

FINAL BILL REPORT

E2SHB 1691

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Synopsis as Enacted

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

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

House Committee on Environment & Energy
House Committee on Appropriations
Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means

Background:

Oil Spill Contingency Planning Requirements and Spill Penalties.

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 into Washington waters 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.

Under Washington water pollution control laws, oil spills in state waters are subject to civil penalties of up to \$10,000 per day per violation, plus additional criminal penalties for willful violations. Parties responsible for oil spills must also pay natural resource damages associated with the spill according to either a prescribed schedule or based on an assessment of the damages to natural resources. Beyond environmental penalties and natural resource damages, strict liability is established for damages to public or private property due to oil

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spills, including loss of income, the means of producing revenue, or economic benefits resulting from an injury due to loss of real property or natural resources.

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 into navigable waters, 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 Washington 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 \$500,000 to \$1 billion. 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 state's 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 2021-2023 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. Under Washington law, Ecology is authorized to enforce these federal financial responsibility requirements.

Other states, including California and Alaska, 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:

Certificates of Financial Responsibility.

The owner or operator of a vessel or facility required to document financial responsibility to the Department of Ecology (Ecology) must do so by obtaining a certificate of financial responsibility (COFR) from Ecology, or by relying upon an equivalent certificate issued by another state or the federal government. Ecology must adopt rules related to COFR requirements, including to specify the effective date for the requirement that vessels obtain a COFR. Ecology's rules implementing financial responsibility requirements for oil facilities and vessels must accord with the state's interest in issuing and managing COFRs in a manner that does not create or contribute to delays in commerce. A COFR:

- is a written acknowledgment 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 under Washington water pollution control laws;
- may not have a term greater than two years; 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.

The holder of a COFR must notify Ecology of a spill in Washington waters, consistent with existing reporting obligations. The holder of a COFR must also notify Ecology of an oil spill in another jurisdiction's waters if the COFR holder may be liable and the spill may incur damages that exceed 15 percent of the resources reflected in the COFR. Upon notification, Ecology may reevaluate any COFR, and Ecology must reevaluate any COFR in the event of a spill that may exceed 25 percent of the resources reflected in the COFR. 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 is suspended or revoked 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. Ecology decisions related to a COFR are appealable to the Pollution Control Hearings Board.

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 damages to Washington and its 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 considering the worst-case amount of oil that could be spilled, as calculated in the applicant's oil spill contingency plan, in addition to the current criteria that Ecology must consider.

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. Ecology rules allowing self-insurance must require an applicant to thoroughly demonstrate the security of the applicant's financial position, and must be no less protective than the qualification standards for self-insurance in other jurisdictions. Ecology may require a self-insurer to demonstrate a greater monetary amount of financial responsibility than applicants relying on an alternative method of compliance.

Various technical corrections and clarifications are included.

A severability clause is included.

Votes on Final Passage:

House	83	15	
Senate	48	0	(Senate amended)
House	84	13	(House concurred)

Effective: June 9, 2022