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**Agriculture & Ecology  
Committee**

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**2SSB 5909**

**Brief Description:** Revising financial responsibility requirements for vessels.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Regala, Spanel and Thibaudeau).

**Brief Summary of Second Substitute Bill**

- Changes statutory financial responsibility requirements for barges, and for tank, cargo and passenger vessels.
- Requires the Department of Ecology to review the sufficiency of financial responsibility requirements for barges, and for tank, cargo, and passenger vessels.
- Requires the Department of Ecology to contract for an independent economic analysis of adequate levels of financial responsibility for onshore and offshore facilities.

**Hearing Date:** 2/26/02

**Staff:** Caroleen Dineen (786-7156).

**Background:**

Federal law regulates vessel traffic and includes provisions for oil pollution liability, prevention, and reporting. See Ports and Waterways Safety Act of 1972 (see 33 U.S.C. Sec. 1223 and 46 U.S.C. Sec. 3703), amended by the Oil Pollution Act of 1990, 33 U.S.C. Secs. 2701 et seq., and 46 U.S.C. Sec. 6101). The United States Coast Guard regulates the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualifications, and vessel manning necessary for increased protection against life or property hazards, vessel safety, and environmental protection.

Within the federal regulatory scheme, the federal Oil Pollution Act includes a "savings clause" preserving the authority of states to impose additional requirements or liabilities with respect to oil discharge. In March 2000 the United States Supreme Court concluded this savings clause is limited to allowing states to adopt regulations governing liability and compensation for oil pollution; the court determined the federal savings clause does not authorize state rules regulating vessel operation, design, or manning. *United States v. Locke*

(Intertanko), 529 U.S. 89 (2000).

Washington statutes include financial responsibility requirements for vessels transporting petroleum products as either cargo or fuel across state waters and for facilities storing, handling, or transferring oil or hazardous substances in bulk on or near navigable waters. The state Department of Ecology (DOE) has rulemaking authority for vessel financial responsibility standards. The documentation of financial responsibility must demonstrate the ability to meet state and federal financial liability requirements for actual costs of oil spill removal, natural resource damages, and necessary expenses.

Barges, tank vessels, cargo or passenger vessels, and onshore and offshore facilities must establish evidence of financial responsibility in various amounts. Appropriate documentation for evidencing financial responsibility is specified in statute. In addition, DOE is authorized to establish lesser financial responsibility standards consistent with federal law under certain circumstances. Further, the DOE establishes the financial responsibility requirements for onshore and offshore facilities, considering factors such as the amount of oil that could be spilled, clean up costs, frequency of facility operations, damages resulting from a spill, and commercial availability and affordability of financial responsibility.

The DOE is required to deny entry to state waters to any vessel that does not meet the statutory financial responsibility requirements. The DOE also is required to report to the United States Coast Guard any vessel owner or operator that does not meet these statutory requirements or the federal Oil Pollution Act of 1990.

A tank vessel owner or operator who is a member of an international protection and indemnity mutual organization covering oil pollution risks in required amounts is not required to provide the required documentation of financial responsibility. The DOE may require these tank vessel owners or operators to prove membership in one of these organizations.

### **Summary of Bill:**

The financial responsibility standard for barges transporting hazardous substances in bulk as cargo is changed from the greater of \$1 million or \$150 per gross ton to the greater of \$5 million or \$300 per gross ton of such vessel. The Director of the Department of Ecology (DOE) may by rule establish a lesser standard for barges of a maximum 300 gross tons. Any standard set by rule for these barges must be based on the quantity and type of cargo being carried.

For tank vessels carrying oil as cargo in bulk, the amount of financial responsibility is increased from \$500 million to \$750 million after January 1, 2002, and \$1 billion after January 1, 2004. The Director of the DOE may establish lesser standards for tank vessels of a maximum 300 gross tons.

A cargo vessel or passenger vessel carrying more than 6,500 barrels of oil as fuel must document financial responsibility of at least \$300 million. The DOE may by rule establish a lesser financial responsibility amount for any vessel meeting safety performance or other standards established by the DOE. Other financial responsibility standards are established in

statute for cargo or passenger vessels carrying oil in various amounts, ranging from \$2 million for between one and 10 barrels to \$20 million for between 1,001 and 6,500 barrels.

Owners and operators of cargo vessels and passenger vessels may be exempt from the financial responsibility documentation requirement based on membership in an international protection and indemnity mutual organization covering oil pollution risks in required amounts. The Director of the DOE must require any tank, cargo, or passenger vessel owner or operator to prove membership in such an organization.

In addition to oil spill removal, natural resource damages, and necessary expenses, documentation of financial responsibility must demonstrate ability to pay for hazardous substance spill removal, civil penalties and fines imposed, and shipwreck and ship debris removal from waters and land related to a spill or substantial threat of a spill of oil or a hazardous substance. The DOE must review the statutory financial responsibility requirements for tank, cargo, or passenger vessels and make recommendations regarding the sufficiency of these requirements to the Legislature and the Governor. Reports are due every five years, with the first report due November 1, 2005.

The amount of financial responsibility requirement for an onshore or offshore facility is to be established by DOE rule by January 1, 2004. In addition to other statutory factors, the DOE must consider the amount of civil penalties and fines that could be imposed and must consider the availability and affordability of financial responsibility for both large and small facilities. The DOE also must contract for an independent economic analysis of adequate levels of financial responsibility for onshore and offshore facilities. The DOE analysis must include consideration of the factors that DOE must consider when establishing the financial responsibility requirements. This analysis must be delivered to the Legislature and the Governor by September 1, 2002.

Entering or operating in state waters without meeting the statutory financial responsibility requirements is unlawful, except when necessary to avoid injury to the vessel's crew or passengers.

Definitions of "hazardous substances" and "oil" are amended to add references to federal regulations adopted as of March 1, 2001. Exemptions to the "hazardous substances" definition are added for several noncompound metals in solid form of a specified size. The definition of "inland barge" is deleted.

Legislative findings include the need to change current financial responsibility statutes to reflect increased risks of spills, changes in federal law, comparative standards of other states, and recent experiences with spills. Legislative intent is specified to provide the highest level of protection consistent with other western states and to achieve a more uniform financial responsibility system along the Pacific coast.

**Appropriation:** None.

**Fiscal Note:** Requested on February 25, 2002.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.