
SENATE BILL 5909

State of Washington

57th Legislature

2001 Regular Session

By Senators Fraser, Regala, Spanel and Thibaudeau

Read first time 02/07/2001. Referred to Committee on Environment, Energy & Water.

1 AN ACT Relating to financial responsibility requirements for
2 vessels and facilities; amending RCW 88.40.011, 88.40.020, 88.40.025,
3 and 88.40.040; and creating new sections.

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

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

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

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

10 (3) "Covered vessel" means a tank vessel, cargo vessel, or
11 passenger vessel.

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

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

14 (6)(a) "Facility" means any structure, group of structures,
15 equipment, pipeline, or device, other than a vessel, located on or near
16 the navigable waters of the state that transfers oil or hazardous
17 substances in bulk to or from a tank vessel or pipeline, that is used
18 for producing, storing, handling, transferring, processing, or
19 transporting oil or hazardous substances in bulk.

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

29 (7) "Hazardous substances" means any substance listed as of March
30 1, 2001, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~August 14,~~
31 ~~1989,~~) under section 101(14) of the federal comprehensive
32 environmental response, compensation, and liability act of 1980, as
33 amended by P.L. 99-499. The following are not hazardous substances for
34 purposes of this chapter:

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

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

37 (c) The noncompound metals antimony, arsenic, beryllium, cadmium,
38 chromium, copper, lead, nickel, selenium, silver, thallium, and zinc,

1 when in solid form in a particle larger than one hundred micrometers
2 (0.004 inches) in diameter.

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

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

10 (~~(10)~~) (9) "Oil" or "oils" means any naturally occurring liquid
11 hydrocarbons at atmospheric temperature and pressure coming from the
12 earth, including condensate and natural gasoline, and any fractionation
13 thereof, including, but not limited to, crude oil, petroleum, gasoline,
14 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
15 other than dredged spoil. Oil does not include any substance listed as
16 of March 1, 2001, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~(August~~
17 ~~14, 1989,~~) under section 101(14) of the federal comprehensive
18 environmental response, compensation, and liability act of 1980, as
19 amended by P.L. 99-499.

20 (~~(11)~~) (10) "Offshore facility" means any facility located in,
21 on, or under any of the navigable waters of the state, but does not
22 include a facility any part of which is located in, on, or under any
23 land of the state, other than submerged land.

24 (~~(12)~~) (11) "Onshore facility" means any facility any part of
25 which is located in, on, or under any land of the state, other than
26 submerged land, that because of its location, could reasonably be
27 expected to cause substantial harm to the environment by discharging
28 oil into or on the navigable waters of the state or the adjoining
29 shorelines.

30 (~~(13)~~) (12)(a) "Owner or operator" means (i) in the case of a
31 vessel, any person owning, operating, or chartering by demise, the
32 vessel; (ii) in the case of an onshore or offshore facility, any person
33 owning or operating the facility; and (iii) in the case of an abandoned
34 vessel or onshore or offshore facility, the person who owned or
35 operated the vessel or facility immediately before its abandonment.

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

1 (~~(14)~~) (13) "Passenger vessel" means a ship of three hundred or
2 more gross tons with a fuel capacity of at least six thousand gallons
3 carrying passengers for compensation.

4 (~~(15)~~) (14) "Ship" means any boat, ship, vessel, barge, or other
5 floating craft of any kind.

6 (~~(16)~~) (15) "Spill" means an unauthorized discharge of oil into
7 the waters of the state.

8 (~~(17)~~) (16) "Tank vessel" means a ship that is constructed or
9 adapted to carry, or that carries, oil in bulk as cargo or cargo
10 residue, and that:

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

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

14 (~~(18)~~) (17) "Waters of the state" includes lakes, rivers, ponds,
15 streams, inland waters, underground water, salt waters, estuaries,
16 tidal flats, beaches and lands adjoining the seacoast of the state,
17 sewers, and all other surface waters and watercourses within the
18 jurisdiction of the state of Washington.

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

21 (1) Any (~~inland~~) barge that transports hazardous substances in
22 bulk as cargo, using any port or place in the state of Washington or
23 the navigable waters of the state shall establish evidence of financial
24 responsibility in the amount of the greater of (~~one~~) five million
25 dollars, or (~~one~~) three hundred (~~fifty~~) dollars per gross ton of
26 such vessel.

27 (2)(a) Except as provided in (b) or (c) of this subsection or
28 subsection (5) of this section, a tank vessel that carries oil as cargo
29 in bulk shall demonstrate financial responsibility to pay at least five
30 hundred million dollars. The amount of financial responsibility
31 required under this subsection is seven hundred fifty million dollars
32 after January 1, 2002, and one billion dollars after January 1, 2004.

33 (b) The director by rule may establish a lesser standard of
34 financial responsibility for tank vessels or barges of three hundred
35 gross tons or less. The standard shall set the level of financial
36 responsibility based on the quantity of cargo the tank vessel or barge
37 is capable of carrying. The director shall not set the standard for

1 tank vessels or barges of three hundred gross tons or less below that
2 required under federal law.

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

9 (3) A cargo vessel or passenger vessel that carries oil as fuel
10 shall demonstrate financial responsibility to pay (~~the greater of at~~
11 ~~least six hundred dollars per gross ton or five hundred thousand~~),
12 except as provided in subsection (5) of this section, at least three
13 hundred million dollars.

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

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

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

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

33 (1) An onshore or offshore facility shall demonstrate financial
34 responsibility in an amount determined by the department, and
35 established by rule, as necessary to compensate the state and affected
36 counties and cities for damages that might occur during a reasonable
37 worst case spill of oil or hazardous substances from that facility into
38 the navigable waters of the state and for civil penalties and fines

1 imposed. The department shall consider such matters as: (a) The
2 amount of oil or hazardous substances that could be spilled into the
3 navigable waters from the facility((~~7~~)); (b) the cost of cleaning up
4 the spilled oil((~~7~~)) or hazardous substances; (c) the frequency of
5 operations at the facility((~~7~~)); (d) the amount of civil penalties and
6 finances that could be imposed; (e) the damages that could result from the
7 spill; and (f) the commercial availability and affordability of
8 financial responsibility.

9 (2) This section shall not apply to an onshore or offshore facility
10 owned or operated by the federal government or by the state or local
11 government.

12 NEW SECTION. Sec. 5. To assist the department in determining the
13 proper levels of financial responsibility for onshore and offshore
14 facilities, as required under RCW 88.40.025, the department shall
15 contract with the Washington state institute for public policy to
16 obtain an independent economic analysis regarding adequate levels of
17 financial responsibility. In conducting the analysis, the institute
18 shall consider the matters identified in RCW 88.40.025. The analysis
19 shall be completed and delivered to the legislature and governor by
20 September 1, 2002.

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

23 (1) The department shall deny entry to the waters of the state to
24 any vessel that does not meet the financial responsibility requirements
25 of this chapter, except when such denial may pose a risk of injury to
26 the vessel's crew or passengers. Any vessel owner or operator that
27 does not meet the financial responsibility requirements of this chapter
28 and any rules prescribed thereunder or the federal oil pollution act of
29 1990 shall be reported by the department to the United States coast
30 guard.

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

33 NEW SECTION. Sec. 7. The department of ecology is encouraged to
34 work with the States/British Columbia oil spill task force, which was
35 created by a memorandum of cooperation signed in 1989, to seek

- 1 uniformity in the standards of financial responsibility for vessels and
- 2 facilities.

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