The Legislature of Rockland County

HARRIET D. CORNELL
Legislator – District 10
Chair, Environmental Committee

AGENDA
ENVIRONMENTAL COMMITTEE
WEDNESDAY, January 27, 2016
6:15 PM

ROLL CALL

ADOPTION OF THE MINUTES OF THE DECEMBER 8, 2015 MEETING

1. REF. #5426 - URGING THE NEW YORK STATE SENATE AND ASSEMBLY TO PASS BILLS S. 5751-A and A. 7625, WHICH WOULD AMEND THE NAVIGATION LAW TO REQUIRE THE OWNER OR OPERATOR OF A MAJOR VESSEL TO PROVIDE THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION WITH EVIDENCE OF FINANCIAL RESPONSIBILITY SUFFICIENT TO COVER CLEANUP AND DECONTAMINATION COSTS ASSOCIATED WITH A POTENTIAL SPILL OR ACCIDENT
(HON. HARRIET D. CORNELL, LEGISLATURE)

2. REF. #1021 - DISCUSSION ITEM – INFORMATIONAL DISCUSSION ON THE PILGRIM PIPELINE
(HON. HARRIET D. CORNELL, LEGISLATURE)

DRAFT

Introduced by: Referral No.

,2016

Hon. Harriet D. Cornell, Sponsor

RESOLUTION NO. OF 2016
URGING THE NEW YORK STATE SENATE AND ASSEMBLY TO PASS BILLS S.5751-A and A.7625, WHICH WOULD AMEND THE NAVIGATION LAW TO REQUIRE THE OWNER OR OPERATOR OF A MAJOR VESSEL TO PROVIDE THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION WITH EVIDENCE OF FINANCIAL RESPONSIBILITY SUFFICIENT TO COVER CLEANUP AND DECONTAMINATION COSTS ASSOCIATED WITH A POTENTIAL SPILL OR ACCIDENT

WHEREAS, oil spills have catastrophic health, environmental, safety and financial impacts on communities; and

WHEREAS, for example, the train carrying Bakken crude oil that derailed and exploded in the Canadian town of Lac Megantic that killed 47 people and destroyed a number of buildings led to costs for rebuilding and decontamination that have been estimated at $2.9 billion; and

WHEREAS, the company determined to be responsible for the Lac Megantic disaster, Montreal Maine and Atlantic Railway, had only $25 million worth of insurance and subsequently declared bankruptcy; and

WHEREAS, taxpayers were burdened with the costs of rebuilding and decontamination following the Lac Megantic disaster; and

WHEREAS, in New York there has been a significant influx of crude oil transported via rail along the Hudson River and by barge on the river, placing our community at risk of a catastrophic oil disaster; and

WHEREAS, there is a continuing concern that taxpayers would bear the costs of rebuilding and cleanup that that are not covered by the transporters or their insurers; and

WHEREAS, the New York State Senate in S.5751 and the New York State Assembly in A.5751-A propose a certain amendment to Paragraph (e) of subdivision 3 of section 181 of the Navigation Law, 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; and

WHEREAS, the said amendment would require that the owner or operator of a major facility or a vessel shall establish and maintain with the New York State Department of Environmental Conservation evidence of financial responsibility sufficient to meet an amount of liability established pursuant to the Navigation Law; and

WHEREAS, the said amendment would require a major facility or vessel owner or operator to demonstrate the financial means to cover all cleanup and decontamination costs associated with a potential spill or accident; and

WHEREAS, the said amendment also requires railroads to provide surety information to the New York State Department of Environmental Conservation; and

WHEREAS, the Environmental Committee has met, considered and by a _____ vote, approved this resolution; now therefore be it

RESOLVED, The Rockland County Legislature hereby urges the New York State Senate and Assembly to Pass bills S.5751-A and A.7625, which would amend the Navigation Law to require the owner or operator of a major vessel to provide the Department of Environmental Conservation with evidence of financial responsibility sufficient to cover cleanup and decontamination costs associated with a potential spill or accident; and be it further

RESOLVED, that the Clerk to the Legislature be and is hereby authorized and directed to send a copy of this resolution to the Hon. Andrew Cuomo, Governor of the State of New York; Hon. David Carlucci and Hon. William J. Larkin Jr., Members of the New York State Senate; Hon. Kenneth P. Zebrowski, Hon Ellen C. Jaffee, Hon. James G. Skoufis, and Hon. Karl A. Brabanec, Members of the New York State Assembly; the President Pro Tem of the New York State Senate; the Speaker of the New York State Assembly; the Majority and Minority Leaders of the New York State Senate and Assembly; Basil Seggos, Acting Commissioner of the New York State Department of Environmental Conservation; and to such other persons as the Clerk, in his discretion, may deem proper in order to effectuate the purpose of this Resolution.

JB
LG-2016-09
1/20/16
1/25/16

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

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 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

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

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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)] (III) 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 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.