

7625

2015-2016 Regular Sessions

I N A S S E M B L Y

May 20, 2015

Introduced by M. of A. FAHY, McDONALD, STECK -- read once and referred
to the Committee on Environmental Conservation

AN ACT to amend the navigation law, in relation to financial responsibility for the liability of a major facility or vessel

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

1 Section 1. Paragraph (e) of subdivision 3 of section 181 of the navi-
2 gation law, as amended by chapter 584 of the laws of 1992 and subpara-
3 graphs (ii) and (iii) as amended by chapter 585 of the laws of 1992 and
4 as further amended by section 104 of part A of chapter 62 of the laws of
5 2011, is amended and a new paragraph (f) is added to read as follows:
6 (e) (i) The owner or operator of a MAJOR FACILITY OR A vessel shall
7 establish and maintain with the department evidence of financial respon-
8 sibility sufficient to meet the amount of liability established pursuant
9 to paragraph (a) of this subdivision. A PERSON MAY NOT CAUSE OR PERMIT
10 THE OPERATION OF A MAJOR FACILITY OR VESSEL IN THE STATE UNTIL THE
11 PERSON HAS FURNISHED TO THE DEPARTMENT, AND THE DEPARTMENT HAS APPROVED
12 SUCH EVIDENCE. The owner or operator of any vessel which demonstrates
13 financial responsibility pursuant to the requirements of the Federal Oil
14 Pollution Act of 1990 (33 U.S.C. 2701 et seq.), shall be deemed to have
15 demonstrated financial responsibility in accordance with this paragraph.
16 (ii) [The commissioner in consultation with the superintendent of
17 financial services may promulgate regulations requiring the owner or
18 operator of a major facility other than a vessel to establish and main-
19 tain evidence of financial responsibility in an amount not to exceed
20 twenty-five dollars, per incident, for each barrel of total petroleum
21 storage capacity at the facility, subject to a maximum of one million
22 dollars per incident per facility in an aggregate not to exceed two
23 million dollars per facility per year; provided, however, that if the
24 owner or operator establishes to the satisfaction of the commissioner
25 that a lesser amount will be sufficient to protect the environment and

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

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1 public health, safety and welfare, the commissioner shall accept
2 evidence of financial responsibility in such lesser amount. In determin-
3 ing the sufficiency of the amount of financial responsibility required
4 under this section, the commissioner and the superintendent of financial
5 services shall take into consideration facility size, storage capacity,
6 throughput, proximity to environmentally sensitive areas, type of petro-
7 leum handled, and other factors relevant to the risks posed by the class
8 or category of facility, as well as the availability and affordability
9 of pollution liability insurance. Any regulations promulgated pursuant
10 to this subparagraph shall not take effect until forty-eight months
11 after the effective date of this section.

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

19 [(iv)] (III) The liability of a third-party insurer providing proof of
20 financial responsibility on behalf of a person required to establish and
21 maintain evidence of financial responsibility under this section is
22 limited to the type of risk assumed and the amount of coverage specified
23 in the proof of financial responsibility furnished to and approved by
24 the department. For the purposes of this section, the term "third-party
25 insurer" means a third-party insurer, surety, guarantor, person furnish-
26 ing a letter of credit, or other group or person providing proof of
27 financial responsibility on behalf of another person; it does not
28 include the person required to establish and maintain evidence of such
29 financial responsibility.

30 (F) (I) ACCEPTANCE OF PROOF OF FINANCIAL RESPONSIBILITY SHALL EXPIRE:

31 (1) ONE YEAR FROM ITS ISSUANCE FOR SELF-INSURANCE;

32 (2) ON THE EFFECTIVE DATE OF A CHANGE IN THE SURETY BOND, GUARANTEE,
33 INSURANCE AGREEMENT, LETTER OF CREDIT, OR OTHER PROOF OF FINANCIAL
34 RESPONSIBILITY; OR

35 (3) ON THE EXPIRATION OR CANCELLATION OF THE SURETY BOND, GUARANTEE,
36 INSURANCE AGREEMENT, LETTER OF CREDIT, OR OTHER PROOF OF FINANCIAL
37 RESPONSIBILITY.

38 (II) THE PERSON WHOSE PROOF OF FINANCIAL RESPONSIBILITY IS ACCEPTED BY
39 THE DEPARTMENT UNDER THIS SECTION SHALL NOTIFY THE DEPARTMENT AT LEAST
40 THIRTY DAYS BEFORE THE EFFECTIVE DATE OF A CHANGE, EXPIRATION OR CANCEL-
41 LATION IN THE SURETY BOND, GUARANTEE, INSURANCE AGREEMENT, LETTER OF
42 CREDIT, OR OTHER PROOF OF FINANCIAL RESPONSIBILITY. APPLICATION FOR
43 RENEWAL OF ACCEPTANCE OF PROOF OF FINANCIAL RESPONSIBILITY UNDER THIS
44 SECTION MUST BE FILED AT LEAST THIRTY DAYS BEFORE THE DATE OF EXPIRA-
45 TION.

46 (III) THE DEPARTMENT, AFTER NOTICE AND HEARING, MAY REVOKE ACCEPTANCE
47 OF PROOF OF FINANCIAL RESPONSIBILITY IF IT DETERMINES THAT:

48 (1) ACCEPTANCE WAS PROCURED BY FRAUD OR MISREPRESENTATION; OR

49 (2) A CHANGE OF CIRCUMSTANCE HAS OCCURRED OTHER THAN A CHANGE SPECI-
50 FIED IN CLAUSES ONE THROUGH THREE OF SUBPARAGRAPH (I) OF THIS PARAGRAPH,
51 WHICH WOULD HAVE WARRANTED DENIAL OF THE APPLICATION.

52 (IV) UPON ACCEPTANCE AND APPROVAL OF PROOF OF FINANCIAL RESPONSIBILITY
53 UNDER THIS SECTION, THE DEPARTMENT SHALL ISSUE TO THE APPLICANT A
54 CERTIFICATE STATING THAT THE STATE'S FINANCIAL RESPONSIBILITY REQUIRE-
55 MENTS HAVE BEEN SATISFIED. THE CERTIFICATE MUST INCLUDE THE NAME OF THE

1 MAJOR FACILITY, VESSEL, OR PIPELINE FOR WHICH IT IS ISSUED AND THE EXPI-
2 RATION DATE OF THE CERTIFICATE.

3 S 2. The navigation law is amended by adding a new section 181-f to
4 read as follows:

5 S 181-F. RAILROAD FINANCIAL PREPAREDNESS. 1. THE DEPARTMENT SHALL
6 ANNUALLY REQUIRE A RAILROAD COMPANY THAT TRANSPORTS CRUDE OIL IN THE
7 STATE TO SUBMIT INFORMATION RELATING TO THE RAILROAD COMPANY'S ABILITY
8 TO PAY IN THE EVENT OF A DISCHARGE INVOLVING THE TRANSPORT OF CRUDE OIL.
9 THE INFORMATION SUBMITTED TO THE DEPARTMENT MUST INCLUDE A STATEMENT OF
10 WHETHER THE RAILROAD HAS THE ABILITY TO PAY FOR DISCHARGES RESULTING
11 FROM A REASONABLE WORST CASE DISCHARGE AS DETERMINED BY THE DEPARTMENT
12 PURSUANT TO RULES AND REGULATIONS. FOR THE PURPOSES OF THIS SECTION:

13 A. "CRUDE OIL" SHALL MEAN ANY NATURALLY OCCURRING HYDROCARBONS COMING
14 FROM THE EARTH THAT ARE LIQUID AT TWENTY-FIVE DEGREES CELSIUS AND ONE
15 ATMOSPHERE OF PRESSURE INCLUDING, BUT NOT LIMITED TO, CRUDE OIL, BITUMEN
16 AND DILUTED BITUMEN, SYNTHETIC CRUDE OIL, AND NATURAL GAS WELL CONDEN-
17 SATE.

18 B. "RAILROAD" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION
19 TWENTY-FOUR OF SECTION TWO OF THE TRANSPORTATION LAW.

20 C. "RAILROAD COMPANY" SHALL HAVE THE SAME MEANING AS PROVIDED IN
21 SUBDIVISION TWENTY-FIVE OF SECTION TWO OF THE TRANSPORTATION LAW.

22 D. "STREET RAILROAD" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDI-
23 VISION TWENTY-NINE OF SECTION TWO OF THE TRANSPORTATION LAW.

24 2. THE DEPARTMENT SHALL MAKE SUCH INFORMATION AVAILABLE ON ITS PUBLIC
25 WEBSITE NOT LATER THAN FEBRUARY FIRST OF EACH YEAR. IN ADDITION, THE
26 DEPARTMENT SHALL ALSO PROVIDE RECOMMENDATIONS TO THE LEGISLATURE ON HOW
27 TO ADDRESS ANY FINANCIAL DEFICIENCIES IDENTIFIED BY RAILROAD COMPANIES.

28 S 3. This act shall take effect on the one hundred twentieth day after
29 it shall have become a law.