

2SSB 5057 - S AMD TO S AMD (S-2278.4/15) 202

By Senator McCoy

NOT ADOPTED 3/9/2015

1 Beginning on page 6, line 33 of the amendment, strike all of  
2 section 8 and insert the following:

3 "Sec. 8. RCW 88.40.011 and 2007 c 347 s 4 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Barge" means a vessel that is not self-propelled.

8 (2) "Cargo vessel" means a self-propelled ship in commerce, other  
9 than a tank vessel, fishing vessel, or a passenger vessel, of three  
10 hundred or more gross tons.

11 (3) "Bulk" means material that is stored or transported in a  
12 loose, unpackaged liquid, powder, or granular form capable of being  
13 conveyed by a pipe, bucket, chute, or belt system.

14 (4) "Covered vessel" means a tank vessel, cargo vessel, or  
15 passenger vessel.

16 (5) "Department" means the department of ecology.

17 (6) "Director" means the director of the department of ecology.

18 (7)(a) "Facility" means any structure, group of structures,  
19 equipment, pipeline, or device, other than a vessel, located on or  
20 near the navigable waters of the state that transfers oil in bulk to  
21 or from any vessel with an oil carrying capacity over two hundred  
22 fifty barrels or pipeline, that is used for producing, storing,  
23 handling, transferring, processing, or transporting oil in bulk.

24 (b) For the purposes of financial responsibility in RCW  
25 88.40.025, facility also means a railroad that transports oil as bulk  
26 cargo.

27 (c) A facility does not include any: (i) (~~Railroad-car,~~) Motor  
28 vehicle(~~(, or other rolling stock)~~) while transporting oil over the  
29 highways (~~(or rail lines)~~) of this state; (ii) retail motor vehicle  
30 motor fuel outlet; (iii) facility that is operated as part of an  
31 exempt agricultural activity as provided in RCW 82.04.330; (iv)  
32 underground storage tank regulated by the department or a local  
33 government under chapter 90.76 RCW; or (v) marine fuel outlet that

1 does not dispense more than three thousand gallons of fuel to a ship  
2 that is not a covered vessel, in a single transaction.

3 (8) "Fishing vessel" means a self-propelled commercial vessel of  
4 three hundred or more gross tons that is used for catching or  
5 processing fish.

6 (9) "Gross tons" means tonnage as determined by the United States  
7 coast guard under 33 C.F.R. section 138.30.

8 (10) "Hazardous substances" means any substance listed as of  
9 March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under  
10 section (~~(101-14)~~) 102(a) of the federal comprehensive environmental  
11 response, compensation, and liability act of 1980, as amended by P.L.  
12 99-499. The following are not hazardous substances for purposes of  
13 this chapter:

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

15 (b) Wastes listed as K001 through K136 in Table 302.4.

16 (11) "Navigable waters of the state" means those waters of the  
17 state, and their adjoining shorelines, that are subject to the ebb  
18 and flow of the tide and/or are presently used, have been used in the  
19 past, or may be susceptible for use to transport intrastate,  
20 interstate, or foreign commerce.

21 (12) "Oil" or "oils" means oil of any kind that is liquid at  
22 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one  
23 atmosphere of pressure and any fractionation thereof, including, but  
24 not limited to, crude oil, bitumen, synthetic crude oil, natural gas  
25 well condensate, petroleum, gasoline, fuel oil, diesel oil,  
26 biological oils and blends, oil sludge, oil refuse, and oil mixed  
27 with wastes other than dredged spoil. Oil does not include any  
28 substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R.  
29 Part 302 adopted under section (~~(101-14)~~) 102(a) of the federal  
30 comprehensive environmental response, compensation, and liability act  
31 of 1980, as amended by P.L. 99-499.

32 (13) "Offshore facility" means any facility located in, on, or  
33 under any of the navigable waters of the state, but does not include  
34 a facility any part of which is located in, on, or under any land of  
35 the state, other than submerged land.

36 (14) "Onshore facility" means any facility any part of which is  
37 located in, on, or under any land of the state, other than submerged  
38 land, that because of its location, could reasonably be expected to  
39 cause substantial harm to the environment by discharging oil into or  
40 on the navigable waters of the state or the adjoining shorelines.

1 (15)(a) "Owner or operator" means (i) in the case of a vessel,  
2 any person owning, operating, or chartering by demise, the vessel;  
3 (ii) in the case of an onshore or offshore facility, any person  
4 owning or operating the facility; and (iii) in the case of an  
5 abandoned vessel or onshore or offshore facility, the person who  
6 owned or operated the vessel or facility immediately before its  
7 abandonment.

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

11 (16) "Passenger vessel" means a ship of three hundred or more  
12 gross tons with a fuel capacity of at least six thousand gallons  
13 carrying passengers for compensation.

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

16 (18) "Spill" means an unauthorized discharge of oil into the  
17 waters of the state.

18 (19) "Tank vessel" means a ship that is constructed or adapted to  
19 carry, or that carries, oil in bulk as cargo or cargo residue, and  
20 that:

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

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

24 (20) "Waters of the state" includes lakes, rivers, ponds,  
25 streams, inland waters, underground water, salt waters, estuaries,  
26 tidal flats, beaches and lands adjoining the seacoast of the state,  
27 sewers, and all other surface waters and watercourses within the  
28 jurisdiction of the state of Washington.

29 (21) "Certificate of financial responsibility" means an official  
30 written acknowledgment issued by the director or the director's  
31 designee that an owner or operator of a covered vessel or facility,  
32 or the owner of the oil, has demonstrated to the satisfaction of the  
33 director or the director's designee that the relevant entity has the  
34 financial ability to pay for costs and damages caused by an oil  
35 spill."

36 On page 24, after line 22 of the amendment, insert the following:

37 "**Sec. 20.** RCW 88.40.020 and 2003 c 91 s 3 and 2003 c 56 s 3 are  
38 each reenacted and amended to read as follows:

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

6 (2)(a) Except as provided in (b) or (c) of this subsection, a  
7 tank vessel that carries oil as cargo in bulk shall demonstrate  
8 financial responsibility to pay at least five hundred million  
9 dollars. The amount of financial responsibility required under this  
10 subsection is one billion dollars after January 1, 2004.

11 (b) The director by rule may establish a lesser standard of  
12 financial responsibility for tank vessels of three hundred gross tons  
13 or less. The standard shall set the level of financial responsibility  
14 based on the quantity of cargo the tank vessel is capable of  
15 carrying. The director shall not set the standard for tank vessels of  
16 three hundred gross tons or less below that required under federal  
17 law.

18 (c) The owner or operator of a tank vessel who is a member of an  
19 international protection and indemnity mutual organization and is  
20 covered for oil pollution risks up to the amounts required under this  
21 section is not required to demonstrate financial responsibility under  
22 this chapter. The director may require the owner or operator of a  
23 tank vessel to prove membership in such an organization.

24 (3)(a) A cargo vessel or passenger vessel that carries oil as  
25 fuel shall demonstrate financial responsibility to pay at least three  
26 hundred million dollars. However, a passenger vessel that transports  
27 passengers and vehicles between Washington state and a foreign  
28 country shall demonstrate financial responsibility to pay the greater  
29 of at least six hundred dollars per gross ton or five hundred  
30 thousand dollars.

31 (b) The owner or operator of a cargo vessel or passenger vessel  
32 who is a member of an international protection and indemnity mutual  
33 organization and is covered for oil pollution risks up to the amounts  
34 required under this section is not required to demonstrate financial  
35 responsibility under this chapter. The director may require the owner  
36 or operator of a cargo vessel or passenger vessel to prove membership  
37 in such an organization.

38 (4) A fishing vessel while on the navigable waters of the state  
39 must demonstrate financial responsibility in the following amounts:

40 (a) For a fishing vessel carrying predominantly nonpersistent

1 product, one hundred thirty-three dollars and forty cents per  
2 incident, for each barrel of total oil storage capacity, persistent  
3 and nonpersistent product, on the vessel or one million three hundred  
4 thirty-four thousand dollars, whichever is greater; or (b) for a  
5 fishing vessel carrying predominantly persistent product, four  
6 hundred dollars and twenty cents per incident, for each barrel of  
7 total oil storage capacity, persistent product and nonpersistent  
8 product, on the vessel or six million six hundred seventy thousand  
9 dollars, whichever is greater.

10 (5) ~~The ((documentation of financial responsibility shall~~  
11 ~~demonstrate the ability of the document holder to meet state and~~  
12 ~~federal financial liability requirements for the actual costs for~~  
13 ~~removal of oil spills, for natural resource damages, and for~~  
14 ~~necessary expenses)) certificate of financial responsibility is~~  
15 ~~conclusive evidence that the person or entity holding the certificate~~  
16 ~~is the party responsible for the specified vessel, facility, or oil~~  
17 ~~for purposes of determining liability pursuant to this chapter.~~

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

20 **Sec. 21.** RCW 88.40.030 and 2000 c 69 s 32 are each amended to  
21 read as follows:

22 (1) Financial responsibility required by this chapter may be  
23 established by any one of, or a combination of, the following methods  
24 acceptable to the department of ecology: ~~((+1))~~ (a) Evidence of  
25 insurance; ~~((+2))~~ (b) surety bonds; ~~((+3))~~ (c) qualification as a  
26 self-insurer; ~~((or +4))~~ (d) guaranty; (e) letter of credit; (f)  
27 certificate of deposits; (g) protection and indemnity club  
28 membership; or (h) other evidence of financial responsibility. Any  
29 bond filed shall be issued by a bonding company authorized to do  
30 business in the United States. Documentation of such financial  
31 responsibility shall be kept on any covered vessel and filed with the  
32 department at least twenty-four hours before entry of the vessel into  
33 the navigable waters of the state. A covered vessel is not required  
34 to file documentation of financial responsibility twenty-four hours  
35 before entry of the vessel into the navigable waters of the state, if  
36 the vessel has filed documentation of financial responsibility with  
37 the federal government, and the level of financial responsibility  
38 required by the federal government is the same as or exceeds state  
39 requirements. The owner or operator of the vessel may file with the

1 department a certificate evidencing compliance with the requirements  
2 of another state's or federal financial responsibility requirements  
3 if the state or federal government requires a level of financial  
4 responsibility the same as or greater than that required under this  
5 chapter.

6 (2) A certificate of financial responsibility may not have a term  
7 greater than one year.

8 **Sec. 22.** RCW 88.40.040 and 2003 c 56 s 4 are each amended to  
9 read as follows:

10 ~~(1) ((It is unlawful for any vessel required to have financial~~  
11 ~~responsibility under this chapter to enter or operate on Washington~~  
12 ~~waters without meeting the requirements of this chapter or rules~~  
13 ~~adopted under this chapter, except))~~ A vessel or facility need not  
14 demonstrate financial responsibility under this chapter prior to  
15 using any port or place in the state of Washington or the navigable  
16 waters of the state when necessary to avoid injury to the vessel's or  
17 facility's crew or passengers. Any vessel owner or operator that does  
18 not meet the financial responsibility requirements of this chapter  
19 and any rules prescribed thereunder or the federal oil pollution act  
20 of 1990 shall be reported by the department to the United States  
21 coast guard.

22 ~~(2) ((The department shall enforce section 1016 of the federal~~  
23 ~~oil pollution act of 1990 as authorized by section 1019 of the~~  
24 ~~federal act.))~~ Upon notification of an oil spill or discharge or  
25 other action or potential liability, the director shall reevaluate  
26 the validity of the certificate of financial responsibility. If the  
27 director determines that, because of a spill outside of the state or  
28 some other action or potential liability, the holder of a certificate  
29 may not have the financial resources to pay damages for the oil spill  
30 or discharge or other action or potential liability and have  
31 resources remaining available to meet the requirements of this  
32 chapter, the director may suspend or revoke the certificate.

33 (3) An owner or operator of more than one covered vessel, more  
34 than one facility, or one or more vessels and facilities, is only  
35 required to obtain a single certificate of financial responsibility  
36 that applies to all of the owner or operator's vessels and  
37 facilities.

38 (4) If a person holds a certificate for more than one covered  
39 vessel or facility and a spill or spills occurs from one or more of

1 those vessels or facilities for which the owner or operator may be  
2 liable for damages in an amount exceeding five percent of the  
3 financial resources reflected by the certificate, as determined by  
4 the director, the certificate is immediately considered inapplicable  
5 to any vessel or facility not associated with the spill. In that  
6 event, the owner or operator shall demonstrate to the satisfaction of  
7 the director the amount of financial ability required pursuant to  
8 this chapter, as well as the financial ability to pay all damages  
9 that arise or have arisen from the spill or spills that have  
10 occurred."

11       Renumber the remaining sections consecutively and correct any  
12 internal references accordingly.

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13       Beginning on page 24, line 33 of the title amendment, after  
14 "81.53.010," strike "and 81.24.010" and insert "81.24.010, 88.40.030,  
15 and 88.40.040" and on page 25, line 1 of the title amendment, after  
16 "88.46.010" strike "and 38.52.040" and insert ", 38.52.040, and  
17 88.40.020"

EFFECT: Revises the definitions of facility to include railroad and pipelines for purposes of financial responsibility. Specifies criteria for certificate of financial responsibility and demonstration of ability to pay for oil spill costs.

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