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SENATE BILL 5344

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State of Washington

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By Senators Ranker, Swecker, Rockefeller, Marr, Hargrove, Pridemore, Fraser, Shin, McDermott, and Kilmer

Read first time 01/20/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to providing an emergency response system for the  
2 Strait of Juan de Fuca; amending RCW 88.46.130, 88.46.068, and  
3 88.46.010; and adding a new section to chapter 88.46 RCW.

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

5 **Sec. 1.** RCW 88.46.130 and 1991 c 200 s 426 are each amended to  
6 read as follows:

7 (1) An emergency response system for the Strait of Juan de Fuca  
8 shall be established ((by July 1, 1992)) and maintained by the  
9 department. In establishing the emergency response system, the  
10 ((administrator)) director shall consider the recommendations of the  
11 regional marine safety committees ((The administrator shall also))  
12 and consult with the province of British Columbia regarding its  
13 participation in the emergency response system.

14 (2) Full implementation of section 2 of this act, along with  
15 implementation of the drilling requirements for a qualifying tug  
16 provided in RCW 88.46.068, represents the successful adoption of an  
17 emergency response system under this section.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 88.46 RCW  
2 to read as follows:

3        (1) In addition to the contingency plan requirements adopted by the  
4 department under RCW 88.46.060, contingency plans for covered vessels  
5 entering any portion of the Strait of Juan de Fuca west of the city of  
6 Port Angeles must include a specific catastrophic event response  
7 provision requiring the vessel owner or operator to have a valid  
8 contract for the specific vessel with a multimission tug on station and  
9 available to provide assistance and response for the vessel any hour of  
10 any day that the vessel may be in the western portion of the Strait of  
11 Juan de Fuca. The contracted vessel must be permanently stationed in  
12 the Neah Bay staging area identified in WAC 173-182-395, as it existed  
13 on the effective date of this section.

14        (2) To satisfy the requirements of this section, the contracted tug  
15 must have the following response capabilities or equipment:

16        (a) The ability to, in severe weather conditions, make up, stop,  
17 and tow to safety a fully loaded tanker with a deadweight tonnage  
18 capacity of one hundred eighty thousand metric tons;

19        (b) Be equipped with an Orville hook and line throwing gun;

20        (c) The ability to deploy high seas boom and oil spill skimmers  
21 while towing an oil recovery barge or, alternatively, the ability to  
22 store recovered oil on board;

23        (d) The ability to provide a platform for salvage operations,  
24 including divers and firefighters;

25        (e) The ability to transfer passengers from a stricken vessel;

26        (f) Be equipped with onboard oil storage or be contracted with a  
27 dedicated barge stationed alongside the tug, or both; and

28        (g) Starting five years after the effective date of this section,  
29 be equipped with a fully integrated external firefighting system with  
30 no fewer than two pumps, a total pump capacity of not less than two  
31 thousand four hundred cubic meters per hour, a throw length of not less  
32 than one hundred twenty meters, and a throw height of not less than  
33 forty-five meters.

34        (3) All covered vessels subject to this section must have a  
35 contract with a qualifying tug by July 1, 2010.

36        (4) The requirements of this section may be fulfilled by a private  
37 organization or cooperative providing umbrella coverage for multiple  
38 applicable vessels. Financial support for each payee to an

1 organization or cooperative formed to satisfy the requirements of this  
2 section should be based on the maximum total worst case spill potential  
3 of the payee's vessel or vessels.

4 (5) Evidence of compliance with this section must be included as  
5 part of the contingency plan submitted or resubmitted to the department  
6 for review and approval under RCW 88.46.060. For covered vessels that  
7 have submitted a contingency plan to the department for review prior to  
8 July 1, 2010, a free-standing addendum to the previously submitted  
9 contingency plan evidencing compliance with this section satisfies the  
10 submittal requirements of this subsection.

11 (6) This section does not apply if the federal government  
12 implements tug escort requirements for covered vessels in the western  
13 Strait of Juan de Fuca with comparable protective standards or requires  
14 a rescue tug to be stationed at Neah Bay. Upon the implementation of  
15 federal rules or standards, the department shall prepare agency request  
16 legislation recommending the repeal of this section.

17 **Sec. 3.** RCW 88.46.068 and 2006 c 316 s 4 are each amended to read  
18 as follows:

19 (1) The department shall ((by rule)) adopt by rule procedures to  
20 determine the adequacy of contingency plans approved under RCW  
21 88.46.060. The rules shall require random practice drills without  
22 prior notice that will test the adequacy of the responding entities.  
23 The rules may provide for unannounced practice drills of individual  
24 contingency plans.

25 (2)(a) The department shall also provide for the drilling of any  
26 qualifying tug contracted by a covered vessel to satisfy the  
27 requirements of section 2 of this act. Drills performed on a  
28 qualifying tug must be conducted on a regular basis and test the tug's  
29 ability to satisfy oil spill contingency plan requirements.

30 (b) Drills involving a qualifying tug must place an emphasis on the  
31 tug's ability to respond to a potentially worst case spill scenario  
32 caused by a fully loaded covered vessel or barge. However, drills  
33 should also test a tug's capabilities to successfully tow and respond  
34 to all covered vessels.

35 (c) Procedures for the drilling of qualifying tugs are not required  
36 to be identified in rule. However, successful drills of a contracted

1 qualifying tug may be considered as evidence of the adequacy of the  
2 contracting vessel's overall contingency plan.

3 (3) The department shall review and publish a report on the drills  
4 initiated under this section, including an assessment of response time  
5 and available equipment and personnel compared to those listed in the  
6 contingency plans relying on the responding entities, and requirements,  
7 if any, for changes in the plans or their implementation.

8 (4) The department may require additional drills and changes in  
9 arrangements for implementing approved plans which are necessary to  
10 ensure their effective implementation.

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

13 The definitions in this section apply throughout this chapter  
14 unless the context clearly requires otherwise.

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

24 (2) "Best achievable technology" means the technology that provides  
25 the greatest degree of protection taking into consideration (a)  
26 processes that are being developed, or could feasibly be developed,  
27 given overall reasonable expenditures on research and development, and  
28 (b) processes that are currently in use. In determining what is best  
29 achievable technology, the director shall consider the effectiveness,  
30 engineering feasibility, and commercial availability of the technology.

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

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

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

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

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

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

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

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

21 (10) "Marine facility" means any facility used for tank vessel  
22 wharfage or anchorage, including any equipment used for the purpose of  
23 handling or transferring oil in bulk to or from a tank vessel.

24 (11) "Navigable waters of the state" means those waters of the  
25 state, and their adjoining shorelines, that are subject to the ebb and  
26 flow of the tide and/or are presently used, have been used in the past,  
27 or may be susceptible for use to transport intrastate, interstate, or  
28 foreign commerce.

29 (12) "Oil" or "oils" means oil of any kind that is liquid at  
30 atmospheric temperature and any fractionation thereof, including, but  
31 not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil,  
32 biological oils and blends, oil sludge, oil refuse, and oil mixed with  
33 wastes other than dredged spoil. Oil does not include any substance  
34 listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989,  
35 under section 101(14) of the federal comprehensive environmental  
36 response, compensation, and liability act of 1980, as amended by P.L.  
37 99-499.

1 (13) "Offshore facility" means any facility located in, on, or  
2 under any of the navigable waters of the state, but does not include a  
3 facility any part of which is located in, on, or under any land of the  
4 state, other than submerged land. "Offshore facility" does not include  
5 a marine facility.

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

11 (15)(a) "Owner or operator" means (i) in the case of a vessel, any  
12 person owning, operating, or chartering by demise, the vessel; (ii) in  
13 the case of an onshore or offshore facility, any person owning or  
14 operating the facility; and (iii) in the case of an abandoned vessel or  
15 onshore or offshore facility, the person who owned or operated the  
16 vessel or facility immediately before its abandonment.

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

20 (16) "Passenger vessel" means a ship of three hundred or more gross  
21 tons with a fuel capacity of at least six thousand gallons carrying  
22 passengers for compensation.

23 (17) "Person" means any political subdivision, government agency,  
24 municipality, industry, public or private corporation, copartnership,  
25 association, firm, individual, or any other entity whatsoever.

26 (18) "Qualifying tug" means a tug boat that satisfies the  
27 capabilities and equipment standards set forth in section 2 of this  
28 act.

29 (19) "Severe weather conditions" means observed nautical conditions  
30 with sustained winds measured at forty or more knots and wave heights  
31 measured at twelve feet or more.

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

34 ~~((+19))~~ (21) "Spill" means an unauthorized discharge of oil into  
35 the waters of the state.

36 ~~((+20))~~ (22) "Tank vessel" means a ship that is constructed or  
37 adapted to carry, or that carries, oil in bulk as cargo or cargo  
38 residue, and that:

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

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

4 (~~(+21+)~~) (23) "Waters of the state" includes lakes, rivers, ponds,  
5 streams, inland waters, underground water, salt waters, estuaries,  
6 tidal flats, beaches and lands adjoining the seacoast of the state,  
7 sewers, and all other surface waters and watercourses within the  
8 jurisdiction of the state of Washington.

9 (~~(+22+)~~) (24) "Worst case spill" means: (a) In the case of a  
10 vessel, a spill of the entire cargo and fuel of the vessel complicated  
11 by adverse weather conditions; and (b) in the case of an onshore or  
12 offshore facility, the largest foreseeable spill in adverse weather  
13 conditions.

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