

# HOUSE BILL REPORT

## HB 1949

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### As Amended by the Senate

**Title:** An act relating to providing industrial insurance coverage for workers involved in harvesting geoduck clams.

**Brief Description:** Providing industrial insurance coverage for workers involved in harvesting geoduck clams.

**Sponsors:** By Representatives Williams, Conway, B. Sullivan, Strow, Sells, Appleton, Kessler, Hinkle, McCoy, Walsh, Chandler, Pearson, Condotta, Kenney, Hasegawa, Moeller and Ormsby.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/15/07, 2/16/07 [DP].

**Floor Activity:**

Passed House: 3/7/07, 97-0.

Senate Amended.

Passed Senate: 4/13/07, 48-0.

Brief Summary of Bill
<ul style="list-style-type: none"><li>Applies the state Industrial Insurance Act to certain employers and workers involved in the business of harvesting geoducks.</li></ul>

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Green, Moeller and Williams.

**Staff:** Sarah Beznoska (786-7109).

**Background:**

The Longshore and Harbor Workers' Compensation Act, administered by the U.S. Department of Labor, provides medical benefits, compensation for lost wages and

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rehabilitation services to longshoremen, harbor workers, and other maritime workers who are injured during the course of employment or suffer from diseases caused or worsened by conditions of employment. Under the Longshore and Harbor Workers' Compensation Act, businesses whose employees are employed in maritime employment on or near the navigable waters of the United States are required to purchase longshore and harbor workers' compensation insurance.

There are exclusions to coverage under the Longshore and Harbor Workers' Compensation Act. The exclusions apply if the workers are covered by a state workers' compensation law. The exclusions include an exclusion for aquaculture workers.

The federal Jones Act also provides a remedy to seamen for injuries arising out of employment. Under the Jones Act, an injured seaman may obtain damages from his or her employer for the negligence of the vessel's owner, the captain, or other crew members.

The state Industrial Insurance Act does not apply to employers and workers for whom a right or obligation exists under the maritime laws.

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### **Summary of Bill:**

The state Industrial Insurance Act applies to commercial divers harvesting geoduck clams, workers tending to such divers, and the employers of such divers and tenders. The state Industrial Insurance Act applies whether or not the work is performed from a vessel.

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### **EFFECT OF SENATE AMENDMENT(S):**

The amendment adds language relevant to situations in which payments are made both under the Industrial Insurance Act and under the maritime laws. The language provides that when payments are made under both, any benefits paid under the Industrial Insurance Act must be repaid by the worker or beneficiary. If a claim is made under the federal Jones Act, the employer is deemed a third party and the Department of Labor and Industries or the self-insurer may also file notice of statutory interest in recovery.

The amendment clarifies that the Industrial Insurance Act applies to divers harvesting geoduck clams, workers tending to the divers, and their employer when there is a harvesting agreement with the Department of Natural Resources.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This is a bill with strong bipartisan support. This bill addresses a problem for a very small group of workers who are working without any type of workers' compensation coverage. The problem arises because it is confusing. These workers may or may not be covered under the federal Longshore and Harbor Workers' Act and may or may not be covered under the federal Jones Act. Even if they do fall under one of these, it is difficult to figure out who does or does not have coverage. In addition, most divers work off of Department of Natural Resources (DNR) leased lands. Having workers' compensation coverage makes a company not competitive for one of these leases.

This bill proposed a solution. The workers will have state workers' compensation coverage. Some might still fall under the federal Jones Act, but this bill will create a minimum layer of protection. This is a small group of 20-25 workers at any given time during the year and these workers have not had any kind of workers' compensation coverage. This will give them at least some coverage and any associated jurisdictional issues can be worked out.

The DNR co-manages Washington's wildstock geoduck fishery with the Department of Fish and Wildlife and with the treaty tribes of Puget Sound. The DNR sells the rights to harvest geoducks at certain times of year. The companies who get the rights hire vessels and divers to harvest the geoducks. The issue of workers' compensation came up in 2006 in a bill that would have limited the number of licenses for geoduck harvesters. The Department of Labor and Industries and the Attorney General's Office have both worked on this. The divers should be covered by workers' compensation. This will help the DNR with enforcement issues.

(With concerns) There is a difference between leases of the DNR land for wild harvest and leases for shellfish aquaculture geoduck harvest. Shellfish farmers have concerns because all members and divers are already covered as members of the boat crew under the Jones Act. Double payment of coverage should be avoided.

(Opposed) None.

**Persons Testifying:** (In support) Representative Williams, prime sponsor; Sarah Dzinbal, Department of Natural Resources; Clif Finch, Alaska Ice; and Gordon Baxter, Harvest Divers Union.

(With concerns) Jim Jesernig, Pacific Coast Shellfish Growers.

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