**Washington State**
**House of Representatives**
**Office of Program Research**

# BILL ANALYSIS

# Environment & Energy Committee

# HB 1691

**Brief Description:** Concerning financial responsibility requirements related to oil spills.

**Sponsors:** Representatives Gregerson, Lekanoff, Fitzgibbon, Ramel, Sells, Bateman, Duerr and Valdez.

**Brief Summary of Bill**

- Requires the owners or operators of vessels subject to financial responsibility demonstration requirements under existing law to obtain a certificate of financial responsibility (COFR) from the Department of Ecology (Ecology), and provides that COFRs are conclusive evidence that COFR holder is the party responsible for a vessel or facility for purposes of determining liability, and may not have a term greater than 1 year.
- Adds federally recognized Indian tribes to the list of entities that owners or operators of stationary oil facilities must be able to compensate in the event of a reasonable worst-case oil spill, in order to demonstrate required financial responsibility to Ecology.
- Eliminates the option for stationary facilities to demonstrate financial responsibility through self-insurance, and adds certificates of deposit, letters of credit, and protection and indemnity club membership as acceptable options for vessels and facilities to demonstrate financial responsibility to Ecology.

**Hearing Date:** 1/13/22

**Staff:** Jacob Lipson (786-7196).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Oil Spill Contingency Planning Requirements.
The Department of Ecology (Ecology) administers an oil spill preparedness, prevention, and response program. Among other laws implemented by Ecology's oil spills program, operators of vessels and facilities, including oil refineries, terminals, pipelines, and railroads that are involved in the bulk transfer of oil, must put in place oil spill contingency plans that outline containment and remediation responses to potential oil spills. The contingency plans of facilities and vessels must be designed to be capable of removing oil and minimizing damage to the environment from a worst-case spill of oil. For facilities, a worst-case spill is defined as the largest foreseeable spill from the facility in adverse weather conditions; for vessels, a worst-case spill is a spill of the entire cargo and fuel of the vessel in adverse weather conditions.

Financial Assurance Requirements for Facilities and Vessels.
Facilities such as oil refineries and terminals must demonstrate to Ecology the financial ability to compensate the state and local governments for damages from a reasonable worst-case spill. In calculating this amount, Ecology is directed to consider matters including the amount of oil that could be spilled from the facility, the frequency of facility operations, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility.

Likewise, certain vessels including barges and tank vessels that use state waters or ports must also document their financial ability to pay for oil spill removal costs, natural-resource damages, and related expenses. Depending on the type and size of vessel, and whether the vessel transports hazardous substances or oil, and whether it does so in bulk as cargo or as fuel for the vessel, the financial assurance that a vessel owner or operator must demonstrate to Ecology ranges from half a million dollars to a billion dollars. The hazardous substances subject to financial responsibility requirements are substances identified in a United States Environmental Protection Agency rule adopted in 2003.

Financial responsibility must be demonstrated to Ecology by providing evidence of insurance, surety bonds, qualification as a self-insurer, or other evidence of financial responsibility. The owner or operator of a vessel may also file a certificate with Ecology indicating compliance with federal or another states' financial responsibility demonstration requirements if those requirements require the same or greater financial responsibility to be demonstrated. Financial responsibility requirements do not apply to vessels or facilities owned or operated by the federal government, state government, or local governments, or to certain oil spill response barges.

Ecology has adopted rules to implement the financial assurance requirements applicable to certain vessels, but has not adopted rules to implement the financial assurance requirements applicable to facilities. The 2021 operating budget included a proviso requiring Ecology to adopt financial assurance rules applicable to facilities.

Federal and Other State Oil Spill Financial Assurance Provisions.
Under the federal Oil Pollution Act of 1990, the United States Coast Guard administers a program that requires certain vessels and facilities that pose a substantial threat of oil discharge to obtain a certificate of financial responsibility after demonstrating the ability to meet a

maximum amount of liability specified in federal law.

Other states, including California and Alaska, also require certain vessels and facilities to obtain certificates of financial responsibility after demonstrating the ability to pay specified amounts of damages in the event of an oil spill.

**Summary of Bill:**

Certificates of Financial Responsibility.
The owner or operator of a vessel or facility required to document financial responsibility to Ecology must do so by obtaining a certificate of financial responsibility (COFR) from Ecology. A COFR:

- is a written acknowledgement by Ecology that the owner or operator of a facility or vessel, or the owner of the oil, has demonstrated to Ecology's satisfaction that the entity has a financial ability to pay for costs and damages caused by an oil spill;
- is conclusive evidence that the person holding it is the party responsible for a specified vessel, facility or oil for purposes of determining liability;
- may not have a term greater than one year; and
- may cover multiple vessels or facilities owned or operated by the same person, in which case the terms of the COFR are based on the vessel or facility that represents the greatest financial risk in the event of a spill.

Ecology must reevaluate the validity of a COFR upon being notified of an oil spill, discharge, or other potential liability by the owner or operator of a vessel or facility.  Ecology may suspend or revoke a COFR if it determines that the COFR holder is likely to no longer have the financial resources to pay damages for the spill, discharge, or other liability and still have remaining resources sufficient to meet the financial responsibility demonstration requirements.

If a COFR applies to multiple vessels or facilities, and a spill occurs for which Ecology determines the COFR holder may be liable in an amount exceeding 5 percent of the amount of the COFR, then the COFR immediately is rendered inapplicable to any vessel or facility not associated with the spill.  If a COFR is rendered inapplicable, the owner or operator of the vessel or facility may receive a new COFR upon demonstrating an ability to meet the financial responsibility requirements in addition to paying all reasonably estimated anticipated damages arising from the spill.

Calculations of the Amount of Financial Responsibility Demonstrated by Oil Facilities.
Oil facilities must demonstrate to Ecology financial responsibility sufficient to compensate damages to affected federally recognized Indian tribes, in addition to the state, counties, and cities.  Ecology must adopt a rule to calculate the damages that might occur from a reasonable worst-case spill from a facility by multiplying the reasonable per-barrel cleanup and damage cost of the spilled oil by the worst-case spill volume specified in the facility's Ecology-approved spill contingency plan.

Other.
In order to maintain consistency with federal regulations, Ecology may update, by rule, the hazardous substances whose transport by vessel triggers financial responsibility demonstration requirements.
Certificates of deposit, letters of credit, and protection and indemnity club membership are added as acceptable options for vessels and facilities to demonstrate financial responsibility to Ecology. Facilities may not demonstrate financial responsibility through self-insurance.

Various technical corrections and clarifications are included.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Requested on December 29, 2021.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.