

A-Engrossed House Bill 2131

Ordered by the House May 31
Including House Amendments dated May 31

Sponsored by Representative SMITH WARNER; Representatives HOLVEY, KENY-GUYER (Presession filed.)

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.

Modifies requirements for content of State Fire Marshal plan for coordinated response to oil or hazardous material spills or releases that occur during rail transport. Requires railroads operating in state to submit certain information to State Fire Marshal for purposes of plan.

Requires owners and operators of high hazard train routes to submit contingency plans to Department of Environmental Quality. Directs Environmental Quality Commission to adopt rules [*applying certain oil spill prevention and emergency response planning requirements to railroads that own or operate high hazard train routes in this state*] **for preparation of contingency plans for high hazard train routes.**

Adds railroad cars to definition of "facility" for purposes of liability for oil spillage under oil or hazardous material spillage statutes.

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

[*Expands definition of "navigable waters" for purposes of applicability of oil or hazardous material spillage statutes to include inland watersheds and drinking water intakes that intersect with high hazard train routes.*]

Requires proof of financial responsibility for high hazard train routes.

[*Establishes annual assessment proportioned among certain railroads. Transfers moneys to Oil and Hazardous Material Transportation by Rail Action Fund. Becomes operative July 1, 2019.*]

Establishes High Hazard Train Route Oil Spill Prevention Fund. Specifies uses of fund.

Requires Department of Environmental Quality to include listed sensitive areas along high hazard train routes in integrated, interagency response plan for oil or hazardous material spills in certain areas of state.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

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A BILL FOR AN ACT

Relating to safe transport of hazardous materials; creating new provisions; amending ORS 453.392, 468B.300, 468B.340, 468B.355, 468B.360, 468B.365, 468B.370, 468B.385, 468B.410 and 468B.495; and prescribing an effective date.

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

STATE FIRE MARSHAL PLAN FOR RAIL TRANSPORT HAZARDOUS MATERIAL EMERGENCY RESPONSE

SECTION 1. ORS 453.392 is amended to read:

453.392. (1) As part of the plan for the effective implementation of a statewide hazardous material emergency response system established by rule under ORS 453.374, the State Fire Marshal shall adopt by rule a plan for the coordinated response to oil or hazardous material spills or releases that occur during rail transport. The plan adopted under this subsection:

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 (a) Shall address with a specific focus on oil or hazardous material spills or releases that occur
2 during rail transport all required provisions under ORS 453.374;

3 (b) May include requirements and incentives for local governments and other responders to
4 participate in ongoing training programs;

5 (c) Shall provide a system for identifying where **oil or hazardous material spill or release** re-
6 sponse [*materials*] **resources** owned by railroads are located throughout this state and how access
7 to those [*materials*] **resources** is to be coordinated; [*and*]

8 (d) **Shall be consistent with the provisions of the oil or hazardous material spill response**
9 **plan required by ORS 468B.495 and 468B.500 that relate to listed sensitive areas along high**
10 **hazard train routes;**

11 (e) **Shall provide for the implementation of a full-scale, multiagency, multijurisdictional**
12 **and multidisciplinary oil or hazardous material spill or release training exercise that:**

13 (A) **Examines or validates training for all manner of personnel necessary to a coordinated**
14 **response to an oil or hazardous material spill or release;**

15 (B) **Is intended to examine or validate the planning, coordination and command and**
16 **control decisions made by the various agencies and to examine or validate the agencies'**
17 **response-specific capabilities or functions; and**

18 (C) **May involve training that covers the entire sequence of events that take place during**
19 **an oil or hazardous material spill or release incident that occurs during rail transport; and**

20 [(d)] (f) [*May*] **Shall** include any other information deemed necessary by [*the office of*] the State
21 Fire Marshal to provide coordinated response to oil or hazardous material spills or releases that
22 occur during rail transport.

23 (2) **A railroad operating in this state shall provide to the State Fire Marshal, upon re-**
24 **quest, information that the State Fire Marshal deems necessary to develop the plan required**
25 **under subsection (1) of this section. Information requested by the State Fire Marshal under**
26 **this subsection may include, but need not be limited to:**

27 (a) **The names, addresses, phone numbers, facsimile numbers and electronic mail ad-**
28 **resses for the primary owner of the railroad and for the local primary contacts for the**
29 **railroad;**

30 (b) **The contacts for the railroad that are available 24 hours each day to respond to**
31 **threatened or actual oil or hazardous material spills or releases;**

32 (c) **The area of transit of the railroad;**

33 (d) **The spill mitigation measures that are used by the railroad;**

34 (e) **The procedures that the railroad has in place for notification in the event of an oil**
35 **or hazardous material spill or release;**

36 (f) **The personnel that the railroad will have at its disposal, as evidenced by documenta-**
37 **tion that may include letters of intent with contractors, for spill response activities in the**
38 **event of an oil or hazardous material spill or release;**

39 (g) **The response resources available for oil or hazardous material spills or releases that**
40 **are owned by the railroad and available for use in this state, including the location of the**
41 **response resources; and**

42 (h) **The types of responder training that are provided by the railroad and the frequency**
43 **at which the responder training activities occur.**

44 [(2)] (3) The [*office of the*] State Fire Marshal shall annually coordinate with local governments,
45 other state agencies involved in hazardous material emergency response, other responders and rep-

1 representatives of the railroad industry to prepare a report on the coordinated response plan adopted
2 under this section and shall:

3 (a) Make the report available as an appendix to the Office of Emergency Management's oil and
4 hazardous material response emergency operations plan developed pursuant to ORS 401.092; and

5 (b) No later than February 1 of each year, submit the report to the Legislative Assembly in the
6 manner provided in ORS 192.245.

7 [(3)] (4) The report required by subsection [(2)] (3) of this section shall include, but need not be
8 limited to, the following in relation to oil and hazardous material emergency response for rail
9 transport:

10 (a) An inventory of all emergency response resources available in this state, including informa-
11 tion on:

12 (A) The location of, and the means of access to, the resources;

13 (B) Whether the resources are publicly or privately maintained; and

14 (C) Additional resources that are needed to provide for adequate response;

15 (b) Suggested changes to the structure for the continued coordination between state agencies
16 and industry;

17 (c) Possible revisions to the response roles or responsibilities of state agencies, local govern-
18 ments and railroads; and

19 (d) Strategies for ensuring adequate funding at the state and local government levels to cover
20 the training, equipment and administrative costs associated with providing comprehensive response
21 and equipment.

22 **SECTION 2. Sections 3 and 4 of this 2017 Act are added to and made a part of ORS 453.307**
23 **to 453.414.**

24 **SECTION 3. (1) As used in this section:**

25 (a) "Applicable rail carrier" means a railroad operating in this state that is classified as
26 a Class I or Class II carrier under 49 C.F.R. 1201 and that owns or operates high hazard train
27 routes.

28 (b) "Cost to clean up a worst case spill" means a dollar amount equal to the worst case
29 spill number calculated under paragraph (d) of this subsection multiplied by \$16,800.

30 (c) "High hazard train route" has the meaning given that term in ORS 468B.300.

31 (d) "Worst case spill number" means a risk assessment number related to a spill of oil,
32 calculated as follows:

33 (A) An applicable rail carrier shall calculate a percentage equal to (maximum operating
34 speed/65)², where the maximum operating speed is the top speed that any train carrying oil
35 travels on a high hazard train route operated by the applicable rail carrier in this state.

36 (B) The applicable rail carrier shall multiply the percentage calculated under subpara-
37 graph (A) of this paragraph by the number of barrels of oil moved on the largest trainload
38 of oil that traveled on a high hazard train route operated by the applicable rail carrier in this
39 state during the previous calendar year. The result of the calculation made under this sub-
40 paragraph shall equal the worst case spill number.

41 (2) An applicable rail carrier shall annually submit to the State Fire Marshal a statement
42 that demonstrates proof of financial responsibility by the applicable rail carrier to pay the
43 cost to clean up a worst case spill.

44 (3) The State Fire Marshal may not use the information submitted by an applicable rail
45 carrier under this section:

1 (a) As a basis for engaging in economic regulation of a railroad; or

2 (b) As a basis for penalizing a railroad.

3 (4) Nothing in this section may be construed as assigning liability to an applicable rail
4 carrier or establishing liquidated damages for a spill, release or accident involving the
5 transport of oil by an applicable rail carrier.

6 **SECTION 4.** (1) The State Fire Marshal shall make the information received under ORS
7 453.392 (2) and section 3 of this 2017 Act from railroads operating in this state available to
8 the Department of Environmental Quality for the purposes of the department's adminis-
9 tration of those provisions of ORS 468B.300 to 468B.500 that apply to high hazard train
10 routes, as defined in ORS 468B.300.

11 (2) Except as provided in subsection (1) of this section, the State Fire Marshal may make
12 the information received from railroads under ORS 453.392 (2) and section 3 of this 2017 Act
13 available only to the Office of Emergency Management, state and local responders and
14 federally recognized Oregon Indian tribes.

15 (3) All information provided to the State Fire Marshal by a railroad under ORS 453.392
16 (2) and section 3 of this 2017 Act, including any information constituting security sensitive
17 information provided for under 49 U.S.C. 11904(b), 49 C.F.R. 15 and 49 C.F.R. 1520 or infor-
18 mation otherwise protected under federal law, is confidential, exempt from disclosure under
19 public records law, and may not be disclosed to any person or entity not specified in this
20 section. No subpoena or judicial order may be issued compelling the disclosure of information
21 provided under this section, except when relevant to a proceeding where compliance by a
22 railroad's compliance with this section is to be adjudicated.

23
24 **DEPARTMENT OF ENVIRONMENTAL QUALITY; OIL OR**
25 **HAZARDOUS MATERIAL SPILLAGE STATUTES**

26
27 **SECTION 5.** ORS 468B.300 is amended to read:

28 468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500:

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

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

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

38 (4) "Contingency plan" means an oil spill prevention and emergency response plan required un-
39 der ORS 468B.345 or section 9 of this 2017 Act.

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

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

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

1 ting, emptying or dumping oil.

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

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

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

12 (a) A [*railroad car*,] motor vehicle or [*other*] rolling stock **other than a railroad car** while
13 transporting oil over the highways [*or rail lines*] of this state;

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

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

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

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

23 (13) **"High hazard train route" means a section of rail lines in this state:**

24 (a) **That abuts or travels over navigable waters of the state, an inland watershed or a**
25 **drinking water intake; and**

26 (b) **Over which trains that consist of multiple tanker railroad cars that transport oil or**
27 **hazardous material as cargo operate.**

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

32 [(13)] (15) "Maritime association" means an association or cooperative of marine terminals, fa-
33 cilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that pro-
34 vides oil spill response planning and spill related communications services within the state.

35 [(14)] (16) "Maximum probable spill" means the maximum probable spill for a vessel operating
36 in the navigable waters of the state considering the history of spills of vessels of the same class
37 operating on the west coast of the United States.

38 [(15)] (17) "Navigable waters" means the Columbia River, the Willamette River up to Willamette
39 Falls, the Pacific Ocean and estuaries to the head of tidewater.

40 [(16)] (18) "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 Pollution
42 Act of 1990 (P.L. 101-380).

43 [(17)] (19) "Offshore facility" means any facility located in, on or under any of the navigable
44 waters of the state.

45 [(18)] (20) "Oils" or "oil" means:

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

4 (b) **Ethanol, biodiesel** and liquefied natural gas.

5 [(19)] (21) "Onshore facility" means any facility located in, on or under any land of the state,
6 other than submerged land, that, because of its location, could reasonably be expected to cause
7 substantial harm to the environment by discharging oil into or on the navigable waters of the state
8 or adjoining shorelines.

9 [(20)] (22) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for
10 compensation.

11 [(21)] (23) "Person" has the meaning given the term in ORS 468.005.

12 [(22)] (24) "Person having control over oil" includes but is not limited to any person using,
13 storing or transporting oil immediately prior to entry of such oil into the [navigable] waters of the
14 state, and shall specifically include carriers and bailees of such oil.

15 [(23)] (25) "Pipeline" means a facility, including piping, compressors, pump stations and storage
16 tanks, used to transport oil between facilities or between facilities and tank vessels.

17 [(24)] (26) "Region of operation" with respect to the holder of a contingency plan means the area
18 where the operations of the holder that require a contingency plan are located.

19 [(25)] (27) "Removal costs" means the costs of removal that are incurred after a discharge of
20 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs
21 to prevent, minimize or mitigate oil pollution from the incident.

22 [(26)] (28) "Responsible party" has the meaning given under section 1001 of the Oil Pollution
23 Act of 1990 (P.L. 101-380).

24 [(27)] (29) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

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

29 (b) For purposes of this subsection:

30 (A) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, re-
31 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or
32 waters of this state except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468,
33 468A, 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law, or except
34 when being stored or used for its intended purpose.

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

38 [(29)] (31) "Tank vessel" means a ship that is constructed or adapted to carry oil in bulk as
39 cargo or cargo residue. "Tank vessel" does not include:

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

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

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

43 [(30)] (32) "Worst case spill" means:

44 (a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated
45 by adverse weather conditions; and

1 (b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather
2 conditions.

3 **SECTION 6.** ORS 468B.340 is amended to read:

4 468B.340. (1) The Legislative Assembly finds that:

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

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

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

10 (A) Gaps in regulatory oversight;

11 (B) Incomplete cost recovery by states;

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

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

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

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

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

22 **(b) The prevention of oil spills in or near inland rivers and streams serving as essential**
23 **habitat for salmon and other wildlife or as a source of water for consumption, irrigation or**
24 **other public uses of local concern;**

25 **(c) The prevention of oil spills from railroad cars transporting oil as cargo;**

26 **(d) The prevention of oil spills along high hazard train routes;**

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

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

30 [(d)] **(g)** The establishment, coordination and duties of safety committees as provided in ORS
31 468B.415; and

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

34 **SECTION 7. Sections 8 and 9 of this 2017 Act are added to and made a part of ORS**
35 **468B.345 to 468B.415.**

36 **SECTION 8. Notwithstanding ORS 468B.300, as used in ORS 468B.345 to 468B.415,**
37 **“facility” has the meaning given that term in ORS 468B.300, except that “facility” does not**
38 **include railroad cars.**

39 **SECTION 9. (1)(a) An owner or operator of a high hazard train route shall have an oil**
40 **spill prevention and emergency response plan that has been submitted to the Department**
41 **of Environmental Quality pursuant to ORS 468B.355.**

42 **(b) A contingency plan for a high hazard train route shall be renewed at least once every**
43 **five years.**

44 **(c) Failure by an owner or operator of a high hazard train route to submit a contingency**
45 **plan to the department does not preclude the owner or operator from operating the high**

1 **hazard train route.**

2 (2) **The Environmental Quality Commission, after consultation and in coordination with**
3 **the State Fire Marshal, shall by rule adopt standards for the preparation of contingency**
4 **plans for high hazard train routes.**

5 (3) **Rules adopted by the commission under subsection (2) of this section shall, to the**
6 **extent feasible and appropriate:**

7 (a) **Define standards for the preparation of contingency plans for high hazard train routes**
8 **that are consistent with the standards for the preparation of contingency plans for facilities**
9 **adopted under ORS 468B.350; and**

10 (b) **Be consistent with requirements placed on railroads by ORS 453.392 and section 3 of**
11 **this 2017 Act and by rules adopted by the State Fire Marshal under ORS 453.392.**

12 (4) **A contingency plan for a high hazard train route is not subject to approval by the**
13 **department, but shall be subject to review by the department under ORS 468B.360. If the**
14 **department determines upon review that a submitted contingency plan for a high hazard**
15 **train route does not meet the standards adopted by rule under subsection (2) of this section,**
16 **the department shall by conference, conciliation and persuasion endeavor to receive from the**
17 **owner or operator of the high hazard train route an updated or modified contingency plan**
18 **that addresses concerns of the department.**

19 (5) **An owner or operator of a high hazard train route shall immediately notify the de-**
20 **partment, in writing, of any significant change affecting the contingency plan for the high**
21 **hazard train route, including changes in any applicable factor set forth in ORS 468B.345 to**
22 **468B.360 or rules adopted by the commission.**

23 (6) **An owner or operator does not act out of conformity with the terms of a submitted**
24 **contingency plan for a high hazard train route by furnishing to another contingency plan**
25 **holder, after notifying the department, equipment, materials or personnel to assist the other**
26 **plan holder in a response to an oil discharge. The plan holder shall replace or return the**
27 **transferred equipment, materials and personnel as soon as feasible.**

28 (7) **The department may require the holder of a contingency plan for a high hazard train**
29 **route to take steps necessary to demonstrate the holder's ability to carry out the contin-**
30 **gency plan, including:**

31 (a) **Periodic training;**

32 (b) **Spill response team exercises; and**

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

35 (8) **Upon receipt of a contingency plan for a high hazard train route, the department shall**
36 **provide a copy of the contingency plan for review to the State Department of Fish and**
37 **Wildlife, the State Fire Marshal and the Department of Land Conservation and Development**
38 **and to any federally recognized Oregon Indian tribes owning property that abuts or is trav-**
39 **elled over by the high hazard train route for which the contingency plan is prepared. Agen-**
40 **cies and tribes that receive copies of a contingency plan under this subsection shall review**
41 **the plan according to procedures and time limits established by rule by the commission.**

42 (9) **The receipt and review by the Department of Environmental Quality of a contingency**
43 **plan for a high hazard train route does not constitute an express assurance regarding the**
44 **adequacy of the plan or constitute a defense to liability imposed under ORS chapter 468, 468A**
45 **or 468B or any other state law.**

1 **SECTION 10.** ORS 468B.355 is amended to read:

2 468B.355. (1) A contingency plan for a facility or covered vessel shall be submitted to the De-
3 partment of Environmental Quality within 12 months after the Environmental Quality Commission
4 adopts rules under ORS 468B.350. The department may adopt a schedule for submission of [*an oil*]
5 a contingency plan within the 12-month period. The schedule for the Columbia River shall be coor-
6 dinated with the State of Washington. The department may adopt an alternative schedule for the
7 Oregon coast and the Willamette River.

8 **(2) A contingency plan for a high hazard train route shall be submitted to the department**
9 **within 12 months after the commission adopts rules under section 9 of this 2017 Act. The**
10 **department may adopt a schedule for submission of a contingency plan within the 12-month**
11 **period.**

12 [(2)] (3) The contingency plan for a facility shall be submitted by the owner or operator of the
13 facility or by a qualified oil spill response cooperative in which the facility owner or operator is a
14 participating member.

15 [(3)] (4) The contingency plan for a tank vessel shall be submitted by:

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

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

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

21 [(4)] (5) Subject to conditions imposed by the department, the contingency plan for a tank vessel,
22 if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank
23 vessels of a particular class that will be loading or unloading cargo at the facility.

24 [(5)] (6) The contingency plan for a cargo vessel or passenger vessel may be submitted by the
25 owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to con-
26 ditions imposed by the department, the owner, operator, agent or a maritime association may submit
27 a single contingency plan for cargo vessels or passenger vessels of a particular class.

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

30 [(6)] (8) A person that has contracted with a facility, [*or*] covered vessel **or owner or operator**
31 **of a high hazard train route** to provide containment and cleanup services and that meets the
32 standards established by the commission under ORS 468B.350 **or section 9 of this 2017 Act** may
33 submit the contingency plan for any facility, [*or*] covered vessel **or high hazard train route** for
34 which the person is contractually obligated to provide services. Subject to conditions imposed by the
35 department, the person may submit a single plan for more than one covered vessel.

36 [(7)] (9) The requirements of submitting a contingency plan under this section may be satisfied
37 by a covered vessel by submission of proof of assessment participation by the vessel in a maritime
38 association. Subject to conditions imposed by the department, the association may submit a single
39 plan for more than one facility or covered vessel or may submit a single plan providing contingen-
40 cies to respond for different classes of covered vessels.

41 [(8)] (10) A contingency plan prepared for an agency of the federal government or an adjacent
42 state that satisfies the requirements of ORS 468B.345 to 468B.360 and the rules adopted by the
43 [*Environmental Quality*] commission may be accepted as a plan under ORS 468B.345 **or section 9**
44 **of this 2017 Act.** The commission shall assure that to the greatest extent possible, requirements for
45 a contingency plan under ORS 468B.345 to 468B.360 are consistent with requirements for a plan

1 under federal law.

2 [(9)] (11) Covered vessels may satisfy the requirements of submitting a contingency plan under
3 this section through proof of current assessment participation in an approved plan maintained with
4 the department by a maritime association.

5 [(10)] (12) A maritime association may submit a contingency plan for a cooperative group of
6 covered vessels. Covered vessels that have not previously obtained approval of a plan may enter the
7 navigable waters of the state if, upon entering such waters, the vessel pays the established assess-
8 ment for participation in the approved plan maintained by the association.

9 [(11)] (13) A maritime association shall have a lien on the responsible vessel if the vessel owner
10 or operator fails to remit any regular operating assessments and shall further have a lien for the
11 recovery for any direct costs provided to or for the vessel by the maritime association for oil spill
12 response or spill related communications services. The lien shall be enforced in accordance with
13 applicable law.

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

19 [(13)] (15) Except as otherwise provided in ORS chapters 468, 468A and 468B, neither the mem-
20 bers of the association, its officers, agents or employees, nor the business entities by whom the
21 members are regularly employed, may be held individually responsible for errors in judgment, mis-
22 takes or other acts, either of commission or omission, as principal, agent, person or employee, save
23 for their own individual acts of dishonesty or crime.

24 [(14)] (16) Assessment participation in a maritime association does not constitute a defense to
25 liability imposed under ORS 468B.345 to 468B.415 or other state or federal law. Such assessment
26 participation shall not relieve a covered vessel from complying with those portions of the approved
27 maritime association contingency plan that may require vessel specific oil spill response equipment,
28 training or capabilities for that vessel.

29 [(15)] (17) A person providing a contingency plan for a cargo or passenger vessel under this
30 section shall be exempt from liability as provided under ORS 468B.425 for any action taken or
31 omitted in the course of providing contingency planning service.

32 **SECTION 11.** ORS 468B.360 is amended to read:

33 468B.360. In reviewing [*the*] a contingency plan required by ORS 468B.345 **or section 9 of this**
34 **2017 Act**, the Department of Environmental Quality shall consider at least the following factors,
35 **as applicable:**

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

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

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

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

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

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

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

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

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

11 (10) The spill response equipment and resources available to a person providing a contingency
12 plan for cargo and passenger vessels under contingency plans filed by the person under state or
13 federal law for other covered vessels or facilities owned or operated by that person[.]; **and**

14 (11) **For a high hazard train route, the extent to which the plan reduces or eliminates**
15 **local hazards such as contamination of drinking water supplies and irrigation sources.**

16 **SECTION 12.** ORS 468B.365 is amended to read:

17 468B.365. (1) The Department of Environmental Quality shall approve a contingency plan **re-**
18 **quired under ORS 468B.345** only if *[it]* **the department** determines that:

19 (a) The plan **for the covered vessel or facility** meets the requirements of ORS 468B.345 to
20 468B.360; *[and:]*

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

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

26 (2) An owner or operator of a covered vessel or facility shall notify the department in writing
27 immediately of any significant change affecting the contingency plan, including changes in any fac-
28 tor set forth in this section or in rules adopted by the Environmental Quality Commission. The de-
29 partment may require the owner or operator to update a contingency plan as a result of these
30 changes.

31 (3) A holder of an approved contingency plan **required under ORS 468B.345** does not violate
32 the terms of the contingency plan by furnishing to another plan holder, after notifying the depart-
33 ment, equipment, materials or personnel to assist the other plan holder in a response to an oil dis-
34 charge. The plan holder shall replace or return the transferred equipment, materials and personnel
35 as soon as feasible.

36 (4) The department may attach any reasonable term or condition to its approval or modification
37 of a contingency plan **required under ORS 468B.345** that the department determines is necessary
38 to *[insure]* **ensure** that the applicant:

39 (a) Has access to sufficient resources to protect environmentally sensitive areas and to prevent,
40 contain, clean up and mitigate potential oil discharges from the facility or tank vessel;

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

42 (c) Complies with the contingency plan.

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

45 (6) The department may require an applicant or a holder of an approved contingency plan to

1 take steps necessary to demonstrate its ability to carry out the contingency plan, including:

2 (a) Periodic training;

3 (b) Response team exercises; and

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

6 (7) The department may consider evidence that oil discharge prevention measures such as dou-
7 ble hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic test-
8 ing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented
9 and, in its discretion, may make exceptions to the requirements of this section to reflect the reduced
10 risk of oil discharges from the facility or tank vessel for which the plan is submitted or being mod-
11 ified.

12 (8) Before the department approves or modifies a contingency plan required under ORS 468B.345,
13 the department shall provide a copy of the contingency plan to the State Department of Fish and
14 Wildlife, the office of the State Fire Marshal and the Department of Land Conservation and Devel-
15 opment for review. The agencies shall review the plan according to procedures and time limits es-
16 tablished by rule of the Environmental Quality Commission.

17 (9) Upon approval of a contingency plan **required under ORS 468B.345**, the department shall
18 issue to the plan holder a certificate stating that the plan has been approved. The certificate shall
19 include the name of the facility or tank vessel for which the certificate is issued, the effective date
20 of the plan and the date by which the plan must be submitted for renewal.

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

24 **SECTION 13.** ORS 468B.370 is amended to read:

25 468B.370. (1)(a) The Environmental Quality Commission by rule shall adopt procedures to de-
26 termine the adequacy of [*a contingency plan*] **contingency plans:**

27 **(A)** Approved or filed for approval under ORS 468B.365[.]; **and**

28 **(B) Required for a high hazard train route under section 9 of this 2017 Act.**

29 (b) The rules shall require random practice drills without prior notice to test the adequacy of
30 the responding entities. The rules may provide for unannounced practice drills of an individual
31 contingency plan.

32 (c) The rules may require the contingency plan holder to publish a report on the drills. This
33 report shall include an assessment of response time and available equipment and personnel com-
34 pared to those listed in the contingency plan relying on the responding entities and requirements,
35 if any, for changes in the plans or their implementation. The Department of Environmental Quality
36 shall review the report and assess the adequacy of the drill.

37 (d) The department may require additional drills and changes in arrangements for implementing
38 the approved plan that are necessary to insure the effective implementation of the plan.

39 (2) The [*Environmental Quality*] commission by rule may require any tank vessel carrying oil as
40 cargo in the navigable waters of the state to:

41 (a) Place booms, in-water sensors or other detection equipment around tank vessels during
42 transfers of oil; and

43 (b) Submit to the department evidence of a structural and mechanical integrity inspection of the
44 tank vessel equipment and hull structures.

45 (3) A tank vessel that is conducting, or is available only for conducting, oil discharge response

1 operations is exempt from the requirements of subsection (1) of this section if the tank vessel has
2 received prior approval of the department. The department may approve exemptions under this
3 subsection upon application and presentation of information required by the department.

4 **SECTION 14.** ORS 468B.385 is amended to read:

5 468B.385. (1) Upon request of a plan holder or on the initiative of the Department of Environ-
6 mental Quality, the department, after notice and opportunity for hearing, may modify its approval
7 of a contingency plan **required under ORS 468B.345** if the department determines that a change
8 has occurred in the operation of the facility or tank vessel necessitating an amended or supple-
9 mental plan, or that the operator's discharge experience demonstrates a necessity for modification.

10 (2) The department, after notice and opportunity for hearing, may revoke its approval of a con-
11 tingency plan **required under ORS 468B.345** if the department determines that:

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

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

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

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

18 (3) Failure of a holder of an approved or modified contingency plan **or a submitted contin-**
19 **gency plan for a high hazard train route** to comply with the plan or to have access to the quality
20 or quantity of resources identified in the plan or to respond with those resources within the shortest
21 possible time in the event of a spill is a violation of ORS 468B.345 to 468B.415 for purposes of ORS
22 466.992, 468.140, 468.943 and any other applicable law.

23 (4) If the holder of an approved or modified contingency plan, **or of a submitted contingency**
24 **plan for a high hazard train route**, fails to respond to and conduct cleanup operations of an un-
25 permitted discharge of oil with the quality and quantity of resources identified in the plan and in
26 a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil
27 penalty assessed under ORS 466.992 and 468.140.

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

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

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

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

34 (d) Comply with terms and conditions attached to the plan by the department under ORS
35 468B.345 to 468B.380; and

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

38 **SECTION 15.** ORS 468B.410 is amended to read:

39 468B.410. (1) The Oil Spill Prevention Fund is established separate and distinct from the General
40 Fund in the State Treasury. Interest earned on the fund shall be credited to the fund. Moneys re-
41 ceived by the Department of Environmental Quality for the purpose of oil and hazardous material
42 spill prevention and the fees collected under ORS 468B.405 shall be paid into the State Treasury and
43 credited to the fund.

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

1 (3) The moneys in the Oil Spill Prevention Fund are appropriated continuously to the Depart-
2 ment of Environmental Quality to be used in the manner described in subsection (4) of this section.

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

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

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

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

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

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

13 **(5) Notwithstanding any contrary provision of subsection (4) of this section, moneys in**
14 **the Oil Spill Prevention Fund may not be used to pay the costs of the department that may**
15 **be paid with moneys deposited in the High Hazard Train Route Oil Spill Prevention Fund**
16 **established under section 17 of this 2017 Act.**

17 **SECTION 16. Section 17 of this 2017 Act is added to and made a part of ORS 468B.345 to**
18 **468B.415.**

19 **SECTION 17. (1) The High Hazard Train Route Oil Spill Prevention Fund is established**
20 **in the State Treasury, separate and distinct from the General Fund. Interest earned by the**
21 **High Hazard Train Route Oil Spill Prevention Fund shall be credited to the fund.**

22 **(2) The fund shall consist of:**

23 **(a) All moneys placed in the fund as provided by law; and**

24 **(b) Any gifts, grants, donations, endowments or bequests from any public or private**
25 **source.**

26 **(3) Moneys in the fund are continuously appropriated to the Department of Environ-**
27 **mental Quality to be used only to pay the costs of the department incurred to:**

28 **(a) Review, under ORS 468B.360, contingency plans for high hazard train routes required**
29 **by section 9 of this 2017 Act;**

30 **(b) Conduct training, response exercises, inspection and tests in order to verify equip-**
31 **ment inventories and ability to prevent and respond to oil release emergencies related to**
32 **high hazard train routes and to undertake other activities intended to verify or establish the**
33 **preparedness of the state, a municipality or an owner or operator of a high hazard train**
34 **route required by section 9 of this 2017 Act to have submitted a contingency plan to the de-**
35 **partment; and**

36 **(c) Develop, review and revise the portions of the oil spill response plan required by ORS**
37 **468B.495 and 468B.500 that relate to listed sensitive areas along high hazard train routes.**

38 **SECTION 18. ORS 468B.495 is amended to read:**

39 468B.495. (1) The Department of Environmental Quality shall develop an integrated, interagency
40 response plan for oil or hazardous material spills in the Columbia River, the Willamette River up
41 to Willamette Falls [*and*], the coastal waters and estuaries of the state **and listed sensitive areas**
42 **along high hazard train routes.** In developing the response plan, the department shall work with
43 all affected local, state and federal agencies and with any volunteer group interested in participating
44 in oil or hazardous material spill response.

45 (2) The plan developed under subsection (1) of this section shall be consistent to the extent

1 practicable with the plan for a statewide hazardous material emergency response system established
2 by the State Fire Marshal under ORS 453.374.

3
4 **MISCELLANEOUS**

5
6 **SECTION 19.** (1) Sections 2 to 4, 7 to 9, 16 and 17 of this 2017 Act and the amendments
7 to statutes by sections 1, 5, 6, 10 to 15 and 18 of this 2017 Act become operative on January
8 1, 2018.

9 (2) The State Fire Marshal, the Environmental Quality Commission and the Department
10 of Environmental Quality may take any action before the operative date specified in sub-
11 section (1) of this section that is necessary for the State Fire Marshal, the commission or
12 the department to exercise, on and after the operative date specified in subsection (1) of this
13 section, any of the duties, functions and powers conferred on the State Fire Marshal, the
14 commission and the department by sections 2 to 4, 7 to 9, 16 and 17 of this 2017 Act and the
15 amendments to statutes by sections 1, 5, 6, 10 to 15 and 18 of this 2017 Act.

16 **SECTION 20.** The unit captions used in this 2017 Act are provided only for the conven-
17 ience of the reader and do not become part of the statutory law of this state or express any
18 legislative intent in the enactment of this 2017 Act.

19 **SECTION 21.** This 2017 Act takes effect on the 91st day after the date on which the 2017
20 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

21
