

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5344

61st Legislature
2009 Regular Session

Passed by the Senate March 20, 2009
YEAS 39 NAYS 4

President of the Senate

Passed by the House March 18, 2009
YEAS 74 NAYS 23

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5344** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5344

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Ranker, Swecker, Rockefeller, Marr, Hargrove, Pridemore, Fraser, Shin, McDermott, and Kilmer)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to providing emergency response towing vessels;
2 amending RCW 88.46.130, 88.46.010, and 90.56.500; adding new sections
3 to chapter 88.46 RCW; creating new sections; and providing expiration
4 dates.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the northern
7 coast of the Olympic Peninsula and Washington's west coast from Cape
8 Flattery south to Cape Disappointment:

9 (a) Possess uniquely rich and highly vulnerable biological, marine,
10 and cultural resources supporting some of the nation's most valuable
11 commercial, sport, and tribal fisheries;

12 (b) Sustain endangered species and numerous species of vulnerable
13 marine mammals; and

14 (c) Are internationally recognized through extraordinary
15 designations including a world heritage site, a national park, a
16 national marine sanctuary, national wildlife refuges, a maritime area
17 off-limits to shipping, and tribal lands and fishing areas of federally
18 recognized coastal Indian tribes.

1 (2) The legislature further finds that these coasts are
2 periodically beset by severe storms with dangerously high seas and by
3 strong currents, obscuring fog, and other conditions that imperil
4 vessels and crews. When vessels suffer damage or founder, the coasts
5 are likewise imperiled, particularly if oil is spilled into coastal
6 waters. Oil spills pose great potential risks to treasured resources.

7 (3) The legislature further finds that Washington has maintained an
8 emergency response tug at Neah Bay since 1999 to protect state waters
9 from maritime casualties and resulting oil spills. The tug is
10 necessary because of the peculiarities of local waters that call for
11 special precautionary measures. The tug has demonstrated its necessity
12 and capability by responding to forty-two vessels in need of
13 assistance. State funding for the tug is scheduled to end June 30,
14 2009.

15 (4) The legislature intends that the maritime industry should
16 provide and fully fund at least one year-round emergency response tug
17 at Neah Bay, with necessary logistical and operational support, and
18 that any tug provided by the maritime industry pursuant to this act
19 should meet or exceed technical performance requirements specified in
20 the state's fiscal year 2009 contract for the Neah Bay emergency
21 response tug.

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

24 (1) By July 1, 2010, the owner or operator of a covered vessel
25 transiting to or from a Washington port through the Strait of Juan de
26 Fuca, except for transits extending no further west than Race Rocks
27 light, shall establish and fund an emergency response system ((for the
28 Strait of Juan de Fuca shall be established by July 1, 1992)) that
29 provides for an emergency response towing vessel to be stationed at
30 Neah Bay. ((In establishing the emergency response system, the
31 administrator shall consider the recommendations of the regional marine
32 safety committees. The administrator shall also consult with the
33 province of British Columbia regarding its participation in the
34 emergency response system.))

35 (2) Any emergency response towing vessel provided under this
36 section must:

1 (a) Be available to serve vessels in distress in the Strait of Juan
2 de Fuca and off of the western coast of the state from Cape Flattery
3 light in Clallam county south to Cape Disappointment light in Pacific
4 county; and

5 (b) Meet the requirements specified in section 3 of this act.

6 (3) In addition to meeting requirements specified in RCW 88.46.060,
7 contingency plans for covered vessels operating in the Strait of Juan
8 de Fuca must provide for the emergency response system required by this
9 section. Documents describing how compliance with this section will be
10 achieved must be submitted to the department by December 1, 2009. An
11 initial contingency plan submitted to the department after December 1,
12 2009, must be accompanied by documents demonstrating compliance with
13 this section.

14 (4) The requirements of this section are met if:

15 (a) Owners or operators of covered vessels provide an emergency
16 response towing vessel that complies with subsection (2) of this
17 section; or

18 (b) The United States government implements a system of protective
19 measures that the department determines to be substantially equivalent
20 to the requirements of this section as long as the emergency response
21 towing vessel required by this section is stationed at Neah Bay.

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

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

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

30 (b) Be able to deploy at any hour of any day to provide emergency
31 assistance within the capabilities of the minimum planning standards
32 and be safely manned to remain underway for at least forty-eight hours;

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

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

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

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

5 (g) Be equipped with appropriate equipment for:

6 (i) Damage control patching;

7 (ii) Vessel dewatering;

8 (iii) Air safety monitoring; and

9 (iv) Digital photography.

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

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

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

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

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

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

35 (1) It is the intent of the legislature to provide the various
36 components of the maritime industry with the tools necessary to satisfy
37 the requirements of RCW 88.46.130 in the most cost-effective manner.

1 In doing, the legislature encourages, but does not mandate, the
2 maritime industry to unite behind their mutual interests and
3 responsibilities and identify or form a single umbrella organization
4 that allows all affected covered vessels to equitably share the costs
5 inherent in the implementation of RCW 88.46.130.

6 (2) The legislature further finds that, given the broad range of
7 covered vessel types and sizes, an equitable sharing of the costs of
8 implementing RCW 88.46.130 will likely mean that not all covered
9 vessels will be responsible for providing the same amount of funding.
10 Any umbrella organization that is identified or formed to satisfy the
11 requirements of this act should consider the multitude of factors that
12 comprise the risk of vessel emergencies and the likelihood of
13 initiating a response from the emergency response vessel required by
14 RCW 88.46.130.

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

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

35 NEW SECTION. **Sec. 5.** (1) Designated representatives of the owners
36 and operators of all classes of covered vessels shall negotiate, given

1 the intent of section 4 of this act, a system to determine the
2 equitable apportionment of costs of the emergency response system
3 required by this act.

4 (2) Participants to the negotiations shall provide interim progress
5 reports to the appropriate committees of the legislature by October 31,
6 2009, and again by December 1, 2009, the latter date coinciding with
7 the deadline for contingency plans for covered vessels operating in the
8 Strait of Juan de Fuca to provide for the emergency response system
9 required by RCW 88.46.130. These reports shall provide available
10 information relating to:

11 (a) The anticipated average annual cost of providing the emergency
12 response system;

13 (b) The methodology for determining the anticipated average annual
14 cost for each class of covered vessel, including:

15 (i) A system for crediting enhanced navigational or structural
16 characteristics;

17 (ii) Appropriate limits on total cost for vessels that frequently
18 transit the Strait of Juan de Fuca, except for transits extending no
19 further west than Race Rocks light; and

20 (iii) Consideration of current economic conditions; and

21 (c) Any impediment to equitable apportionment of costs.

22 (3) As used in this section, "class of covered vessel" means:

23 (a) Oil tankers;

24 (b) Tank barges;

25 (c) Tug and oil barge combinations;

26 (d) Cargo vessels;

27 (e) Passenger vessels; and

28 (f) Other covered vessels.

29 (4) If the representatives designated under this section to
30 participate in negotiations fail to achieve the goals of this section
31 or otherwise choose not to report the outcomes to the legislature, the
32 department of ecology shall, by December 1, 2009, deliver the summation
33 of any reports received under section 4 of this act.

34 (5) This section expires June 30, 2010.

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

37 (1) As part of reviewing contingency plans submitted under RCW

1 88.46.130, the department may determine the adequacy of the emergency
2 response system required in RCW 88.46.130 through practice drills that
3 test compliance with the requirements of section 3 of this act.
4 Practice drills may be conducted without prior notice.

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

8 (3) Drills of the emergency response system required in RCW
9 88.46.130 must emphasize the system's ability to respond to a
10 potentially worst case vessel emergency scenario.

11 **Sec. 7.** 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) "Race Rocks light" means the nautical landmark located
27 southwest of the city of Victoria, British Columbia.

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

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

33 ~~((+19))~~ (21) "Spill" means an unauthorized discharge of oil into
34 the waters of the state.

35 ~~((+20))~~ (22) "Strait of Juan de Fuca" means waters off the
36 northern coast of the Olympic Peninsula seaward of a line drawn from
37 New Dungeness light in Clallam county to Discovery Island light on
38 Vancouver Island, British Columbia, Canada.

1 (23) "Tank vessel" means a ship that is constructed or adapted to
2 carry, or that carries, oil in bulk as cargo or cargo residue, and
3 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" means a substantial threat of
8 pollution originating from a covered vessel, including loss or serious
9 degradation of propulsion, steering, means of navigation, primary
10 electrical generating capability, and seakeeping capability.

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

16 ~~((+22+))~~ (26) "Worst case spill" means: (a) In the case of a
17 vessel, a spill of the entire cargo and fuel of the vessel complicated
18 by adverse weather conditions; and (b) in the case of an onshore or
19 offshore facility, the largest foreseeable spill in adverse weather
20 conditions.

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

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

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

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

33 (1) The state oil spill response account is created in the state
34 treasury. All receipts from RCW 82.23B.020(1) shall be deposited in
35 the account. All costs reimbursed to the state by a responsible party
36 or any other person for responding to a spill of oil shall also be

1 deposited in the account. Moneys in the account shall be spent only
2 after appropriation. The account is subject to allotment procedures
3 under chapter 43.88 RCW.

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

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

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

9 (3) Payment of response costs under subsection (2)(a) of this
10 section shall be limited to spills which the director has determined
11 are likely to exceed fifty thousand dollars.

12 (4) Before expending moneys from the account, the director shall
13 make reasonable efforts to obtain funding for response costs under
14 subsection (2) of this section from the person responsible for the
15 spill and from other sources, including the federal government.

16 (5) Reimbursement for response costs shall be allowed only for
17 costs which are not covered by funds appropriated to the agencies
18 responsible for response activities. Costs associated with the
19 response to spills of crude oil or petroleum products shall include:

20 ~~((+1))~~ (a) Natural resource damage assessment and related
21 activities;

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

24 ~~((+3))~~ (c) Interagency coordination and public information related
25 to a response; and

26 ~~((+4))~~ (d) Appropriate travel, goods and services, contracts, and
27 equipment.

28 NEW SECTION. **Sec. 10.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

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