

# HOUSE BILL REPORT

## ESHB 1409

---

### As Passed House:

March 5, 2009

**Title:** An act relating to providing an emergency response system for the Strait of Juan de Fuca.

**Brief Description:** Providing an emergency response system for the Strait of Juan de Fuca.

**Sponsors:** House Committee on Ecology & Parks (originally sponsored by Representatives Van De Wege, Kessler, Upthegrove, Rolfes, Blake, Dunshee, Campbell, Jacks, Orwall, Seaquist, Appleton, Nelson, Roberts, Morris, Takko, Cody, Carlyle, McCoy, Goodman, Quall, Sullivan, Liias, Chase, Pedersen, Williams, Kagi, Kenney, Simpson, Conway and Moeller).

### Brief History:

#### Committee Activity:

Ecology & Parks: 1/27/09, 2/20/09 [DPS].

#### Floor Activity

Passed House: 3/5/09, 62-35.

### Brief Summary of Engrossed Substitute Bill

- Requires all vessels required to file an oil spill contingency plan with the Department of Ecology to also file evidence of participation in an emergency response system for the waters of the Strait of Juan de Fuca that includes the stationing of an emergency response towing vessel at Neah Bay.
- Requires the Director of the Department of Ecology to initiate discussions with an official of similar capacity in British Columbia to explore options for sharing the cost of marine response assets in the Strait of Juan de Fuca.
- Requires the representatives of covered vessels to negotiate a method for allocating costs to pay for the Strait of Juan de Fuca emergency response system.
- Requires the Department of Ecology to receive and summarize official notifications from the owners and operators of covered vessels indicating that costs for implementing the Strait of Juan de Fuca emergency response system are not allocated in an equitable manner.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Allows the Oil Spill Response Account to be by the Department of Ecology to pay for instances when the state initiates the Strait of Juan de Fuca emergency response vessel.

---

## HOUSE COMMITTEE ON ECOLOGY & PARKS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Chase, Dickerson, Dunshee, Eddy, Finn, Hudgins and Morris.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Short, Ranking Minority Member; Kristiansen, Orcutt and Shea.

**Staff:** Jason Callahan (786-7117)

### **Background:**

#### Contingency Plans.

Certain vessels are required to have a contingency plan on file with the Department of Ecology (Department) that outlines how potential oil spills from the vessel will be contained and remediated. The vessels that are required to file contingency plans with the Department are those ships that are designed to carry oil as cargo, passenger vessels over 300 gross tons with a fuel capacity of at least 6,000 gallons, and cargo vessels over 300 gross tons.

Operating without an approved contingency plan, or in violation of the plan's provisions, can give cause for both criminal and civil penalties. Criminal sanctions can include gross misdemeanors and class C felonies. Civil penalties can range up to \$1,000 for each day that a vessel is in state waters without a valid contingency plan.

#### Neah Bay Tug.

The state has provided funding for an emergency response tugboat to be stationed at Neah Bay since 1999. The original mission of the Neah Bay tug was limited to the winter storm season. However, the tug has been stationed at Neah Bay year round for the past biennium. State funding for the current contract is set to expire on June 30 of this year.

### **Summary of Engrossed Substitute Bill:**

#### Strait of Juan de Fuca Emergency Response System.

All vessels operating west of Dungeness Spit in the Strait of Juan de Fuca (Strait) after July 1, 2010, must have on file with the Department evidence of the establishment of an emergency response system for the waters of the Strait and the Washington portion of the Pacific Ocean. The emergency response system must include provisions for the management and operation of an emergency response towing vessel stationed at Neah Bay that is capable and available to respond to any substantial threat of pollution originating from vessels with contingency plans.

The emergency response towing vessel must satisfy certain minimum planning standards. These minimum standards include the ability to deploy at any time for up to 48 hours within 20 minutes of the decision to deploy, secure a disabled vessel that weighs up to 180,000 metric tons, employ a ship anchor chain recovery hook and line, and be capable of a bollard pull of at least 70 short tons. The Director of the Department (Director) may suspend the requirements for an emergency response towing vessel if it is determined by the Director that no vessel is available that meets the minimum requirements.

Vessels with a current contingency plan on file with the Department must submit an addendum to their plan by January 1, 2010, for review. Vessels required to submit an initial contingency plan after January 1, 2010, must submit evidence of compliance concurrent with the new contingency plan.

The contract providing for the emergency response towing vessel must provide flexibility for the towing vessel to be deployed by the Department in response to a potentially emerging maritime casualty and by other vessels not required to file a contingency plan with the Department. Instances of the Department deploying the emergency response towing vessel must be paid for by the Department from funds in the Oil Spill Response Account, and uses of the emergency response towing vessel to respond to vessels not operating under a contingency plan must be paid for on a cost recovery basis with the affected vessel.

If the emergency response towing vessel is deployed by a vessel operator, then the operator must return a report to the Department as soon as practicable after the incident. The report must detail the incident and provide photographic documentation.

The ability of the emergency response towing vessel to respond adequately must be determined by the Department through practice drills that emphasize potential worst-case scenarios. Any deployments of the emergency response towing vessel may be counted as a successful drill.

The Legislature intends for the costs of the emergency response system to be allocated equitably among all covered vessels based on the risk of causing an oil spill and the likelihood of needing assistance from the emergency response towing vessel. If the owner or operator of a covered vessel feels as though a contract does not equitably allocate costs, then that owner or operator has the option of filing an official notice of his or her concern with the Department. The Department must collect all notices and summarize their contents for the Legislature upon request.

Prior to the requirement to provide an emergency response towing vessel taking effect, representatives of covered vessel owners and operators must meet to negotiate a cost allocation formula. The results of those negotiations must be reported to the Legislature in December of 2009.

#### Talks with Canada.

The Director is required to initiate talks with his counterpart in British Columbia. The talks are to explore options for Washington and British Columbia to share in the marine response assets available in the Strait. Progress or outcomes from the discussions must be reported to the Legislature by January 1, 2011.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The Strait sees a massive concentration of ships carrying billions of gallons of oil through dangerous waters. The Strait is the least protected marine water body in North America. A quick response for this solution is necessary. After 41 service missions, the need for a rescue tug in the Strait is well established for the protection of both the Puget Sound and coastal and tribal communities. It is critical that the tug offer year-round service.

One oil spill in the Strait can have disastrous consequences, and the cost of a tug is miniscule compared to the damage one spill can cause. A spill can cause damage to the ecology and economy of Puget Sound. Oil spills are the number one threat to orcas. Recreationalists require a clean Puget Sound. Oil spills lead to toxic beach closures, which in turn leads to oiled birds; oiled birds lead to a decrease in tourism and recreation spending in communities. The tug is essential to the protection of Puget Sound, and fits with the priorities of the Puget Sound Partnership and the Oil Spill Advisory Council. Prevention is the best strategy.

Previous oil spills have ruined treaty-protected resources. The resources ensure the continuation of tribal cultural heritage and the maintenance of tribal cultures. Federal efforts to provide a tug have been frustrating, but tribes will continue to work with the Coast Guard and federal government to reform how the issue is managed.

The rescue tug at Neah Bay has been historically funded through a variety of state funding mechanisms, including the State General Fund and the State Toxics Control Account, that are renegotiated each biennium. The cost of the tug is inflated because there has not been the funding certainty needed to enter into a long-term contract. An increase in the number of bidders for the tug's service will also lower the price.

Funding for the tug needs to be fair and balanced. The burden for paying for the tug should be spread around to those who pose the highest risk of spilling oil and not be borne by just one segment of the shipping traffic. The funding should no longer be provided by the taxpayers, but instead to those who create the risk. The upfront costs of the tug would be amortized over just a few years and result in small costs to an industry with high profits.

The state has a property interest in aquatic lands. Protecting against oil spills protects aquatic lands, and the model in the bill relieves state accounts from funding a tug. The money that would otherwise pay for the tug can be used for aquatic restoration efforts. Private shellfish growers also face losses when oil spills affect aquatic lands. Shellfish growers have a sacred relationship with water quality. Closed shellfish beds damage the grower's bottom line and the industry's overall public perception.

(With concerns) Any share of costs should not be based on a worst-case spill scenario, since such an approach fails to take into account safety upgrades and other investments made by oil tankers. If an existing tug cannot be located or contracted with, the cost of commissioning a new tug will be very expensive.

(Opposed) Questions still persist as to when, why, and how we should have a tug in Neah Bay. The required mission of the tug in the statute should reflect the current mission of the existing tug. The current tug is limited to simply keeping vessels off of the rocks, but the tug required in the bill would be capable of full salvage missions. The current funding formula has no effect on the State's General Fund.

Once a tug is mandated in state law, the cost of contracting with the tug will skyrocket. This is especially true since there are few, if any, tugs available that satisfy the requirements set forth in the bill. There needs to be clarity in the funding pool.

This measure is expensive and premature. Very few oil spills come from commercial vessels, and the risk of a spill has been reduced over the past 25 years through international cooperation. Spill risk will continue to decline without requiring a tug that will be hard to sustain in a declining economy.

Washington ports must compete aggressively with other West Coast ports, and this bill creates uncertainty in that competition. The uncertainty may interfere with a strategic part of Washington's economy. The bill does not affect Canadian transport, which creates a competitive disadvantage for Washington.

**Persons Testifying:** (In support) Representative Van De Wege, prime sponsor; Kathy Fletcher, People for Puget Sound; Gerald Joyce, Seattle Audubon; Bill Anderson, Citizens for a Healthy Bay; Fred Felleman, Friends of the Earth; Rich Doenges, Department of Natural Resources; Michael Grayum, Puget Sound Partnership; Dale Jensen, Department of Ecology; Jacqui B. Miller, Oil Spill Advisory Council; Steve Robinson, Northwest Indian Fisheries Commission; Chad Bowechop, Makah Tribe; Jody Kennedy, Surfrider Foundation; Mike Racine, Washington Scuba Alliance; and Brett Bishop, Puget Sound Shellfish Growers Association.

(With concerns) Joe Daniels, Holland America Line; Greg Hanon, Western States Petroleum Association; and Johan Hellman, Washington Public Ports Association.

(Opposed) Mike Moore, Pacific Merchants Shipping Association; Rich Berkowitz, Transportation Institute; and Phil Morrell, Totem Ocean Trailer Express.

**Persons Signed In To Testify But Not Testifying:** None.