S T A T E O F N E W Y O R K

4551

2011-2012 Regular Sessions

I N S E N A T E

April 12, 2011

Introduced by Sen. GRISANTI -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the navigation law, in relation to increasing liability for the discharge of petroleum

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3 of section 181 of the navigation law, as amended by chapter 584 of the laws of 1992, subparagraphs (ii) and (iii) of paragraph (e) as amended by chapter 585 of the laws of 1992, is amended to read as follows:

3. (a) The owner or operator of a major facility or vessel which has discharged petroleum shall be strictly liable, without regard to fault, subject to the defenses enumerated in subdivision four of this section, for all cleanup and removal costs and all direct and indirect damages paid by the fund. However, the cleanup and removal costs and direct and indirect damages which may be recovered by the fund with respect to each incident shall not exceed:

(i) for a tank vessel, the greater of:

(1) [one] TWO thousand [two hundred] dollars per gross ton; or

(2) (A) in the case of a vessel greater than three thousand gross tons, [ten] SIXTEEN million dollars; or

(B) in the case of a vessel [or] OF three thousand gross tons or less, [two] THREE million dollars;

(ii) for any other vessel subject to the liability limits set forth in the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), [six hundred] ONE THOUSAND dollars per gross ton or [five] EIGHT hundred thousand dollars, whichever is greater;

(iii) for any other vessel not subject to the liability limits set forth in the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), [three] FIVE hundred dollars per gross ton for each vessel;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD09196-01-1

(iv) for a major facility that is defined as an "onshore facility" and covered by the liability limits established under the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), [three] FIVE hundred fifty million dollars. This liability limit shall not be considered to increase the liability above the federal limit of three hundred fifty million dollars per incident[.];

(v) for a major facility not covered in subparagraph (iv) of this paragraph, [fifty] SEVENTY-FIVE million dollars.

(b) The liability limits established in subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall not be considered to increase liability above the federal limits for tank vessels or vessels as defined in the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

(c) (i) The department shall establish, by regulation, a limit of liability under this subdivision of less than [three] FIVE hundred fifty million dollars but not less than [eight] TWELVE million dollars, for major facilities defined as "onshore facilities" under the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), taking into account facility size, storage capacity, throughput, proximity to environmentally sensitive areas, type of petroleum handled, and other factors relevant to risks posed by the class or category of facility.

(ii) The department shall establish, by regulation, a limit of liability under this subdivision of [fifty] SEVENTY-FIVE million dollars or less for major facilities other than vessels that are not defined as "onshore facilities" under the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), taking into account facility size, storage capacity, throughput, proximity to environmentally sensitive areas, type of petroleum handled, and other factors relevant to risks posed by the class or category of facility.

(d) The provisions of paragraph (a) of this subdivision shall not apply and the owner or operator shall be liable for the full amount of cleanup and removal costs and damages if it can be shown that the discharge was the result of (i) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (ii) a gross or willful violation of applicable safety, construction or operating standards or regulations. In addition, the provisions of paragraph (a) of this subdivision shall not apply if the owner or operator fails or refuses:

(1) to report the discharge as required by section one hundred seventy-five of this article and the owner or operator knows or had reason to know of the discharge; or

(2) to provide all reasonable cooperation and assistance requested by the federal on-scene coordinator or the commissioner or his designee in connection with cleanup and removal activities.

(e) (i) The owner or operator of a vessel shall establish and maintain with the department evidence of financial responsibility sufficient to meet the amount of liability established pursuant to paragraph (a) of this subdivision. The owner or operator of any vessel which demonstrates financial responsibility pursuant to the requirements of the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), shall be deemed to have demonstrated financial responsibility in accordance with this paragraph.

(ii) The commissioner in consultation with the superintendent of insurance may promulgate regulations requiring the owner or operator of a major facility other than a vessel to establish and maintain evidence of financial responsibility in an amount not to exceed [twenty-five] FORTY dollars, per incident, for each barrel of total petroleum storage

capacity at the facility, subject to a maximum of one million SIX HUNDRED dollars per incident per facility in an aggregate not to exceed [two] THREE million dollars per facility per year; provided, however, that if the owner or operator establishes to the satisfaction of the commissioner that a lesser amount will be sufficient to protect the environment and public health, safety and welfare, the commissioner shall accept evidence of financial responsibility in such lesser amount. In determining the sufficiency of the amount of financial responsibility required under this section, the commissioner and the superintendent of insurance shall take into consideration facility size, storage capacity, throughput, proximity to environmentally sensitive areas, type of petroleum handled, and other factors relevant to the risks posed by the class or category of facility, as well as the availability and affordability of pollution liability insurance. Any regulations promulgated pursuant to this subparagraph shall not take effect until forty-eight months after the effective date of this section.

(iii) Financial responsibility under this paragraph may be established by any one or a combination of the following methods acceptable to the commissioner in consultation with the superintendent of insurance: evidence of insurance, surety bonds, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility, including certifications which qualify under the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

(iv) The liability of a third-party insurer providing proof of financial responsibility on behalf of a person required to establish and maintain evidence of financial responsibility under this section is limited to the type of risk assumed and the amount of coverage specified in the proof of financial responsibility furnished to and approved by the department. For the purposes of this section, the term "third-party insurer" means a third-party insurer, surety, guarantor, person furnishing a letter of credit, or other group or person providing proof of financial responsibility on behalf of another person; it does not include the person required to establish and maintain evidence of such financial responsibility.

S 2. This act shall take effect immediately.