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ENGROSSED SUBSTITUTE HOUSE BILL 1409

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State of Washington

61st Legislature

2009 Regular Session

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

READ FIRST TIME 02/23/09.

1 AN ACT Relating to providing an emergency response system for the  
2 Strait of Juan de Fuca; amending RCW 88.46.130, 88.46.010, and  
3 90.56.500; adding new sections to chapter 88.46 RCW; creating new  
4 sections; and providing expiration dates.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the Olympic  
7 Peninsula is bounded on the west and north by uniquely rich and highly  
8 vulnerable biological, cultural, and marine resources supporting some  
9 of the nation's most valuable tribal, commercial, and sport fisheries.  
10 The area also sustains endangered species and numerous species of  
11 vulnerable marine mammals. The area's national significance is  
12 recognized by special federal designations including a national park,  
13 a national marine sanctuary, a maritime area to be avoided, national  
14 wildlife refuges, a world heritage site, as well as tribal lands and  
15 usual and accustomed fishing areas of federally recognized coastal  
16 Indian tribes. This remote area periodically experiences severe  
17 coastal storms, dangerous seas, strong coastal currents, and frequent  
18 fog placing economically valuable maritime commerce and ship crews at  
19 risk.

1 (2) The legislature further finds that these peculiarities of the  
2 local waters require special protection from the serious threat posed  
3 by maritime casualties. The area's natural, cultural, and economic  
4 resources must be provided with the best achievable protection from  
5 damages caused by the discharge of oil into coastal waters.

6 (3) The legislature further finds that the state of Washington has  
7 maintained an emergency response tug at Neah Bay since 1999 to protect  
8 its waters from maritime casualties and resultant oil spills. During  
9 that time it has demonstrated its capability by responding to forty-one  
10 ships in need of assistance in the area from Port Angeles to the  
11 Columbia river. State funding is scheduled to end June 30, 2009. The  
12 legislature intends for the maritime industry to provide and fully fund  
13 a year-round emergency response tug at Neah Bay, including the  
14 logistical and operational management support system. This emergency  
15 response towing vessel and its operations should meet or exceed the  
16 state's fiscal year 2009 technical contract specifications of the  
17 contracted Neah Bay emergency response towing vessel.

18 **Sec. 2.** RCW 88.46.130 and 1991 c 200 s 426 are each amended to  
19 read as follows:

20 (1) An emergency response system for vessels operating in the entry  
21 of the Strait of Juan de Fuca shall be established and operated  
22 consistent with this section by July 1, ((1992)) 2010. ((In  
23 establishing the emergency response system, the administrator shall  
24 consider the recommendations of the regional marine safety committees.  
25 The administrator shall also consult with the province of British  
26 Columbia regarding its participation in the emergency response  
27 system.))

28 (2)(a) Except as otherwise provided in this section, and in  
29 addition to the contingency plan requirements adopted by the department  
30 under RCW 88.46.060, contingency plans for all covered vessels while  
31 operating in all waters of the entry to the Strait of Juan de Fuca  
32 north of the Clallam county shoreline and east of Duncan rock must  
33 provide for the emergency response system described in this section,  
34 including the management and operation of an emergency response towing  
35 vessel that satisfies the planning standards in section 3 of this act.

36 (b) Owners and operators of covered vessels that operate in the  
37 portion of the entry to the Strait of Juan de Fuca identified in this

1 subsection shall submit an addendum to their oil spill contingency plan  
2 demonstrating compliance with this section by January 1, 2010. A  
3 vessel submitting an initial contingency plan after January 1, 2010,  
4 must provide documentation of its compliance with this section  
5 concurrent with the submittal of its contingency plan.

6 (c) The department shall review all submittals demonstrating  
7 compliance with this section and shall approve any submittal that meets  
8 the intent and planning standards established in section 3 of this act.

9 (3) Full implementation of section 3 of this act, or implementation  
10 of a system of protective measures imposed or required by the federal  
11 government that are determined by the department to be substantially  
12 equivalent to those requirements, satisfies the emergency response  
13 system required by this section.

14 (4) The director may suspend the requirement for an emergency  
15 response towing vessel created in this section if the director  
16 determines that an emergency response towing vessel satisfying the  
17 requirements of section 3 of this act is not available to provide the  
18 services required under this section.

19 NEW SECTION. Sec. 3. A new section is added to chapter 88.46 RCW  
20 to read as follows:

21 (1) An emergency response towing vessel that is a part of the  
22 emergency response system required by RCW 88.46.130 must be stationed  
23 at Neah Bay and be continuously capable and available to respond to any  
24 vessel emergency. The towing vessel must, at a minimum, be able to  
25 satisfy the following planning standards:

26 (a) Be underway within twenty minutes of a decision to deploy;

27 (b) Be able to deploy at any hour of any day to provide emergency  
28 assistance and be safely manned to remain underway for at least forty-  
29 eight hours;

30 (c) In severe weather conditions, be capable of making up to,  
31 stopping, holding, and towing a drifting or disabled vessel of one  
32 hundred eighty thousand metric dead weight tons;

33 (d) In severe weather conditions, be capable of holding position  
34 within one hundred feet of another vessel;

35 (e) Be equipped with and maneuverable enough to effectively employ  
36 a ship anchor chain recovery hook and line throwing gun;

- 1 (f) Be capable of a bollard pull of at least seventy short tons;  
2 and  
3 (g) Be equipped with appropriate equipment for:  
4 (i) Damage control patching;  
5 (ii) Vessel dewatering;  
6 (iii) Air safety monitoring; and  
7 (iv) Digital photography.

8 (2) The requirements of this section may be fulfilled by one or  
9 more private organizations or nonprofit cooperatives providing umbrella  
10 coverage under contract to single or multiple covered vessels.

11 (3)(a) The department must be authorized to contract with the  
12 emergency response towing vessel, at the discretion of the department,  
13 in response to a potentially emerging maritime casualty or as a  
14 precautionary measure during severe storms. All instances of use by  
15 the department must be paid for by the department.

16 (b) Covered vessels that are required to provide an emergency  
17 response towing vessel under RCW 88.46.130 may not restrict the  
18 emergency response towing vessel from responding to distressed vessels  
19 that are not covered vessels.

20 (4) Nothing in this section limits the ability of a covered vessel  
21 to contract with an emergency response towing vessel with capabilities  
22 that exceed the minimum capabilities provided for a towing vessel in  
23 this section.

24 (5) The covered vessel owner or operator shall submit a written  
25 report to the department as soon as practicable regarding an emergency  
26 response system deployment, including photographic documentation  
27 determined by the department to be of adequate quality. The report  
28 must provide a detailed description of the incident necessitating a  
29 response and the actions taken to render assistance under the emergency  
30 response system.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46 RCW  
32 to read as follows:

33 (1) It is the intent of the legislature to provide the various  
34 components of the maritime industry with the tools necessary to satisfy  
35 the requirements of RCW 88.46.130 in the most cost-effective manner.  
36 In doing, the legislature encourages, but does not mandate, the  
37 maritime industry to unite behind their mutual interests and

1 responsibilities and identify or form a single umbrella organization  
2 that allows all affected covered vessels to equitably share the costs  
3 inherent in the implementation of RCW 88.46.130.

4 (2) The legislature further finds that an equitable sharing of the  
5 costs of implementing RCW 88.46.130 may mean that not all covered  
6 vessels will be responsible for providing the same amount of funding.  
7 Any umbrella organization that is identified or formed to satisfy the  
8 requirements of this act should consider the multitude of factors that  
9 comprise the risk of oil spills and the likelihood of initiating a  
10 response from the emergency response vessel required by RCW 88.46.130,  
11 including the number of transits made by the covered vessel, the nature  
12 and quantity of its cargo, and the technical sophistication of its  
13 design, safety updates, and maintenance.

14 (3) The legislature intends to provide the authority for any  
15 operator of a covered vessel that feels as though an umbrella  
16 organization that is identified, formed, or proposed for formation does  
17 not equitably share the costs of compliance with RCW 88.46.130 with the  
18 covered vessel in question, or the class of vessel to which the covered  
19 vessel belongs, to either contract directly with an adequate emergency  
20 response vessel or form or join a discreet umbrella organization  
21 representing the appropriate segment of the maritime industry.  
22 However, if the operator of a covered vessel chooses not to join a  
23 proposed or existing umbrella organization, or finds that negotiations  
24 leading to the formation of an umbrella organization are not  
25 progressing in an adequate manner, the legislature requests, but does  
26 not require, that the vessel operator contact the department and  
27 provide official notice of their concern as to how the umbrella group  
28 in question failed in establishing an equitable cost-share strategy.

29 (4) The department shall collect and maintain all notices received  
30 under this section and shall summarize any reports received by the  
31 operators of covered vessels and report the summation to the  
32 appropriate committees of the legislature upon request by a legislative  
33 committee.

34 NEW SECTION. **Sec. 5.** (1) Designated representatives of the owners  
35 and operators of all classes of covered vessels shall negotiate, given  
36 the intent of section 4 of this act, a system to determine the

1 equitable apportionment of costs of the emergency response system  
2 required by this act.

3 (2) Participants to the negotiations shall report the results to  
4 the appropriate committees of the legislature by December 1, 2009.  
5 This report shall provide available information relating to:

6 (a) The anticipated average annual cost of providing the emergency  
7 response system required by this act;

8 (b) The methodology for determining the annual cost for each vessel  
9 of complying with this act, including a system for crediting enhanced  
10 navigational or structural characteristics, and any caps or limitations  
11 on total cost for vessels that frequently transit the waters identified  
12 in this act; and

13 (c) The anticipated average annual cost of complying with this act  
14 for each of the following class of covered vessels:

15 (i) Oil tankers;

16 (ii) Tank barges;

17 (iii) Tug and oil barge combinations;

18 (iv) Nontank vessels, including cruise ships;

19 (v) Other covered vessels.

20 (3) If the representatives designated under this section to  
21 participate in negotiations fail to achieve the goals of this section  
22 or otherwise choose not to report the outcomes to the legislature, the  
23 department of ecology shall, by December 1, 2009, deliver the summation  
24 of any reports received under section 4 of this act.

25 (4) This section expires June 30, 2010.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46 RCW  
27 to read as follows:

28 (1) In addition to reviewing contingency plans submitted under RCW  
29 88.46.130, the department may determine the adequacy of the emergency  
30 response system required in RCW 88.46.130 through practice drills that  
31 test the adequacy of the responding entity's capabilities and  
32 satisfaction of the requirements of section 3 of this act. Practice  
33 drills may be conducted without prior notice.

34 (2) Each successful response to a vessel emergency may be  
35 considered by the department to satisfy a drill covering this portion  
36 of a covered vessel's contingency plan.

1 (3) Drills of the emergency response system required in RCW  
2 88.46.130 must emphasize the system's ability to respond to a  
3 potentially worst case vessel emergency scenario.

4 **Sec. 7.** RCW 88.46.010 and 2007 c 347 s 5 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1) "Best achievable protection" means the highest level of  
9 protection that can be achieved through the use of the best achievable  
10 technology and those staffing levels, training procedures, and  
11 operational methods that provide the greatest degree of protection  
12 achievable. The director's determination of best achievable protection  
13 shall be guided by the critical need to protect the state's natural  
14 resources and waters, while considering (a) the additional protection  
15 provided by the measures; (b) the technological achievability of the  
16 measures; and (c) the cost of the measures.

17 (2) "Best achievable technology" means the technology that provides  
18 the greatest degree of protection taking into consideration (a)  
19 processes that are being developed, or could feasibly be developed,  
20 given overall reasonable expenditures on research and development, and  
21 (b) processes that are currently in use. In determining what is best  
22 achievable technology, the director shall consider the effectiveness,  
23 engineering feasibility, and commercial availability of the technology.

24 (3) "Cargo vessel" means a self-propelled ship in commerce, other  
25 than a tank vessel or a passenger vessel, of three hundred or more  
26 gross tons, including but not limited to, commercial fish processing  
27 vessels and freighters.

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

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

33 (6) "Department" means the department of ecology.

34 (7) "Director" means the director of the department of ecology.

35 (8) "Discharge" means any spilling, leaking, pumping, pouring,  
36 emitting, emptying, or dumping.

1           (9) "Duncan rock" means the nautical landmark located northwest of  
2 Tatoosh Island in Clallam county marking the entrance to the Strait of  
3 Juan de Fuca.

4           (10) "Entry to the Strait of Juan de Fuca" means that portion of  
5 the Strait of Juan de Fuca seaward of a line drawn from New Dungeness  
6 light in Clallam county to Discovery Island light on Vancouver Island,  
7 British Columbia, Canada, and including the Washington portion of the  
8 approach area to the Strait of Juan de Fuca from Cape Flattery light in  
9 Clallam county southward to North Head light in Pacific county near the  
10 mouth of the Columbia river.

11           (11)(a) "Facility" means any structure, group of structures,  
12 equipment, pipeline, or device, other than a vessel, located on or near  
13 the navigable waters of the state that transfers oil in bulk to or from  
14 a tank vessel or pipeline, that is used for producing, storing,  
15 handling, transferring, processing, or transporting oil in bulk.

16           (b) A facility does not include any: (i) Railroad car, motor  
17 vehicle, or other rolling stock while transporting oil over the  
18 highways or rail lines of this state; (ii) retail motor vehicle motor  
19 fuel outlet; (iii) facility that is operated as part of an exempt  
20 agricultural activity as provided in RCW 82.04.330; (iv) underground  
21 storage tank regulated by the department or a local government under  
22 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense  
23 more than three thousand gallons of fuel to a ship that is not a  
24 covered vessel, in a single transaction.

25           (~~(10)~~) (12) "Marine facility" means any facility used for tank  
26 vessel wharfage or anchorage, including any equipment used for the  
27 purpose of handling or transferring oil in bulk to or from a tank  
28 vessel.

29           (~~(11)~~) (13) "Navigable waters of the state" means those waters of  
30 the state, and their adjoining shorelines, that are subject to the ebb  
31 and flow of the tide and/or are presently used, have been used in the  
32 past, or may be susceptible for use to transport intrastate,  
33 interstate, or foreign commerce.

34           (~~(12)~~) (14) "Oil" or "oils" means oil of any kind that is liquid  
35 at atmospheric temperature and any fractionation thereof, including,  
36 but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel  
37 oil, biological oils and blends, oil sludge, oil refuse, and oil mixed  
38 with wastes other than dredged spoil. Oil does not include any

1 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August  
2 14, 1989, under section 101(14) of the federal comprehensive  
3 environmental response, compensation, and liability act of 1980, as  
4 amended by P.L. 99-499.

5 ~~((+13+))~~ (15) "Offshore facility" means any facility located in,  
6 on, or under any of the navigable waters of the state, but does not  
7 include a facility any part of which is located in, on, or under any  
8 land of the state, other than submerged land. "Offshore facility" does  
9 not include a marine facility.

10 ~~((+14+))~~ (16) "Onshore facility" means any facility any part of  
11 which is located in, on, or under any land of the state, other than  
12 submerged land, that because of its location, could reasonably be  
13 expected to cause substantial harm to the environment by discharging  
14 oil into or on the navigable waters of the state or the adjoining  
15 shorelines.

16 ~~((+15+))~~ (17)(a) "Owner or operator" means (i) in the case of a  
17 vessel, any person owning, operating, or chartering by demise, the  
18 vessel; (ii) in the case of an onshore or offshore facility, any person  
19 owning or operating the facility; and (iii) in the case of an abandoned  
20 vessel or onshore or offshore facility, the person who owned or  
21 operated the vessel or facility immediately before its abandonment.

22 (b) "Operator" does not include any person who owns the land  
23 underlying a facility if the person is not involved in the operations  
24 of the facility.

25 ~~((+16+))~~ (18) "Passenger vessel" means a ship of three hundred or  
26 more gross tons with a fuel capacity of at least six thousand gallons  
27 carrying passengers for compensation.

28 ~~((+17+))~~ (19) "Person" means any political subdivision, government  
29 agency, municipality, industry, public or private corporation,  
30 copartnership, association, firm, individual, or any other entity  
31 whatsoever.

32 ~~((+18+))~~ (20) "Severe weather conditions" means observed nautical  
33 conditions with sustained winds measured at forty knots and wave  
34 heights measured between twelve and eighteen feet.

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

37 ~~((+19+))~~ (22) "Spill" means an unauthorized discharge of oil into  
38 the waters of the state.

1       (~~(+20+)~~) (23) "Tank vessel" means a ship that is constructed or  
2 adapted to carry, or that carries, oil in bulk as cargo or cargo  
3 residue, and that:

4       (a) Operates on the waters of the state; or

5       (b) Transfers oil in a port or place subject to the jurisdiction of  
6 this state.

7       (~~(+21+)~~) (24) "Vessel emergency" includes:

8       (a) A substantial threat of pollution originating from a covered  
9 vessel including, but not limited to, loss or serious degradation of  
10 propulsion, steering, means of navigation, primary electrical  
11 generating capability, and seakeeping capability;

12       (b) Hull breach; or

13       (c) Oil spill.

14       (25) "Waters of the state" includes lakes, rivers, ponds, streams,  
15 inland waters, underground water, salt waters, estuaries, tidal flats,  
16 beaches and lands adjoining the seacoast of the state, sewers, and all  
17 other surface waters and watercourses within the jurisdiction of the  
18 state of Washington.

19       (~~(+22+)~~) (26) "Worst case spill" means: (a) In the case of a  
20 vessel, a spill of the entire cargo and fuel of the vessel complicated  
21 by adverse weather conditions; and (b) in the case of an onshore or  
22 offshore facility, the largest foreseeable spill in adverse weather  
23 conditions.

24       **Sec. 8.** RCW 90.56.500 and 1991 c 200 s 805 are each amended to  
25 read as follows:

26       (1) The state oil spill response account is created in the state  
27 treasury. All receipts from RCW 82.23B.020(1) shall be deposited in  
28 the account. All costs reimbursed to the state by a responsible party  
29 or any other person for responding to a spill of oil shall also be  
30 deposited in the account. Moneys in the account shall be spent only  
31 after appropriation. The account is subject to allotment procedures  
32 under chapter 43.88 RCW.

33       (2) The account shall be used exclusively to pay for:

34       (a) The costs associated with the response to spills of crude oil  
35 or petroleum products into the navigable waters of the state; and

36       (b) The costs associated with the department's use of the emergency  
37 response towing vessel as described in section 3 of this act.

1       (3) Payment of response costs under subsection (2)(a) of this  
2 section shall be limited to spills which the director has determined  
3 are likely to exceed fifty thousand dollars. Before expending moneys  
4 from the account, the director shall make reasonable efforts to obtain  
5 funding for response costs from the person responsible for the spill  
6 and from other sources, including the federal government.

7       (4) Reimbursement for response costs shall be allowed only for  
8 costs which are not covered by funds appropriated to the agencies  
9 responsible for response activities. Costs associated with the  
10 response to spills of crude oil or petroleum products shall include:

11       ~~((1))~~ (a) Natural resource damage assessment and related  
12 activities;

13       ~~((2))~~ (b) Spill related response, containment, wildlife rescue,  
14 cleanup, disposal, and associated costs;

15       ~~((3))~~ (c) Interagency coordination and public information related  
16 to a response; and

17       ~~((4))~~ (d) Appropriate travel, goods and services, contracts, and  
18 equipment.

19       NEW SECTION. Sec. 9. (1) The director of the department of  
20 ecology, or the director's designee, shall initiate discussions with  
21 the director's equivalent position in the government for the Canadian  
22 province of British Columbia to explore options for Washington and  
23 British Columbia to share the marine response assets required under  
24 this act.

25       (2) Any progress or outcomes from the discussions initiated under  
26 this section must be reported to the appropriate committees of the  
27 legislature no later than January 1, 2011.

28       (3) This section expires July 31, 2011.

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