

ESHB 1578 - S COMM AMD
By Committee on Ways & Means

ADOPTED AS AMENDED 04/12/2019

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that a variety of
4 existing policies designed to reduce the risk of oil spills have
5 helped contribute to a relatively strong safety record for oil moved
6 by water, pipeline, and train in recent years in Washington state.
7 Nevertheless, gaps exist in our safety regimen, especially deriving
8 from shifts in the modes of overwater transportation of oil and the
9 increased transport of oils that may submerge or sink, contributing
10 to an unacceptable threat to Washington waters, where a catastrophic
11 spill would inflict potentially irreversible damage on the endangered
12 southern resident killer whales. In addition to the unique marine and
13 cultural resources in Puget Sound that would be damaged by an oil
14 spill, the geographic, bathometric, and other environmental
15 peculiarities of Puget Sound present navigational challenges that
16 heighten the risk of an oil spill incident occurring. Therefore, it
17 is the intent of the legislature to enact certain new safety
18 requirements designed to reduce the current, acute risk from existing
19 infrastructure and activities of an oil spill that could eradicate
20 our whales, violate the treaty interests and fishing rights of
21 potentially affected federally recognized Indian tribes, damage
22 commercial fishing prospects, undercut many aspects of the economy
23 that depend on the Salish Sea, and otherwise harm the health and
24 well-being of Washington residents. In enacting such measures,
25 however, it is not the intent of the legislature to mitigate, offset,
26 or otherwise encourage additional projects or activities that would
27 increase the frequency or severity of oil spills in the Salish Sea.
28 Furthermore, it is the intent of the legislature for this act to
29 assist in coordinating enhanced international discussions among
30 federal, state, provincial, first nation, federally recognized Indian
31 tribe, and industry leaders in the United States and Canada to
32 develop an agreement for an additional emergency rescue tug available

1 to vessels in distress in the narrow Straits of the San Juan Islands
2 and other boundary waters, which would lessen oil spill risks to the
3 marine environment in both the United States and Canada.

4 **Sec. 2.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
5 as follows:

6 (1) Any oil tanker, whether enrolled or registered, of greater
7 than one hundred (~~and~~) twenty-five thousand deadweight tons shall
8 be prohibited from proceeding beyond a point east of a line extending
9 from Discovery Island light south to New Dungeness light, unless
10 authorized by the United States coast guard, pursuant to 33 C.F.R.
11 Sec. 165.1303.

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

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

18 ~~(b) Twin screws; and~~

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

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

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

25 ~~PROVIDED, That, if such forty to one hundred and twenty-five~~
26 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
27 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~
28 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
29 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
30 ~~horsepower equivalencies may be required under certain conditions as~~
31 ~~established by rule and regulation of the Washington utilities and~~
32 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~

33 ~~FURTHER, That))~~ (a) (i) An oil tanker of forty to one hundred twenty-
34 five thousand deadweight tons may operate in the waters east of a
35 line extending from Discovery Island light south to New Dungeness
36 light and all points in the Puget Sound area, including but not
37 limited to the San Juan Islands and connected waterways and the
38 waters south of Admiralty Inlet, to the extent that these waters are
39 within the territorial boundaries of Washington, only if the oil

1 tanker is under the escort of a tug or tugs that have an aggregate
2 shaft horsepower equivalent to at least five percent of the
3 deadweight tons of the escorted oil tanker.

4 (ii) Effective September 1, 2020, the following may operate in
5 Rosario Strait and connected waterways to the east only if under the
6 escort of a tug or tugs that have an aggregate shaft horsepower
7 equivalent to at least five percent of the deadweight tons of a forty
8 thousand deadweight ton oil tanker: (A) Oil tankers of between five
9 thousand and forty thousand deadweight tons; and (B) both articulated
10 tug barges and towed waterborne vessels or barges that are: (I)
11 Designed to transport oil in bulk internal to the hull; and (II)
12 greater than five thousand deadweight tons.

13 (iii) The requirements of (a)(ii) of this subsection: (A) Do not
14 apply to vessels providing bunkering or refueling services; (B) do
15 not apply to a towed general cargo deck barge; and (C) may be
16 adjusted or suspended by rule by the board of pilotage commissioners,
17 consistent with section 3(1)(c) of this act.

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

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

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

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

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

33 (c) "Towed general cargo deck barge" means a waterborne vessel or
34 barge designed to carry cargo on deck.

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 88.16
2 RCW to read as follows:

3 (1) (a) By December 31, 2025, the board of pilotage commissioners,
4 in consultation with the department of ecology, must adopt rules
5 regarding tug escorts to address the peculiarities of Puget Sound for
6 the following:

7 (i) Oil tankers of between five thousand and forty thousand
8 deadweight tons; and

9 (ii) Both articulated tug barges and towed waterborne vessels or
10 barges that are: (A) Designed to transport oil in bulk internal to
11 the hull; and (B) greater than five thousand deadweight tons.

12 (b) The requirements of this section do not apply to:

13 (i) A towed general cargo deck barge; or

14 (ii) A vessel providing bunkering or refueling services.

15 (c) The rule making pursuant to (a) of this subsection must be
16 for operating in the waters east of the line extending from Discovery
17 Island light south to New Dungeness light and all points in the Puget
18 Sound area. This rule making must address the tug escort requirements
19 applicable to Rosario Strait and connected waterways to the east
20 established in RCW 88.16.190(2)(a)(ii), and may adjust or suspend
21 those requirements based on expertise developed under subsection (5)
22 of this section.

23 (d) To achieve the rule adoption deadline in (a) of this
24 subsection, the board of pilotage commissioners must adhere to the
25 following interim milestones:

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

29 (ii) By December 31, 2021, complete a synopsis of changing vessel
30 traffic trends; and

31 (iii) By September 1, 2023, consult with potentially affected
32 federally recognized Indian treaty fishing tribes, other federally
33 recognized treaty tribes with potentially affected interests, and
34 stakeholders as required under subsection (6) of this section and
35 complete the analysis required under subsection (5) of this section.
36 By September 1, 2023, the department of ecology must submit a summary
37 of the results of the analysis required under subsection (5) of this
38 section to the legislature consistent with RCW 43.01.036.

39 (2) When developing rules, the board of pilotage commissioners
40 must consider recommendations from potentially affected federally

1 recognized Indian treaty fishing tribes, other federally recognized
2 treaty tribes with potentially affected interests, and:

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

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

7 (c) The recommendations included in the southern resident orca
8 task force report, November 2018, and any subsequent research or
9 reports on related topics;

10 (d) Changing vessel traffic trends, including the synopsis
11 required under subsection (1)(d)(ii) of this section; and

12 (e) For any formally proposed draft rules or adopted rules,
13 identified estimates of expected costs and benefits of the rule to:

14 (i) State government agencies to administer and enforce the rule;
15 and

16 (ii) Private persons or businesses, by category of type of person
17 or business affected.

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

20 (a) Base decisions for risk protection on geographic zones in the
21 waters specified in subsection (1)(c) of this section. As the initial
22 foci of the rules, the board of pilotage commissioners must equally
23 prioritize geographic zones encompassing: (i) Rosario Strait and
24 connected waterways to the east; and (ii) Haro Strait and Boundary
25 Pass;

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

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

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

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

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

35 (iii) The characteristics of the waterways; and

36 (e) Publish a document that identifies the sources of information
37 that it relied upon in developing the rules, including any sources of
38 peer-reviewed science and information submitted by tribes.

39 (4) The rules adopted under this section may not require oil
40 tankers, articulated tug barges, or towed waterborne vessels or

1 barges to be under the escort of a tug when these vessels are in
2 ballast or are unladen.

3 (5) To inform rule making, the board of pilotage commissioners
4 must conduct an analysis of tug escorts using the model developed by
5 the department of ecology under section 4 of this act. The board of
6 pilotage commissioners may:

7 (a) Develop scenarios and subsets of oil tankers, articulated tug
8 barges, and towed waterborne vessels or barges that could preclude
9 requirements from being imposed under the rule making for a given
10 zone or vessel;

11 (b) Consider the benefits of vessel safety measures that are
12 newly in effect on or after July 1, 2019, and prior to the adoption
13 of rules under this section; and

14 (c) Enter into an interagency agreement with the department of
15 ecology to assist with conducting the analysis and developing the
16 rules, subject to each of the requirements of this section.

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

32 (7) Rules adopted under this section must be periodically updated
33 consistent with section 5 of this act.

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

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

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

4 (c) "Towed general cargo deck barge" means a waterborne vessel or
5 barge designed to carry cargo on deck.

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

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

13 (1) The department must develop and maintain a model to
14 quantitatively assess current and potential future risks of oil
15 spills from covered vessels in Washington waters, as it conducts
16 ongoing oil spill risk assessments. The department must consult with
17 the United States coast guard, potentially affected federally
18 recognized Indian treaty fishing tribes, other federally recognized
19 treaty tribes with potentially affected interests, and stakeholders
20 to: Determine model assumptions; develop scenarios to show the likely
21 impacts of changes to model assumptions, including potential changes
22 in vessel traffic, commodities transported, and vessel safety and
23 risk reduction measures; and update the model periodically.

24 (2) Utilizing the model pursuant to subsection (1) of this
25 section, the department must quantitatively assess whether an
26 emergency response towing vessel serving Haro Strait, Boundary Pass,
27 Rosario Strait, and connected navigable waterways will reduce oil
28 spill risk. The department must report its findings to the
29 legislature by September 1, 2023.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46
31 RCW to read as follows:

32 (1) By October 1, 2028, and no less often than every ten years
33 thereafter, the board of pilotage commissioners and the department
34 must together consider:

35 (a) The effects of rules established under RCW 88.16.190 and
36 section 3 of this act on vessel traffic patterns and oil spill risks
37 in the Salish Sea. Factors considered must include modeling developed
38 by the department under section 4 of this act and may include: (i)

1 Vessel traffic data; (ii) vessel accident and incident data, such as
2 incidents where tug escorts or an emergency response towing vessel
3 acted to reduce spill risks; and (iii) consultation with the United
4 States coast guard, potentially affected federally recognized Indian
5 treaty fishing tribes, other federally recognized treaty tribes with
6 potentially affected interests, and stakeholders; and

7 (b) Whether experienced or forecasted changes to vessel traffic
8 patterns or oil spill risk in the Salish Sea necessitate an update to
9 the tug escort rules adopted under section 3 of this act.

10 (2) In the event that the board of pilotage commissioners
11 determines that updates are merited to the rules, the board must
12 notify the appropriate standing committees of the house of
13 representatives and the senate, and must thereafter adopt rules
14 consistent with the requirements of section 3 of this act, including
15 the consultation process outlined in section 3(6) of this act.

16 **Sec. 6.** RCW 88.46.240 and 2018 c 262 s 204 are each amended to
17 read as follows:

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

23 (2) The department must:

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

26 (b) Seek participation from each potentially affected federally
27 recognized Indian treaty fishing tribe, other federally recognized
28 treaty tribes with potentially affected interests, first nations, and
29 stakeholders that, at minimum, includes representatives of the
30 following: State, provincial, and federal governmental entities,
31 regulated entities, and environmental organizations~~((tribes, and~~
32 ~~first nations))~~.

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

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

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

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

3 (d) Beginning in 2019, whether an emergency response system in
4 Haro Strait, Boundary Pass, and Rosario Strait (~~, similar to the~~
5 system implemented by the maritime industry pursuant to RCW
6 88.46.130,)) will decrease oil spill risk (~~and how to fund such a~~
7 shared system). In advance of the 2019 meeting, the department must
8 discuss the options of an emergency response system with
9 organizations such as, but not limited to, the coast Salish
10 gathering, which provides a transboundary natural resource policy
11 dialogue of elected officials representing federal, state,
12 provincial, first nations, and tribal governments within the Salish
13 Sea; and

14 (e) The impacts of vessel traffic on treaty-protected fishing.

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

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

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

25 (5) This section expires July 1, 2021.

26 **Sec. 7.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to
27 read as follows:

28 (1)(a) A facility that receives crude oil from a railroad car
29 must provide advance notice to the department that the facility will
30 receive crude oil from a railroad car, as provided in this section.
31 The advance notice must include the route taken to the facility
32 within the state, if known, and the scheduled time, location, volume,
33 region per bill of lading, type, and gravity as measured by standards
34 developed by the American petroleum institute, of crude oil received.
35 Each week, a facility that provides advance notice under this section
36 must provide the required information regarding the scheduled arrival
37 of railroad cars carrying crude oil to be received by the facility in
38 the succeeding seven-day period. A facility is not required to

1 provide advance notice when there is no receipt of crude oil from a
2 railroad car scheduled for a seven-day period.

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

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

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

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

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

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

5 **Sec. 8.** RCW 88.46.165 and 2006 c 316 s 1 are each amended to
6 read as follows:

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

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

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

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

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

32 NEW SECTION. **Sec. 9.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected."

ADOPTED AS AMENDED 04/12/2019

1 On page 1, line 2 of the title, after "transportation;" strike
2 the remainder of the title and insert "amending RCW 88.16.190,
3 88.46.240, 90.56.565, and 88.46.165; adding a new section to chapter
4 88.16 RCW; adding new sections to chapter 88.46 RCW; and creating a
5 new section."

EFFECT: Includes tug escort requirements for Rosario Strait may be suspended through rules based on expertise gained after consideration of information during rule review; adds clarifying language regarding the definition of ATBs and towed waterborne vessels and impacted federally recognized Indian tribes.

--- END ---