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SENATE BILL 5104

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State of Washington

58th Legislature

2003 Regular Session

By Senators Fraser, Morton and Fairley

Read first time 01/15/2003. Referred to Committee on Natural Resources, Energy & Water.

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

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 are in need of update and  
7 revision. These changes are necessary due to the increased risks of  
8 spills, the length of time that has passed since the current standards  
9 were put in place, the recent changes that have occurred in federal  
10 statutory and case law, the comparative standards of other western  
11 states, and the recent experiences of other states with spills. The  
12 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  
2 in this section apply throughout this chapter unless the context  
3 clearly requires otherwise.

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

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

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

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

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

15       (6)(a) "Facility" means any structure, group of structures,  
16 equipment, pipeline, or device, other than a vessel, located on or near  
17 the navigable waters of the state that transfers oil in bulk to or from  
18 a tank vessel or pipeline, that is used for producing, storing,  
19 handling, transferring, processing, or transporting oil 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) "Fishing vessel" means a self-propelled commercial vessel of  
30 three hundred or more gross tons that is used for catching or  
31 processing fish.

32       (8) "Hazardous substances" means any substance listed as of March  
33 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~(August 14,~~  
34 ~~1989,~~) under section 101(14) of the federal comprehensive  
35 environmental response, compensation, and liability act of 1980, as  
36 amended by P.L. 99-499. The following are not hazardous substances for  
37 purposes of this chapter:

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

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

2 (c) The noncompound metals antimony, arsenic, beryllium, cadmium,  
3 chromium, copper, lead, nickel, selenium, silver, thallium, and zinc,  
4 when in solid form in a particle larger than one hundred micrometers  
5 (0.004 inches) in diameter.

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

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

13 (10) "Oil" or "oils" means any naturally occurring liquid  
14 hydrocarbons at atmospheric temperature and pressure coming from the  
15 earth, including condensate and natural gasoline, and any fractionation  
16 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
17 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes  
18 other than dredged spoil. Oil does not include any substance listed as  
19 of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~August~~  
20 ~~14, 1989,~~) under section 101(14) of the federal comprehensive  
21 environmental response, compensation, and liability act of 1980, as  
22 amended by P.L. 99-499.

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

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

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

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

4 (14) "Passenger vessel" means a ship of three hundred or more gross  
5 tons with a fuel capacity of at least six thousand gallons carrying  
6 passengers for compensation.

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

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

11 (17) "Tank vessel" means a ship that is constructed or adapted to  
12 carry, or that carries, oil in bulk as cargo or cargo residue, and  
13 that:

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

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

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

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

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

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

35 (2)(a) Except as provided in (b) or (c) of this subsection or  
36 subsection (6) of this section, a tank vessel that carries oil as cargo  
37 in bulk shall demonstrate financial responsibility to pay at least five

1 hundred million dollars. The amount of financial responsibility  
2 required under this subsection is one billion dollars after January 1,  
3 2004.

4 (b) The director by rule may establish a lesser standard of  
5 financial responsibility for tank vessels or barges of three hundred  
6 gross tons or less. The standard shall set the level of financial  
7 responsibility based on the quantity of cargo the tank vessel or barge  
8 is capable of carrying. The director shall not set the standard for  
9 tank vessels or barges of three hundred gross tons or less below that  
10 required under federal law.

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

17 (3)(a) A cargo vessel or passenger vessel that carries more than  
18 six thousand five hundred barrels of oil as fuel shall demonstrate  
19 financial responsibility to pay (~~(the greater of at least six hundred~~  
20 ~~dollars per gross ton or five hundred thousand)~~), except as provided in  
21 subsection (6) of this section, at least three hundred million dollars.

22 (b) A cargo vessel or passenger vessel, as defined in RCW  
23 88.40.011, that carries: (i) Between one and ten barrels of oil shall  
24 demonstrate financial responsibility to pay at least two million  
25 dollars; (ii) between eleven and fifty barrels of oil shall demonstrate  
26 financial responsibility to pay at least five million dollars; (iii)  
27 between fifty-one and five hundred barrels of oil shall demonstrate  
28 financial responsibility to pay at least ten million dollars; (iv)  
29 between five hundred one and one thousand barrels of oil shall  
30 demonstrate financial responsibility to pay at least twenty million  
31 dollars; and (v) between one thousand one and six thousand five hundred  
32 barrels of oil shall demonstrate financial responsibility to pay at  
33 least twenty million dollars for the first one thousand barrels and  
34 five million for each additional one thousand barrels.

35 (c) The owner or operator of a cargo or passenger vessel who is a  
36 member of an international protection and indemnity mutual organization  
37 and is covered for oil pollution risks up to the amounts required under

1 this section is not required to demonstrate financial responsibility  
2 under this chapter. The director shall require the owner or operator  
3 of a tank vessel to prove membership in such an organization.

4 (4) A fishing vessel while on the navigable waters of the state  
5 must demonstrate financial responsibility in the amount of the greater  
6 of five million dollars, or one million dollars for each employee on  
7 the vessel.

8 (5) The documentation of financial responsibility shall demonstrate  
9 the ability of the document holder to meet state and federal financial  
10 liability requirements for the actual costs for removal of oil or  
11 hazardous substance spills, for natural resource damages, for civil  
12 penalties and fines imposed, for removal of shipwrecks and ship debris  
13 from the lands and waters of the state, and for necessary expenses  
14 related to a spill, or substantial threat of a spill, involving oil or  
15 a hazardous substance.

16 ~~((+5))~~ (6) The department may by rule set a lesser amount of  
17 financial responsibility for a tank vessel, cargo vessel, or passenger  
18 vessel that meets safety performance or other standards ~~((for~~  
19 ~~construction, propulsion, equipment, and personnel))~~ established by the  
20 department. The department shall require as a minimum level of  
21 financial responsibility under this subsection the same level of  
22 financial responsibility required under federal law.

23 ~~((+6))~~ (7) This section shall not apply to a covered vessel owned  
24 or operated by the federal government or by a state or local  
25 government.

26 (8) The department shall review the statutory financial  
27 responsibility requirements established in this section and make  
28 recommendations regarding the sufficiency of the requirements to the  
29 legislature and the governor at least every five years with the first  
30 report due November 1, 2007.

31 **Sec. 4.** RCW 88.40.040 and 2000 c 69 s 33 are each amended to read  
32 as follows:

33 (1) ~~((The department shall deny entry to the waters of the state to~~  
34 ~~any vessel that does not meet the financial responsibility requirements~~  
35 ~~of this chapter))~~ It is unlawful for any vessel required to have  
36 financial responsibility under this chapter to enter or operate on  
37 Washington waters without meeting the requirements of this chapter or

1 rules adopted under this chapter, except when necessary to avoid injury  
2 to the vessel's crew or passengers. Any vessel owner or operator that  
3 does not meet the financial responsibility requirements of this chapter  
4 and any rules prescribed thereunder or the federal oil pollution act of  
5 1990 shall be reported by the department to the United States coast  
6 guard.

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

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