

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1578

66th Legislature
2019 Regular Session

Passed by the House April 18, 2019
Yeas 59 Nays 35

Speaker of the House of Representatives

Passed by the Senate April 12, 2019
Yeas 32 Nays 13

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1578** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1578

AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

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; and
5 creating a new section.

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) both articulated
25 tug barges and towed waterborne vessels or barges that are: (I)
26 Designed to transport oil in bulk internal to the hull; and (II)
27 greater than five thousand deadweight tons.

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

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

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

1 (3) 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) "Towed general cargo deck barge" means a waterborne vessel or
10 barge designed to carry cargo on deck.

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

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

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

22 (i) Oil tankers of between five thousand and forty thousand
23 deadweight tons; and

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

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

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

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

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

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

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

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

9 (iii) By September 1, 2023, consult with potentially affected
10 federally recognized Indian treaty fishing tribes, other federally
11 recognized treaty tribes with potentially affected interests, and
12 stakeholders as required under subsection (6) of this section and
13 complete the analysis required under subsection (5) of this section.
14 By September 1, 2023, the department of ecology must submit a summary
15 of the results of the analysis required under subsection (5) of this
16 section to the legislature consistent with RCW 43.01.036.

17 (2) When developing rules, the board of pilotage commissioners
18 must consider recommendations from potentially affected federally
19 recognized Indian treaty fishing tribes, other federally recognized
20 treaty tribes with potentially affected interests, and:

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

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

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

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

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

32 (i) State government agencies to administer and enforce the rule;
33 and

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

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

38 (a) Base decisions for risk protection on geographic zones in the
39 waters specified in subsection (1)(c) of this section. As the initial
40 foci of the rules, the board of pilotage commissioners must equally

1 prioritize geographic zones encompassing: (i) Rosario Strait and
2 connected waterways to the east; and (ii) Haro Strait and Boundary
3 Pass;

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

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

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

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

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

13 (iii) The characteristics of the waterways; and

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

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

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

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

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

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

35 (6) The board of pilotage commissioners must consult with the
36 United States coast guard, the Puget Sound harbor safety committee,
37 potentially affected federally recognized Indian treaty fishing
38 tribes, other federally recognized treaty tribes with potentially
39 affected interests, ports, local governments, state agencies, and
40 other appropriate entities before adopting tug escort rules

1 applicable to any portion of Puget Sound. Considering relevant
2 information elicited during the consultations required under this
3 subsection, the board of pilotage commissioners must also design the
4 rules with a goal of avoiding or minimizing additional underwater
5 noise from vessels in the Salish Sea, focusing vessel traffic into
6 established shipping lanes, protecting and minimizing vessel traffic
7 impacts to established treaty fishing areas, and respecting and
8 preserving the treaty-protected interests and fishing rights of
9 potentially affected federally recognized Indian tribes.

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

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

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

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

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

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

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

29 (1) 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, potentially affected federally
34 recognized Indian treaty fishing tribes, other federally recognized
35 treaty tribes with potentially affected interests, and stakeholders
36 to: Determine model assumptions; develop scenarios to show the likely
37 impacts of changes to model assumptions, including potential changes
38 in vessel traffic, commodities transported, and vessel safety and
39 risk reduction measures; and update the model periodically.

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

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

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

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

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

25 (2) In the event that the board of pilotage commissioners
26 determines that updates are merited to the rules, the board must
27 notify the appropriate standing committees of the house of
28 representatives and the senate, and must thereafter adopt rules
29 consistent with the requirements of section 3 of this act, including
30 the consultation process outlined in section 3(6) of this act.

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

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

38 (2) The department must:

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

3 (b) Seek participation from each potentially affected federally
4 recognized Indian treaty fishing tribe, other federally recognized
5 treaty tribes with potentially affected interests, first nations, and
6 stakeholders that, at minimum, includes representatives of the
7 following: State, provincial, and federal governmental entities,
8 regulated entities, and environmental organizations(~~(, tribes, and~~
9 ~~first nations)~~).

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

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

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

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

19 (d) Beginning in 2019, whether an emergency response system in
20 Haro Strait, Boundary Pass, and Rosario Strait~~((, similar to the~~
21 ~~system implemented by the maritime industry pursuant to RCW~~
22 ~~88.46.130,))~~ will decrease oil spill risk ~~((and how to fund such a~~
23 ~~shared system))~~. In advance of the 2019 meeting, the department must
24 discuss the options of an emergency response system with all
25 potentially affected federally recognized Indian treaty tribes and,
26 as relevant, with organizations such as, but not limited to, the
27 coast Salish gathering, which provides a transboundary natural
28 resource policy dialogue of elected officials representing federal,
29 state, provincial, first nations, and tribal governments within the
30 Salish Sea; and

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

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

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

37 (b) "Waterborne vessel or barge" means any ship, barge, or other
38 watercraft capable of traveling on the navigable waters of this state
39 and capable of transporting any crude oil or petroleum product in

1 quantities of ten thousand gallons or more for purposes other than
2 providing fuel for its motor or engine.

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

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

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

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

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

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

1 delivering crude oil, and number and volume of spills during
2 transport and delivery.

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

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

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

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

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

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

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

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

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

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

--- END ---