

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1691

67th Legislature
2022 Regular Session

Passed by the House March 8, 2022
Yeas 84 Nays 13

**Speaker of the House of
Representatives**

Passed by the Senate March 3, 2022
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1691** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1691

AS AMENDED BY THE SENATE

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By House Appropriations (originally sponsored by Representatives Gregerson, Lekanoff, Fitzgibbon, Ramel, Sells, Bateman, Duerr, Valdez, Davis, Fey, Macri, Peterson, Senn, Simmons, Pollet, and Kloba)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to financial responsibility requirements related
2 to oil spills; amending RCW 88.40.011, 88.40.025, 88.40.030, and
3 88.40.040; reenacting and amending RCW 88.40.020; adding a new
4 section to chapter 88.40 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 88.40.011 and 2020 c 20 s 1489 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

11 (2) "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 (3) "Cargo vessel" means a self-propelled ship in commerce, other
15 than a tank vessel, fishing vessel, or a passenger vessel, of three
16 hundred or more gross tons.

17 (4) "Covered vessel" means a tank vessel, cargo vessel, or
18 passenger vessel.

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

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

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

7 (b) A facility does not include any: (i) Railroad car, motor
8 vehicle, or other rolling stock while transporting oil over the
9 highways or rail lines of this state; (ii) retail motor vehicle motor
10 fuel outlet; (iii) facility that is operated as part of an exempt
11 agricultural activity as provided in RCW 82.04.330; (iv) underground
12 storage tank regulated by the department or a local government under
13 chapter 70A.355 RCW; or (v) marine fuel outlet that does not dispense
14 more than three thousand gallons of fuel to a ship that is not a
15 covered vessel, in a single transaction.

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

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

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

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

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

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

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

38 (13) "Oil" or "oils" means oil of any kind that is liquid at
39 twenty-five degrees Celsius and one atmosphere of pressure and any
40 fractionation thereof, including, but not limited to, crude oil,

1 bitumen, synthetic crude oil, natural gas well condensate, petroleum,
2 gasoline, fuel oil, diesel oil, biological oils and blends, oil
3 sludge, oil refuse, and oil mixed with wastes other than dredged
4 spoil. Oil does not include any substance listed as of March 1, 2003,
5 in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of
6 the federal comprehensive environmental response, compensation, and
7 liability act of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

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

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

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

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

1 (21) "Certificate of financial responsibility" means an official
2 written acknowledgment issued by the director or the director's
3 designee that an owner or operator of a covered vessel or facility,
4 or the owner of the oil, has demonstrated to the satisfaction of the
5 director or the director's designee that the relevant entity has the
6 financial ability to pay for costs and damages caused by an oil
7 spill.

8 **Sec. 2.** RCW 88.40.020 and 2003 c 91 s 3 and 2003 c 56 s 3 are
9 each reenacted and amended to read as follows:

10 (1) (~~Any~~) The owner or operator of any barge that transports
11 hazardous substances in bulk as cargo, using any port or place in the
12 state of Washington or the navigable waters of the state shall
13 (~~establish evidence of~~) demonstrate financial responsibility in the
14 amount of the greater of (~~five million dollars~~) \$5,000,000, or
15 (~~three hundred dollars~~) \$300 per gross ton of such vessel.

16 (2) (a) Except as provided in (b) or (c) of this subsection, the
17 owner or operator of a tank vessel that carries oil as cargo in bulk
18 shall demonstrate financial responsibility to pay at least (~~five~~
19 ~~hundred million dollars. The amount of financial responsibility~~
20 ~~required under this subsection is one billion dollars after January~~
21 ~~1, 2004~~) \$1,000,000,000.

22 (b) The director by rule may establish a lesser standard of
23 financial responsibility for tank vessels of (~~three hundred~~) 300
24 gross tons or less. The standard shall set the level of financial
25 responsibility based on the quantity of cargo the tank vessel is
26 capable of carrying. The director shall not set the standard for tank
27 vessels of (~~three hundred~~) 300 gross tons or less below that
28 required under federal law.

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

35 (3) (a) (~~A~~) The owner or operator of a cargo vessel or passenger
36 vessel that carries oil as fuel shall demonstrate financial
37 responsibility to pay at least (~~three hundred million dollars~~)
38 \$300,000,000. However, the owner or operator of a passenger vessel
39 that transports passengers and vehicles between Washington state and

1 a foreign country shall demonstrate financial responsibility to pay
2 the greater of at least (~~six hundred dollars~~) \$600 per gross ton or
3 (~~five hundred thousand dollars~~) \$500,000.

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

11 (4) ((A)) The owner or operator of a fishing vessel while on the
12 navigable waters of the state must demonstrate financial
13 responsibility in the following amounts: (a) For a fishing vessel
14 carrying predominantly nonpersistent product, (~~one hundred thirty-~~
15 ~~three dollars and forty cents~~) \$133.40 per incident, for each barrel
16 of total oil storage capacity, persistent and nonpersistent product,
17 on the vessel or (~~one million three hundred thirty-four thousand~~
18 ~~dollars~~) \$1,334,000, whichever is greater; or (b) for a fishing
19 vessel carrying predominantly persistent product, (~~four hundred~~
20 ~~dollars and twenty cents~~) \$400.20 per incident, for each barrel of
21 total oil storage capacity, persistent product and nonpersistent
22 product, on the vessel or (~~six million six hundred seventy thousand~~
23 ~~dollars~~) \$6,670,000, whichever is greater.

24 (5) (~~The documentation of financial responsibility shall~~
25 ~~demonstrate the ability of the document holder to meet state and~~
26 ~~federal financial liability requirements for the actual costs for~~
27 ~~removal of oil spills, for natural resource damages, and for~~
28 ~~necessary expenses.~~) In order to demonstrate financial
29 responsibility as required under this section, the owner or operator
30 of a vessel must, effective upon a date specified in rules adopted by
31 the department, obtain a certificate of financial responsibility from
32 the department, except as provided in RCW 88.40.040. The certificate
33 of financial responsibility is conclusive evidence that the person or
34 entity holding the certificate is the party responsible for the
35 specified vessel, facility, or oil for purposes of determining
36 liability under chapter 90.48 RCW.

37 (6) ((This)) The requirements of this section ((shall)) do not
38 apply to a covered vessel owned or operated by the federal government
39 or by a state or local government.

1 (7) The department may by rule update the hazardous substances
2 subject to the requirements of this section to maintain consistency
3 with any changes to federal regulations adopted after 2003 to the
4 hazardous substances identified under section 102(a) of the federal
5 comprehensive environmental response, compensation, and liability act
6 of 1980.

7 **Sec. 3.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to
8 read as follows:

9 An onshore or offshore facility shall demonstrate financial
10 responsibility in an amount determined by the department as necessary
11 to compensate the state and affected federally recognized Indian
12 tribes, counties, and cities for damages that might occur during a
13 reasonable worst case spill of oil from that facility into the
14 navigable waters of the state. The department shall ~~((consider))~~
15 adopt a rule that considers such matters as the worst case amount of
16 oil that could be spilled ~~((into the navigable waters from the~~
17 ~~facility))~~, as calculated in the applicant's oil spill contingency
18 plan approved under chapter 90.56 RCW, the cost of cleaning up the
19 spilled oil, the frequency of operations at the facility, the damages
20 that could result from the spill, and the commercial availability and
21 affordability of financial responsibility. ~~((This section shall))~~ In
22 order to demonstrate financial responsibility as required under this
23 section, the owner or operator of a facility must obtain a
24 certificate of financial responsibility from the department. The
25 requirements of this section do not apply to an onshore or offshore
26 facility owned or operated by the federal government or by the state
27 or local government.

28 **Sec. 4.** RCW 88.40.030 and 2000 c 69 s 32 are each amended to
29 read as follows:

30 ~~((Financial responsibility required by this chapter may be~~
31 ~~established by any one of, or a combination of, the following methods~~
32 ~~acceptable to the department of ecology: (1) Evidence of insurance;~~
33 ~~(2) surety bonds; (3) qualification as a self-insurer; or (4) other~~
34 ~~evidence of financial responsibility. Any bond filed shall be issued~~
35 ~~by a bonding company authorized to do business in the United States.~~
36 ~~Documentation of such financial responsibility shall))~~ (1) The owner
37 or operator of a vessel or facility that is required to demonstrate
38 financial responsibility under this chapter may do so by any one of,

1 or a combination of, the following methods acceptable to the
2 department:

3 (a) Evidence of insurance;

4 (b) Surety bonds;

5 (c) Guaranty;

6 (d) Letter of credit;

7 (e) Certificates of deposit;

8 (f) Protection and indemnity club membership;

9 (g) A certificate evidencing compliance with the requirements of
10 another state's financial responsibility requirements or federal
11 financial responsibility requirements if the state or federal
12 government requires a level of financial responsibility the same as
13 or greater than that required under this chapter; or

14 (h) Other evidence of financial responsibility deemed acceptable
15 by the department.

16 (2) In addition to the options provided in subsection (1) of this
17 section, the owner or operator of a vessel or facility may
18 demonstrate financial responsibility under this chapter through
19 qualification as a self-insurer. Rules adopted by the department that
20 provide a self-insurance option for vessels and facilities must
21 require the applicant to thoroughly demonstrate the security of the
22 applicant's financial position, which may include a demonstration of
23 a combination of the applicant's assets, cash flow, equity,
24 liabilities, and bond ratings. The department may require a
25 certificate applicant relying on qualification as a self-insurer to
26 demonstrate a greater monetary amount of financial responsibility
27 than is required of applicants relying on a form of financial
28 responsibility described in subsection (1) of this section. In
29 adopting rules pertaining to self-insurance requirements, the
30 department must establish standards that are no less protective than
31 the qualification standards for self-insurance established in other
32 jurisdictions with similar programs as of January 1, 2022, and from
33 which Washington imports significant volumes of oil or petroleum
34 products or to which Washington exports significant volumes of oil or
35 petroleum products.

36 (3) Upon determining that the owner or operator of a vessel or
37 facility has adequately demonstrated financial responsibility to the
38 department, the department must issue a certificate of financial
39 responsibility to the owner or operator of the vessel or facility.

1 (4) Any bond filed with the department to demonstrate financial
2 responsibility under this chapter must be issued by a bonding company
3 authorized to do business in the United States.

4 (5) A certificate of financial responsibility, or a certificate
5 specified in subsection (1)(g) of this section, must be kept on any
6 covered vessel and filed with the department at least ((twenty-four))
7 24 hours before entry of the vessel into the navigable waters of the
8 state. ((A)) The owner or operator of a covered vessel must notify
9 the department but is not required to file ((documentation of)) a
10 certificate of financial responsibility ((twenty-four)) 24 hours
11 before entry of the vessel into the navigable waters of the state, if
12 the vessel has filed documentation of financial responsibility with
13 the federal government, and the level of financial responsibility
14 required by the federal government is the same as or exceeds state
15 requirements. ((The owner or operator of the vessel may file with the
16 department a certificate evidencing compliance with the requirements
17 of another state's or federal financial responsibility requirements
18 if the state or federal government requires a level of financial
19 responsibility the same as or greater than that required under this
20 chapter.))

21 (6) A certificate of financial responsibility issued by the
22 department under this chapter or otherwise used for compliance with
23 this chapter may not have a term greater than two years.

24 **Sec. 5.** RCW 88.40.040 and 2003 c 56 s 4 are each amended to read
25 as follows:

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

37 (2) The department ~~((shall))~~ may enforce section 1016 of the
38 federal oil pollution act of 1990 as authorized by section 1019 of
39 the federal act.

1 (3) (a) (i) The holder of a certificate under this chapter must
2 notify the director of an oil spill or discharge in state waters
3 consistent with chapters 90.48 and 90.56 RCW.

4 (ii) The holder of a certificate of financial responsibility for
5 more than one covered vessel or facility must notify the director if
6 it experiences a spill or spill from a vessel or facility in another
7 jurisdiction for which it may be liable and which may incur damages
8 that exceed 15 percent of the financial resources reflected by the
9 certificate.

10 (b) Upon notification of an oil spill or discharge or other
11 potential liability by the owner or operator of a vessel or facility
12 that holds a certificate of financial responsibility under (a) of
13 this subsection, the director may reevaluate the validity of the
14 certificate of financial responsibility under this chapter. The
15 director must reevaluate the validity of a certificate of financial
16 responsibility under this chapter upon notification of a spill for
17 which the certificate holder may be liable and which may incur
18 damages that exceed 25 percent of the financial resources reflected
19 by the certificate. The director may suspend or revoke a certificate
20 of financial responsibility if the director determines that, because
21 of a spill, discharge, or other action or potential liability, the
22 holder of the certificate is likely to no longer have the financial
23 resources to both pay damages for the oil spill or discharge or other
24 action or potential liability and have resources remaining available
25 in an amount sufficient to meet the requirements of this chapter,
26 effective 10 days after its determination.

27 (c) Upon a determination by the director under (a) of this
28 subsection that a certificate has been suspended or revoked as a
29 result of a spill, the owner or operator of a facility or vessel
30 required to obtain a certificate of financial responsibility under
31 this chapter may receive a new certificate of financial
32 responsibility from the director upon a demonstration to the
33 satisfaction of the director the amount of financial ability required
34 pursuant to this chapter, as well as the financial ability to pay all
35 reasonably estimated anticipated damages that arise or have arisen
36 from the spill or spills that have occurred. The department must
37 expeditiously review any applications from owners or operators whose
38 certificates have been suspended or revoked by the department under
39 this section. The department may issue a temporary certificate of
40 financial responsibility to an owner or operator whose certificate

1 has previously been revoked or suspended in order to allow the owner
2 or operator to continue to operate a facility or vessel while the
3 department evaluates a pending application from the owner or operator
4 for a new certificate. It is in the interest of the state to issue
5 and manage certificates of financial responsibility in a manner that
6 does not create or contribute to delays in commerce for vessels and
7 facilities subject to the requirements of this chapter. The
8 department is directed to adopt rules to implement this chapter
9 accordingly.

10 (4) An owner or operator of more than one vessel subject to the
11 requirements of this chapter, more than one facility subject to the
12 requirements of this chapter, or more than one vessel and facility
13 subject to the requirements of this chapter, may:

14 (a) Obtain a single certificate of financial responsibility that
15 applies to all of the owner's or operator's vessels and facilities.
16 The department must base the terms of such a certificate upon the
17 vessel or facility that represents the greatest financial risk in the
18 event of a spill; or

19 (b) Obtain separate certificates that each apply to a subset of
20 the owner's or operator's vessels or facilities, provided that each
21 vessel or facility of the owner or operator is covered by at least
22 one valid certificate.

23 NEW SECTION. Sec. 6. A new section is added to chapter 88.40
24 RCW to read as follows:

25 (1) Violations of the requirements of this chapter are subject to
26 criminal penalties as provided in RCW 90.56.300 and civil penalties
27 as provided in RCW 90.56.310.

28 (2) A determination by the department to issue, modify, suspend,
29 revoke, or terminate a certificate issued under this chapter is
30 appealable to the pollution control hearings board, as provided in
31 RCW 43.21B.110(1)(c).

32 NEW SECTION. Sec. 7. If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

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