
SUBSTITUTE HOUSE BILL 1409

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, Seaquist, 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 and 88.46.010; adding
3 new sections to chapter 88.46 RCW; creating new sections; and providing
4 an expiration date.

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 bear the future costs
13 of funding a year-round emergency response tug at Neah Bay, in a manner
14 that equitably allocates the cost of mitigating the risk of marine
15 casualties, incidents, and oil spills, including the logistical and
16 operational management support system. This emergency response towing
17 vessel and its operations should meet or exceed the state's 2007-2009
18 biennium contract specifications of the contracted Neah Bay emergency
19 response towing vessel.

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

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

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

1 (b) Owners and operators of covered vessels shall submit an
2 addendum to their contingency plan, or provide separate documentation,
3 evidencing compliance with this section by January 1, 2010. A vessel
4 submitting an initial contingency plan after January 1, 2010, must
5 provide evidence of compliance with this section concurrent with the
6 submittal of its contingency plan.

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

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

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

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

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

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

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

31 (c) In severe weather conditions, make up to, stop, hold, and tow
32 a drifting or disabled vessel of one hundred eighty thousand metric
33 dead weight tons;

34 (d) In severe weather conditions, hold position within one hundred
35 feet of another vessel;

36 (e) Be equipped with and maneuverable enough to effectively employ
37 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 a private
9 organization or cooperative providing umbrella coverage under contract
10 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) The emergency response towing vessel must be authorized to
17 respond to distressed vessels not required to submit a contingency plan
18 under this chapter on a cost recovery basis with the vessel receiving
19 assistance.

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 detail the incident necessitating a response and the actions taken
29 to render assistance under the emergency response system.

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

32 (1) The department shall determine the adequacy of the emergency
33 response system required in RCW 88.46.130 through practice drills that
34 test the adequacy of the responding entity's capabilities. Practice
35 drills may be conducted without prior notice.

36 (2) Each successful response to a vessel emergency may be

1 considered by the department to satisfy a drill covering this portion
2 of a covered vessel's contingency plan.

3 (3) Drills of the emergency response system required in RCW
4 88.46.130 must emphasize the system's ability to respond to a
5 potentially worst case vessel emergency scenario.

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

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

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

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

33 (5) "Covered vessel" means a tank vessel, cargo vessel, or
34 passenger vessel.

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

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

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

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

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

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

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

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

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

36 ((+12)) (14) "Oil" or "oils" means oil of any kind that is liquid
37 at atmospheric temperature and any fractionation thereof, including,
38 but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel

1 oil, biological oils and blends, oil sludge, oil refuse, and oil mixed
2 with wastes other than dredged spoil. Oil does not include any
3 substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August
4 14, 1989, under section 101(14) of the federal comprehensive
5 environmental response, compensation, and liability act of 1980, as
6 amended by P.L. 99-499.

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

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

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

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

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

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

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

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

1 (~~(19)~~) (22) "Spill" means an unauthorized discharge of oil into
2 the waters of the state.

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

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

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

9 (~~(21)~~) (24) "Vessel emergency" includes:

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

14 (b) Hull breach; or

15 (c) Oil spill.

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

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

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

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

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

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