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**SUBSTITUTE SENATE BILL 5578**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Van De Wege, Liias, Carlyle, Frockt, Billig, Conway, Hunt, Pedersen, Palumbo, McCoy, Dhingra, Keiser, Kuderer, Saldaña, and Wilson, C.; by request of Office of the Governor)

AN ACT Relating to reducing threats to southern resident killer whales by improving the safety of oil transportation; amending RCW 88.16.190, 88.46.240, 90.56.565, and 88.46.165; adding a new section to chapter 88.16 RCW; adding new sections to chapter 88.46 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature finds that a variety of existing policies designed to reduce the risk of oil spills have helped contribute to a relatively strong safety record for oil moved by water, pipeline, and train in recent years in Washington state. Nevertheless, gaps exist in our safety regimen, especially deriving from shifts in the modes of overwater transportation of oil and the increased transport of oils that may submerge or sink, contributing to an unacceptable threat to Washington waters, where a catastrophic spill would inflict potentially irreversible damage on the endangered southern resident killer whales. In addition to the unique marine and cultural resources in Puget Sound that would be damaged by an oil spill, the geographic, bathometric, and other environmental peculiarities of Puget Sound present navigational challenges that heighten the risk of an oil spill incident occurring. Therefore, it is the intent of the legislature to enact certain new safety requirements designed to reduce the current, acute risk from existing infrastructure and activities of an oil spill that could eradicate our whales, violate the treaty fishing rights of any potentially affected federally recognized Indian tribes, damage commercial fishing prospects, undercut many aspects of the economy that depend on the Salish Sea, and otherwise harm the health and well-being of Washington residents. In enacting such measures, however, it is not the intent of the legislature to mitigate, offset, or otherwise encourage additional projects or activities that would increase the frequency or severity of oil spills in the Salish Sea. Furthermore, it is the intent of the legislature for this act to spur international discussions among federal, state, provincial, and industry leaders in the United States and Canada to develop an agreement for the shared funding of an emergency rescue tug available to vessels in distress in the narrow Straits of the San Juan Islands and other boundary waters, which would lessen oil spill risks to the marine environment in both the United States and Canada.

**Sec.**  RCW 88.16.190 and 1994 c 52 s 1 are each amended to read as follows:

(1) Any oil tanker, whether enrolled or registered, of greater than one hundred ((~~and~~)) twenty-five thousand deadweight tons shall be prohibited from proceeding beyond a point east of a line extending from Discovery Island light south to New Dungeness light.

(2) ((~~An oil tanker, whether enrolled or registered, of forty to one hundred and twenty-five thousand deadweight tons may proceed beyond the points enumerated in subsection (1) if such tanker possesses all of the following standard safety features:~~

~~(a) Shaft horsepower in the ratio of one horsepower to each two and one-half deadweight tons; and~~

~~(b) Twin screws; and~~

~~(c) Double bottoms, underneath all oil and liquid cargo compartments; and~~

~~(d) Two radars in working order and operating, one of which must be collision avoidance radar; and~~

~~(e) Such other navigational position location systems as may be prescribed from time to time by the board of pilotage commissioners:~~

~~PROVIDED, That, if such forty to one hundred and twenty-five thousand deadweight ton tanker is in ballast or is under escort of a tug or tugs with an aggregate shaft horsepower equivalent to five percent of the deadweight tons of that tanker, subsection (2) of this section shall not apply: PROVIDED FURTHER, That additional tug shaft horsepower equivalencies may be required under certain conditions as established by rule and regulation of the Washington utilities and transportation commission pursuant to chapter 34.05 RCW: PROVIDED FURTHER, That~~)) (a)(i) An oil tanker of forty to one hundred twenty-five thousand deadweight tons may operate in the waters east of a line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area, including but not limited to the San Juan Islands and connected waterways and the waters south of Admiralty Inlet, to the extent that these waters are within the territorial boundaries of Washington, only if the oil tanker is under the escort of a tug or tugs that have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of the escorted oil tanker.

(ii) Effective October 1, 2019, with the exception of vessels providing bunkering or refueling services, oil tankers of less than forty thousand deadweight tons, and articulated tug barges and waterborne vessels or barges of greater than five thousand deadweight tons may operate in Rosario Strait and connected waterways to the east only if the vessel is under the escort of a tug or tugs that have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of a forty thousand deadweight ton oil tanker. The requirements of this subsection may be adjusted by rule by the board of pilotage commissioners, consistent with section 3(3)(b) of this act.

(b) An oil tanker, articulated tug barge, or waterborne vessel or barge in ballast is not required to be under the escort of a tug.

(c) A tanker assigned a deadweight of less than forty thousand deadweight tons at the time of construction or reconstruction as reported in Lloyd's Register of Ships is not subject to the provisions of RCW 88.16.170 ((~~through 88.16.190~~)) and 88.16.180.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Articulated tug barge" means a tank barge and a towing vessel joined by hinged or articulated fixed mechanical equipment affixed or connecting to the stern of the tank barge.

(b) "Oil tanker" means a self-propelled deep draft tank vessel designed to transport oil in bulk. "Oil tanker" does not include an articulated tug barge tank vessel.

(c) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

NEW SECTION. **Sec.**  A new section is added to chapter 88.16 RCW to read as follows:

(1)(a) By December 31, 2025, the board of pilotage commissioners, in consultation with the department of ecology, must adopt rules regarding tug escorts to address the peculiarities of Puget Sound, with the exception of vessels providing bunkering or refueling services, for oil tankers of less than forty thousand deadweight tons, articulated tug barges, and waterborne vessels or barges of greater than five thousand deadweight tons operating in the waters east of the line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area. This rule making must address the tug escort requirements applicable to Rosario Strait and connected waterways to the east established in RCW 88.16.190(2)(a)(ii), and may adjust those requirements.

(b) To achieve the rule-making deadline in (a) of this subsection, the board of pilotage commissioners must adhere to the following interim milestones:

(i) By September 1, 2020, identify and define the zones, specified in subsection (3)(a) of this section, to inform the analysis required under subsection (5) of this section; and

(ii) By September 1, 2023, consult with stakeholders as required under subsection (6) of this section and complete the analysis required under subsection (5) of this section. By September 1, 2023, the department of ecology must submit a summary of the results of the analysis required under subsection (5) of this section to the legislature consistent with RCW 43.01.036.

(2) When developing rules, the board of pilotage commissioners must consider:

(a) The results of the most recently completed vessel traffic risk assessments;

(b) The report developed by the department of ecology as required under section 206, chapter 262, Laws of 2018;

(c) The recommendations of any potentially affected federally recognized Indian tribes; and

(d) The recommendations included in the southern resident orca task force report, November 2018.

(3) In the rules adopted under this section, the board of pilotage commissioners must:

(a) Make decisions about risk protection on the basis of geographic zones in the waters specified in subsection (1)(a) of this section. As the initial foci of the rules, the board of pilotage commissioners must equally prioritize geographic zones encompassing (i) Rosario Strait and connected waterways to the east; and (ii) Haro Strait and Boundary Pass;

(b) Specify operational requirements, such as tethering, for tug escorts;

(c) Include functionality requirements for tug escorts, such as aggregate shaft horsepower for tethered tug escorts; and

(d) Be designed to achieve best achievable protection, as defined under RCW 88.46.010, as informed by consideration of:

(i) Accident records in British Columbia and Washington waters;

(ii) Existing propulsion and design standards for covered tank vessels; and

(iii) The characteristics of the waterways.

(4) The rules adopted under this section may not require oil tankers, articulated tug barges, waterborne vessels, or barges to be under the escort of a tug when these vessels are in ballast.

(5) To inform rule making, the board of pilotage commissioners must conduct an analysis of tug escorts using the model developed by the department of ecology under section 5 of this act. The board of pilotage commissioners may:

(a) Develop subsets of oil tankers of less than forty thousand deadweight tons, and articulated tug barges and waterborne vessels or barges of greater than five thousand deadweight tons, and situations that could preclude the requirements of the rule making for a given zone or vessel; and

(b) Enter into an interagency agreement with the department of ecology to assist with conducting the analysis and developing the rules.

(6) The board of pilotage commissioners must consult with the United States coast guard, the Puget Sound harbor safety committee, any potentially affected federally recognized Indian tribes, ports, local governments, state agencies, and other appropriate entities before adopting tug escort rules for Puget Sound. Considering relevant information elicited during the consultations required under this subsection, the board of pilotage commissioners must also design the rules with a goal of avoiding or minimizing the impacts of underwater noise from vessels in the Salish Sea, focusing vessel traffic into established shipping lanes, protecting and minimizing vessel traffic impacts to established treaty fishing areas, and respecting and preserving the treaty-protected fishing rights of any potentially affected federally recognized Indian tribes.

(7) Rules adopted under this section must be periodically updated consistent with section 6 of this act.

(8) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Articulated tug barge" means a tank barge and a towing vessel joined by hinged or articulated fixed mechanical equipment affixed or connecting to the stern of the tank barge.

(b) "Oil tanker" means a self-propelled deep draft tank vessel designed to transport oil in bulk. "Oil tanker" does not include an articulated tug barge tank vessel.

(c) "Waterborne vessels or barges" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

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

(1) The department may adopt rules to require the owners and operators of covered vessels transiting to or from a Washington port through Haro Strait, Boundary Pass, or Rosario Strait to collectively establish and fund an emergency response system that provides for an emergency response towing vessel in a manner similar to the requirements of RCW 88.46.125 through 88.46.139. These rules must:

(a) Require that an emergency response towing vessel be stationed in the vicinity of the San Juan Islands and be able to respond immediately to a vessel in distress in Haro Strait, Boundary Pass, Rosario Strait, and connected navigable waterways;

(b) Establish minimum deployment and equipment standards for an emergency response towing vessel, which may include requirements related to the speed and availability of the vessel for deployment, the functionality of the vessel in severe weather conditions, and other operational capabilities;

(c) Allow the requirements of this section to be fulfilled by one or more private organizations or nonprofit cooperatives providing umbrella coverage under contract to single or multiple covered vessels;

(d) Allow the department, at its discretion, to contract with the emergency response towing vessel in response to a potentially emerging maritime casualty or as a precautionary measure during severe storms. In all instances of use by the department, the department must be responsible for the cost of its use of an emergency response towing vessel;

(e) Not allow the emergency response towing vessel to be restricted from responding to distressed vessels that are not covered vessels;

(f) Require the owner or operator of a vessel that receives assistance from the emergency response towing vessel to submit a written report to the department as soon as practicable regarding the deployment of the emergency response system;

(g) Be designed with a goal of avoiding or minimizing the impacts of underwater noise from vessels in the Salish Sea, focusing vessel traffic into established shipping lanes, protecting and minimizing vessel traffic impacts to established fishing areas, and respecting and preserving the treaty-protected fishing rights of any potentially affected federally recognized Indian tribes;

(h) Be designed to maximize the incremental risk reduction offered by an emergency response system in light of the requirements established in or authorized by RCW 88.16.190;

(i) Consider whether the adoption of rules under this section would establish the perverse effects of either:

(i) Encouraging the development of or mitigating the impacts of oil infrastructure in British Columbia; or

(ii) Discouraging regulatory authorities in Canada from establishing tug escorts, emergency response systems, or similar maritime safety requirements for vessels operating in international boundary waters;

(j) Consider input received during the 2019 Salish Sea shared waters forum;

(k) Be carried out in consultation with the entities identified in section 3(6) of this act; and

(l) Rely, in part, upon analysis of the emergency response towing vessel using the model developed by the department under section 5 of this act.

(2) Rules adopted under this section must be periodically updated consistent with section 6 of this act.

(3) The department must prioritize Haro Strait and Boundary Pass as the initial focus of analysis conducted in support of rule-making processes under this section.

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

The department must develop and maintain a model to quantitatively assess current and potential future risks of oil spills from covered vessels in Washington waters, as it conducts ongoing oil spill risk assessments. The department must consult with the United States coast guard, tribes, and stakeholders to: Determine model assumptions; develop scenarios to show the likely impacts of changes to model assumptions, including potential changes in vessel traffic, commodities transported, and vessel safety and risk reduction measures; and update the model periodically.

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

(1) By October 1, 2028, and every ten years thereafter, the board of pilotage commissioners and the department must together consider:

(a) The effects of rules established under RCW 88.16.190 and sections 3 and 4 of this act on vessel traffic patterns and oil spill risks in the Salish Sea. Factors considered must include modeling developed by the department under section 5 of this act and may include: (i) Vessel traffic data; (ii) vessel accident and incident data, such as incidents where tug escorts or an emergency response towing vessel acted to reduce spill risks; and (iii) consultation with the United States coast guard, any potentially affected federally recognized Indian tribes, and stakeholders; and

(b) Whether experienced or forecasted changes to vessel traffic patterns or oil spill risk in the Salish Sea necessitate an update to the tug escort rules adopted under RCW 88.16.190 and section 3 of this act, or to the emergency response towing vessel requirements adopted under section 4 of this act.

(2) In the event that the department or board of pilotage commissioners determines that updates are merited to the rules, the department or board, as appropriate, must notify the appropriate standing committees of the house of representatives and the senate, and must thereafter adopt rules consistent with the requirements of RCW 88.16.190, section 3 of this act, including the consultation process outlined in section 3(6) of this act, and section 4 of this act.

**Sec.**  RCW 88.46.240 and 2018 c 262 s 204 are each amended to read as follows:

(1) The department must establish the Salish Sea shared waters forum to address common issues in the cross-boundary waterways between Washington state and British Columbia such as: Enhancing efforts to reduce oil spill risk; addressing navigational safety; and promoting data sharing.

(2) The department must:

(a) Coordinate with provincial and federal Canadian agencies when establishing the Salish Sea shared waters forum; and

(b) Seek participation from stakeholders that, at minimum, includes representatives of the following: State, provincial, and federal governmental entities, regulated entities, environmental organizations, tribes, and first nations.

(3) The Salish Sea shared waters forum must meet at least once per year to consider the following:

(a) Gaps and conflicts in oil spill policies, regulations, and laws;

(b) Opportunities to reduce oil spill risk, including requiring tug escorts for oil tankers, articulated tug barges, and other waterborne vessels or barges;

(c) Enhancing oil spill prevention, preparedness, and response capacity; and

(d) Whether an emergency response system in Haro Strait, Boundary Pass, and Rosario Strait, similar to the system implemented by the maritime industry pursuant to RCW 88.46.130, will decrease oil spill risk and how to fund such a shared system.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Articulated tug barge" means a tank barge and a towing vessel joined by hinged or articulated fixed mechanical equipment affixed or connecting to the stern of the tank barge.

(b) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

(5) In advance of the 2019 meeting of the Salish Sea shared waters forum, the department must partner with organizations such as, but not limited to, the coast Salish gathering, which provides a transboundary natural resource policy dialogue of elected officials representing federal, state, provincial, first nations, and tribal governments within the Salish Sea, to discuss the specifics of how the shared system described in subsection (3)(d) of this section could be funded. The 2019 meeting of the Salish Sea shared waters forum must include continued discussion of the specifics of funding.

(6) This section expires July 1, 2021.

**Sec.**  RCW 90.56.565 and 2015 c 274 s 8 are each amended to read as follows:

(1)(a) A facility that receives crude oil from a railroad car must provide advance notice to the department that the facility will receive crude oil from a railroad car, as provided in this section. The advance notice must include the route taken to the facility within the state, if known, and the scheduled time, location, volume, region per bill of lading, type, and gravity as measured by standards developed by the American petroleum institute, of crude oil received. Each week, a facility that provides advance notice under this section must provide the required information regarding the scheduled arrival of railroad cars carrying crude oil to be received by the facility in the succeeding seven-day period. A facility is not required to provide advance notice when there is no receipt of crude oil from a railroad car scheduled for a seven-day period.

(b) Twice per year, pipelines that transport crude oil must report to the department the following information about the crude oil transported by the pipeline through the state: The volume of crude oil, gravity of the crude oil as measured by standards developed by the American petroleum institute, type of crude oil, and the state or province of origin of the crude oil. This report must be submitted each year by July 31st for the period January 1st through June 30th and by January 31st for the period July 1st through December 31st.

(2) The department may share information provided by a facility through the advance notice system established in this section with the state emergency management division and any county, city, tribal, port, or local government emergency response agency upon request.

(3) The department must publish information collected under this section on a quarterly basis on the department's internet web site. With respect to the information reported under subsection (1)(a) of this section, the information published by the department must be aggregated on a statewide basis by route through the state, by week, and by type of crude oil. The report may also include other information available to the department including, but not limited to, place of origin, modes of transport, number of railroad cars delivering crude oil, and number and volume of spills during transport and delivery.

(4) A facility providing advance notice under this section is not responsible for meeting advance notice time frame requirements under subsection (1) of this section in the event that the schedule of arrivals of railroad cars carrying crude oil changes during a seven-day period.

(5) Consistent with the requirements of chapter 42.56 RCW, the department and any state, local, tribal, or public agency that receives information provided under this section may not disclose any such information to the public or to nongovernmental entities that contains proprietary, commercial, or financial information unless that information is aggregated. The requirement for aggregating information does not apply when information is shared by the department with emergency response agencies as provided in subsection (2) of this section.

(6) The department shall adopt rules to implement this section. The advance notice system required in this section must be consistent with the oil transfer reporting system adopted by the department pursuant to RCW 88.46.165.

**Sec.**  RCW 88.46.165 and 2006 c 316 s 1 are each amended to read as follows:

(1) The department's rules authorized under RCW 88.46.160 and this section shall be scaled to the risk posed to people and to the environment, and be categorized by type of transfer, volume of oil, frequency of transfers, and such other risk factors as identified by the department.

(2) The rules may require prior notice be provided before an oil transfer, regulated under this chapter, occurs in situations defined by the department as posing a higher risk. The notice may include the time, location, and volume of the oil transfer, as well as the region per bill of lading, gravity as measured by standards developed by the American petroleum institute, and type of crude oil. The rules may not require prior notice when marine fuel outlets are transferring less than three thousand gallons of oil in a single transaction to a ship that is not a covered vessel and the transfers are scheduled less than four hours in advance.

(3) The department may require semiannual reporting of volumes of oil transferred to ships by a marine fuel outlet.

(4) The rules may require additional measures to be taken in conjunction with the deployment of containment equipment or with the alternatives to deploying containment equipment. However, these measures must be scaled appropriately to the risks posed by the oil transfer.

(5) The rules shall include regulations to enhance the safety of oil transfers over water originating from vehicles transporting oil over private roads or highways of the state.

NEW SECTION. **Sec.**  Sections 8 and 9 of this act take effect July 1, 2021.

NEW SECTION. **Sec.**  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.

**--- END ---**