

B-Engrossed House Bill 2150

Ordered by the House June 15
Including House Amendments dated March 15 and June 15

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Environmental Quality)

SUMMARY

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

Changes fee assessed by Department of Environmental Quality on cargo vessels, tank vessels and onshore and offshore facilities for Oil Spill Prevention Fund. Specifies that department is state agency responsible for overall management of threatened spills or releases and of cleanup of oil or hazardous material spills or releases. Requires Environmental Quality Commission to adopt rules defining oil spill response zones and prescribing amount of containment and cleanup equipment required to be regularly located in those zones. Directs department to establish task force to investigate ways to reduce oil and hazardous material spills and releases. Eliminates requirement that maritime pilot report owner or operator of ship who does not have proof of financial responsibility. Declares emergency, effective July 1, 2001.

A BILL FOR AN ACT

Relating to spill prevention; creating new provisions; amending ORS 468.140, 468B.300, 468B.350, 468B.370, 468B.390, 468B.395 and 468B.405; repealing ORS 468B.480 and 468B.490; limiting expenditures; and declaring an emergency.

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

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

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

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

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

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

(4) "Contingency plan" means an oil spill prevention and emergency response plan required under ORS 468B.345.

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

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

(7) "Discharge" means any emission other than natural seepage of oil, whether intentional or

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.

unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.

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

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

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

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

(c) Any structure, group of structures, equipment[, *pipeline*] or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil but does not receive oil from tank vessels, barges or pipelines.

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

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

(12) "Maritime association" means an association or cooperative of marine terminals, facilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that provides oil spill response planning and spill related communications services within the state.

(13) "Maximum probable spill" means the maximum probable spill for a vessel operating in the navigable waters of the state considering the history of spills of vessels of the same class operating on the west coast of the United States.

(14) "Navigable waters" means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tidewater.

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

(16) "Offshore facility" means any facility located in, on or under any of the navigable waters of the state.

(17) "Oils" or "oil" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

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

(19) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(20) "Person" has the meaning given the term in ORS 468.005.

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

(22) "Pipeline" means [*an onshore*] a facility, including piping, compressors, pump stations and storage tanks, used to transport oil between facilities or between facilities and tank vessels.

(23) "Region of operation" with respect to the holder of a contingency plan means the area where the operations of the holder that require a contingency plan are located.

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

(25) "Responsible party" has the meaning given under section 1001 of the Oil Pollution Act of 1990 (P.L. 101-380).

(26) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

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

(b) For purposes of this subsection:

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

(B) "Threatened spill or release" means that oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of this state.

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

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

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

(c) An oil spill response barge or vessel.

[(28)] **(29) "Worst case spill" means:**

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

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

SECTION 2. ORS 468B.350 is amended to read:

468B.350. (1) [*On or before July 1, 1992,*] The Environmental Quality Commission shall adopt [*by rule*] **rules defining:**

(a) Standards for the preparation of contingency plans for facilities and covered vessels; and

(b) Oil spill response zones within the navigable waters of the state and the amount of equipment identified in an oil spill contingency plan that is required to be regularly located in those zones.

(2) The rules adopted under subsection (1) of this section shall be coordinated with rules and regulations adopted by the State of Washington and the United States Coast Guard and shall require contingency plans that at a minimum meet the following standards. The plan shall:

- 1 (a) Include complete details concerning the response to oil spills of various sizes from any covered vessel or facility covered by the contingency plan.
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- 3 (b) To the maximum extent practicable, be designed, in terms of personnel, materials and equipment, to:
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- 5 (A) Remove oil and minimize any damage to the environment resulting from a maximum probable spill; and
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- 7 (B) Remove oil and minimize any damage to the environment resulting from a worst case spill.
- 8 (c) Consider the nature and number of facilities and marine terminals in a geographic area and the resulting ability of a facility to finance a plan and pay for department review.
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- 10 (d) Describe how the contingency plan relates to and is coordinated with the response plan developed by the Department of Environmental Quality under ORS 468B.495 and 468B.500 and any relevant contingency plan prepared by a cooperative, port, regional entity, the state or the federal government in the same area of the state covered by the plan.
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- 14 (e) Provide procedures for early detection of an oil spill and timely notification of appropriate federal, state and local authorities about an oil spill in accordance with applicable state and federal law.
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- 17 (f) Demonstrate ownership of or access to an emergency response communications network covering all locations of operation or transit by a covered vessel. The emergency response communications network also shall provide for immediate notification and continual emergency communications during cleanup response.
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- 21 (g) State the number, training preparedness and fitness of all dedicated, pre-positioned personnel assigned to direct and implement the plan.
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- 23 (h) Incorporate periodic training and drill programs to evaluate whether the personnel and equipment provided under the plan are in a state of operational readiness at all times.
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- 25 (i) State the means of protecting and mitigating the effects of a spill on the environment, including fish, marine mammals and other wildlife, and insuring that implementation of the plan does not pose unacceptable risks to the public or to the environment.
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- 28 (j) Provide a detailed description of equipment, training and procedures to be used by the crew of a vessel, or the crew of a tugboat involved in the operation of a nonself-propelled tank vessel, to minimize vessel damage, stop or reduce spilling from the vessel and only when appropriate and the vessel's safety is assured, contain and clean up the spilled oil.
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- 32 (k) Provide arrangements **by contract or other approved means** for pre-positioning oil spill containment **equipment**, [and] cleanup equipment, **dedicated response vessels** and trained personnel at strategic locations from which the personnel and equipment can be deployed to the spill site to promptly and properly remove the spilled oil.
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- 36 (L) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan.
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- 38 (m) Provide for disposal of recovered oil in accordance with local, state and federal laws.
- 39 (n) State the measures that have been taken to reduce the likelihood a spill will occur, including but not limited to design and operation of a vessel or facility, training of personnel, number of personnel and backup systems designed to prevent a spill.
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- 42 (o) State the amount and type of equipment **and the dedicated response vessels** available **by contract or other approved means** to respond to a spill, where the equipment [is] **and vessels are** located and the extent to which other contingency plans rely on the same equipment **and vessels**.
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(p) If the commission has adopted rules permitting the use of dispersants, describe the circumstances and the manner for the application of dispersants in conformance with the rules of the commission.

(3) As used in this section:

(a) "Contract or other approved means" means:

(A) A written contract between a covered vessel or facility owner or operator and an oil spill removal organization that identifies and ensures the availability of specified personnel and equipment within stipulated response times in specified oil spill response zones;

(B) Certification by the vessel or facility owner or operator that specified personnel and equipment are owned, operated or under the direct control of the vessel or facility owner or operator and are available within stipulated response times in specified oil spill response zones;

(C) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment that are available to respond to an oil spill within stipulated response times in specified oil spill response zones; or

(D) A written document that:

(i) Identifies personnel, equipment and services capable of being provided by the oil spill removal organization within stipulated response times in specified oil spill response zones;

(ii) Acknowledges that the oil spill removal organization intends to commit the identified resources in the event of an oil spill;

(iii) Permits the commission to verify the availability of the identified oil spill removal resources through tests, inspections and exercises; and

(iv) Is referenced in an oil spill contingency plan for the vessel or facility.

(b) "Dedicated response vessel" means a vessel that limits service exclusively to recovering and transporting spilled oil, tanker escorting, deploying oil spill response equipment, supplies and personnel, spill response related training, testing, exercises and research, or other oil spill removal and related activities.

SECTION 3. ORS 468B.370 is amended to read:

468B.370. (1)(a) The Environmental Quality Commission by rule shall adopt procedures to determine the adequacy of a contingency plan approved **or filed for approval** under ORS 468B.365.

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

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

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

(2) The Environmental Quality Commission by rule may require any tank vessel carrying oil as cargo in the navigable waters of the state to:

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

(b) Submit to the department evidence of a structural and mechanical integrity inspection of the

1 tank vessel equipment and hull structures.

2 (3) A tank vessel that is conducting, or is available only for conducting, oil discharge response
3 operations is exempt from the requirements of subsection (1) of this section if the tank vessel has
4 received prior approval of the department. The department may approve exemptions under this
5 subsection upon application and presentation of information required by the department.

6 **SECTION 4.** ORS 468B.390 is amended to read:

7 468B.390. (1) No person shall cause or permit the operation of a facility in the state unless the
8 person has proof of compliance with Section 1016 of the Federal Oil Pollution Act of 1990
9 (P.L. 101-380), if such compliance is required by federal law.

10 (2) No person may cause or permit the operation of an offshore exploration or production facility
11 in the state unless the person has proof of compliance with Section 1016 of the Federal Oil Pollution
12 Act of 1990 (P.L. 101-380).

13 (3) Except for a barge that does not carry oil as cargo or fuel or a spill response vessel or barge,
14 the owner of any vessel over 300 gross tons **in the waters of this state** shall have proof of financial
15 responsibility for the following vessels:

16 (a) For tank vessels over 300 gross tons:

17 (A) \$1,200 per gross ton or \$2 million for vessels of 3,000 gross tons or less, whichever is
18 greater; and

19 (B) \$1,200 per gross ton or \$10 million for vessels over 3,000 gross tons, whichever is greater;
20 or

21 (b) For any other covered vessel over 300 gross tons **carrying oil only for use as fuel**, \$600
22 per gross ton or \$500,000, whichever is greater.

23 (4) [*On or before January 1, 1992,*] The Department of Environmental Quality shall enter into
24 an agreement with the United States Coast Guard to receive notification of noncompliance with the
25 provisions of this section.

26 **(5) The financial assurance requirement established under subsection (3) of this section**
27 **shall meet the liability to the state for:**

28 **(a) Actual costs for removal of spilled oil;**

29 **(b) Civil penalties and fines imposed in connection with oil spills; and**

30 **(c) Natural resource damage.**

31 **SECTION 5.** ORS 468B.395 is amended to read:

32 468B.395. The Department of Environmental Quality shall:

33 (1) In cooperation with other natural resource agencies, develop a method of natural resource
34 valuation that fully incorporates nonmarket and market values in assessing damages resulting from
35 oil discharges;

36 (2) Work with other potentially affected states to develop a joint oil discharge prevention edu-
37 cation program for operators of fishing vessels, ferries, ports, cruise ships and marinas;

38 (3) Review the adequacy of and make recommendations for improvements in equipment, operat-
39 ing procedures and the appropriateness of west coast locations for transfer of oil;

40 (4) In cooperation with industry and the United States Coast Guard, develop local programs to
41 provide oil discharge response training to fishing boat operators and marinas;

42 **(5) Act as the state agency responsible for the overall management of the environmental**
43 **cleanup of oil or hazardous material spills or releases, which shall include:**

44 **(a) [*Adopt*] Adoption of an incident command system to enhance the department's ability to**
45 **manage responses to a major oil [*discharge*] or hazardous material spill or release; and**

(b) Appointment of a state on-scene coordinator for any major incident involving an oil or hazardous material spill or release or threatened spill or release;

(6) Coordinate oil spill research with other west coast states and develop a framework for information sharing and combined funding of research projects;

(7) Annually review and revise the interagency response plan for oil **and hazardous material spills or releases** in [*certain*] navigable waters of the state developed under ORS 468B.495 and 468B.500;

(8) On the Oregon coast, assist affected local agencies and industry groups to complete an inventory of existing plans and resources and to identify or establish an organization to coordinate oil spill contingency planning as part of the alternative schedule adopted for the Oregon coast described in ORS 468B.355 (1);

(9) Where adequate resources do not exist to prevent, contain, clean up and mitigate [*potential*] oil spills **or threatened spills**, assist local agencies and industry groups to secure necessary funds and equipment; and

(10) In its annual review and revision of the plan developed under ORS 468B.495 and 468B.500:

(a) Consult with all affected local, state and federal agencies, municipal and community officials and representatives of industry;

(b) Provide training in the use of the plan; and

(c) Conduct spill exercises to test the adequacy of the plan.

SECTION 6. ORS 468B.405 is amended to read:

468B.405. (1) The Department of Environmental Quality shall assess **the following** fees on covered vessels and offshore and onshore facilities to recover the costs of reviewing the plans and conducting the inspections, exercises, training and activities required under ORS 468B.345 to 468B.400:[]

[(2) The fees assessed by the department on cargo vessels and nonself-propelled tank vessels under subsection (1) of this section shall be:]

(a) On all cargo vessels, [~~\$25~~] **\$48** per trip.

(b) On all nonself-propelled tank vessels, [~~\$28~~] **\$42** per trip.

(c) On all self-propelled tank vessels of 300 gross tons or less, \$42 per trip.

(d) On all self-propelled tank vessels over 300 gross tons, \$836 per trip.

(e) On all offshore and onshore facilities, \$4,500 per year.

[(3) As used in this subsection, "trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of Oregon. For the purpose of assessing trip fees under this section, self-propelled tank vessels transiting the navigable waters of the state in ballast shall be considered cargo vessels.]

[(4) The Environmental Quality Commission shall establish by rule a schedule of fees to be assessed under subsection (1) of this section on offshore facilities, onshore facilities and on self-propelled tank vessels in an amount not to exceed \$153,600 per year for all such facilities and vessels.]

[(5)] **(2)** Moneys collected under this section shall be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund established under ORS 468B.410.

(3) As used in this section, "trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of this state. For the purpose of assessing trip fees under this section, self-propelled tank vessels transiting the navigable waters of this state in ballast shall be considered cargo vessels.

SECTION 7. ORS 468.140 is amended to read:

1 468.140. (1) In addition to any other penalty provided by law, any person who violates any of the
2 following shall incur a civil penalty for each day of violation in the amount prescribed by the
3 schedule adopted under ORS 468.130:

4 (a) The terms or conditions of any permit required or authorized by law and issued by the De-
5 partment of Environmental Quality or a regional air quality control authority.

6 (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
7 454.535, 454.605 to 454.755, ORS chapter 467 and ORS chapters 468, 468A and 468B.

8 (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued
9 pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755,
10 ORS chapter 467 and ORS chapters 468, 468A and 468B.

11 (d) Any term or condition of a variance granted by the commission or department pursuant to
12 ORS 467.060.

13 (e) Any rule or standard or order of a regional authority adopted or issued under authority of
14 ORS 468A.135.

15 (f) The financial assurance requirement under ORS [~~468B.480~~] **468B.390** and 468B.485 or any rule
16 related to the financial assurance requirement under ORS [~~468B.480~~] **468B.390**.

17 (2) Each day of violation under subsection (1) of this section constitutes a separate offense.

18 (3)(a) In addition to any other penalty provided by law, any person who intentionally or
19 negligently causes or permits the discharge of oil into the waters of the state shall incur a civil
20 penalty not to exceed the amount of \$20,000 for each violation.

21 (b) In addition to any other penalty provided by law, the following persons shall incur a civil
22 penalty not to exceed the amount of \$10,000 for each day of violation:

23 (A) Any person who violates the terms or conditions of a permit authorizing waste discharge
24 into the air or waters of the state.

25 (B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040,
26 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B re-
27 lating to air or water pollution.

28 (C) Any person who violates the provisions of a rule adopted or an order issued under ORS
29 459A.590.

30 (4) In addition to any other penalty provided by law, any person who violates the provisions of
31 ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$500 for each day of violation.

32 (5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission
33 standards which are not violations of standards for control of noise emissions.

34 (6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided
35 by law, any person who intentionally or negligently causes or permits open field burning contrary
36 to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed
37 by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned.
38 Any fines collected by the department pursuant to this subsection shall be deposited with the State
39 Treasurer to the credit of the General Fund and shall be available for general governmental ex-
40 pense. As used in this subsection, "open field burning" does not include propane flaming of mint
41 stubble.

42 **SECTION 8. In order to provide a more safe and clean environment by preventing and**
43 **reducing spills of oil or hazardous materials from storage and handling sites located in this**
44 **state, the Department of Environmental Quality shall:**

45 **(1) Establish a task force to consider methods by which the department can minimize**

1 environmental impacts from oil and hazardous material spills, including but not limited to:

2 (a) Evaluating the need for spill contingency planning and standardized spill preparedness
3 measures;

4 (b) Evaluating the need for coordination with local and state emergency responders;

5 (c) Developing employee training and contingency plans for sites storing and handling oil
6 and hazardous materials; and

7 (d) Assessing the benefits of providing technical assistance from the department to per-
8 sons using, storing, handling or producing oil or hazardous materials.

9 (2) Include in the task force established pursuant to subsection (1) of this section at least
10 the following parties:

11 (a) Representatives of industries using, storing, handling or producing oil or hazardous
12 materials;

13 (b) Members of the public; and

14 (c) Representatives of local, state and federal agencies.

15 (3) Report to the Seventy-second Legislative Assembly, no later than January 31, 2003,
16 on the progress of the department in developing spill preparedness strategies.

17 SECTION 9. Section 8 of this 2001 Act is repealed on December 31, 2003.

18 SECTION 10. Notwithstanding any other law, the amount of \$208,280 is established for
19 the biennium beginning July 1, 2001, as the maximum limit for payment of expenses from
20 fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds
21 and federal funds, collected or received by the Department of Environmental Quality for the
22 purpose of carrying out the amendments to ORS 468.140, 468B.300, 468B.350, 468B.370,
23 468B.390, 468B.395 and 468B.405 by sections 1 to 7 of this 2001 Act and section 8 of this 2001
24 Act.

25 SECTION 11. ORS 468B.480 and 468B.490 are repealed.

26 SECTION 12. This 2001 Act being necessary for the immediate preservation of the public
27 peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect
28 July 1, 2001.