

# HOUSE BILL REPORT

## ESSB 5344

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**As Reported by House Committee On:**  
Ecology & Parks

**Title:** An act relating to providing emergency response towing vessels.

**Brief Description:** Concerning emergency response towing vessels.

**Sponsors:** Senate Committee on Environment, Water & Energy (originally sponsored by Senators Ranker, Swecker, Rockefeller, Marr, Hargrove, Pridemore, Fraser, Shin, McDermott and Kilmer).

**Brief History:**

**Committee Activity:**

Ecology & Parks: 3/13/09, 3/17/09 [DPA].

**Brief Summary of Engrossed Substitute Bill  
(As Amended by House)**

- 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 representatives of covered vessels to negotiate an equitable cost-sharing formula and report the results of the negotiations to the Legislature.
- 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.
- Allows the Oil Spill Response Account to be used by the Department of Ecology to pay for instances when the state initiates the Strait of Juan de Fuca emergency response vessel.

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### HOUSE COMMITTEE ON ECOLOGY & PARKS

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Chase, Dickerson, Dunshee, Eddy, Finn, Hudgins and Morris.

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*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.*

**Minority Report:** Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Kretz, 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, 2009.

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**Summary of Amended Bill:**

Strait of Juan de Fuca Emergency Response System.

All vessels operating in the Strait of Juan de Fuca (Strait) west of Victoria, British Columbia 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.

Vessels with a current contingency plan on file with the Department must submit an addendum to their plan for review. Vessels required to submit an initial contingency plan 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 by 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 adequacy of the emergency response system 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.

Representatives of covered vessel owners and operators must meet to negotiate a cost-allocation formula prior to the effective start of the emergency response towing vessel requirement. The results of those negotiations must be reported to the Legislature in December of 2009. The Department shall provide a report if the vessel operators choose not to issue a report.

#### 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.

#### **Amended Bill Compared to Original Bill:**

The amended bill: (1) exempts Seattle-to-Victoria vessel traffic from the requirements to provide a response system; (2) replaces a substantive mandate that costs be shared with direction to representatives of covered vessels to negotiate an equitable cost sharing formula; (3) requests that covered vessels and not the Department report the results of ongoing negotiations to the Legislature; (4) requires the negotiations to consider economic conditions;

(5) allows the Oil Spill Response Account to be used by the Department to pay for instances when the state initiates the Strait emergency response vessel; (6) provides definitions; and (7) adds a severability clause.

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**Appropriation:** None.

**Fiscal Note:** Requested on March 16, 2009.

**Effective Date of Amended Bill:** 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 amendment is a good, implementable policy for the state. It is an exciting opportunity that is the result of tremendous stakeholder input. If there is to be a policy decision to move funding from private to public sources, then this approach is the best to accomplish that goal. It provides a balance of interests and allows industry to have the framework needed to work out the details.

The Strait has been the source of more oil spills than anywhere else in Washington. There are some changes that would perfect the bill, but it is important to provide the necessary protection to the Strait.

(Neutral) The bill is not perfect, but it is acceptable. Stakeholders were engaged and their concerns were incorporated. There may not be agreement that a tug is needed in the Strait, but if there is to be one, the bill does provide a beneficial way to allocate costs. The question of how costs are to be negotiated is important, so the reports back the Legislature are critical. There is an economic crisis that has to be recognized. Cargo volume is down and shipping is being redirected to other ports.

(Opposed) None.

**Persons Testifying:** (In support) Senator Ranker, prime sponsor; Bruce Wishart, People for Puget Sound; Dale Jensen, Department of Ecology; Greg Hanon, Western States Petroleum Association; Johan Hellman, Washington Public Ports Association; and Fred Felleman, Friends of the Earth.

(Neutral) Scott Hazelgrove, Pacific Merchant Shipping Association; and Sean Eagan, Port of Tacoma.

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