

House Bill 2064

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Environmental Quality)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Environmental Quality Commission to adopt rules applying certain oil spill prevention and emergency response planning requirements to high hazard train routes in this state.

Defines "high hazard train route" and "listed sensitive area" for purposes of contingency plans.

Requires railroads that own or operate high hazard train routes to annually submit financial responsibility statements to Department of Environmental Quality.

Requires department to levy and collect annual assessment equal to \$_____ per year. Requires railroads that own and operate high hazard train routes to pay share of annual assessment proportionate to high hazard train route track miles operated by railroads.

Establishes High Hazard Train Route Oil Spill Prevention Fund. Requires moneys collected to be deposited in High Hazard Train Route Oil Spill Prevention Fund. Prescribes uses of fund.

Becomes operative January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to safe transportation of oil; creating new provisions; amending ORS 468B.300, 468B.305,
3 468B.340, 468B.345, 468B.355, 468B.360, 468B.365, 468B.385, 468B.410, 468B.412 and 468B.495; and
4 prescribing an effective date.

5 **Be It Enacted by the People of the State of Oregon:**

CONTINGENCY PLANNING

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9 **SECTION 1.** ORS 468B.300 is amended to read:

10 468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500:

11 (1) "Bulk" means material stored or transported in loose, unpackaged liquid, powder or granular
12 form capable of being conveyed by a pipe, bucket, chute or belt system.

13 (2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, of 300
14 gross tons or more. "Cargo vessel" does not include a vessel used solely for commercial fish har-
15 vesting.

16 (3) "Commercial fish harvesting" means taking food fish with any gear unlawful for angling un-
17 der ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food
18 fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or
19 trade, in commercial channels.

20 (4) "Contingency plan" means an oil spill prevention and emergency response plan required un-
21 der ORS 468B.345.

22 (5) "Covered vessel" means a tank vessel, cargo vessel, passenger vessel or dredge vessel.

23 (6) "Damages" includes damages, costs, losses, penalties or attorney fees of any kind for which
24 liability may exist under the laws of this state resulting from, arising out of or related to the dis-
25 charge or threatened discharge of oil.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (7) "Discharge" means any emission other than natural seepage of oil, whether intentional or
2 unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emit-
3 ting, emptying or dumping oil.

4 (8) "Dredge vessel" means a self-propelled vessel of 300 or more gross tons that is equipped for
5 regularly engaging in dredging of submerged and submersible lands.

6 (9) "Exploration facility" means a platform, vessel or other offshore facility used to explore for
7 oil in the navigable waters of the state. "Exploration facility" does not include platforms or vessels
8 used for stratigraphic drilling or other operations that are not authorized or intended to drill to a
9 producing formation.

10 (10) "Facility" means a pipeline or any structure, group of structures, equipment or device, other
11 than a vessel that transfers oil over navigable waters of the state, that is used for producing, stor-
12 ing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or
13 transporting 10,000 or more gallons of oil. "Facility" does not include:

14 (a) A railroad car, motor vehicle or other rolling stock while transporting oil over the highways
15 or rail lines of this state;

16 (b) An underground storage tank regulated by the Department of Environmental Quality or a
17 local government under ORS 466.706 to 466.882 and 466.994; or

18 (c) A marina, or a public fueling station, that is engaged exclusively in the direct sale of fuel,
19 or any other product used for propulsion, to a final user of the fuel or other product.

20 (11) "Federal on-scene coordinator" means the federal official predesignated by the United
21 States Environmental Protection Agency or the United States Coast Guard to coordinate and direct
22 federal responses or the official designated by the lead agency to coordinate and direct removal
23 under the National Contingency Plan.

24 (12) "Hazardous material" has the meaning given that term in ORS 466.605.

25 (13) **"High hazard train route" means a section of rail lines in this state over which trains**
26 **operate that, in a single train, transport:**

27 (a) **20 or more tank railroad cars loaded with oil that are in a continuous block; or**

28 (b) **35 or more tank railroad cars loaded with oil that are spread throughout the entirety**
29 **of the rolling stock, not including the locomotive, that make up the train.**

30 (14) **"Listed sensitive area" means an area or location listed as an area of special eco-**
31 **nomical or environmental importance in an Area Contingency Plan or Sub-Area Contingency**
32 **Plan prepared and published pursuant to section 311(j) of the Federal Water Pollution Control**
33 **Act, 33 U.S.C. 1321(j), as amended by the Oil Pollution Act of 1990 (P.L. 101-380).**

34 [(13)] (15) "Maritime association" means an association or cooperative of marine terminals, fa-
35 cilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that pro-
36 vides oil spill response planning and spill related communications services within the state.

37 [(14)] (16) "Maximum probable spill" means the maximum probable spill for a vessel operating
38 in the navigable waters of the state considering the history of spills of vessels of the same class
39 operating on the west coast of the United States.

40 (17) **"National Contingency Plan" means the plan prepared and published under section**
41 **311(d) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil**
42 **Pollution Act of 1990 (P.L. 101-380).**

43 [(15)] (18) "Navigable waters" means the Columbia River, the Willamette River up to Willamette
44 Falls, the Pacific Ocean and estuaries to the head of tidewater.

45 [(16)] *"National Contingency Plan" means the plan prepared and published under section 311(d) of*

1 *the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of*
 2 *1990 (P.L. 101-380).]*

3 [(17)] (19) “Offshore facility” means any facility located in, on or under any of the navigable
 4 waters of the state.

5 [(18)] (20) “Oils” or “oil” means:

6 (a) Oil, including gasoline, crude oil, **bitumen, synthetic crude oil, natural gas well**
 7 **condensate**, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related
 8 product; and

9 (b) Liquefied natural gas.

10 [(19)] (21) “Onshore facility” means any facility located in, on or under any land of the state,
 11 other than submerged land, that, because of its location, could reasonably be expected to cause
 12 substantial harm to the environment by discharging oil into or on the navigable waters of the state
 13 or adjoining shorelines.

14 [(20)] (22) “Passenger vessel” means a ship of 300 or more gross tons carrying passengers for
 15 compensation.

16 [(21)] (23) “Person” has the meaning given the term in ORS 468.005.

17 [(22)] (24) “Person having control over oil” includes but is not limited to any person using,
 18 storing or transporting oil immediately prior to entry of such oil into the navigable waters of the
 19 state, and shall specifically include carriers and bailees of such oil.

20 [(23)] (25) “Pipeline” means a facility, including piping, compressors, pump stations and storage
 21 tanks, used to transport oil between facilities or between facilities and tank vessels.

22 [(24)] (26) “Region of operation” with respect to the holder of a contingency plan means the area
 23 where the operations of the holder that require a contingency plan are located.

24 [(25)] (27) “Removal costs” means the costs of removal that are incurred after a discharge of
 25 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs
 26 to prevent, minimize or mitigate oil pollution from the incident.

27 [(26)] (28) “Responsible party” has the meaning given under section 1001 of the Oil Pollution
 28 Act of 1990 (P.L. 101-380), **33 U.S.C. 2701**.

29 [(27)] (29) “Ship” means any boat, ship, vessel, barge or other floating craft of any kind.

30 [(28)(a)] (30)(a) “State on-scene coordinator” means the state official appointed by the Depart-
 31 ment of Environmental Quality to represent the department and the State of Oregon in response to
 32 an oil or hazardous material spill or release or threatened spill or release and to coordinate cleanup
 33 response with state and local agencies.

34 (b) For purposes of this subsection:

35 (A) “Spill or release” means the discharge, deposit, injection, dumping, spilling, emitting, re-
 36 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or
 37 waters of this state except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468,
 38 468A, 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law, or except
 39 when being stored or used for its intended purpose.

40 (B) “Threatened spill or release” means oil or hazardous material is likely to escape or be car-
 41 ried into the air or into or on any land or waters of the state, including from a ship as defined in
 42 this section that is in imminent danger of sinking.

43 [(29)] (31) “Tank vessel” means a ship that is constructed or adapted to carry oil in bulk as
 44 cargo or cargo residue. “Tank vessel” does not include:

45 (a) A vessel carrying oil in drums, barrels or other packages;

1 (b) A vessel carrying oil as fuel or stores for that vessel; or

2 (c) An oil spill response barge or vessel.

3 [(30)] **(32)** “Worst case spill” means:

4 (a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated
5 by adverse weather conditions; [and]

6 (b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather
7 conditions[.]; **and**

8 **(c) In the case of a high hazard train route, the greater of:**

9 **(A) 300,000 gallons of oil from a single train; or**

10 **(B) 15 percent of the total lading of oil transported within the largest single train rea-**
11 **sonably expected to transport oil over the high hazard train route.**

12 **SECTION 2.** ORS 468B.340 is amended to read:

13 468B.340. (1) The Legislative Assembly finds that:

14 (a) Oil spills present a serious danger to the fragile natural environment of the state.

15 (b) Commercial vessel activity on the navigable waters of the state is vital to the economic in-
16 terests of the people of the state.

17 (c) Recent studies conducted in the wake of disastrous oil spills have identified the following
18 problems in the transport and storage of oil:

19 (A) Gaps in regulatory oversight;

20 (B) Incomplete cost recovery by states;

21 (C) Despite research in spill cleanup technology, it is unlikely that a large percentage of oil can
22 be recovered from a catastrophic spill;

23 (D) Because response efforts cannot effectively reduce the impact of oil spills, prevention is the
24 most effective approach to oil spill management; and

25 (E) Comprehensive oil spill prevention demands participation by industry, citizens, environ-
26 mental organizations and local, state, federal and international governments.

27 (2) Therefore, the Legislative Assembly declares it is the intent of ORS 468B.345 to 468B.415 to
28 establish a program to promote:

29 (a) The prevention of oil spills especially on the large, navigable waters of the Columbia River,
30 the Willamette River and the Oregon coast;

31 **(b) The prevention of oil spills to listed sensitive areas, such as inland rivers and streams**
32 **that serve as essential habitats for salmon and other wildlife or as sources of water for**
33 **consumption, irrigation or other public use;**

34 **(c) The prevention of oil spills along high hazard train routes;**

35 [(b)] **(d)** Oil spill response preparedness, including the identification of actions and content re-
36 quired for an effective contingency plan;

37 [(c)] **(e)** A consistent west coast approach to oil spill prevention and response;

38 [(d)] **(f)** The establishment, coordination and duties of safety committees as provided in ORS
39 468B.415; and

40 [(e)] **(g)** To the maximum extent possible, coordination of state programs with the programs and
41 regulations of the United States Coast Guard and adjacent states.

42 **SECTION 3.** ORS 468B.305 is amended to read:

43 468B.305. (1) It shall be unlawful for oil to enter the waters of the state from any ship **or high**
44 **hazard train route** or **from** any fixed or mobile facility or installation located offshore or onshore,
45 whether publicly or privately operated, regardless of the cause of the entry or the fault of the per-

1 son having control over the oil, or regardless of whether the entry **of oil** is the result of intentional
 2 or negligent conduct, accident or other cause. Such entry constitutes pollution of the waters of the
 3 state.

4 (2) Subsection (1) of this section shall not apply to the entry of oil into the waters of the state
 5 under the following circumstances:

6 (a) The person discharging the oil was expressly authorized to do so by the Department of En-
 7 vironmental Quality, having obtained a permit *[therefor]* **to do so** required by ORS 468B.050;

8 (b) Notwithstanding any other provision of ORS 466.640, 468B.025 or 468B.050 or this section,
 9 the person discharging the oil was expressly authorized to do so by a federal on-scene coordinator
 10 or the department in connection with activities related to the removal of or response to oil that
 11 entered the waters of the state; or

12 (c) The person having control over the oil can prove that the entry *[thereof]* **of oil** into the wa-
 13 ters of the state was caused by:

14 (A) An act of war or sabotage or an act of God.

15 (B) Negligence on the part of the United States Government, or the State of Oregon.

16 (C) An act or omission of a third party without regard to whether any such act or omission was
 17 or was not negligent.

18 **SECTION 4.** ORS 468B.345 is amended to read:

19 468B.345. (1)(a) Unless an oil spill prevention and emergency response plan has been approved
 20 by the Department of Environmental Quality and has been properly implemented, *[no]* **a** person
 21 *[shall]* **may not**:

22 *[(a)]* (A) Cause or permit the operation of an onshore facility in the state;

23 *[(b)]* (B) Cause or permit the operation of an offshore facility in the state; or

24 *[(c)]* (C) Cause or permit the operation of a covered vessel within the navigable waters of the
 25 state.

26 *[(2)]* (b) It is not a defense to an action brought for a violation of **this** subsection *[(1) of this*
 27 *section]* that the person charged believed that a current contingency plan had been approved by the
 28 department.

29 *[(3)]* (c) A contingency plan **required under this subsection** shall be renewed at least once
 30 every five years.

31 *[(4) This section shall not apply to the operation of a cargo or passenger vessel on Yaquina Bay*
 32 *or on the navigable waters of the state in the Pacific Ocean used by cargo or passenger vessels entering*
 33 *or leaving Yaquina Bay until January 1, 1998.]*

34 (2)(a) **A railroad that owns or operates a high hazard train route in this state shall have**
 35 **an oil spill prevention and emergency response plan that has been approved by the depart-**
 36 **ment.**

37 (b) **It is not a defense to an action brought for a violation of this subsection that the**
 38 **person charged believed that a current contingency plan had been approved by the depart-**
 39 **ment.**

40 (c) **A contingency plan required under this subsection for a high hazard train route shall**
 41 **be renewed at least once every five years.**

42 (d) **Failure by a railroad that owns or operates a high hazard train route to comply with**
 43 **this subsection or to be in compliance with a contingency plan required under this subsection**
 44 **does not preclude the railroad from operating the high hazard train route.**

45 **SECTION 5.** Section 6 of this 2019 Act is added to and made a part of ORS 468B.345 to

1 468B.415.

2 **SECTION 6.** (1) The Environmental Quality Commission shall, by rule:

3 (a) Adopt standards for the preparation of contingency plans for high hazard train routes
4 that:

5 (A) Reflect the requirements of subsection (2) of this section; and

6 (B) To the extent feasible and appropriate, are equivalent to standards for the prepara-
7 tion of contingency plans for facilities and covered vessels adopted under ORS 468B.350.

8 (b) Identify oil spill response zones along high hazard train routes and the amount of
9 equipment identified in a contingency plan that is required to be regularly located in those
10 zones.

11 (c) Identify all navigable waters and listed sensitive areas within the region of operation
12 of high hazard train routes. A listed sensitive area may be considered within the region of
13 operation of a high hazard train route if the listed sensitive area is located anywhere within
14 an area:

15 (A) Beginning at the probable point of a spill of oil into waters of the state from a high
16 hazard train route; and

17 (B) Ending at the point that the oil could travel to, by water flowing downstream, in a
18 time period and at a speed, measured in knots, established by the commission by rule.

19 (2) A contingency plan shall, at a minimum:

20 (a) Identify the high hazard train route for which the contingency plan is prepared and
21 the specific type or types of oil transported over the high hazard train route.

22 (b) Demonstrate the capacity of the railroad that owns or operates the high hazard train
23 route, both in material resources and finances, for the cleanup of a spill of oil and for the
24 delivery of resources to the location of the spill within specified response times.

25 (c) Include the following information related to specified personnel and equipment that
26 are available to respond to a spill of oil:

27 (A) The names, addresses, phone numbers and electronic mail addresses for the primary
28 owner or operator of the high hazard train route and for the local primary contacts for the
29 railroad that owns or operates the high hazard train route;

30 (B) A list of all personnel, equipment and services available to respond to a spill, and a
31 timeline for the delivery of the personnel, equipment and services to the spill location pur-
32 suant to a written contract between the railroad that owns or operates the high hazard train
33 route and other entities;

34 (C) The contact information for all personnel available to arrive on behalf of the railroad
35 that owns or operates the high hazard train route and the timeline for the personnel to re-
36 spond to a spill or threatened spill;

37 (D) A description of the responsibilities of the personnel specified in the contingency plan
38 for responding to a spill;

39 (E) The number, training preparedness and fitness of all dedicated, prepositioned per-
40 sonnel assigned to direct and implement the contingency plan; and

41 (F) The amount and type of equipment and supplies available or other approved means
42 to respond to a spill and a description of where the equipment and supplies are located.

43 (d) Describe how the contingency plan relates to and is coordinated with the interagency
44 response plan developed by the Department of Environmental Quality under ORS 468B.495
45 and 468B.500 and any relevant contingency plan prepared by a cooperative, port, regional

1 entity, the state or the federal government in the same area of the state covered by the
2 contingency plan.

3 (e) Include procedures and information that support the early detection of an oil spill and
4 timely notification of appropriate federal, state, local, tribal and other authorities about an
5 oil spill in accordance with applicable state and federal law, including but not limited to:

6 (A) Procedures for the initial detection of a spill;

7 (B) Procedures for the immediate notification of qualified individuals at the railroad that
8 owns or operates the high hazard train route;

9 (C) Call-down lists for the notification of appropriate federal, state, local, tribal and other
10 authorities;

11 (D) Information demonstrating that the railroad that owns or operates the high hazard
12 train route has ownership of or access to an emergency response communications network
13 covering the entire high hazard train route and that the emergency response communi-
14 cations network also provides for immediate notification and continual emergency commu-
15 nications during cleanup response;

16 (E) Procedures specifying the circumstances under which notifications will be made and
17 the time frames for making notifications; and

18 (F) Requirements for follow-up notifications, provided for on a 24-hour basis.

19 (3) A railroad that owns or operates a high hazard train route shall develop and conduct
20 an oil spill exercise program that includes conducting an annual notification drill and annu-
21 ally conducting one of the following three types of exercises, on a three-year rotating basis:

22 (a) An incident management team table top drill;

23 (b) An oil spill containment and recovery equipment deployment drill; and

24 (c) A listed sensitive area protection exercise.

25 (4) The commission and the department may not require the railroad that owns or op-
26 erates a high hazard train route to submit, as part of a contingency plan, information con-
27 stituting sensitive security information provided for under 49 C.F.R. 1520.5(b)(12), (14) or (16).

28 **SECTION 7.** Notwithstanding ORS 468B.355 (2), if operations of trains that cause a sec-
29 tion of rail lines to meet the definition of a high hazard train route commence on or before
30 the date that the Environmental Quality Commission adopts rules under section 6 of this
31 2019 Act, a contingency plan for the high hazard train route shall be submitted to the De-
32 partment of Environmental Quality no later than 12 months after the date that the com-
33 mission adopts rules under section 6 of this 2019 Act. The department may adopt a schedule
34 for submission of a contingency plan within the 12-month period.

35 **SECTION 8.** Section 7 of this 2019 Act is repealed on January 2, 2022.

36 **SECTION 9.** ORS 468B.355 is amended to read:

37 468B.355. (1) A contingency plan for a facility or covered vessel shall be submitted to the De-
38 partment of Environmental Quality within 12 months after the Environmental Quality Commission
39 adopts rules under ORS 468B.350. The department may adopt a schedule for submission of [*an oil*]
40 a contingency plan for a facility or covered vessel within the 12-month period. The schedule for
41 the Columbia River shall be coordinated with the State of Washington. The department may adopt
42 an alternative schedule for the Oregon coast and the Willamette River.

43 (2) A contingency plan for a high hazard train route shall be submitted to the department
44 no later than 90 days before operations of trains that cause a section of rail lines to meet
45 the definition of a high hazard train route commence.

1 [(2)] (3) The contingency plan for a facility shall be submitted by the owner or operator of the
2 facility or by a qualified oil spill response cooperative in which the facility owner or operator is a
3 participating member.

4 [(3)] (4) The contingency plan for a tank vessel shall be submitted by:

5 (a) The owner or operator of the tank vessel;

6 (b) The owner or operator of the facility at which the vessel will be loading or unloading its
7 cargo; or

8 (c) A qualified oil spill response cooperative in which the tank vessel owner or operator is a
9 participating member.

10 [(4)] (5) Subject to conditions imposed by the department, the contingency plan for a tank vessel,
11 if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank
12 vessels of a particular class that will be loading or unloading cargo at the facility.

13 [(5)] (6) The contingency plan for a cargo vessel or passenger vessel may be submitted by the
14 owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to con-
15 ditions imposed by the department, the owner, operator, agent or a maritime association may submit
16 a single contingency plan for cargo vessels or passenger vessels of a particular class.

17 **(7) The contingency plan for a high hazard train route shall be submitted by the railroad**
18 **that owns or operates the high hazard train route.**

19 [(6)] (8) A person that has contracted with a facility, [or] covered vessel **or railroad that owns**
20 **or operates a high hazard train route** to provide containment and cleanup services and that meets
21 the standards established by the commission under ORS 468B.350 **or section 6 of this 2019 Act** may
22 submit the contingency plan for any facility, [or] covered vessel **or high hazard train route** for
23 which the person is contractually obligated to provide services. Subject to conditions imposed by the
24 department, the person may submit a single plan for more than one covered vessel.

25 [(7)] (9) The requirements of submitting a contingency plan under this section may be satisfied
26 by a covered vessel by submission of proof of assessment participation by the vessel in a maritime
27 association. Subject to conditions imposed by the department, the association may submit a single
28 plan for more than one facility or covered vessel or may submit a single plan providing contingen-
29 cies to respond for different classes of covered vessels.

30 [(8)] (10) A contingency plan prepared for an agency of the federal government or an adjacent
31 state that satisfies the requirements of ORS 468B.345 to 468B.360 and the rules adopted by the En-
32 vironmental Quality Commission may be accepted as a plan under ORS 468B.345. The commission
33 shall [assure] **ensure** that to the greatest extent possible, requirements for a contingency plan under
34 ORS 468B.345 to 468B.360 are consistent with requirements for a plan under federal law.

35 [(9)] (11) Covered vessels may satisfy the requirements of submitting a contingency plan under
36 this section through proof of current assessment participation in an approved plan maintained with
37 the department by a maritime association.

38 [(10)] (12) A maritime association may submit a contingency plan for a cooperative group of
39 covered vessels. Covered vessels that have not previously obtained approval of a plan may enter the
40 navigable waters of the state if, upon entering such waters, the vessel pays the established assess-
41 ment for participation in the approved plan maintained by the association.

42 [(11)] (13) A maritime association shall have a lien on the responsible vessel if the vessel owner
43 or operator fails to remit any regular operating assessments and shall further have a lien for the
44 recovery for any direct costs provided to or for the vessel by the maritime association for oil spill
45 response or spill related communications services. The lien shall be enforced in accordance with

1 applicable law.

2 [(12)] (14) Obligations incurred by a maritime association and any other liabilities or claims
 3 against the association shall be enforced only against the assets of the association, and no liability
 4 for the debts or action of the association exists against either the State of Oregon or any other
 5 subdivision or instrumentality thereof, or against any member, officer, employee or agent of the as-
 6 sociation in an individual or representative capacity.

7 [(13)] (15) Except as otherwise provided in ORS chapters 468, 468A and 468B, neither the mem-
 8 bers of the association, its officers, agents or employees, nor the business entities by whom the
 9 members are regularly employed, may be held individually responsible for errors in judgment, mis-
 10 takes or other acts, either of commission or omission, as principal, agent, person or employee, save
 11 for their own individual acts of dishonesty or crime.

12 [(14)] (16) Assessment participation in a maritime association does not constitute a defense to
 13 liability imposed under ORS 468B.345 to 468B.415 or other state or federal law. Such assessment
 14 participation shall not relieve a covered vessel from complying with those portions of the approved
 15 maritime association contingency plan that may require vessel specific oil spill response equipment,
 16 training or capabilities for that vessel.

17 [(15)] (17) A person providing a contingency plan for a cargo or passenger vessel under this
 18 section shall be exempt from liability as provided under ORS 468B.425 for any action taken or
 19 omitted in the course of providing contingency planning service.

20 **SECTION 10.** ORS 468B.360 is amended to read:

21 468B.360. In reviewing the contingency plan required by ORS 468B.345, the Department of En-
 22 vironmental Quality shall consider at least the following factors:

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

27 (2) The nature and amount of vessel **or high hazard train route** traffic within the area covered
 28 by the plan;

29 (3) The volume and type of oil being transported within the area covered by the plan;

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

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

33 (6) The sensitivity of fisheries and wildlife and other natural resources within the area covered
 34 by the plan;

35 (7) Relevant information on previous spills contained in on-scene coordinator reports covered
 36 by the plan;

37 (8) The extent to which reasonable, cost-effective measures to reduce the likelihood that a spill
 38 will occur have been incorporated into the plan;

39 (9) The number of covered vessels calling in, **and high hazard train routes** and *[the]* facilities
 40 located in, the geographic area and the resulting ability of local agencies and industry groups to
 41 develop, finance and maintain a contingency plan and spill response system for those vessels, **high**
 42 **hazard train routes** and facilities; and

43 (10) The spill response equipment and resources available to a person providing a contingency
 44 plan for cargo and passenger vessels under contingency plans filed by the person under state or
 45 federal law for other covered vessels or facilities owned or operated by that person.

SECTION 11. ORS 468B.365 is amended to read:

468B.365. (1) The Department of Environmental Quality shall approve a contingency plan only if *[it]* **the department** determines that:

(a)(A) The plan **for a covered vessel or facility** meets the requirements of ORS 468B.345 to 468B.360 and[:]

[(a)] the covered vessel or facility demonstrates evidence of compliance with ORS 468B.390; *[and]* **or**

(B) The plan for a high hazard train route meets the requirements of ORS 468B.345 to 486B.360; and

(b) If implemented, the plan is capable, to the maximum extent practicable in terms of personnel, materials and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(2) An owner or operator of a covered vessel, **high hazard train route** or facility shall notify the department in writing immediately of any significant change affecting the contingency plan, including changes in any factor set forth in this section or in rules adopted by the Environmental Quality Commission. The department may require the owner or operator to update a contingency plan as a result of these changes.

(3) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, after notifying the department, equipment, materials or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials and personnel as soon as feasible.

(4) The department may attach any reasonable term or condition to its approval or modification of a contingency plan that the department determines is necessary to *[insure]* **ensure** that the applicant:

(a) Has access to sufficient resources to protect environmentally sensitive areas and to prevent, contain, clean up and mitigate potential oil discharges from the facility or tank vessel **or along the high hazard train route;**

(b) Maintains personnel levels sufficient to carry out emergency operations; and

(c) Complies with the contingency plan.

(5) The contingency plan must provide for the use by the applicant of the best technology available at the time the contingency plan was submitted or renewed.

(6) The department may require an applicant or a holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including:

(a) Periodic training;

(b) Response team exercises; and

(c) Verification of access to inventories of equipment, supplies and personnel identified as available in the approved contingency plan.

(7) The department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented and in its discretion, may make exceptions to the requirements of this section to reflect the reduced risk of oil discharges from the facility or tank vessel, **or along the high hazard train route**, for which the plan is submitted or being modified.

(8)(a) Before the department approves or modifies a contingency plan required under ORS 468B.345, the department shall provide a copy of the contingency plan to the State Department of

1 Fish and Wildlife, the office of the State Fire Marshal and the Department of Land Conservation
2 and Development for review.

3 **(b) In addition to providing copies to the agencies listed in paragraph (a) of this sub-**
4 **section, before approving or modifying a contingency plan for a high hazard train route, the**
5 **Department of Environmental Quality shall provide a copy of the contingency plan to each**
6 **federally recognized Indian tribe that owns land or enjoys treaty-reserved hunting, fishing**
7 **or gathering rights that could be impacted by an oil discharge along any portion of the high**
8 **hazard train route.**

9 **(c) [The] Agencies and tribes that receive copies of a contingency plan under this sub-**
10 **section shall review the plan according to procedures and time limits established by rule of the**
11 **[Environmental Quality] commission.**

12 (9) Upon approval of a contingency plan, the department shall issue to the plan holder a certif-
13 icate stating that the plan has been approved. The certificate shall include the name of the
14 facility, **high hazard train route** or tank vessel for which the certificate is issued, the effective
15 date of the plan and the date by which the plan must be submitted for renewal.

16 (10) The approval of a contingency plan by the department does not constitute an express as-
17 surance regarding the adequacy of the plan or constitute a defense to liability imposed under ORS
18 chapters 468, 468A and 468B or any other state law.

19 **SECTION 12.** ORS 468B.385 is amended to read:

20 468B.385. (1) Upon request of a plan holder or on the initiative of the Department of Environ-
21 mental Quality, the department, after notice and opportunity for hearing, may modify its approval
22 of a contingency plan if the department determines that a change has occurred in the operation of
23 the facility, **high hazard train route** or tank vessel necessitating an amended or supplemental plan,
24 or that the operator's discharge experience demonstrates a necessity for modification.

25 (2) The department, after notice and opportunity for hearing, may revoke its approval of a con-
26 tingency plan if the department determines that:

27 (a) Approval was obtained by fraud or misrepresentation;

28 (b) The operator does not have access to the quality or quantity of resources identified in the
29 plan;

30 (c) A term or condition of approval or modification has been violated; or

31 (d) The plan holder is not in compliance with the plan and the deficiency materially affects the
32 plan holder's response capability.

33 (3) Failure of a holder of an approved or modified contingency plan to comply with the plan or
34 to have access to the quality or quantity of resources identified in the plan or to respond with those
35 resources within the shortest possible time in the event of a spill is a violation of ORS 468B.345 to
36 468B.415 for purposes of ORS 466.992, 468.140, 468.943 and any other applicable law.

37 (4) If the holder of an approved or modified contingency plan fails to respond to and conduct
38 cleanup operations of an unpermitted discharge of oil with the quality and quantity of resources
39 identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly
40 and severally, for the civil penalty assessed under ORS 466.992 and 468.140.

41 (5) In order to be considered in compliance with a contingency plan, the plan holder must:

42 (a) Establish and carry out procedures identified in the plan as being the responsibility of the
43 holder of the plan;

44 (b) Have access to and have on hand the quantity and quality of equipment, personnel and other
45 resources identified as being accessible or on hand in the plan;

1 (c) Fulfill the assurances espoused in the plan in the manner described in the plan;

2 (d) Comply with terms and conditions attached to the plan by the department under ORS
3 468B.345 to 468B.380; and

4 (e) Successfully demonstrate the ability to carry out the plan when required by the department
5 under ORS 468B.370.

6 **SECTION 13.** ORS 468B.495 is amended to read:

7 468B.495. (1) The Department of Environmental Quality shall develop an integrated, interagency
8 response plan for oil or hazardous material spills:

9 (a) In the Columbia River, the Willamette River up to Willamette Falls and the coastal waters
10 and estuaries of the state[.]; **and**

11 **(b) In listed sensitive areas within the region of operation of high hazard train routes.**

12 (2) In developing the response plan **under subsection (1) of this section**, the department shall
13 work with all affected local, state and federal agencies and with any volunteer group interested in
14 participating in oil or hazardous material spill response.

15 [(2)] **(3)** The **response** plan developed under subsection (1) of this section shall be consistent to
16 the extent practicable with the plan for a statewide hazardous material emergency response system
17 established by the State Fire Marshal under ORS 453.374.

18
19 **FINANCIAL RESPONSIBILITY**

20
21 **SECTION 14.** Section 15 of this 2019 Act is added to and made a part of ORS 468B.300 to
22 **468B.500.**

23 **SECTION 15.** (1) A railroad that owns or operates a high hazard train route in this state
24 shall annually submit to the Department of Environmental Quality a statement that:

25 (a) Describes all insurance carried by the railroad that covers any losses resulting from
26 a worst case spill, as well as the coverage amounts, limitations and other conditions of the
27 insurance; and

28 (b) Identifies the capacity, measured in barrels, of the total lading of oil transported
29 within the average-sized train and the largest single train that was operated on each high
30 hazard train route owned or operated by the railroad during the previous calendar year.

31 (2)(a) A statement required under subsection (1) of this section must also contain addi-
32 tional information sufficient to demonstrate the railroad's ability to pay the cost to clean
33 up a worst case spill on each high hazard train route owned or operated by the railroad
34 during the previous calendar year. Additional information may include, but need not be lim-
35 ited to, proof of reserve accounts, letters of credit or other financial instruments or re-
36 sources that the railroad can rely on to pay the cost to clean up a worst case spill.

37 (b) For purposes of this subsection, "cost to clean up a worst case spill" means a dollar
38 amount equal to the number of barrels of oil that would constitute a worst case spill on the
39 high hazard train route multiplied by \$16,800.

40 (3) A railroad shall submit a statement required by this section to the department upon
41 payment to the department of the annual assessment payable under section 17 of this 2019
42 Act.

43
44 **RAILROAD SAFETY ASSESSMENTS AND USE**

1 **SECTION 16.** Section 17 of this 2019 Act is added to and made a part of ORS 468B.300 to
2 **468B.500.**

3 **SECTION 17.** (1) The Department of Environmental Quality shall levy and collect an an-
4 nual assessment from railroads that own or operate high hazard train routes. The total as-
5 sessment under this section shall equal \$_____ per year, with each applicable railroad
6 assessed a proportional share of the total assessment that is based on the total track miles
7 within this state that are part of high hazard train routes owned or operated by the railroad.

8 (2) Moneys collected by the department under this section shall be deposited in the State
9 Treasury to the credit of the High Hazard Train Route Oil Spill Prevention Fund established
10 under section 20 of this 2019 Act.

11 **SECTION 18.** ORS 468B.410 is amended to read:

12 468B.410. (1) The Oil Spill Prevention Fund is established separate and distinct from the General
13 Fund in the State Treasury. Interest earned on the fund shall be credited to the fund. Moneys re-
14 ceived by the Department of Environmental Quality for the purpose of oil and hazardous material
15 spill prevention and the fees collected under ORS 468B.405 shall be paid into the State Treasury and
16 credited to the fund.

17 (2) The State Treasurer shall invest and reinvest moneys in the Oil Spill Prevention Fund in the
18 manner prescribed by law.

19 (3) The moneys in the Oil Spill Prevention Fund are appropriated continuously to the depart-
20 ment [*of Environmental Quality*] to be used in the manner described in subsection (4) of this section.

21 (4) The Oil Spill Prevention Fund may be used by the department [*of Environmental Quality*] to:

22 (a) Pay all costs of the department incurred to:

23 (A) Review the contingency plans submitted under ORS 468B.360;

24 (B) Conduct training, response exercises, inspection and tests in order to verify equipment in-
25 ventories and ability to prevent and respond to oil release emergencies and to undertake other ac-
26 tivities intended to verify or establish the preparedness of the state, a municipality or a party
27 required by ORS 468B.345 to 468B.415 to have an approved contingency plan to act in accordance
28 with that plan; and

29 (C) Verify or establish proof of financial responsibility required by ORS 468B.390.

30 (b) Review and revise the oil spill response plan required by ORS 468B.495 and 468B.500.

31 (5) **Notwithstanding any contrary provision of subsection (4) of this section, moneys in**
32 **the Oil Spill Prevention Fund may not be used to pay the costs of the department that may**
33 **be paid with moneys deposited in the High Hazard Train Route Oil Spill Prevention Fund**
34 **established under section 20 of this 2019 Act.**

35 **SECTION 19.** Section 20 of this 2019 Act is added to and made a part of ORS 468B.345 to
36 **468B.415.**

37 **SECTION 20.** (1) The High Hazard Train Route Oil Spill Prevention Fund is established
38 in the State Treasury, separate and distinct from the General Fund. Interest earned by the
39 High Hazard Train Route Oil Spill Prevention Fund shall be credited to the fund.

40 (2) The fund shall consist of:

41 (a) Moneys deposited in the fund under section 17 of this 2019 Act;

42 (b) All other moneys placed in the fund as provided by law; and

43 (c) Any gifts, grants, donations, endowments or bequests from any public or private
44 source.

45 (3) Moneys in the fund are continuously appropriated to the Department of Environ-

1 **mental Quality to be used only to pay the costs of the department incurred to:**

2 (a) **Review, under ORS 468B.360, contingency plans for high hazard train routes;**

3 (b) **Conduct training, response exercises, inspection and tests in order to verify equip-**
4 **ment inventories and ability to prevent and respond to oil release emergencies related to**
5 **high hazard train routes and to undertake other activities intended to maintain the capabil-**
6 **ities for emergency response related to high hazard train routes of the state, a municipality**
7 **or an owner or operator of a high hazard train route required by ORS 468B.345 to 468B.415**
8 **to have an approved contingency plan;**

9 (c) **Verify proof of financial responsibility required by section 15 of this 2019 Act; and**

10 (d) **Develop, review and revise the portions of the oil spill response plan required by ORS**
11 **468B.495 and 468B.500 that relate to high hazard train routes.**

12 **SECTION 21.** ORS 468B.412 is amended to read:

13 468B.412. (1) By September 30 of each year, the Department of Environmental Quality shall
14 publish a report for the previous fiscal year, commencing on July 1 and ending on June 30, that
15 addresses:

16 (a) The fees assessed under ORS 468B.405 on covered vessels and offshore and onshore facilities;

17 (b) **The amount collected by the department out of the assessment under section 17 of**
18 **this 2019 Act;**

19 [(b)] (c) The activities of the department under ORS 468B.410 (4);

20 [(c)] (d) The penalties recovered by the department under ORS 468B.450 (1); and

21 [(d)] (e) The activities of the department under ORS 468B.455 (2).

22 (2)(a) The report published by the department under this section must be in a format that allows
23 for the monitoring of [fee] collection **of fees or assessments** and related activities by the depart-
24 ment and for ensuring that adequate but not excessive fees **or assessments** are collected to meet
25 the department's budgetary needs.

26 (b) The department shall make the report available to those who paid fees under ORS
27 468B.405, **those who paid the assessment under section 17 of this 2019 Act** and [to] the general
28 public.

29
30 **CAPTIONS**

31
32 **SECTION 22.** The unit captions used in this 2019 Act are provided only for the conven-
33 **ience of the reader and do not become part of the statutory law of this state or express any**
34 **legislative intent in the enactment of this 2019 Act.**

35
36 **OPERATIVE DATE**

37
38 **SECTION 23.** (1) Sections 5 to 8, 14 to 17, 19 and 20 of this 2019 Act and the amendments
39 **to statutes by sections 1 to 4, 9 to 13, 18 and 21 of this 2019 Act become operative on January**
40 **1, 2020.**

41 (2) **The Environmental Quality Commission and the Department of Environmental Qual-**
42 **ity may take any action before the operative date specified in subsection (1) of this section**
43 **that is necessary for the commission or the department to exercise, on and after the oper-**
44 **ative date specified in subsection (1) of this section, any of the duties, functions and powers**
45 **conferred on the commission and the department by sections 5 to 8, 14 to 17, 19 and 20 of**

1 **this 2019 Act and the amendments to statutes by sections 1 to 4, 9 to 13, 18 and 21 of this**
2 **2019 Act.**

3

4

EFFECTIVE DATE

5

6 **SECTION 24. This 2019 Act takes effect on the 91st day after the date on which the 2019**
7 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

8
