STATE OF NEW YORK

9213--A

IN ASSEMBLY

February 16, 2024

Introduced by M. of A. FAHY, DINOWITZ, WEPRIN, GLICK, COLTON, LUCAS, SIMON, SHIMSKY, SLATER, BURDICK, FORREST, THIELE, EPSTEIN, L. ROSENTHAL -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- 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:

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:

(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. **A person may not cause or permit the operation of a 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.

(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 **plus an annual inflation adjustment, determined by the commissioner from the increase in the consumer price index in the one-year period ending on the March thirty-first prior to such inflation adjustment effective on the ensuing September first**, per incident, for

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

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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 **plus an annual inflation adjustment, determined by the commissioner from the increase in the consumer price index in the one-year period ending on the March thirty-first prior to such inflation adjustment effective on the ensuing September first,** 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 financial services 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 financial services: 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.

(f) (i) Acceptance of proof of financial responsibility shall expire:

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility; or

(3) on the expiration or cancellation of the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility.

(ii) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least thirty days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least thirty days before the date of expiration.

(iii) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that:

(1) acceptance was procured by fraud or misrepresentation; or

(2) a change of circumstance has occurred other than a change specified in clauses one through three of subparagraph (i) of this paragraph, which would have warranted denial of the application.

(iv) Upon acceptance and approval of proof of financial responsibility under this section, the department shall issue to the applicant a certificate stating that the state's financial responsibility requirements 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.

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

§ 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.

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