

SHB 1578 - H AMD 243

By Representative Lekanoff

ADOPTED AS AMENDED 03/07/2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (1)(a) By December 31, 2025, the board of pilotage commissioners,
39 in consultation with the department of ecology, must adopt rules

1 regarding tug escorts to address the peculiarities of Puget Sound,
2 with the exception of vessels providing bunkering or refueling
3 services, for the following:

4 (i) Oil tankers of between five thousand and forty thousand
5 deadweight tons; and

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

9 (b) The rule making pursuant to (a) of this subsection must be
10 for operating in the waters east of the line extending from Discovery
11 Island light south to New Dungeness light and all points in the Puget
12 Sound area. This rule making must address the tug escort requirements
13 applicable to Rosario Strait and connected waterways to the east
14 established in RCW 88.16.190(2)(a)(ii), and may adjust those
15 requirements.

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

19 (i) By September 1, 2020:

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

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

24 (ii) By September 1, 2023, consult with potentially affected
25 federally recognized Indian tribes and stakeholders as required under
26 subsection (6) of this section and complete the analysis required
27 under subsection (5) of this section. By September 1, 2023, the
28 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 recommendations of potentially affected federally
33 recognized Indian tribes, and:

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

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

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

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

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)(b) 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;

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; and

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

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

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

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

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

1 (c) Enter into an interagency agreement with the department of
2 ecology to assist with conducting the analysis and developing the
3 rules.

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

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

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

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

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

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

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

35 (1) The department must develop and maintain a model to
36 quantitatively assess current and potential future risks of oil
37 spills from covered vessels in Washington waters, as it conducts
38 ongoing oil spill risk assessments. The department must consult with
39 the United States coast guard, potentially affected federally

1 recognized Indian tribes, and stakeholders to: Determine model
2 assumptions; develop scenarios to show the likely impacts of changes
3 to model assumptions, including potential changes in vessel traffic,
4 commodities transported, and vessel safety and risk reduction
5 measures; and update the model periodically.

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

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

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

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

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

29 (2) In the event that the department or board of pilotage
30 commissioners determines that updates are merited to the rules, the
31 department or board, as appropriate, must notify the appropriate
32 standing committees of the house of representatives and the senate,
33 and must thereafter adopt rules consistent with the requirements of
34 section 3 of this act, including the consultation process outlined in
35 section 3(6) of this act.

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

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

6 (2) The department must:

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

9 (b) Seek participation from potentially affected federally
10 recognized Indian tribes, first nations, and stakeholders that, at
11 minimum, includes representatives of the following: State,
12 provincial, and federal governmental entities, regulated entities,
13 and environmental organizations (~~(, tribes, and first nations)~~).

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

16 (a) Gaps and conflicts in oil spill policies, regulations, and
17 laws;

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

21 (c) Enhancing oil spill prevention, preparedness, and response
22 capacity; ~~((and))~~

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

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

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

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

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

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

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

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

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

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

35 (3) The department must publish information collected under this
36 section on a quarterly basis on the department's internet web site.
37 With respect to the information reported under subsection (1)(a) of
38 this section, the information published by the department must be
39 aggregated on a statewide basis by route through the state, by week,

1 and by type of crude oil. The report may also include other
2 information available to the department including, but not limited
3 to, place of origin, modes of transport, number of railroad cars
4 delivering crude oil, and number and volume of spills during
5 transport and delivery.

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

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

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

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

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

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

1 ship that is not a covered vessel and the transfers are scheduled
2 less than four hours in advance.

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

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

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

13 NEW SECTION. **Sec. 9.** Sections 7 and 8 of this act take effect
14 July 1, 2021.

15 NEW SECTION. **Sec. 10.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected."

19 Correct the title.

EFFECT: Makes the following changes to the underlying substitute
bill:

(1) Amends the existing statutory prohibition on oil tankers of
at least 125,000 deadweight tons in Puget Sound to specify that the
United States coast guard may issue a waiver allowing their entrance
consistent with federal regulations;

(2) Delays the effective date of the statutory tug escort
requirements on certain oil-bearing vessels in Rosario Strait and
connected waterways from October 1, 2019, to September 1, 2020;

(3) Limits the scope of tug escort requirements in statute or
adopted by rule to address only towed waterborne vessels or barges
that are designed to transport oil in bulk;

(4) Directs the board of pilotage commissioners, when adopting
tug escort rules, to consider subsequent research or reports on same
topics as the 2018 southern resident killer whale task force report,
in addition to considering the 2018 report;

(5) Authorizes the board of pilotage commissioners to consider
the benefits of vessel safety measures that are newly in effect on or
after July 1, 2019, prior to adopting tug escort requirements by
rule;

(6) Eliminates authority for the department of ecology to adopt
rules by 2025 requiring covered vessels to establish an emergency
response towing vessel in Puget Sound;

(7) Requires the department of ecology to report to the
legislature by 2023 regarding whether an emergency response towing

vessel serving Haro Strait, Boundary Pass, and Rosario Strait will reduce oil spill risk, based on a quantitative assessment using the department of ecology's model;

(8) Requires the department of ecology and board of pilotage commissioners to consider adopted tug escort and emergency response towing vessel requirements and adopt updated rules as necessary no less often than every ten years, rather than every ten years;

(9) Requires the department of ecology to discuss emergency response system options and the impacts of vessel traffic on treaty-protected fishing in advance of the 2019 Salish Sea shared waters forum, rather than to specifically discuss how to fund a shared system similar to the Neah Bay emergency response towing vessel; and

(10) Makes technical corrections, such as correcting internal references.

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