

---

ENGROSSED SUBSTITUTE HOUSE BILL 1578

---

State of Washington

66th Legislature

2019 Regular Session

**By** House Environment & Energy (originally sponsored by Representatives Lekanoff, Peterson, Doglio, Fitzgibbon, Shewmake, Robinson, Slatter, Valdez, Bergquist, Morris, Stanford, Tharinger, Cody, Jenkins, Kloba, Pollet, Frame, Davis, and Macri; by request of Office of the Governor)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to reducing threats to southern resident killer  
2 whales by improving the safety of oil transportation; amending RCW  
3 88.16.190, 88.46.240, 90.56.565, and 88.46.165; adding a new section  
4 to chapter 88.16 RCW; adding new sections to chapter 88.46 RCW;  
5 creating a new section; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that a variety of  
8 existing policies designed to reduce the risk of oil spills have  
9 helped contribute to a relatively strong safety record for oil moved  
10 by water, pipeline, and train in recent years in Washington state.  
11 Nevertheless, gaps exist in our safety regimen, especially deriving  
12 from shifts in the modes of overwater transportation of oil and the  
13 increased transport of oils that may submerge or sink, contributing  
14 to an unacceptable threat to Washington waters, where a catastrophic  
15 spill would inflict potentially irreversible damage on the endangered  
16 southern resident killer whales. In addition to the unique marine and  
17 cultural resources in Puget Sound that would be damaged by an oil  
18 spill, the geographic, bathometric, and other environmental  
19 peculiarities of Puget Sound present navigational challenges that  
20 heighten the risk of an oil spill incident occurring. Therefore, it  
21 is the intent of the legislature to enact certain new safety

1 requirements designed to reduce the current, acute risk from existing  
2 infrastructure and activities of an oil spill that could eradicate  
3 our whales, violate the treaty interests and fishing rights of  
4 potentially affected federally recognized Indian tribes, damage  
5 commercial fishing prospects, undercut many aspects of the economy  
6 that depend on the Salish Sea, and otherwise harm the health and  
7 well-being of Washington residents. In enacting such measures,  
8 however, it is not the intent of the legislature to mitigate, offset,  
9 or otherwise encourage additional projects or activities that would  
10 increase the frequency or severity of oil spills in the Salish Sea.  
11 Furthermore, it is the intent of the legislature for this act to  
12 assist in coordinating enhanced international discussions among  
13 federal, state, provincial, first nation, federally recognized Indian  
14 tribe, and industry leaders in the United States and Canada to  
15 develop an agreement for an additional emergency rescue tug available  
16 to vessels in distress in the narrow Straits of the San Juan Islands  
17 and other boundary waters, which would lessen oil spill risks to the  
18 marine environment in both the United States and Canada.

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

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

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

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

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

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

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

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

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

19       (ii) Effective September 1, 2020, the following may operate in  
20 Rosario Strait and connected waterways to the east only if under the  
21 escort of a tug or tugs that have an aggregate shaft horsepower  
22 equivalent to at least five percent of the deadweight tons of a forty  
23 thousand deadweight ton oil tanker: (A) Oil tankers of between five  
24 thousand and forty thousand deadweight tons; and (B) articulated tug  
25 barges and towed waterborne vessels or barges designed to transport  
26 oil in bulk of greater than five thousand deadweight tons.

27       (iii) The requirements of (a) (ii) of this subsection: (A) Do not  
28 apply to vessels providing bunkering or refueling services; and (B)  
29 may be adjusted by rule by the board of pilotage commissioners,  
30 consistent with section 3(1)(b) of this act.

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

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

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

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

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

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

12 NEW SECTION. Sec. 3. A new section is added to chapter 88.16  
13 RCW to read as follows:

14 (1) (a) By December 31, 2025, the board of pilotage commissioners,  
15 in consultation with the department of ecology, must adopt rules  
16 regarding tug escorts to address the peculiarities of Puget Sound,  
17 with the exception of vessels providing bunkering or refueling  
18 services, for the following:

19 (i) Oil tankers of between five thousand and forty thousand  
20 deadweight tons; and

21 (ii) Articulated tug barges and towed waterborne vessels or  
22 barges designed to transport oil in bulk of greater than five  
23 thousand deadweight tons.

24 (b) The rule making pursuant to (a) of this subsection must be  
25 for operating in the waters east of the line extending from Discovery  
26 Island light south to New Dungeness light and all points in the Puget  
27 Sound area. This rule making must address the tug escort requirements  
28 applicable to Rosario Strait and connected waterways to the east  
29 established in RCW 88.16.190(2)(a)(ii), and may adjust those  
30 requirements.

31 (c) To achieve the rule adoption deadline in (a) of this  
32 subsection, the board of pilotage commissioners must adhere to the  
33 following interim milestones:

34 (i) By September 1, 2020:

35 (A) Identify and define the zones, specified in subsection (3)(a)  
36 of this section, to inform the analysis required under subsection (5)  
37 of this section; and

38 (B) Complete a synopsis of changing vessel traffic trends; and

1 (ii) By September 1, 2023, consult with potentially affected  
2 federally recognized Indian tribes and stakeholders as required under  
3 subsection (6) of this section and complete the analysis required  
4 under subsection (5) of this section. By September 1, 2023, the  
5 department of ecology must submit a summary of the results of the  
6 analysis required under subsection (5) of this section to the  
7 legislature consistent with RCW 43.01.036.

8 (2) When developing rules, the board of pilotage commissioners  
9 must consider recommendations of potentially affected federally  
10 recognized Indian tribes, and:

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

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

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

18 (d) Changing vessel traffic trends, including the synopsis  
19 required under subsection (1)(c)(i)(B) of this section; and

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

22 (i) State government agencies to administer and enforce the rule;  
23 and

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

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

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

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

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

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

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

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

3 (iii) The characteristics of the waterways; and

4 (e) Publish a document that identifies the sources of information  
5 that it relied upon in developing the rules, including any sources of  
6 peer-reviewed science.

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

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

15 (a) Develop subsets of oil tankers, articulated tug barges, and  
16 towed waterborne vessels or barges, and situations that could  
17 preclude requirements from being imposed under the rule making for a  
18 given zone or vessel;

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) The effects of rules established under RCW 88.16.190 and  
38 section 3 of this act on vessel traffic patterns and oil spill risks

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

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

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

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

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

25 (2) The department must:

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

28 (b) Seek participation from potentially affected federally  
29 recognized Indian tribes, first nations, and stakeholders that, at  
30 minimum, includes representatives of the following: State,  
31 provincial, and federal governmental entities, regulated entities,  
32 and environmental organizations (~~(, tribes, and 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.** Sections 7 and 8 of this act take effect  
33 July 1, 2021.

34 NEW SECTION. **Sec. 10.** If any provision of this act or its  
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

--- **END** ---