

SHB 1409 - H AMD 119

By Representative Van De Wege

ADOPTED 03/05/2009

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

22 (3) The legislature further finds that the state of Washington has  
23 maintained an emergency response tug at Neah Bay since 1999 to protect  
24 its waters from maritime casualties and resultant oil spills. During  
25 that time it has demonstrated its capability by responding to forty-one  
26 ships in need of assistance in the area from Port Angeles to the  
27 Columbia river. State funding is scheduled to end June 30, 2009. The  
28 legislature intends for the maritime industry to provide and fully fund  
29 a year-round emergency response tug at Neah Bay, including the  
30 logistical and operational management support system. This emergency

1 response towing vessel and its operations should meet or exceed the  
2 state's fiscal year 2009 technical contract specifications of the  
3 contracted Neah Bay emergency response towing vessel.

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

6 (1) An emergency response system for vessels operating in the entry  
7 of the Strait of Juan de Fuca shall be established and operated  
8 consistent with this section by July 1, ((1992)) 2010. ((In  
9 establishing the emergency response system, the administrator shall  
10 consider the recommendations of the regional marine safety committees.  
11 The administrator shall also consult with the province of British  
12 Columbia regarding its participation in the emergency response  
13 system.))

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

22 (b) Owners and operators of covered vessels that operate in the  
23 portion of the entry to the Strait of Juan de Fuca identified in this  
24 subsection shall submit an addendum to their oil spill contingency plan  
25 demonstrating compliance with this section by January 1, 2010. A  
26 vessel submitting an initial contingency plan after January 1, 2010,  
27 must provide documentation of its compliance with this section  
28 concurrent with the submittal of its contingency plan.

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

32 (3) Full implementation of section 3 of this act, or implementation  
33 of a system of protective measures imposed or required by the federal  
34 government that are determined by the department to be substantially  
35 equivalent to those requirements, satisfies the emergency response  
36 system required by this section.

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

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

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

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

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

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

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

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

24       (f) Be capable of a bollard pull of at least seventy short tons;  
25 and

26       (g) Be equipped with appropriate equipment for:

27       (i) Damage control patching;

28       (ii) Vessel dewatering;

29       (iii) Air safety monitoring; and

30       (iv) Digital photography.

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

34       (3)(a) The department must be authorized to contract with the  
35 emergency response towing vessel, at the discretion of the department,  
36 in response to a potentially emerging maritime casualty or as a

1 precautionary measure during severe storms. All instances of use by  
2 the department must be paid for by the department.

3 (b) Covered vessels that are required to provide an emergency  
4 response towing vessel under RCW 88.46.130 may not restrict the  
5 emergency response towing vessel from responding to distressed vessels  
6 that are not covered vessels.

7 (4) Nothing in this section limits the ability of a covered vessel  
8 to contract with an emergency response towing vessel with capabilities  
9 that exceed the minimum capabilities provided for a towing vessel in  
10 this section.

11 (5) The covered vessel owner or operator shall submit a written  
12 report to the department as soon as practicable regarding an emergency  
13 response system deployment, including photographic documentation  
14 determined by the department to be of adequate quality. The report  
15 must provide a detailed description of the incident necessitating a  
16 response and the actions taken to render assistance under the emergency  
17 response system.

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

20 (1) It is the intent of the legislature to provide the various  
21 components of the maritime industry with the tools necessary to satisfy  
22 the requirements of RCW 88.46.130 in the most cost-effective manner.  
23 In doing, the legislature encourages, but does not mandate, the  
24 maritime industry to unite behind their mutual interests and  
25 responsibilities and identify or form a single umbrella organization  
26 that allows all affected covered vessels to equitably share the costs  
27 inherent in the implementation of RCW 88.46.130.

28 (2) The legislature further finds that an equitable sharing of the  
29 costs of implementing RCW 88.46.130 may mean that not all covered  
30 vessels will be responsible for providing the same amount of funding.  
31 Any umbrella organization that is identified or formed to satisfy the  
32 requirements of this act should consider the multitude of factors that  
33 comprise the risk of oil spills and the likelihood of initiating a  
34 response from the emergency response vessel required by RCW 88.46.130,  
35 including the number of transits made by the covered vessel, the nature  
36 and quantity of its cargo, and the technical sophistication of its  
37 design, safety updates, and maintenance.

1 (3) The legislature intends to provide the authority for any  
2 operator of a covered vessel that feels as though an umbrella  
3 organization that is identified, formed, or proposed for formation does  
4 not equitably share the costs of compliance with RCW 88.46.130 with the  
5 covered vessel in question, or the class of vessel to which the covered  
6 vessel belongs, to either contract directly with an adequate emergency  
7 response vessel or form or join a discreet umbrella organization  
8 representing the appropriate segment of the maritime industry.  
9 However, if the operator of a covered vessel chooses not to join a  
10 proposed or existing umbrella organization, or finds that negotiations  
11 leading to the formation of an umbrella organization are not  
12 progressing in an adequate manner, the legislature requests, but does  
13 not require, that the vessel operator contact the department and  
14 provide official notice of their concern as to how the umbrella group  
15 in question failed in establishing an equitable cost-share strategy.

16 (4) The department shall collect and maintain all notices received  
17 under this section and shall summarize any reports received by the  
18 operators of covered vessels and report the summation to the  
19 appropriate committees of the legislature upon request by a legislative  
20 committee.

21 NEW SECTION. **Sec. 5.** (1) Designated representatives of the owners  
22 and operators of all classes of covered vessels shall negotiate, given  
23 the intent of section 4 of this act, a system to determine the  
24 equitable apportionment of costs of the emergency response system  
25 required by this act.

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

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

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

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

- 1 (i) Oil tankers;
- 2 (ii) Tank barges;
- 3 (iii) Tug and oil barge combinations;
- 4 (iv) Nontank vessels, including cruise ships;
- 5 (v) Other covered vessels.

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

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

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

14 (1) In addition to reviewing contingency plans submitted under RCW  
15 88.46.130, the department may determine the adequacy of the emergency  
16 response system required in RCW 88.46.130 through practice drills that  
17 test the adequacy of the responding entity's capabilities and  
18 satisfaction of the requirements of section 3 of this act. Practice  
19 drills may be conducted without prior notice.

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

23 (3) Drills of the emergency response system required in RCW  
24 88.46.130 must emphasize the system's ability to respond to a  
25 potentially worst case vessel emergency scenario.

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

28 The definitions in this section apply throughout this chapter  
29 unless the context clearly requires otherwise.

30 (1) "Best achievable protection" means the highest level of  
31 protection that can be achieved through the use of the best achievable  
32 technology and those staffing levels, training procedures, and  
33 operational methods that provide the greatest degree of protection  
34 achievable. The director's determination of best achievable protection  
35 shall be guided by the critical need to protect the state's natural

1 resources and waters, while considering (a) the additional protection  
2 provided by the measures; (b) the technological achievability of the  
3 measures; and (c) the cost of the measures.

4 (2) "Best achievable technology" means the technology that provides  
5 the greatest degree of protection taking into consideration (a)  
6 processes that are being developed, or could feasibly be developed,  
7 given overall reasonable expenditures on research and development, and  
8 (b) processes that are currently in use. In determining what is best  
9 achievable technology, the director shall consider the effectiveness,  
10 engineering feasibility, and commercial availability of the technology.

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

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

18 (5) "Covered vessel" means a tank vessel, cargo vessel, or  
19 passenger vessel.

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

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

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

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

27 (10) "Entry to the Strait of Juan de Fuca" means that portion of  
28 the Strait of Juan de Fuca seaward of a line drawn from New Dungeness  
29 light in Clallam county to Discovery Island light on Vancouver Island,  
30 British Columbia, Canada, and including the Washington portion of the  
31 approach area to the Strait of Juan de Fuca from Cape Flattery light in  
32 Clallam county southward to North Head light in Pacific county near the  
33 mouth of the Columbia river.

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

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

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

14 ~~((+11+))~~ (13) "Navigable waters of the state" means those waters of  
15 the state, and their adjoining shorelines, that are subject to the ebb  
16 and flow of the tide and/or are presently used, have been used in the  
17 past, or may be susceptible for use to transport intrastate,  
18 interstate, or foreign commerce.

19 ~~((+12+))~~ (14) "Oil" or "oils" means oil of any kind that is liquid  
20 at atmospheric temperature and any fractionation thereof, including,  
21 but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel  
22 oil, biological oils and blends, oil sludge, oil refuse, and oil mixed  
23 with wastes other than dredged spoil. Oil does not include any  
24 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August  
25 14, 1989, under section 101(14) of the federal comprehensive  
26 environmental response, compensation, and liability act of 1980, as  
27 amended by P.L. 99-499.

28 ~~((+13+))~~ (15) "Offshore facility" means any facility located in,  
29 on, or under any of the navigable waters of the state, but does not  
30 include a facility any part of which is located in, on, or under any  
31 land of the state, other than submerged land. "Offshore facility" does  
32 not include a marine facility.

33 ~~((+14+))~~ (16) "Onshore facility" means any facility any part of  
34 which is located in, on, or under any land of the state, other than  
35 submerged land, that because of its location, could reasonably be  
36 expected to cause substantial harm to the environment by discharging  
37 oil into or on the navigable waters of the state or the adjoining  
38 shorelines.



1       (~~(15)~~) (17)(a) "Owner or operator" means (i) in the case of a  
2 vessel, any person owning, operating, or chartering by demise, the  
3 vessel; (ii) in the case of an onshore or offshore facility, any person  
4 owning or operating the facility; and (iii) in the case of an abandoned  
5 vessel or onshore or offshore facility, the person who owned or  
6 operated the vessel or facility immediately before its abandonment.

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

10       (~~(16)~~) (18) "Passenger vessel" means a ship of three hundred or  
11 more gross tons with a fuel capacity of at least six thousand gallons  
12 carrying passengers for compensation.

13       (~~(17)~~) (19) "Person" means any political subdivision, government  
14 agency, municipality, industry, public or private corporation,  
15 copartnership, association, firm, individual, or any other entity  
16 whatsoever.

17       (~~(18)~~) (20) "Severe weather conditions" means observed nautical  
18 conditions with sustained winds measured at forty knots and wave  
19 heights measured between twelve and eighteen feet.

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

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

24       (~~(20)~~) (23) "Tank vessel" means a ship that is constructed or  
25 adapted to carry, or that carries, oil in bulk as cargo or cargo  
26 residue, and that:

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

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

30       (~~(21)~~) (24) "Vessel emergency" includes:

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

35       (b) Hull breach; or

36       (c) Oil spill.

37       (25) "Waters of the state" includes lakes, rivers, ponds, streams,  
38 inland waters, underground water, salt waters, estuaries, tidal flats,

1 beaches and lands adjoining the seacoast of the state, sewers, and all  
2 other surface waters and watercourses within the jurisdiction of the  
3 state of Washington.

4 ~~((+22))~~ (26) "Worst case spill" means: (a) In the case of a  
5 vessel, a spill of the entire cargo and fuel of the vessel complicated  
6 by adverse weather conditions; and (b) in the case of an onshore or  
7 offshore facility, the largest foreseeable spill in adverse weather  
8 conditions.

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

11 (1) The state oil spill response account is created in the state  
12 treasury. All receipts from RCW 82.23B.020(1) shall be deposited in  
13 the account. All costs reimbursed to the state by a responsible party  
14 or any other person for responding to a spill of oil shall also be  
15 deposited in the account. Moneys in the account shall be spent only  
16 after appropriation. The account is subject to allotment procedures  
17 under chapter 43.88 RCW.

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

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

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

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

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

33 ~~((+1))~~ (a) Natural resource damage assessment and related  
34 activities;

35 ~~((+2))~~ (b) Spill related response, containment, wildlife rescue,  
36 cleanup, disposal, and associated costs;

1       (~~(+3)~~) (c) Interagency coordination and public information related  
2 to a response; and  
3       (~~(+4)~~) (d) Appropriate travel, goods and services, contracts, and  
4 equipment.

5       NEW SECTION.   **Sec. 9.**   (1) The director of the department of  
6 ecology, or the director's designee, shall initiate discussions with  
7 the director's equivalent position in the government for the Canadian  
8 province of British Columbia to explore options for Washington and  
9 British Columbia to share the marine response assets required under  
10 this act.

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

14       (3) This section expires July 31, 2011."

15       Correct the title.

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