

# STATE OF NEW YORK

8703--A

Cal. No. 1215

## IN SENATE

March 1, 2024

Introduced by Sens. HINCHEY, KRUEGER, MAY, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 vessel shall establish and maintain  
7 with the department evidence of financial responsibility sufficient to  
8 meet the amount of liability established pursuant to paragraph (a) of  
9 this subdivision. A person may not cause or permit the operation of a  
10 vessel in the state until the person has furnished to the department,  
11 and the department has approved such evidence. The owner or operator of  
12 any vessel which demonstrates financial responsibility pursuant to the  
13 requirements of the Federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et  
14 seq.), shall be deemed to have demonstrated financial responsibility in  
15 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 plus an annual inflation adjustment, determined by  
21 the commissioner from the increase in the consumer price index in the  
22 one-year period ending on the March thirty-first prior to such inflation  
23 adjustment effective on the ensuing September first, per incident, for  
24 each barrel of total petroleum storage capacity at the facility, subject

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

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1 to a maximum of one million dollars per incident per facility in an  
2 aggregate not to exceed two million dollars plus an annual inflation  
3 adjustment, determined by the commissioner from the increase in the  
4 consumer price index in the one-year period ending on the March thirty-  
5 first prior to such inflation adjustment effective on the ensuing  
6 September first, per facility per year; provided, however, that if the  
7 owner or operator establishes to the satisfaction of the commissioner  
8 that a lesser amount will be sufficient to protect the environment and  
9 public health, safety and welfare, the commissioner shall accept  
10 evidence of financial responsibility in such lesser amount. In determin-  
11 ing the sufficiency of the amount of financial responsibility required  
12 under this section, the commissioner and the superintendent of financial  
13 services shall take into consideration facility size, storage capacity,  
14 throughput, proximity to environmentally sensitive areas, type of petro-  
15 leum handled, and other factors relevant to the risks posed by the class  
16 or category of facility, as well as the availability and affordability  
17 of pollution liability insurance. Any regulations promulgated pursuant  
18 to this subparagraph shall not take effect until forty-eight months  
19 after the effective date of this section.

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

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

38 (f) (i) Acceptance of proof of financial responsibility shall expire:  
39 (1) one year from its issuance for self-insurance;  
40 (2) on the effective date of a change in the surety bond, guarantee,  
41 insurance agreement, letter of credit, or other proof of financial  
42 responsibility; or

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

46 (ii) The person whose proof of financial responsibility is accepted by  
47 the department under this section shall notify the department at least  
48 thirty days before the effective date of a change, expiration or cancel-  
49 lation in the surety bond, guarantee, insurance agreement, letter of  
50 credit, or other proof of financial responsibility. Application for  
51 renewal of acceptance of proof of financial responsibility under this  
52 section must be filed at least thirty days before the date of expira-  
53 tion.

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

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

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

4 (iv) Upon acceptance and approval of proof of financial responsibility  
5 under this section, the department shall issue to the applicant a  
6 certificate stating that the state's financial responsibility require-  
7 ments have been satisfied. The certificate must include the name of the  
8 major facility, vessel, or pipeline for which it is issued and the expi-  
9 ration date of the certificate.

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

12 § 181-f. Railroad financial preparedness. 1. The department shall  
13 annually require a railroad company that transports crude oil in the  
14 state to submit information relating to the railroad company's ability  
15 to pay in the event of a discharge involving the transport of crude oil.  
16 The information submitted to the department must include a statement of  
17 whether the railroad has the ability to pay for discharges resulting  
18 from a reasonable worst case discharge as determined by the department  
19 pursuant to rules and regulations. For the purposes of this section:

20 a. "Crude oil" shall mean any naturally occurring hydrocarbons coming  
21 from the earth that are liquid at twenty-five degrees Celsius and one  
22 atmosphere of pressure including, but not limited to, crude oil, bitumen  
23 and diluted bitumen, synthetic crude oil, and natural gas well conden-  
24 sate.

25 b. "Railroad" shall have the same meaning as provided in subdivision  
26 twenty-four of section two of the transportation law.

27 c. "Railroad company" shall have the same meaning as provided in  
28 subdivision twenty-five of section two of the transportation law.

29 d. "Street railroad" shall have the same meaning as provided in subdi-  
30 vision twenty-nine of section two of the transportation law.

31 2. The department shall make such information available on its public  
32 website not later than February first of each year. In addition, the  
33 department shall also provide recommendations to the legislature on how  
34 to address any financial deficiencies identified by railroad companies.

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