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**SIXTY-FIRST LEGISLATURE - REGULAR SESSION**

**SIXTY FIFTH DAY**

House Chamber, Olympia, Tuesday, March 17, 2009

The House was called to order at 9:55 a.m. by the Speaker (Representative Moeller presiding).

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

**MESSAGES FROM THE SENATE**

March 16, 2009

Mr. Speaker:

The President has signed the following:

SENATE BILL NO. 5164,

SENATE BILL NO. 5348,

SUBSTITUTE SENATE BILL NO. 5417,

and the same are herewith transmitted.

Thomas Hoemann, Secretary

There being no objection, the House advanced to the fifth order of business.

**REPORTS OF STANDING COMMITTEES**

March 17, 2009

SSB 5130 Prime Sponsor, Committee on Human Services & Corrections: Regarding prisoner access to public records. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass as amended:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 42.56 RCW to read as follows:

(1) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities or persons directly connected to such persons may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;

(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

(iv) Fulfilling the request may assist criminal activity.

(2) In deciding whether to enjoin a request under subsection (1) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;

(b) The type of record or records sought;

(c) Statements offered by the requestor concerning the purpose for the request;

(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

(3) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:

(a) The same requestor;

(b) An entity owned or controlled in whole or in part by the same requestor;

(c) A family member of the requestor; or

(d) An acquaintance of the requestor.

(4) An agency shall not be liable for penalties under RCW 42.56.550(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal.

**NEW SECTION. Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander; Hurst and Miloscia.

MINORITY recommendation: Do not pass. Signed by Representative Flannigan.

March 17, 2009

ESSB 5344 Prime Sponsor, Committee on Environment, Water & Energy: Concerning emergency response towing vessels. Reported by Committee on Ecology & Parks

MAJORITY recommendation: Do pass as amended:

Strike everything after the enacting clause and insert the following:

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

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

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

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

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

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

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

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

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

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

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

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

(3) In addition to meeting requirements specified in RCW 88.46.060, contingency plans for covered vessels operating in the Strait of Juan de Fuca must provide for the emergency response

system required by this section. Documents describing how compliance with this section will be achieved must be submitted to the department by December 1, 2009. An initial contingency plan submitted to the department after December 1, 2009, must be accompanied by documents demonstrating compliance with this section.

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

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

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

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

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

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

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

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

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

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

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

(g) Be equipped with appropriate equipment for:

(i) Damage control patching;

(ii) Vessel dewatering;

(iii) Air safety monitoring; and

(iv) Digital photography.

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

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

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

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

(5) The covered vessel owner or operator shall submit a written report to the department as soon as practicable regarding an emergency response system deployment, including photographic documentation determined by the department to be of adequate quality. The report must provide a detailed description of the

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Consideration of current economic conditions; and

(c) Any impediment to equitable apportionment of costs.

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

(a) Oil tankers;

(b) Tank barges;

(c) Tug and oil barge combinations;

(d) Cargo vessels;

(e) Passenger vessels; and

(f) Other covered vessels.

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

(5) This section expires June 30, 2010.

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

(1) As part of reviewing contingency plans submitted under RCW 88.46.130, the department may determine the adequacy of the emergency response system required in RCW 88.46.130 through practice drills that test compliance with the requirements of section 3 of this act. Practice drills may be conducted without prior notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

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

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

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

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

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

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

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

((21)) (24) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

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

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

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

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

(3) This section expires July 31, 2011.

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

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

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

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

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

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

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

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

((1)) (a) Natural resource damage assessment and related activities;

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

((3)) (c) Interagency coordination and public information related to a response; and

((4)) (d) Appropriate travel, goods and services, contracts, and equipment.

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

Correct the title.

Signed by Representatives Upthegrove, Chair; Rolfes, Vice Chair; Chase; Dickerson; Dunshee; Eddy; Finn; Hudgins and Morris.

MINORITY recommendation: Do not pass. Signed by Representatives Short, Ranking Minority Member; Kretz; Kristiansen; Orcutt and Shea.

March 13, 2009

ESSB 5595 Prime Sponsor, Committee on Labor, Commerce & Consumer Protection: Addressing the termination, cancellation, or nonrenewal of franchises between new motor vehicle dealers and manufacturers. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass. Signed by Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler; Crouse and Green.

There being no objection, the bills listed on the day's committee reports under the fifth order of business were placed on the second reading calendar.

There being no objection, the House advanced to the eighth order of business.

There being no objection, the Committee on Health Care & Wellness was relieved of ENGROSSED SUBSTITUTE SENATE BILL NO. 5892, and the bill was referred to the Committee on Ways & Means.

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 10:00 a.m., March 18, 2009, the 66th Day of the Regular Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk