing in this section limits the ability of a covered vessel to contract with an emergency response towing vessel with capabilities that exceed the minimum capabilities provided for a towing vessel in this section.

(5) The covered vessel owner or operator shall submit a written report to the department as soon as practicable regarding an emergency response system deployment, including photographic documentation determined by the department to be of adequate quality. The report must provide a detailed

description of the incident necessitating a response and the actions taken to render assistance under the emergency response system. [2009 c 11 § 3.]

Findings—Intent—2009 c 11: See note following RCW 88.46.130.

88.46.139 Emergency response system—Adequacy determination—Practice drills. (1) As part of reviewing contingency plans submitted under RCW 88.46.130, the department may determine the adequacy of the emergency response system required in RCW 88.46.130 through practice drills that test compliance with the requirements of RCW 88.46.135. Practice drills may be conducted without prior notice.

(2) Each successful response to a vessel emergency may be considered by the department to satisfy a drill covering this portion of a covered vessel's contingency plan.

(3) Drills of the emergency response system required in RCW 88.46.130 must emphasize the system's ability to respond to a potentially worst case vessel emergency scenario. [2009 c 11 § 6.]

Findings—Intent—2009 c 11: See note following RCW 88.46.130.

88.46.160 Refueling, bunkering, or lightering operations—Availability of containment and recovery equipment—Rules. Any person or facility conducting ship refueling and bunkering operations, or the lightering of petroleum products, and any person or facility transferring oil between an onshore or offshore facility and a tank vessel shall have containment and recovery equipment readily available for deployment in the event of the discharge of oil into the waters of the state and shall deploy the containment and recovery equipment in accordance with standards adopted by the department. All persons conducting refueling, bunkering, or lightering operations, or oil transfer operations shall be trained in the use and deployment of oil spill containment and recovery equipment. The department shall adopt rules as necessary to carry out the provisions of this section by June 30, 2006. The rules shall include standards for the circumstances under which containment equipment should be deployed including standards requiring deployment of containment equipment prior to the transfer of oil when determined to be safe and effective by the department. The department may require a person or facility to employ alternative measures including but not limited to automatic shutoff devices and alarms, extra personnel to monitor the transfer, or containment equipment that is deployed quickly and effectively. The standards adopted by rule must be suitable to the specific environmental and operational conditions and characteristics of the facilities that are subject to the standards, and the department must consult with the United States coast guard with the objective of developing state standards that are compatible with federal requirements applicable to the activities covered by this section. An onshore or offshore facility shall include the procedures used to contain and recover discharges in the facility's contingency plan. It is the responsibility of the person providing bunkering, refueling, or lightering services to provide any containment or recovery equipment required under this section. This section does not apply to a person operating a ship for personal pleasure or for recreational purposes. [2004 c 226 § 3; 2000 c 69 § 12; 1991 c 200 § 438; 1987 c 479 § 2. Formerly RCW 90.48.510.]

(2022 Ed.)

88.46.165 Oil transfers—Scope of rules—Reporting volumes of oil transferred. (1) The department's rules authorized under RCW 88.46.160 and this section shall be scaled to the risk posed to people and to the environment, and be categorized by type of transfer, volume of oil, frequency of transfers, and such other risk factors as identified by the department.

(2) The rules may require prior notice be provided before an oil transfer, regulated under this chapter, occurs in situations defined by the department as posing a higher risk. The notice may include the time, location, and volume of the oil transfer, as well as the region per bill of lading, gravity as measured by standards developed by the American petroleum institute, and type of crude oil. The rules may not require prior notice when marine fuel outlets are transferring less than three thousand gallons of oil in a single transaction to a ship that is not a covered vessel and the transfers are scheduled less than four hours in advance.

(3) The department may require semiannual reporting of volumes of oil transferred to ships by a marine fuel outlet.

(4) The rules may require additional measures to be taken in conjunction with the deployment of containment equipment or with the alternatives to deploying containment equipment. However, these measures must be scaled appropriately to the risks posed by the oil transfer.

(5) The rules shall include regulations to enhance the safety of oil transfers over water originating from vehicles transporting oil over private roads or highways of the state. [2019 c 289 § 8; 2006 c 316 § 1.]

Finding—Intent—2019 c 289: See note following RCW 88.16.190.

Additional notes found at www.leg.wa.gov

88.46.167 Inspection authority—Department to conduct specialized reviews and prioritize adding capacity. In addition to other inspection authority provided for in this chapter and chapter 90.56 RCW, the department may conduct inspections of oil transfer operations regulated under RCW 88.46.160 or 88.46.165. The department must conduct specialized reviews and prioritize adding capacity for the inspection of oil transfer operations where oils, depending on their qualities, weathering, environmental factors, and method of discharge, may submerge or sink in water. [2018 c 262 § 205; 2006 c 316 § 2.]

Findings—Intent—Report—2018 c 262: See notes following RCW 82.23B.010.

Additional notes found at www.leg.wa.gov

88.46.170 Field operations program—Coordination with United States coast guard. (1) The department shall establish a field operations program to enforce the provisions of this chapter. The field operations program shall include, but is not limited to, the following elements:

- (a) Education and public outreach;
- (b) Review of lightering and bunkering operations to prevent oil spills;
- (c) Evaluation and boarding of tank vessels for compliance with prevention plans prepared pursuant to this chapter;
- (d) Evaluation and boarding of covered vessels that may pose a substantial risk to the public health, safety, and the environment;

(e) Evaluation and boarding of covered vessels for compliance with rules adopted by the department to implement recommendations of regional marine safety committees; and

(f) Collection of vessel information to assist in identifying vessels which pose a substantial risk to the public health, safety, and the environment.

(2) The department shall coordinate the field operations program with similar activities of the United States coast guard. To the extent feasible, the department shall coordinate its boarding schedules with those of the United States coast guard to reduce the impact of boardings on vessel operators, to more efficiently use state and federal resources, and to avoid duplication of United States coast guard inspection operations.

(3) In developing and implementing the field operations program, the department shall give priority to activities designed to identify those vessels which pose the greatest risk to the waters of the state. The department shall consult with the marine transportation industry, individuals concerned with the marine environment, other state and federal agencies, and the public in developing and implementing the program required by this section. [2000 c 69 § 13; 1993 c 162 § 1.]

Additional notes found at www.leg.wa.gov

88.46.180 Planning standards for equipment—Updates. (1) The department shall evaluate and update planning standards for oil spill response equipment required under contingency plans required by this chapter, including aerial surveillance, in order to ensure access in the state to equipment that represents the best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety, as determined by the incident commander or the unified command.

(2) The department shall by rule update the planning standards at five-year intervals to ensure the maintenance of best available protection over time. Rule updates to covered nontank vessels shall minimize potential impacts to discretionary cargo moved through the state. [2015 c 274 § 23; 2011 c 122 § 2.]

Effective date—2015 c 274: See note following RCW 90.56.005.

88.46.190 Rule making for vessels of opportunity response system. By December 31, 2012, the department shall complete rule making for purposes of improving the effectiveness of the vessels of opportunity [response] system to participate in spill response. [2011 c 122 § 3.]

88.46.200 Advisory marine safety committees—Recommendations. The director may appoint ad hoc, advisory marine safety committees to solicit recommendations and technical advice concerning vessel traffic safety. The department may implement recommendations made in regional marine safety plans that are approved by the department and over which the department has authority. If federal authority or action is required to implement the recommendations, the department may petition the appropriate agency or the congress. [2000 c 69 § 14; 1994 sp.s. c 9 § 854.]

Additional notes found at www.leg.wa.gov

88.46.210 Volunteer coordination system. (1) The department shall establish a volunteer coordination system. The volunteer coordination system may be included as a part of the state's overall oil spill response strategy, and may be implemented by local emergency management organizations, in coordination with any analogous federal efforts, to supplement the state's timely and effective response to spills.

(2) The department should consider how the volunteer coordination system will:

(a) Coordinate with the incident commander or unified command of an oil spill and any affected local governments to receive, screen, and register volunteers who are not affiliated with the emergency management organization or a local nongovernmental organization;

(b) Coordinate the management of volunteers with local nongovernmental organizations and their affiliated volunteers;

(c) Coordinate appropriate response operations with different classes of volunteers, including pretrained volunteers and convergent volunteers, to fulfill requests by the department or an oil spill incident commander or unified command;

(d) Coordinate public outreach regarding the need for and use of volunteers;

(e) Determine minimum participation criteria for volunteers; and

(f) Identify volunteer training requirements and, if applicable, provide training opportunities for volunteers prior to an oil spill response incident.

(3) An act or omission by any volunteer participating in a spill response or training as part of a volunteer coordination system, while engaged in such activities, does not impose any liability on any state agency, any participating local emergency management organization, or the volunteer for civil damages resulting from the act or omission. However, the immunity provided under this subsection does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct.

(4) The decisions to utilize volunteers in an oil spill response, which volunteers to utilize, and to determine which response activities are appropriate for volunteer participation in any given response are the sole responsibilities of the designated incident commander or unified command. [2011 c 122 § 4.]

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

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

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

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

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

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

(5) The department shall, when practicable, coordinate with applicable federal agencies, the state of Oregon, and the province of British Columbia to establish a drill incident command and to help ensure that lessons learned from the drills are evaluated with the goal of improving the underlying contingency plans. [2018 c 262 § 203; 2011 c 122 § 5.]

Findings—Intent—Report—2018 c 262: See notes following RCW 82.23B.010.

88.46.230 Umbrella plan holders. (1) When submitting a contingency plan to the department under RCW 88.46.060, any umbrella plan holder that enrolls both tank vessels and covered vessels that are not tank vessels must, in addition to satisfying the other requirements of this chapter, specify:

(a) The maximum worst case discharge volume from covered vessels that are not tank vessels to be covered by the umbrella plan holder's contingency plan; and

(b) The maximum worst case discharge volume from tank vessels to be covered by the umbrella plan holder's contingency plan.

(2) Any owner or operator of a covered vessel having a worst case discharge volume that exceeds the maximum volume covered by an approved umbrella plan holder may enroll with the umbrella plan holder if the owner or operator of the covered vessel maintains an agreement with another entity to provide supplemental equipment sufficient to meet the requirements of this chapter.

(3) The department must approve an umbrella plan holder that covers vessels having a worst case discharge volume that exceeds the maximum volume if:

(a) The department determines that the umbrella plan holder should be approved for a lower discharge volume;

(b) The vessel owner or operator provides documentation to the umbrella plan holder authorizing the umbrella plan holder to activate additional resources sufficient to meet the worst case discharge volume of the vessel; and

(c) The department has previously approved a plan that provides access to the same resources identified in (3)(b) [(b) of this subsection] to meet the requirements of this chapter for worst case discharge volumes equal to or greater than the worst case discharge volume of the vessel.

(4) The umbrella plan holder must describe in the plan how the activation of additional resources will be implemented and provide the department the ability to review and inspect any documentation that the umbrella plan holder relies on to enroll a vessel with a worst case discharge that exceeds the plan's maximum volume. [2011 c 122 § 7.]

(2022 Ed.)

88.46.250 Model—Assessment of oil spill risks, emergency response towing vessel—Report. (1) The department must develop and maintain a model to quantitatively assess current and potential future risks of oil spills from covered vessels in Washington waters, as it conducts ongoing oil spill risk assessments. The department must consult with the United States coast guard, potentially affected federally recognized Indian treaty fishing tribes, other federally recognized treaty tribes with potentially affected interests, and stakeholders to: Determine model assumptions; develop scenarios to show the likely impacts of changes to model assumptions, including potential changes in vessel traffic, commodities transported, and vessel safety and risk reduction measures; and update the model periodically.

(2) Utilizing the model pursuant to subsection (1) of this section, the department must quantitatively assess whether an emergency response towing vessel serving Haro Strait, Boundary Pass, Rosario Strait, and connected navigable waterways will reduce oil spill risk. The department must report its findings to the legislature by September 1, 2023. [2019 c 289 § 4.]

Finding—Intent—2019 c 289: See note following RCW 88.16.190.

88.46.260 Vessel traffic patterns, oil spill risks—Effects of rules—Board of pilotage commissioners and department to consider—Notice. (1) By October 1, 2028, and no less often than every ten years thereafter, the board of pilotage commissioners and the department must together consider:

(a) The effects of rules established under RCW 88.16.190 and 88.16.260 on vessel traffic patterns and oil spill risks in the Salish Sea. Factors considered must include modeling developed by the department under RCW 88.46.250 and may include: (i) Vessel traffic data; (ii) vessel accident and incident data, such as incidents where tug escorts or an emergency response towing vessel acted to reduce spill risks; and (iii) consultation with the United States coast guard, potentially affected federally recognized Indian treaty fishing tribes, other federally recognized treaty tribes with potentially affected interests, and stakeholders; and

(b) Whether experienced or forecasted changes to vessel traffic patterns or oil spill risk in the Salish Sea necessitate an update to the tug escort rules adopted under RCW 88.16.260.

(2) In the event that the board of pilotage commissioners determines that updates are merited to the rules, the board must notify the appropriate standing committees of the house of representatives and the senate, and must thereafter adopt rules consistent with the requirements of RCW 88.16.260, including the consultation process outlined in RCW 88.16.260(6). [2019 c 289 § 5.]

Finding—Intent—2019 c 289: See note following RCW 88.16.190.

88.46.901 Effective dates—1991 c 200. See RCW 90.56.901.

88.46.921 Office of marine safety abolished. The office of marine safety is hereby abolished and its powers, duties, and functions are hereby transferred to the department of ecology. All references to the administrator or office of marine safety in the Revised Code of Washington shall be

construed to mean the director or department of ecology.
[1991 c 200 § 430.]

Additional notes found at www.leg.wa.gov

88.46.926 Apportionments of budgeted funds. If apportionments of budgeted funds are required because of the transfers directed by *RCW 88.46.922 through 88.46.925, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.
[1991 c 200 § 435.]

***Reviser's note:** (1) RCW 88.46.922 was repealed by 2000 c 69 § 37.
(2) RCW 88.46.924 and 88.46.925 were decodified by 2000 c 69 § 36.

Additional notes found at www.leg.wa.gov