

5751--A

2015-2016 Regular Sessions

I N S E N A T E

June 2, 2015

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 navigation law, as amended by chapter 584 of the laws of 1992 and subparagraphs (ii) and (iii) as amended by chapter 585 of the laws of 1992 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended and a new paragraph (f) is added to read as follows:
2 (e) (i) The owner or operator of a MAJOR FACILITY OR 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. A PERSON MAY NOT CAUSE OR PERMIT THE OPERATION OF A MAJOR FACILITY OR VESSEL IN THE STATE UNTIL THE PERSON HAS FURNISHED TO THE DEPARTMENT, AND THE DEPARTMENT HAS APPROVED SUCH EVIDENCE. 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.
3 (ii) [The commissioner in consultation with the superintendent of financial services 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 dollars, per incident, for each barrel of total petroleum storage capacity at the facility, subject to a maximum of one million dollars per incident per facility in an aggregate not to exceed two million dollars per facility per year; provided, however, that if the

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

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

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

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

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

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

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

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

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

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

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

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

54 (IV) UPON ACCEPTANCE AND APPROVAL OF PROOF OF FINANCIAL RESPONSIBILITY
55 UNDER THIS SECTION, THE DEPARTMENT SHALL ISSUE TO THE APPLICANT A
56 CERTIFICATE STATING THAT THE STATE'S FINANCIAL RESPONSIBILITY REQUIRE-

MENTS HAVE BEEN SATISFIED. THE CERTIFICATE MUST INCLUDE THE NAME OF THE MAJOR FACILITY, VESSEL, OR PIPELINE FOR WHICH IT IS ISSUED AND THE EXPIRATION DATE OF THE CERTIFICATE.

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

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

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

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

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

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

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

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