
SUBSTITUTE SENATE BILL 5578

State of Washington**66th Legislature****2019 Regular Session**

By Senate Environment, Energy & Technology (originally sponsored by Senators Van De Wege, Liiias, Carlyle, Frockt, Billig, Conway, Hunt, Pedersen, Palumbo, McCoy, Dhingra, Keiser, Kuderer, Saldaña, and Wilson, C.; by request of Office of the Governor)

READ FIRST TIME 02/08/19.

1 AN ACT Relating to reducing threats to southern resident killer
2 whales by improving the safety of oil transportation; amending RCW
3 88.16.190, 88.46.240, 90.56.565, and 88.46.165; adding a new section
4 to chapter 88.16 RCW; adding new sections to chapter 88.46 RCW;
5 creating a new section; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that a variety of
8 existing policies designed to reduce the risk of oil spills have
9 helped contribute to a relatively strong safety record for oil moved
10 by water, pipeline, and train in recent years in Washington state.
11 Nevertheless, gaps exist in our safety regimen, especially deriving
12 from shifts in the modes of overwater transportation of oil and the
13 increased transport of oils that may submerge or sink, contributing
14 to an unacceptable threat to Washington waters, where a catastrophic
15 spill would inflict potentially irreversible damage on the endangered
16 southern resident killer whales. In addition to the unique marine and
17 cultural resources in Puget Sound that would be damaged by an oil
18 spill, the geographic, bathometric, and other environmental
19 peculiarities of Puget Sound present navigational challenges that
20 heighten the risk of an oil spill incident occurring. Therefore, it
21 is the intent of the legislature to enact certain new safety

1 requirements designed to reduce the current, acute risk from existing
2 infrastructure and activities of an oil spill that could eradicate
3 our whales, violate the treaty fishing rights of any potentially
4 affected federally recognized Indian tribes, damage commercial
5 fishing prospects, undercut many aspects of the economy that depend
6 on the Salish Sea, and otherwise harm the health and well-being of
7 Washington residents. In enacting such measures, however, it is not
8 the intent of the legislature to mitigate, offset, or otherwise
9 encourage additional projects or activities that would increase the
10 frequency or severity of oil spills in the Salish Sea. Furthermore,
11 it is the intent of the legislature for this act to spur
12 international discussions among federal, state, provincial, and
13 industry leaders in the United States and Canada to develop an
14 agreement for the shared funding of an emergency rescue tug available
15 to vessels in distress in the narrow Straits of the San Juan Islands
16 and other boundary waters, which would lessen oil spill risks to the
17 marine environment in both the 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 deadweight tons shall
22 be prohibited from proceeding beyond a point east of a line extending
23 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 deadweight tons may operate in the waters east of a
8 line extending from Discovery Island light south to New Dungeness
9 light and all points in the Puget Sound area, including but not
10 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
15 deadweight tons of the escorted oil tanker.

16 (ii) Effective October 1, 2019, with the exception of vessels
17 providing bunkering or refueling services, oil tankers of less than
18 forty thousand deadweight tons, and articulated tug barges and
19 waterborne vessels or barges of greater than five thousand deadweight
20 tons may operate in Rosario Strait and connected waterways to the
21 east only if the vessel is under the escort of a tug or tugs that
22 have an aggregate shaft horsepower equivalent to at least five
23 percent of the deadweight tons of a forty thousand deadweight ton oil
24 tanker. The requirements of this subsection may be adjusted by rule
25 by the board of pilotage commissioners, consistent with section
26 3(3) (b) of this act.

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

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

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

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

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

1 (c) "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 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,
11 with the exception of vessels providing bunkering or refueling
12 services, for oil tankers of less than forty thousand deadweight
13 tons, articulated tug barges, and waterborne vessels or barges of
14 greater than five thousand deadweight tons operating in the waters
15 east of the line extending from Discovery Island light south to New
16 Dungeness light and all points in the Puget Sound area. This rule
17 making must address the tug escort requirements applicable to Rosario
18 Strait and connected waterways to the east established in RCW
19 88.16.190(2)(a)(ii), and may adjust those requirements.

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

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

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

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

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 of any potentially affected federally
39 recognized Indian tribes; 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 deadweight tons, and articulated tug barges and waterborne vessels or
30 barges of greater than five thousand deadweight tons, and situations
31 that could preclude the requirements of the rule making for a given
32 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 any potentially affected federally recognized Indian tribes, ports,
39 local governments, state agencies, and other appropriate entities
40 before adopting tug escort rules for Puget Sound. Considering

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

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" means 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 any potentially
25 affected federally recognized Indian tribes;

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, any potentially affected
32 federally recognized Indian 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 any ship, barge, or other
5 watercraft capable of traveling on the navigable waters of this state
6 and capable of transporting any crude oil or petroleum product in
7 quantities of ten thousand gallons or more for purposes other than
8 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 organizations such as,
11 but not limited to, the coast Salish gathering, which provides a
12 transboundary natural resource policy dialogue of elected officials
13 representing federal, state, provincial, first nations, and tribal
14 governments within the Salish Sea, to discuss the specifics of how
15 the shared system described in subsection (3)(d) of this section
16 could be funded. The 2019 meeting of the Salish Sea shared waters
17 forum must include continued discussion of the specifics of funding.

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

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

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

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

1 submitted each year by July 31st for the period January 1st through
2 June 30th and by January 31st for the period July 1st through
3 December 31st.

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

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

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

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

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

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

38 (1) The department's rules authorized under RCW 88.46.160 and
39 this section shall be scaled to the risk posed to people and to the

1 environment, and be categorized by type of transfer, volume of oil,
2 frequency of transfers, and such other risk factors as identified by
3 the department.

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

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

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

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

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

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

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