
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-4709.1/02

ATTY/TYPIST: KT:seg

BRIEF DESCRIPTION:

2 **2SSB 5909** - H COMM AMD

3 By Committee on Agriculture & Ecology

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that the current
8 financial responsibility laws for vessels and facilities are in need of
9 update and revision. These changes are necessary due to the increased
10 risks of spills, the length of time that has passed since the current
11 standards were put in place, the recent changes that have occurred in
12 federal statutory and case law, the comparative standards of other
13 western states, and the recent experiences of other states with spills.
14 The legislature intends that, whenever possible, the standards set for
15 Washington state provide the highest level of protection consistent
16 with other western states and to ultimately achieve a more uniform
17 system of financial responsibility on the Pacific Coast.

18 **Sec. 2.** RCW 88.40.011 and 2000 c 69 s 30 are each amended to read
19 as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) "Cargo vessel" means a self-propelled ship in commerce, other
23 than a tank vessel or a passenger vessel, of three hundred or more
24 gross tons, including but not limited to, commercial fish processing
25 vessels and freighters.

26 (2) "Bulk" means material that is stored or transported in a loose,
27 unpackaged liquid, powder, or granular form capable of being conveyed
28 by a pipe, bucket, chute, or belt system.

29 (3) "Covered vessel" means a tank vessel, cargo vessel, or
30 passenger vessel.

31 (4) "Department" means the department of ecology.

32 (5) "Director" means the director of the department of ecology.

33 (6)(a) "Facility" means any structure, group of structures,
34 equipment, pipeline, or device, other than a vessel, located on or near
35 the navigable waters of the state that transfers oil in bulk to or from

1 a tank vessel or pipeline, that is used for producing, storing,
2 handling, transferring, processing, or transporting oil in bulk.

3 (b) A facility does not include any: (i) Railroad car, motor
4 vehicle, or other rolling stock while transporting oil over the
5 highways or rail lines of this state; (ii) retail motor vehicle motor
6 fuel outlet; (iii) facility that is operated as part of an exempt
7 agricultural activity as provided in RCW 82.04.330; (iv) underground
8 storage tank regulated by the department or a local government under
9 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
10 more than three thousand gallons of fuel to a ship that is not a
11 covered vessel, in a single transaction.

12 (7) "Hazardous substances" means any substance listed as of March
13 1, 2002, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~August 14,~~
14 ~~1989,~~) under section 101(14) of the federal comprehensive
15 environmental response, compensation, and liability act of 1980, as
16 amended by P.L. 99-499. The following are not hazardous substances for
17 purposes of this chapter:

18 (a) Wastes listed as F001 through F028 in Table 302.4; (~~and~~)

19 (b) Wastes listed as K001 through K136 in Table 302.4; and

20 (c) The noncompound metals antimony, arsenic, beryllium, cadmium,
21 chromium, copper, lead, nickel, selenium, silver, thallium, and zinc,
22 when in solid form in a particle larger than one hundred micrometers
23 (0.004 inches) in diameter.

24 (~~(8) ("Inland barge" means any barge operating on the waters of the~~
25 ~~state and certified by the coast guard as an inland barge.~~

26 ~~(9))~~ "Navigable waters of the state" means those waters of the
27 state, and their adjoining shorelines, that are subject to the ebb and
28 flow of the tide and/or are presently used, have been used in the past,
29 or may be susceptible for use to transport intrastate, interstate, or
30 foreign commerce.

31 (~~(10)~~) (9) "Oil" or "oils" means any naturally occurring liquid
32 hydrocarbons at atmospheric temperature and pressure coming from the
33 earth, including condensate and natural gasoline, and any fractionation
34 thereof, including, but not limited to, crude oil, petroleum, gasoline,
35 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
36 other than dredged spoil. Oil does not include any substance listed as
37 of March 1, 2002, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~August~~
38 ~~14, 1989,~~) under section 101(14) of the federal comprehensive

1 environmental response, compensation, and liability act of 1980, as
2 amended by P.L. 99-499.

3 ~~((11))~~ (10) "Offshore facility" means any facility located in,
4 on, or under any of the navigable waters of the state, but does not
5 include a facility any part of which is located in, on, or under any
6 land of the state, other than submerged land.

7 ~~((12))~~ (11) "Onshore facility" means any facility any part of
8 which is located in, on, or under any land of the state, other than
9 submerged land, that because of its location, could reasonably be
10 expected to cause substantial harm to the environment by discharging
11 oil into or on the navigable waters of the state or the adjoining
12 shorelines.

13 ~~((13))~~ (12)(a) "Owner or operator" means (i) in the case of a
14 vessel, any person owning, operating, or chartering by demise, the
15 vessel; (ii) in the case of an onshore or offshore facility, any person
16 owning or operating the facility; and (iii) in the case of an abandoned
17 vessel or onshore or offshore facility, the person who owned or
18 operated the vessel or facility immediately before its abandonment.

19 (b) "Operator" does not include any person who owns the land
20 underlying a facility if the person is not involved in the operations
21 of the facility.

22 ~~((14))~~ (13) "Passenger vessel" means a ship of three hundred or
23 more gross tons with a fuel capacity of at least six thousand gallons
24 carrying passengers for compensation.

25 ~~((15))~~ (14) "Ship" means any boat, ship, vessel, barge, or other
26 floating craft of any kind.

27 ~~((16))~~ (15) "Spill" means an unauthorized discharge of oil into
28 the waters of the state.

29 ~~((17))~~ (16) "Tank vessel" means a ship that is constructed or
30 adapted to carry, or that carries, oil in bulk as cargo or cargo
31 residue, and that:

32 (a) Operates on the waters of the state; or

33 (b) Transfers oil in a port or place subject to the jurisdiction of
34 this state.

35 ~~((18))~~ (17) "Waters of the state" includes lakes, rivers, ponds,
36 streams, inland waters, underground water, salt waters, estuaries,
37 tidal flats, beaches and lands adjoining the seacoast of the state,
38 sewers, and all other surface waters and watercourses within the
39 jurisdiction of the state of Washington.

1 **Sec. 3.** RCW 88.40.020 and 2000 c 69 s 31 are each amended to read
2 as follows:

3 (1)(a) Any ~~((inland))~~ barge that transports hazardous substances in
4 bulk as cargo, using any port or place in the state of Washington or
5 the navigable waters of the state shall establish evidence of financial
6 responsibility in the amount of the greater of ~~((one))~~ five million
7 dollars, or ~~((one))~~ three hundred ~~((fifty))~~ dollars per gross ton of
8 such vessel.

9 (b) The director by rule may establish a lesser standard of
10 financial responsibility for barges, transporting hazardous substances,
11 of three hundred gross tons or less. The standard shall set the level
12 of financial responsibility based on the quantity of cargo and type of
13 cargo the barge is capable of carrying.

14 (2)(a) Except as provided in (b) or (c) of this subsection or
15 subsection (5) of this section, a tank vessel that carries oil as cargo
16 in bulk shall demonstrate financial responsibility to pay at least five
17 hundred million dollars. The amount of financial responsibility
18 required under this subsection is seven hundred fifty million dollars
19 after January 1, 2003, and one billion dollars after January 1, 2005.

20 (b) The director by rule may establish a lesser standard of
21 financial responsibility for tank vessels or barges of three hundred
22 gross tons or less. The standard shall set the level of financial
23 responsibility based on the quantity of cargo the tank vessel or barge
24 is capable of carrying. The director shall not set the standard for
25 tank vessels or barges of three hundred gross tons or less below that
26 required under federal law.

27 (c) The owner or operator of a tank vessel who is a member of an
28 international protection and indemnity mutual organization and is
29 covered for oil pollution risks up to the amounts required under this
30 section is not required to demonstrate financial responsibility under
31 this chapter. The director ~~((may))~~ shall require the owner or operator
32 of a tank vessel to prove membership in such an organization.

33 (3)(a) A cargo vessel or passenger vessel that carries more than
34 six thousand five hundred barrels of oil as fuel shall demonstrate
35 financial responsibility to pay ~~((the greater of at least six hundred~~
36 ~~dollars per gross ton or five hundred thousand))~~, except as provided in
37 subsection (5) of this section, at least three hundred million dollars.

38 (b) A cargo vessel or passenger vessel, as defined in RCW
39 88.40.011, that carries: (i) Between one and ten barrels of oil shall

1 demonstrate financial responsibility to pay at least two million
2 dollars; (ii) between eleven and fifty barrels of oil shall demonstrate
3 financial responsibility to pay at least five million dollars; (iii)
4 between fifty-one and five hundred barrels of oil shall demonstrate
5 financial responsibility to pay at least ten million dollars; (iv)
6 between five hundred one and one thousand barrels of oil shall
7 demonstrate financial responsibility to pay at least twenty million
8 dollars; and (v) between one thousand one and six thousand five hundred
9 barrels of oil shall demonstrate financial responsibility to pay at
10 least twenty million dollars for the first one thousand barrels and
11 five million for each additional one thousand barrels.

12 (c) The owner or operator of a cargo or passenger vessel who is a
13 member of an international protection and indemnity mutual organization
14 and is covered for oil pollution risks up to the amounts required under
15 this section is not required to demonstrate financial responsibility
16 under this chapter. The director shall require the owner or operator
17 of a tank vessel to prove membership in such an organization.

18 (4) The documentation of financial responsibility shall demonstrate
19 the ability of the document holder to meet state and federal financial
20 liability requirements for the actual costs for removal of oil or
21 hazardous substance spills, for natural resource damages, for civil
22 penalties and fines imposed, for removal of shipwrecks and ship debris
23 from the lands and waters of the state, and for necessary expenses
24 related to a spill, or substantial threat of a spill, involving oil or
25 a hazardous substance.

26 (5) The department may by rule set a lesser amount of financial
27 responsibility for a tank vessel, cargo vessel, or passenger vessel
28 that meets safety performance or other standards (~~for construction,~~
29 ~~propulsion, equipment, and personnel~~) established by the department.
30 The department shall require as a minimum level of financial
31 responsibility under this subsection the same level of financial
32 responsibility required under federal law.

33 (6) This section shall not apply to a covered vessel owned or
34 operated by the federal government or by a state or local government.

35 **Sec. 4.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to
36 read as follows:

37 (1) An onshore or offshore facility shall demonstrate financial
38 responsibility in an amount determined by the department, and

1 established in rule by January 1, 2005, as necessary to compensate the
2 state and affected counties and cities for damages that might occur
3 during a reasonable worst case spill of oil from that facility into the
4 navigable waters of the state and for civil penalties and fines
5 imposed. The department shall consider such matters as: (a) The
6 amount of oil that could be spilled into the navigable waters from the
7 facility((~~7~~)); (b) the cost of cleaning up the spilled oil((~~7~~)); (c)
8 the frequency of operations at the facility((~~7~~)); (d) the amount of
9 civil penalties and fines that could be imposed; (e) the damages that
10 could result from the spill; and (f) the commercial availability and
11 affordability of financial responsibility for both large and small
12 facilities.

13 (2) This section shall not apply to an onshore or offshore facility
14 owned or operated by the federal government or by the state or local
15 government.

16 NEW SECTION. Sec. 5. To assist the department in determining the
17 proper levels of financial responsibility for onshore and offshore
18 facilities, as required under RCW 88.40.025, the department shall
19 contract for an independent economic analysis regarding adequate levels
20 of financial responsibility. The analysis shall include consideration
21 of the matters identified in RCW 88.40.025. The analysis shall be
22 completed and delivered to the legislature and governor by September 1,
23 2003.

24 **Sec. 6.** RCW 88.40.040 and 2000 c 69 s 33 are each amended to read
25 as follows:

26 (1) (~~The department shall deny entry to the waters of the state to~~
27 ~~any vessel that does not meet the financial responsibility requirements~~
28 ~~of this chapter)) It is unlawful for any vessel required to have
29 financial responsibility under this chapter to enter or operate on
30 Washington waters without meeting the requirements of this chapter or
31 rules adopted under this chapter, except when necessary to avoid injury
32 to the vessel's crew or passengers. Any vessel owner or operator that
33 does not meet the financial responsibility requirements of this chapter
34 and any rules prescribed thereunder or the federal oil pollution act of
35 1990 shall be reported by the department to the United States coast
36 guard.~~

1 (2) The department shall enforce section 1016 of the federal oil
2 pollution act of 1990 as authorized by section 1019 of the federal
3 act."

4 Correct the title.

EFFECT: The striking amendment advances dates in financial responsibility provisions and review and report requirements by one year. The striking amendment also removes the requirement for the DOE to review the statutory financial responsibility requirements for tank, cargo, or passenger vessels and report on the sufficiency of these requirements every five years.

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