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**HOUSE BILL 1578**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**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 01/24/19. Referred to Committee on Environment & Energy.

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 fishing rights of federally recognized  
4 Indian tribes, damage commercial fishing prospects, undercut many  
5 aspects of the economy that depend on the Salish Sea, and otherwise  
6 harm the health and well-being of Washington residents. In enacting  
7 such measures, however, it is not the intent of the legislature to  
8 mitigate, offset, or otherwise encourage additional projects or  
9 activities that would increase the frequency or severity of oil  
10 spills in the Salish Sea. Furthermore, it is the intent of the  
11 legislature for this act to spur international discussions among  
12 federal, state, provincial, and industry leaders in the United States  
13 and Canada to develop an agreement for the shared funding of an  
14 emergency rescue tug available to vessels in distress in the narrow  
15 Straits of the San Juan Islands and other boundary waters, which  
16 would lessen oil spill risks to the marine environment in both the  
17 United States and Canada.

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

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

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

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

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

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

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

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

37 ~~PROVIDED, That, if such forty to one hundred and twenty-five~~  
38 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~  
39 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~

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

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

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

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

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

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

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

8 (1) (a) By December 31, 2025, the board of pilotage commissioners,  
9 in consultation with the department of ecology, must adopt rules  
10 regarding tug escorts to address the peculiarities of Puget Sound for  
11 oil tankers of less than forty thousand metric deadweight tons,  
12 articulated tug barges, and waterborne vessels or barges of greater  
13 than five thousand metric deadweight tons operating in the waters  
14 east of the line extending from Discovery Island light south to New  
15 Dungeness light and all points in the Puget Sound area. This rule  
16 making must address the tug escort requirements applicable to Rosario  
17 Strait and connected waterways to the east established in RCW  
18 88.16.190(2) (a) (ii), and may adjust those requirements.

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

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

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

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

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

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

37 (c) The recommendations of tribes with usual and accustomed  
38 fishing rights in these areas; and

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

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

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

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

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

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

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

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

20 (iii) The characteristics of the waterways.

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

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

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

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

36 (6) The board of pilotage commissioners must consult with the  
37 United States coast guard, the Puget Sound harbor safety committee,  
38 treaty tribes, ports, local governments, state agencies, and other  
39 appropriate entities before adopting tug escort rules for Puget  
40 Sound. Considering relevant information elicited during the

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

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

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

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

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

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

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

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

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

36 (b) Establish minimum deployment and equipment standards for an  
37 emergency response towing vessel, which may include requirements  
38 related to the speed and availability of the vessel for deployment,

1 the functionality of the vessel in severe weather conditions, and  
2 other operational capabilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

16 (2) The department must:

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

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

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

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

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

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

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

36 (4) The definitions in this subsection apply throughout this  
37 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) "Waterborne vessel or barge" (~~means~~) includes any ship,  
5 barge, or other watercraft capable of traveling on the navigable  
6 waters of this state and capable of transporting any crude oil or  
7 petroleum product in quantities of ten thousand gallons or more for  
8 purposes other than providing fuel for its motor or engine.

9 (5) In advance of the 2019 meeting of the Salish Sea shared  
10 waters forum, the department must partner with the coast Salish  
11 gathering, which is the transboundary natural resource policy  
12 dialogue of elected officials representing federal, state,  
13 provincial, first nations, and tribal governments within the Salish  
14 Sea, to discuss the specifics of how the shared system described in  
15 subsection (3)(d) of this section could be funded. The 2019 meeting  
16 of the Salish Sea shared waters forum must include continued  
17 discussion of the specifics covered on this topic during the coast  
18 Salish gathering.

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

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

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

35 (b) Twice per year, pipelines that transport crude oil must  
36 report to the department the following information about the crude  
37 oil transported by the pipeline through the state: The volume of  
38 crude oil, gravity of the crude oil as measured by standards  
39 developed by the American petroleum institute, type of crude oil, and

1 the state or province of origin of the crude oil. This report must be  
2 submitted each year by July 31st for the period January 1st through  
3 June 30th and by January 31st for the period July 1st through  
4 December 31st.

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

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

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

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

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

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

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

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

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

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

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

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

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

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