

Requested by Representative SMITH WARNER

**PROPOSED AMENDMENTS TO
HOUSE BILL 2131**

1 On page 1 of the printed bill, line 2, delete “and”.

2 In line 3, delete “, 468B.390” and after “468B.412” insert “; and prescribing
3 an effective date”.

4 Delete lines 5 through 24 and delete pages 2 through 12 and insert:

5

6 **“AMENDMENTS TO OIL OR HAZARDOUS MATERIAL**
7 **SPILLAGE STATUTES**

8

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
11 468B.500:

12 **“(1) ‘Applicable rail carrier’ means a railroad operating in this state**
13 **that is classified as a Class I or Class II carrier under 49 C.F.R. 1201**
14 **and that owns or operates high hazard train routes.**

15 “[~~1~~] (2) ‘Bulk’ means material stored or transported in loose, unpackaged
16 liquid, powder or granular form capable of being conveyed by a pipe, bucket,
17 chute or belt system.

18 “[~~2~~] (3) ‘Cargo vessel’ means a self-propelled ship in commerce, other
19 than a tank vessel, of 300 gross tons or more. ‘Cargo vessel’ does not include
20 a vessel used solely for commercial fish harvesting.

21 “[~~3~~] (4) ‘Commercial fish harvesting’ means taking food fish with any

1 gear unlawful for angling under ORS 506.006, or taking food fish in excess
2 of the limits permitted for personal use, or taking food fish with the intent
3 of disposing of such food fish or parts thereof for profit, or by sale, barter
4 or trade, in commercial channels.

5 “[4] (5) ‘Contingency plan’ means an oil spill prevention and emergency
6 response plan required under ORS 468B.345.

7 “[5] (6) ‘Covered vessel’ means a tank vessel, cargo vessel, passenger
8 vessel or dredge vessel.

9 “[6] (7) ‘Damages’ includes damages, costs, losses, penalties or attorney
10 fees of any kind for which liability may exist under the laws of this state
11 resulting from, arising out of or related to the discharge or threatened dis-
12 charge of oil.

13 “[7] (8) ‘Discharge’ means any emission other than natural seepage of
14 oil, whether intentional or unintentional. ‘Discharge’ includes but is not
15 limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping
16 oil.

17 “[8] (9) ‘Dredge vessel’ means a self-propelled vessel of 300 or more gross
18 tons that is equipped for regularly engaging in dredging of submerged and
19 submersible lands.

20 “[9] (10) ‘Exploration facility’ means a platform, vessel or other offshore
21 facility used to explore for oil in the navigable waters of the state. ‘Explo-
22 ration facility’ does not include platforms or vessels used for stratigraphic
23 drilling or other operations that are not authorized or intended to drill to
24 a producing formation.

25 “[10] (11) ‘Facility’ means a pipeline, **a railroad car** or any structure,
26 group of structures, equipment or device, other than a vessel that transfers
27 oil over navigable waters of the state, that is used for producing, storing,
28 handling, transferring, processing or transporting oil in bulk and that is ca-
29 pable of storing or transporting 10,000 or more gallons of oil. ‘Facility’ does
30 not include:

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

4 “(b) An underground storage tank regulated by the Department of Envi-
5 ronmental Quality or a local government under ORS 466.706 to 466.882 and
6 466.994; or

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

10 “[~~(11)~~] **(12)** ‘Federal on-scene coordinator’ means the federal official pre-
11 designated by the United States Environmental Protection Agency or the
12 United States Coast Guard to coordinate and direct federal responses or the
13 official designated by the lead agency to coordinate and direct removal under
14 the National Contingency Plan.

15 “[~~(12)~~] **(13)** ‘Hazardous material’ has the meaning given that term in ORS
16 466.605.

17 “**(14) ‘High hazard train route’ means a section of rail lines in this**
18 **state:**

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

21 “**(b) Over which trains operate that consist of multiple tanker rail-**
22 **road cars transporting oil or hazardous material as cargo.**

23 “**(15) ‘Listed sensitive area’ means an area or location listed as an**
24 **area of special economic or environmental importance in an Area**
25 **Contingency Plan or Sub-Area Contingency Plan prepared and pub-**
26 **lished pursuant to section 311(j) of the Federal Water Pollution Control**
27 **Act, 33 U.S.C. 1321(j), as amended by the Oil Pollution Act of 1990, P.L.**
28 **101-380.**

29 “[~~(13)~~] **(16)** ‘Maritime association’ means an association or cooperative of
30 marine terminals, facilities, vessel owners, vessel operators, vessel agents or

1 other maritime industry groups, that provides oil spill response planning and
2 spill related communications services within the state.

3 “[~~(14)~~] (17) ‘Maximum probable spill’ means the maximum probable spill
4 for a vessel operating in the navigable waters of the state considering the
5 history of spills of vessels of the same class operating on the west coast of
6 the United States.

7 “[~~(15)~~] (18) ‘Navigable waters’ means the Columbia River, the Willamette
8 River up to Willamette Falls, the Pacific Ocean and estuaries to the head
9 of tidewater.

10 “[~~(16)~~] (19) ‘National Contingency Plan’ means the plan prepared and
11 published under section 311(d) of the Federal Water Pollution Control Act,
12 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (P.L. 101-380).

13 “[~~(17)~~] (20) ‘Offshore facility’ means any facility located in, on or under
14 any of the navigable waters of the state.

15 “[~~(18)~~] (21) ‘Oils’ or ‘oil’ means:

16 “(a) Oil, including gasoline, crude oil, **bitumen, synthetic crude oil,**
17 **natural gas condensate,** fuel oil, diesel oil, lubricating oil, sludge, oil re-
18 fuse and any other petroleum related product; **and**

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

20 “[~~(19)~~] (22) ‘Onshore facility’ means any facility located in, on or under
21 any land of the state, other than submerged land, that, because of its lo-
22 cation, could reasonably be expected to cause substantial harm to the envi-
23 ronment by discharging oil into or on the navigable waters of the state or
24 adjoining shorelines.

25 “[~~(20)~~] (23) ‘Passenger vessel’ means a ship of 300 or more gross tons
26 carrying passengers for compensation.

27 “[~~(21)~~] (24) ‘Person’ has the meaning given the term in ORS 468.005.

28 “[~~(22)~~] (25) ‘Person having control over oil’ includes but is not limited to
29 any person using, storing or transporting oil immediately prior to entry of
30 such oil into the [*navigable*] waters of the state, and shall specifically in-

1 clude carriers and bailees of such oil.

2 “[23] **(26)** ‘Pipeline’ means a facility, including piping, compressors,
3 pump stations and storage tanks, used to transport oil between facilities or
4 between facilities and tank vessels.

5 “[24] **(27)** ‘Region of operation’ with respect to the holder of a contin-
6 gency plan means the area where the operations of the holder that require
7 a contingency plan are located.

8 “[25] **(28)** ‘Removal costs’ means the costs of removal that are incurred
9 after a discharge of oil has occurred or, in any case in which there is a
10 substantial threat of a discharge of oil, the costs to prevent, minimize or
11 mitigate oil pollution from the incident.

12 “[26] **(29)** ‘Responsible party’ has the meaning given under section 1001
13 of the Oil Pollution Act of 1990 (P.L. 101-380).

14 “[27] **(30)** ‘Ship’ means any boat, ship, vessel, barge or other floating
15 craft of any kind.

16 “[28)(a)] **(31)(a)** ‘State on-scene coordinator’ means the state official ap-
17 pointed by the Department of Environmental Quality to represent the de-
18 partment and the State of Oregon in response to an oil or hazardous material
19 spill or release or threatened spill or release and to coordinate cleanup re-
20 sponse with state and local agencies.

21 “(b) For purposes of this subsection:

22 “(A) ‘Spill or release’ means the discharge, deposit, injection, dumping,
23 spilling, emitting, releasing, leaking or placing of any oil or hazardous ma-
24 terial into the air or into or on any land or waters of this state except as
25 authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A,
26 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal
27 law, or except when being stored or used for its intended purpose.

28 “(B) ‘Threatened spill or release’ means oil or hazardous material is likely
29 to escape or be carried into the air or into or on any land or waters of the
30 state, including from a ship as defined in this section that is in imminent

1 danger of sinking.

2 “[29] **(32)** ‘Tank vessel’ means a ship that is constructed or adapted to
3 carry oil in bulk as cargo or cargo residue. ‘Tank vessel’ does not include:

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

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

6 “(c) An oil spill response barge or vessel.

7 “[30] **(33)** ‘Worst case spill’ means:

8 “(a) In the case of a vessel, a spill of the entire cargo and fuel of the tank
9 vessel complicated by adverse weather conditions; *[and]*

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

12 **“(c) In the case of an applicable rail carrier, a spill of a number of**
13 **barrels of oil as calculated by an applicable rail carrier under section**
14 **14 of this 2017 Act.**

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

16 “468B.340. (1) The Legislative Assembly finds that:

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

19 “(b) Commercial vessel activity on the navigable waters of the state is
20 vital to the economic interests of the people of the state.

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

23 “(A) Gaps in regulatory oversight;

24 “(B) Incomplete cost recovery by states;

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

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

29 “(E) Comprehensive oil spill prevention demands participation by indus-
30 try, citizens, environmental organizations and local, state, federal and inter-

1 national governments.

2 “(2) Therefore, the Legislative Assembly declares it is the intent of ORS
3 468B.345 to 468B.415 to establish a program to promote:

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

6 “(b) **The prevention of oil spills to inland rivers and streams serving
7 as essential habitat for salmon and other wildlife or as a source of
8 water for consumption, irrigation or other public use;**

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

11 “(d) **The prevention of spills along high hazard train routes;**

12 “[b)] (e) Oil spill response preparedness, including the identification of
13 actions and content required for an effective contingency plan;

14 “[c)] (f) A consistent west coast approach to oil spill prevention and re-
15 sponse;

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

18 “[e)] (h) To the maximum extent possible, coordination of state programs
19 with the programs and regulations of the United States Coast Guard and
20 adjacent states.

21 **“SECTION 3. Section 4 of this 2017 Act is added to and made a part
22 of ORS 468B.345 to 468B.415.**

23 **“SECTION 4. Notwithstanding ORS 468B.300, as used in ORS
24 468B.345 to 468B.415, ‘facility’ has the meaning given that term in ORS
25 468B.300, except that ‘facility’ does not include railroad cars.**

26 **“SECTION 5. ORS 468B.345 is amended to read:**

27 “468B.345. (1)(a) Unless an oil spill prevention and emergency response
28 plan has been approved by the Department of Environmental Quality and has
29 been properly implemented, no person shall:

30 “[a)] (A) Cause or permit the operation of an onshore facility in the

1 state;

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

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

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

9 “[*(3)*] **(c)** A contingency plan shall be renewed at least once every five
10 years.

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

15 **“(2)(a) A railroad that owns or operates a high hazard train route**
16 **in this state shall have an oil spill prevention and emergency response**
17 **plan that has been approved by the department.**

18 **“(b) It is not a defense to an action brought for a violation of this**
19 **subsection that the person charged believed that a current contin-**
20 **gency plan had been approved by the department.**

21 **“(c) A contingency plan for a high hazard train route shall be re-**
22 **newed at least once every five years.**

23 **“SECTION 6. Section 7 of this 2017 Act is added to and made a part**
24 **of ORS 468B.345 to 468B.415.**

25 **“SECTION 7. (1) The Environmental Quality Commission, after**
26 **consultation and in coordination with the State Fire Marshal, shall**
27 **adopt rules defining:**

28 **“(a) Standards for the preparation of contingency plans for high**
29 **hazard train routes; and**

30 **“(b) Oil spill response zones along high hazard train routes and the**

1 amount of equipment identified in a contingency plan that is required
2 to be regularly located in the zones.

3 **“(2) The rules adopted under subsection (1) of this section shall:**

4 **“(a) To the extent feasible and appropriate, define standards for the**
5 **preparation of contingency plans for high hazard train routes that are**
6 **equivalent to standards for the preparation of contingency plans for**
7 **facilities adopted under ORS 468B.350; and**

8 **“(b) Require the owners and operators of high hazard train routes**
9 **to demonstrate an ability to meet the requirements of subsection (3)**
10 **of this section.**

11 **“(3) A railroad that owns or operates a high hazard train route in**
12 **this state shall:**

13 **“(a) Offer training at least once every three years to each fire de-**
14 **partment, including each tribal fire department, having jurisdiction**
15 **along the high hazard train routes owned or operated by the railroad.**
16 **Training provided under this paragraph must be coordinated by the**
17 **State Fire Marshal and meet any requirements for ongoing training**
18 **adopted by the State Fire Marshal by rule under ORS 453.392.**

19 **“(b) Following confirmation of a discharge from a train along a**
20 **high hazard train route, deliver and deploy sufficient equipment and**
21 **trained personnel to contain and recover discharged oil or hazardous**
22 **materials and to protect life, safety, property and the environment.**
23 **The railroad must:**

24 **“(A) Provide, within one hour of confirmation of the discharge, a**
25 **qualified company employee to advise the state on-scene coordinator.**
26 **The employee may be made available by telephone and must be au-**
27 **thorized to deploy all necessary response resources of the railroad.**

28 **“(B) Within a certain time period after confirmation of a discharge**
29 **as set forth in rule by the commission, be capable of providing:**

30 **“(i) Air monitoring equipment and a trained equipment operator to**

1 assist in protecting the safety of emergency responders and the public;
2 and

3 “(ii) Qualified personnel at the discharge site to assess the dis-
4 charge and advise the state on-scene coordinator.

5 “(C) Within a certain time period after confirmation of a discharge
6 as set forth in rule by the commission, be capable of delivering and
7 deploying containment booms, boats, oil recovery equipment, trained
8 staff and all other materials needed to provide:

9 “(i) On-site containment and recovery of a volume of oil equal to
10 a percentage of the calculated worst case spill as required by the
11 commission by rule at any location along the route; and

12 “(ii) Protection of the listed sensitive areas and potable water in-
13 takes that are within a distance as specified by the commission by rule
14 from a discharge site and within eight hours of water travel time
15 downstream in any river or stream that the high hazard train route
16 abuts.

17 “(D) Within a certain time period after confirmation of a discharge
18 as set forth in rule by the commission, be capable of delivering and
19 deploying additional containment booms, boats, oil recovery equip-
20 ment, trained staff and all other materials needed to provide contain-
21 ment and recovery of a worst case spill and to protect the listed
22 sensitive areas and potable water intakes that are at any location
23 along the route.

24 “(c) Be capable of deploying containment booms from land across
25 sewer outfalls, creeks, ditches and other places where oil or hazardous
26 substances may drain, in order to prevent access by discharged mate-
27 rial. A railroad may arrange with a contractor or other qualified public
28 or private entity to supply containment booms under this paragraph.
29 Any arrangement entered into under this paragraph must be tested
30 by drill at least once every five years.

1 “(d) Conduct at least one oil containment, recovery and listed sen-
2 sitive area protection drill every three years, at a location and time
3 chosen by the Department of Environmental Quality. The drill must
4 be attended by safety representatives of railroad employees governed
5 by the Railway Labor Act, as amended (45 U.S.C. 153 et seq.).

6 “**SECTION 8.** ORS 468B.355 is amended to read:

7 “468B.355. (1) A contingency plan for a facility or covered vessel shall be
8 submitted to the Department of Environmental Quality within 12 months
9 after the Environmental Quality Commission adopts rules under ORS
10 468B.350. The department may adopt a schedule for submission of [*an oil*] a
11 contingency plan within the 12-month period. The schedule for the Columbia
12 River shall be coordinated with the State of Washington. The department
13 may adopt an alternative schedule for the Oregon coast and the Willamette
14 River.

15 “(2) A contingency plan for a high hazard train route shall be sub-
16 mitted to the department within 12 months after the commission
17 adopts rules under section 7 of this 2017 Act. The department may
18 adopt a schedule for submission of a contingency plan within the
19 12-month period.

20 “[(2)] (3) The contingency plan for a facility shall be submitted by the
21 owner or operator of the facility or by a qualified oil spill response cooper-
22 ative in which the facility owner or operator is a participating member.

23 “[(3)] (4) The contingency plan for a tank vessel shall be submitted by:

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

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

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

29 “[(4)] (5) Subject to conditions imposed by the department, the contin-
30 gency plan for a tank vessel, if submitted by the owner or operator of a fa-

1 cility, may be submitted as a single plan for all tank vessels of a particular
2 class that will be loading or unloading cargo at the facility.

3 “[5] (6) The contingency plan for a cargo vessel or passenger vessel may
4 be submitted by the owner or operator of the vessel, or the agent for the
5 vessel resident in this state. Subject to conditions imposed by the depart-
6 ment, the owner, operator, agent or a maritime association may submit a
7 single contingency plan for cargo vessels or passenger vessels of a particular
8 class.

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

12 “[6] (8) A person that has contracted with a facility, [or] covered vessel
13 **or railroad that operates a high hazard train route** to provide contain-
14 ment and cleanup services and that meets the standards established by the
15 commission under ORS 468B.350 **or section 7 of this 2017 Act** may submit
16 the contingency plan for any facility, [or] covered vessel **or high hazard**
17 **train route** for which the person is contractually obligated to provide ser-
18 vices. Subject to conditions imposed by the department, the person may
19 submit a single plan for more than one covered vessel.

20 “[7] (9) The requirements of submitting a contingency plan under this
21 section may be satisfied by a covered vessel by submission of proof of as-
22 sessment participation by the vessel in a maritime association. Subject to
23 conditions imposed by the department, the association may submit a single
24 plan for more than one facility or covered vessel or may submit a single plan
25 providing contingencies to respond for different classes of covered vessels.

26 “[8] (10) A contingency plan prepared for an agency of the federal gov-
27 ernment or an adjacent state that satisfies the requirements of ORS 468B.345
28 to 468B.360 and the rules adopted by the [*Environmental Quality*] commission
29 may be accepted as a plan under ORS 468B.345. The commission shall assure
30 that to the greatest extent possible, requirements for a contingency plan

1 under ORS 468B.345 to 468B.360 are consistent with requirements for a plan
2 under federal law.

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

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

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

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

24 “[13] (15) Except as otherwise provided in ORS chapters 468, 468A and
25 468B, neither the members of the association, its officers, agents or employ-
26 ees, nor the business entities by whom the members are regularly employed,
27 may be held individually responsible for errors in judgment, mistakes or
28 other acts, either of commission or omission, as principal, agent, person or
29 employee, save for their own individual acts of dishonesty or crime.

30 “[14] (16) Assessment participation in a maritime association does not

1 constitute a defense to liability imposed under ORS 468B.345 to 468B.415 or
2 other state or federal law. Such assessment participation shall not relieve a
3 covered vessel from complying with those portions of the approved maritime
4 association contingency plan that may require vessel specific oil spill re-
5 sponse equipment, training or capabilities for that vessel.

6 “[~~(15)~~] (17) A person providing a contingency plan for a cargo or passen-
7 ger vessel under this section shall be exempt from liability as provided under
8 ORS 468B.425 for any action taken or omitted in the course of providing
9 contingency planning service.

10 **“SECTION 9.** ORS 468B.360 is amended to read:

11 “468B.360. In reviewing the contingency plan required by ORS 468B.345,
12 the Department of Environmental Quality shall consider at least the follow-
13 ing factors:

14 “(1) The adequacy of containment and cleanup equipment, personnel,
15 communications equipment, notification procedures and call-down lists, re-
16 sponse time and logistical arrangements for coordination and implementation
17 of response efforts to remove oil spills promptly and properly and to protect
18 the environment;

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

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

23 “(4) The existence of navigational hazards within the area covered by the
24 plan;

25 “(5) The history and circumstances surrounding prior spills of oil within
26 the area covered by the plan;

27 “(6) The sensitivity of fisheries and wildlife and other natural resources
28 within the area covered by the plan;

29 “(7) Relevant information on previous spills contained in on-scene coor-
30 dinator reports covered by the plan;

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

3 “(9) The number of covered vessels calling in, **and high hazard train**
4 **routes** and *[the]* facilities located in, the geographic area and the resulting
5 ability of local agencies and industry groups to develop, finance and main-
6 tain a contingency plan and spill response system for those vessels, **high**
7 **hazard train routes** and facilities; and

8 “(10) The spill response equipment and resources available to a person
9 providing a contingency plan for cargo and passenger vessels under contin-
10 gency plans filed by the person under state or federal law for other covered
11 vessels or facilities owned or operated by that person.

12 **“SECTION 10.** ORS 468B.365 is amended to read:

13 “468B.365. (1) The Department of Environmental Quality shall approve a
14 contingency plan only if it determines that:

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

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

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

21 “(b) If implemented, the plan is capable, to the maximum extent practi-
22 cable in terms of personnel, materials and equipment, of removing oil
23 promptly and properly and minimizing any damage to the environment.

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

30 “(3) A holder of an approved contingency plan does not violate the terms

1 of the contingency plan by furnishing to another plan holder, after notifying
2 the department, equipment, materials or personnel to assist the other plan
3 holder in a response to an oil discharge. The plan holder shall replace or
4 return the transferred equipment, materials and personnel as soon as feasi-
5 ble.

6 “(4) The department may attach any reasonable term or condition to its
7 approval or modification of a contingency plan that the department deter-
8 mines is necessary to [*insure*] **ensure** that the applicant:

9 “(a) Has access to sufficient resources to protect environmentally sensi-
10 tive areas and to prevent, contain, clean up and mitigate potential oil dis-
11 charges from the facility or tank vessel **or along the high hazard train**
12 **route**;

13 “(b) Maintains personnel levels sufficient to carry out emergency oper-
14 ations; and

15 “(c) Complies with the contingency plan.

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

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

22 “(a) Periodic training;

23 “(b) Response team exercises; and

24 “(c) Verification of access to inventories of equipment, supplies and per-
25 sonnel identified as available in the approved contingency plan.

26 “(7) The department may consider evidence that oil discharge prevention
27 measures such as double hulls or double bottoms on vessels or barges, sec-
28 ondary containment systems, hydrostatic testing, enhanced vessel traffic
29 systems or enhanced crew or staffing levels have been implemented and, in
30 its discretion, may make exceptions to the requirements of this section to

1 reflect the reduced risk of oil discharges from the facility or tank vessel,
2 **or along the high hazard train route**, for which the plan is submitted or
3 being modified.

4 “(8)(a) Before the department approves or modifies a contingency plan
5 required under ORS 468B.345, the department shall provide a copy of the
6 contingency plan to the State Department of Fish and Wildlife, the office of
7 the State Fire Marshal and the Department of Land Conservation and De-
8 velopment for review.

9 **“(b) In addition to providing copies to the agencies listed in para-**
10 **graph (a) of this subsection, before approving or modifying a contin-**
11 **gency plan for a high hazard train route, the Department of**
12 **Environmental Quality shall provide a copy of the contingency plan**
13 **to federally recognized Oregon Indian tribes.**

14 **“(c) [The] Agencies and tribes that receive copies of a contingency**
15 **plan under this subsection** shall review the plan according to procedures
16 and time limits established by rule of the Environmental Quality Commis-
17 sion.

18 “(9) Upon approval of a contingency plan, the department shall issue to
19 the plan holder a certificate stating that the plan has been approved. The
20 certificate shall include the name of the facility, **high hazard train route**
21 or tank vessel for which the certificate is issued, the effective date of the
22 plan and the date by which the plan must be submitted for renewal.

23 “(10) The approval of a contingency plan by the department does not
24 constitute an express assurance regarding the adequacy of the plan or con-
25 stitute a defense to liability imposed under ORS chapters 468, 468A and 468B
26 or any other state law.

27 **“SECTION 11.** ORS 468B.385 is amended to read:

28 “468B.385. (1) Upon request of a plan holder or on the initiative of the
29 Department of Environmental Quality, the department, after notice and op-
30 portunity for hearing, may modify its approval of a contingency plan if the

1 department determines that a change has occurred in the operation of the
2 facility, **high hazard train route** or tank vessel necessitating an amended
3 or supplemental plan, or that the operator's discharge experience demon-
4 strates a necessity for modification.

5 “(2) The department, after notice and opportunity for hearing, may revoke
6 its approval of a contingency plan if the department determines that:

7 “(a) Approval was obtained by fraud or misrepresentation;

8 “(b) The operator does not have access to the quality or quantity of re-
9 sources identified in the plan;

10 “(c) A term or condition of approval or modification has been violated;
11 or

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

14 “(3) Failure of a holder of an approved or modified contingency plan to
15 comply with the plan or to have access to the quality or quantity of re-
16 sources identified in the plan or to respond with those resources within the
17 shortest possible time in the event of a spill is a violation of ORS 468B.345
18 to 468B.415 for purposes of ORS 466.992, 468.140, 468.943 and any other ap-
19 plicable law.

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

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

27 “(a) Establish and carry out procedures identified in the plan as being the
28 responsibility of the holder of the plan;

29 “(b) Have access to and have on hand the quantity and quality of equip-
30 ment, personnel and other resources identified as being accessible or on hand

1 in the plan;

2 “(c) Fulfill the assurances espoused in the plan in the manner described
3 in the plan;

4 “(d) Comply with terms and conditions attached to the plan by the de-
5 partment under ORS 468B.345 to 468B.380; and

6 “(e) Successfully demonstrate the ability to carry out the plan when re-
7 quired by the department under ORS 468B.370.

8

9 **“RAILROAD SAFETY ASSESSMENTS AND**
10 **FINANCIAL RESPONSIBILITY STATEMENTS**

11

12 **“SECTION 12. Sections 13 and 14 of this 2017 Act are added to and**
13 **made a part of ORS 468B.300 to 468B.500.**

14 **“SECTION 13. (1) The Department of Environmental Quality shall**
15 **levy and collect an annual assessment from applicable rail carriers.**
16 **The total assessment under this section shall equal \$_____ per**
17 **year, with each applicable rail carrier assessed a proportional share**
18 **of the total assessment that is based on the total high hazard train**
19 **route track miles operated by the applicable rail carrier within this**
20 **state.**

21 **“(2) Moneys collected under this section shall be deposited in the**
22 **State Treasury as follows:**

23 **“(a) _____ percent of the total assessment collected per year to the**
24 **credit of the Oil Spill Prevention Fund, to be used in the manner de-**
25 **scribed in ORS 468B.410 (4) for activities related to high hazard train**
26 **routes; and**

27 **“(b) _____ percent of the total assessment collected per year to the**
28 **credit of the Oil and Hazardous Material Transportation by Rail Action**
29 **Fund.**

30 **“SECTION 14. (1) As used in this section:**

1 “(a) ‘Cost to clean up a worst case spill’ means a dollar amount
2 equal to the worst case spill calculated under paragraph (b) of this
3 subsection multiplied by \$16,800.

4 “(b) ‘Worst case spill’ means a spill of an amount of barrels of oil
5 calculated as follows:

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

10 “(B) The applicable rail carrier shall multiply the percentage cal-
11 culated under subparagraph (A) of this paragraph by the number of
12 barrels of oil moved on the largest train load of oil that traveled on a
13 high hazard train route operated by the applicable rail carrier in this
14 state during the previous calendar year. The result of the calculation
15 under this subparagraph shall equal the worst case spill.

16 “(2) An applicable rail carrier shall annually submit to the Depart-
17 ment of Environmental Quality a statement that:

18 “(a) Describes all insurance carried by the rail carrier that covers
19 any losses resulting from a worst case spill, as well as the coverage
20 amounts, limitations and other conditions of the insurance;

21 “(b) Identifies the capacity, measured in barrels, of the average and
22 of the largest trains consisting of multiple tanker cars transporting
23 oil or hazardous materials as cargo that were operated on high hazard
24 train routes by the applicable rail carrier in the previous calendar
25 year; and

26 “(c) Includes additional information sufficient to demonstrate the
27 applicable rail carrier’s ability to pay the cost to clean up a worst case
28 spill including, but not limited to, insurance, reserve accounts, letters
29 of credit or other financial instruments or resources that the applica-
30 ble rail carrier can rely on to pay the cost to clean up a worst case

1 **spill.**

2 **“(3) An applicable rail carrier shall submit the statement required**
3 **by this section upon payment of the annual assessment required under**
4 **section 13 of this 2017 Act.**

5 **“SECTION 15.** ORS 468B.412 is amended to read:

6 “468B.412. (1) By September 30 of each year, the Department of Environ-
7 mental Quality shall publish a report for the previous fiscal year, commenc-
8 ing on July 1 and ending on June 30, that addresses:

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

11 **“(b) The assessment on applicable rail carriers under section 13 of**
12 **this 2017 Act;**

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

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

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

17 “(2)(a) The report published by the department under this section must
18 be in a format that allows for the monitoring of fee **and assessment** col-
19 lection and related activities by the department and for ensuring that ade-
20 quate but not excessive fees **and assessments** are collected to meet the
21 department’s budgetary needs.

22 “(b) The department shall make the report available to those who paid
23 fees under ORS 468B.405, **those who paid the assessment under section**
24 **13 of this 2017 Act** and [*to*] the general public.

25

26

“MISCELLANEOUS

27

28 **“SECTION 16.** (1) **Sections 3, 4, 6, 7 and 12 to 14 of this 2017 Act and**
29 **the amendments to ORS 468B.300, 468B.340, 468B.345, 468B.355, 468B.360,**
30 **468B.365, 468B.385 and 468B.412 by sections 1, 2, 5, 8 to 11 and 15 of this**

1 2017 Act become operative on January 1, 2018.

2 “(2) The Environmental Quality Commission and the Department
3 of Environmental Quality may take any action before the operative
4 date specified in subsection (1) of this section that is necessary for the
5 commission or the department to exercise, on and after the operative
6 date specified in subsection (1) of this section any of the duties, func-
7 tions and powers conferred on the commission or the department by
8 sections 3, 4, 6, 7 and 12 to 14 of this 2017 Act and the amendments to
9 ORS 468B.300, 468B.340, 468B.345, 468B.355, 468B.360, 468B.365, 468B.385
10 and 468B.412 by sections 1, 2, 5, 8 to 11 and 15 of this 2017 Act.

11 “SECTION 17. The unit captions used in this 2017 Act are provided
12 only for the convenience of the reader and do not become part of the
13 statutory law of this state or express any legislative intent in the
14 enactment of this 2017 Act.

15 “SECTION 18. This 2017 Act takes effect on the 91st day after the
16 date on which the 2017 regular session of the Seventy-ninth Legislative
17 Assembly adjourns sine die.”.

18 _____