

HOUSE BILL REPORT

ESHB 1578

As Passed House:
March 7, 2019

Title: An act relating to reducing threats to southern resident killer whales by improving the safety of oil transportation.

Brief Description: Reducing threats to southern resident killer whales by improving the safety of oil transportation.

Sponsors: House Committee on 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).

Brief History:

Committee Activity:

Environment & Energy: 2/18/19, 2/19/19 [DPS];
Appropriations: 2/27/19, 2/28/19 [DPS(ENVI)].

Floor Activity:

Passed House: 3/7/19, 70-28.

Brief Summary of Engrossed Substitute Bill

- Requires a tug escort in Rosario Strait and connected waterways to the east for laden oil tankers of between 5,000 and 40,000 deadweight tons and for articulated tug-barges and certain towed waterborne vessels of at least 5,000 deadweight tons, beginning in 2020.
- Directs the Board of Pilotage Commissioners (BPC), in consultation with the Department of Ecology (ECY), to adopt tug escort rules by 2025 addressing certain oil tankers of between 5,000 and 40,000 deadweight tons, articulated tug-barges, and towed waterborne vessels or barges of at least 5,000 deadweight tons operating in Puget Sound.
- Directs the ECY to develop and maintain a model to assess oil spill risks in Washington waters and the oil spill risk reduction potential of an emergency response towing vessel serving waterways located near the San Juan Islands.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Requires the ECY and the BPC to periodically consider the effects of adopted tug escort rules and vessel traffic pattern changes, and whether to update tug escort rules.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

Minority Report: Without recommendation. Signed by 1 member: Representative DeBolt.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Environment & Energy be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Caldier, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

Staff: Dan Jones (786-7118).

Background:

Notices of Oil Transfer or Receipt.

Vessel operators transferring over 100 gallons of oil must provide advanced notice of the transfer to the Department of Ecology (ECY) that includes time, location, and volume information prior to certain transfers of oil involving a vessel. The ECY may conduct inspections of oil transfer operations.

Facilities that receive oil from railroad cars must provide advanced notice to the ECY. The notice must include the route taken to the facility, the scheduled time, location, volume, gravity, and originating region of crude oil received. This advanced notice must be provided once per week to the ECY for the receipts scheduled for the following week. Pipelines must report to the ECY twice per year on the volume of crude oil they transported through the state and the originating state or province of the oil.

The ECY may share this information with other government emergency response agencies. The ECY must also publish a quarterly report featuring information from the railroad and pipeline information that it receives. Information in the quarterly report must be aggregated on a statewide basis by route, week, and type of oil.

Oil Tanker Tug Escorts.

Tug escorts can be a tool to assist vessels in distress that have lost control of their power or steering. State law requires oil tankers of greater than 40,000 deadweight tons entering Puget Sound to have one tug escort with a minimum horsepower equivalent to 5 percent of the deadweight tonnage of the vessel the tug is escorting. The Board of Pilotage Commissioners (BPC) has adopted rules regarding the applicability of oil tanker tug escort requirements. Violation of oil tanker escort requirements is a gross misdemeanor and may also trigger civil penalties of up to \$10,000 per day. Civil penalties may be sought by a county prosecutor or the Washington Attorney General upon the request of the BPC.

Federal law prohibits oil tankers larger than 125,000 deadweight tons from entering Puget Sound, unless authorized by the United States Coast Guard. State law prohibits oil tankers larger than 125,000 deadweight tons from entering Puget Sound.

Emergency Response Towing Vessel.

The following oil-bearing vessels operating in the Strait of Juan de Fuca must file with the ECY evidence of an emergency response system that provides for the operation of a towing vessel capable of response to vessel oil spill threats:

- tank vessels that carry oil in bulk as cargo and that operate on state waters or that transfer oil in a place subject to state jurisdiction (tank vessels);
- vessels carrying passengers for compensation, of at least 300 gross tons and with a fuel capacity of 6,000 gallons (large passenger vessels); and
- self-propelled ships in commerce of at least 300 gross tons (cargo vessels).

The emergency response towing vessel must be stationed at Neah Bay on the Olympic Peninsula.

Other Oil Spill Prevention and Response Requirements.

The ECY administers an oil spill preparedness, prevention, and response program. Among other laws implemented by the ECY's oil spills program, operators of vessels and facilities, including oil refineries, terminals, pipelines, and railroads that are involved in the bulk transfer of oil, must put in place oil spill contingency plans that outline containment and remediation responses to potential oil spills. In addition to, or as part of, state spill contingency plans, onshore facilities and vessels must submit oil spill prevention plans to the ECY. The ECY may only approve these plans if they incorporate measures providing for the best achievable protection (BAP) of public health and the environment, which means that the plans must provide the highest level of protection through the best achievable technology and the most protective staffing levels, training procedures, and operational methods. The standard of BAP is also applied to certain other oil spill prevention and response requirements under rules adopted by the ECY.

Engrossed Second Substitute Senate Bill 6269 (2018).

In 2018 the Legislature required the ECY to submit a report, relying on existing vessel traffic risk assessments and other sources of information, on vessel traffic and traffic safety in the Strait of Juan de Fuca and specified parts of northern Puget Sound. In the report, the ECY was required to include recommendations on risk reduction measures, including tug escorts for certain vessels and an emergency response system in northern Puget Sound that is similar to the rescue vessel that is stationed at Neah Bay. A final report was submitted to the Legislature in December 2018.

As part of this same legislation, the ECY was directed to establish a Salish Sea Shared Waters Forum (Forum) that addresses data sharing, oil spill risk reduction, navigational safety, and other common issues in the cross-boundary waterways shared with British Columbia, Canada. The Forum must meet at least once per year until 2021, when the Forum expires. The Forum must consider topics including policy gaps and conflicts, oil spill prevention, preparedness and response capacity, and the risk reduction potential and funding options for an emergency response system in shared waters that is similar to the rescue vessel that is stationed at Neah Bay.

Southern Resident Killer Whale Task Force (2018).

In 2018 Governor Inslee issued executive order 18-02, which established the Southern Resident Killer Whale (SRKW) Task Force. The executive order directed the SRKW Task Force to identify, prioritize, and support the implementation of a plan to address three threats: prey availability, contaminants, and disturbance from vessel noise.

Summary of Engrossed Substitute Bill:

Oil Movement Information.

The type of information received by the Department of Ecology (ECY) with respect to oil movement using various modes of transportation is expanded.

- The information that the ECY may require in the advanced notices of oil transfers provided by vessels is expanded to include the oil's region per bill of lading, the gravity as measured by American Petroleum Institute standards, and the type of crude oil.
- The information that the ECY receives in the advanced notices of oil transfer from railroad cars to oil facilities is expanded to include oil type.
- The information that the ECY receives from the twice-annual oil movement reports from pipelines is expanded to include the gravity of the crude oil as measured by American Petroleum Institute standards and the type of crude oil.

Oil Spill Models.

The ECY must develop and maintain a model (Model) to assess current and potential risks of oil spills from tank vessels, large passenger vessels, and cargo ships in Washington waters. The ECY must consult with the United States Coast Guard, tribes, and other stakeholders to develop modeling assumptions and scenarios, and to periodically update the Model. By September 1, 2023, the ECY must use the Model to quantitatively assess the oil spill risk reduction from an emergency response towing vessel serving Haro Strait, Boundary Pass, and Rosario Strait, and report its findings to the Legislature.

Tug Escort Requirements and Rulemaking Authority.

Oil tankers of at least 125,000 deadweight tons may enter Puget Sound when authorized by the United States Coast Guard, consistent with federal regulations.

Effective September 1, 2020, the following types of oil-laden vessels must be under the escort of a tug in Rosario Strait and connected waterways to the east:

- oil tankers of between 5,000 and 40,000 deadweight tons;
- articulated tug barges of at least 5,000 deadweight tons; and
- towed waterborne vessels or barges of at least 5,000 deadweight tons designed to transport oil in bulk and that are capable of transporting at least 10,000 tons of oil for purposes other than providing fuel to the vessel's motor or engine.

These requirements do not apply to vessels providing bunkering or refueling services. Escort tugs for these oil-laden vessels must have an aggregate shaft horsepower of at least 5 percent of a 40,000 deadweight ton oil tanker. Tug escort requirements applicable to Rosario Strait may be adjusted by Board of Pilotage Commissioners (BPC) rule.

By December 1, 2025, the BPC in consultation with the ECY must adopt tug escort rules for Puget Sound that are applicable to the same categories of vessels subject to the Rosario Strait tug escort requirements. The rulemaking must address the tug escort requirements in Rosario Strait and connected waterways to the east. When developing rules, the BPC must consider recently completed vessel traffic risk assessments, the 2018 report to the Legislature required in Engrossed Substitute Senate Bill 6269 (2018), the recommendations of potentially affected federally recognized Indian tribes, and the recommendations of the 2018 South Resident Killer Whale Task Force and any related subsequent research or reports. When proposing or adopting rules, the BPC must publish a document that cites the sources of information that the agency relied upon, and must identify estimates of the costs and benefits of the rules to categories of private persons, businesses, and state agencies

Under the tug escort rulemaking, decisions about risk protection must be made on the basis of identified geographic zones. Rosario Strait and connected waterways to the east and Haro Strait and Boundary Pass must be equally prioritized as the initial foci of these rules. The rules for tug escorts must specify operational and functionality requirements. The rules must also be designed to achieve best achievable protection, as informed by consideration of accident records, propulsion and design standards, and waterway characteristics.

To inform rulemaking, the BPC must conduct an analysis of tug escorts using the Model. The BPC may enter into an interagency agreement with the ECY, may identify subsets of vessels and situations for the analysis, and may consider the benefits of vessel safety measures that take effect after July 1, 2019. Before adopting rules, the BPC must consult with the Puget Sound Harbor Safety Committee, treaty tribes, specified government entities, and others. Rules must be designed with a goal of avoiding or minimizing underwater vessel noise, focusing vessel traffic into existing shipping lanes, minimizing vessel traffic impacts to established treaty fishing areas, and protecting and respecting treaty-protected fishing rights.

To achieve the 2025 rulemaking deadline, the following interim milestones are established:

- by September 2020, identify and define zones that are to be subject to the analysis, and complete a synopsis of changing vessel traffic trends; and
- by September 2023, consult with stakeholders, complete the analysis, and submit to the Legislature a summary of the results of the analysis.

Updates to Oil Tanker and Emergency Response Towing Vessel Rules.

No less than every 10 years, beginning in October 2028, the ECY and the BPC must together consider the impacts of adopted tug escort rules on vessel traffic patterns and oil spill risks in the Salish Sea, and whether experienced or forecasted changes to vessel traffic necessitate an update to those adopted rules. In the event that updated rules are merited, the ECY or the BPC must notify the Legislature and thereafter adopt rules consistent with the consultation process specified for the 2020 to 2025 adoption of tug escort rules.

Other Provisions.

In advance of the 2019 Salish Sea Shared Waters Forum, the ECY must discuss emergency response system options with organizations such as the coast Salish gathering that provide a transboundary dialogue of elected officials representing federal, state, provincial, tribal, and first nations governments, to discuss how the shared ERTV system could be funded. The 2019 Salish Sea Shared Waters Forum may discuss whether an emergency response system in Haro Strait, Boundary Pass, and Rosario Strait will decrease oil spill risk. The Salish Sea Shared Waters Forum may also consider the impacts of vessel traffic on treaty-protected fishing.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for the sections 8 and 9, relating to the information reported to the Department of Ecology regarding the transport of oil by pipeline, railroad car, and vessel, which take effect July 1, 2021.

Staff Summary of Public Testimony (Environment & Energy):

(In support) Washington has a relatively strong oil transportation safety record, but spill risks would be reduced by instituting additional safety measures. Sizeable oil spills and documented near-misses have occurred in Washington waters from oil tankers and towed barges. Barges have a worse safety record than articulated tug-barges or oil tankers. Where there are gaps in existing maritime safety requirements, companies will exploit those gaps in order to reduce their operating costs. Small oil tankers and barges are not currently required to receive tug escorts in the narrow waters of the San Juan Islands where spill risks are high and where a spill's impact would be devastating and persist for years. A large oil spill would damage the environment, state aquatic lands, tribal fishing rights, and the economy, including commercial fishing businesses, whale watching, and tourism. Southern resident killer whales are already endangered, and an oil spill could eliminate the species' chance of recovery. Southern resident killer whales are important to the heritage and culture of Salish Sea Indian

tribes. This bill will not encourage oil infrastructure expansion projects. Risk models and input from tribes and stakeholders will help inform agency decision making during tug escort and emergency response towing vessel rulemaking. Interim actions can be taken to improve maritime safety in advance of the tug escort rules being finalized.

(Opposed) The bill has the correct goal in attempting to reduce oil spills, but does not include the right measures to manage oil spill risks. The oil spill risk reductions achieved in this bill would be negligible. The United States Coast Guard needs to be involved in processes to improve marine safety operations. The bill should not establish tug escorts in statute immediately, but should adopt requirements by rule so that the details can be worked out. There will be unintended consequences from this bill, such as increased vessel traffic noise and safety risks in waters that have already been deemed too noisy for southern resident killer whales. The Department of Ecology's (ECY) recent oil transportation study does not support the establishment of an emergency response towing vessel in the San Juan Islands. Stakeholders were not sufficiently consulted by the ECY during the report development process due to a rushed timeline.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill grew out of recommendations from the Southern Resident Killer Whale (SRKW) Task Force. Prevention is key in dealing with major oil spills, which are one of the greatest threats to orcas. Tug escorts are one of the most effective ways to prevent oil spills because a vessel experiencing problems can be towed to a safe harbor. Large oil tankers in Puget Sound are required to have tug escorts but small tankers are not, even though they often carry as much oil. California and Massachusetts have enacted similar laws. The fiscal impact of the oil spill model is money well spent compared to the potential cost of a cleanup.

(Opposed) The SRKW Task Force recommendations that this bill is based on were in response to a Department of Ecology (ECY) oil spill safety report required by 2018 legislation. The ECY report studied 26 tank barge oil spills in Washington and Oregon waters. Of those oil spills, 23 occurred during moorage, not during transit, and the ECY concluded that none provided an opportunity for a tug escort to intervene. There has been no analysis of potential safety risks from introducing another vessel on the waterway. Requiring tug escorts could increase the likelihood of problems.

Persons Testifying (Environment & Energy): (In support) Representative Lekanoff, prime sponsor; Rob Duff, Office of the Governor; Denise Clifford, Department of Ecology; Jaime Bever, Board of Pilotage Commissioners; Kristin Swenddal, Department of Natural Resources; Daryl Williams, Tulalip Tribes of Washington; Lisa Williams, Lummi Nation; Eric von Brandenfels, Puget Sound Pilots; Darcy Nonemacher, Washington Environmental Council and Washington Conservation Voters; Bruce Wishart, Puget Soundkeeper Alliance and Sierra Club; Noah Martin and Paul Cereghino, Quaker Voice on Washington State Policy; and Fred Felleman, Friends of the Earth and Port of Seattle.

(Opposed) Charles Costanzo, American Waterways Operators; and Greg Hanon, Western States Petroleum Association.

Persons Testifying (Appropriations): (In support) Bruce Wishart, Puget Soundkeeper and Sierra Club.

(Opposed) Greg Hanon, Western States Petroleum Association; and Cliff Webster, American Waterways Operators.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): Clifford Traisman.