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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1691**

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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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