
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, Jinkins, 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 any
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 the shared funding of an additional
16 emergency rescue tug available to vessels in distress in the narrow
17 Straits of the San Juan Islands and other boundary waters, which
18 would lessen oil spill risks to the marine environment in both the
19 United States and Canada.

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

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

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

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

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

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

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

37 ~~(e) Such other navigational position location systems as may be
38 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 October 1, 2019, 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 of greater than five
26 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(3) (b) of this act.

31 (b) An oil tanker, articulated tug barge, or towed waterborne
32 vessel or barge in ballast is not required to be under the escort of
33 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 of greater than five thousand deadweight tons.

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

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

33 (i) By September 1, 2020:

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

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

38 (ii) By September 1, 2023, consult with potentially affected
39 federally recognized Indian tribes and stakeholders as required under

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

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

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

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

13 (c) The recommendations included in the southern resident orca
14 task force report, November 2018; and

15 (d) Changing vessel traffic trends, including the synopsis
16 required under subsection (1)(c)(i)(B) of this section.

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

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

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

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

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

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

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

34 (iii) The characteristics of the waterways; and

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

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

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

5 (a) Develop subsets of oil tankers, articulated tug barges, and
6 towed waterborne vessels or barges, and situations that could
7 preclude the requirements of the rule making for a given zone or
8 vessel; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (m) Be supported by a document published by the department that
20 identifies the sources of information that it relied upon in
21 developing the rules, including any sources of peer-reviewed science.

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

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

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

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

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

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

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

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

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

27 **Sec. 7.** RCW 88.46.240 and 2018 c 262 s 204 are each amended to
28 read as follows:

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

34 (2) The department must:

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

37 (b) Seek participation from tribes, first nations, and
38 stakeholders that, at minimum, includes representatives of the
39 following: State, provincial, and federal governmental entities,

1 regulated entities, and environmental organizations (~~(, tribes, and~~
2 ~~first nations)~~).

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

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

7 (b) Opportunities to reduce oil spill risk, including requiring
8 tug escorts for oil tankers, articulated tug barges, and (~~either~~)
9 towed waterborne vessels or barges;

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

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

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

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

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

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

35 (6) This section expires July 1, 2021.

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

38 (1)(a) A facility that receives crude oil from a railroad car
39 must provide advance notice to the department that the facility will

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

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

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

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

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

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

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

14 **Sec. 9.** RCW 88.46.165 and 2006 c 316 s 1 are each amended to
15 read as follows:

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

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

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

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

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

4 NEW SECTION. **Sec. 10.** Sections 8 and 9 of this act take effect
5 July 1, 2021.

6 NEW SECTION. **Sec. 11.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

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