

**PMSA'S OPPOSITION TO PSP'S
MOTION TO COMPEL DISCOVERY**

**Exh. A
TP-220513
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March 17, 2023

VIA EMAIL

Michael E. Haglund
Haglund Kelley LLP
2177 SW Broadway
Portland, OR 97201

**Re: *Wash. Utilities and Transportation Comm'n v. Puget Sound Pilots*
Docket TP-220513
PMSA Responses to PSP's Data Requests Nos. 1-9**

Dear Mr. Haglund:

Enclosed please find Pacific Merchant Shipping Association's Responses to Puget Sound Pilots' Data Request Nos. 1-9 and document production PMSA_00001 to PMSA_00016.

Thank you very much.

Sincerely,



Michelle DeLappe

Enclosure

cc: All parties (via electronic service)

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143637093.1

**PMSA'S OPPOSITION TO PSP'S
MOTION TO COMPEL DISCOVERY**

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES TO PUGET SOUND PILOTS DATA REQUEST NOS. 1-9

DATE PREPARED: March 17, 2023	WITNESS: Capt. Michael Moore
DOCKET: TP-220513	RESPONDER: Capt. Michael Moore,
REQUESTER: Puget Sound Pilots	Pacific Merchant Shipping Assn.

PSP DATA REQUEST NO. 1:

Provide lists of the members of the Pacific Merchant Shipping Association ("PMSA") in the calendar years 2019, 2020, 2021, 2022 and as of the first quarter of 2023.

PMSA RESPONSE TO PSP DATA REQUEST NO. 1:

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged, as further described below.

This Data Request is untimely for addressing issues having already been resolved and waived by PSP in the consideration of this filing. The basis for any inquiry regarding PMSA's membership is with respect to the establishment of PMSA's standing as a "person with a substantial interest" to participate in this proceeding as "an organization representing... vessel operators" pursuant to RCW 81.116.010, WAC 480-160-020. The Commission has already determined that PMSA has such standing as a person with a substantial interest and approved PMSA intervention in this matter. Order 03, ¶¶ 4-5 (August 26, 2022). PSP did not raise any objection to this finding, and any such interest it has in such line of inquiry has therefore been waived.

This Data Request is not reasonably calculated to lead to admissible evidence. Aside from questions of PMSA's standing, the composition of PMSA and the scope of its membership is not at issue in any of the testimony or proposals of PSP, or the response testimony of PMSA, TOTE, or UTC Staff. No items in the Petition or the proposed tariff are conditioned on PMSA membership, no vessel or PSP customer is advantaged or disadvantaged on the basis of PMSA membership. And, even if PSP proposed such provisions, they would likely be facially unlawful per se and not useful to setting a tariff.

This Data Request seeks information that is constitutionally privileged from disclosure during discovery. PMSA and its membership exercise their First Amendment constitutional rights to association and to petition the government by their appearance in this matter. PMSA asserts that there is some probability that this requested disclosure will harm its and its members protected rights. PSP's request for PMSA's membership list is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is

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no basis for a finding that any other source of relevant information has been exhausted in this process.

The First Amendment freedom to associate protects private associations from unnecessary discovery. *See N.A.A.C.P. v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). Under Washington state law this right is protected during discovery through a series of limitations on a requesting party:

In the discovery context, Washington has established a three-part test for First Amendment challenges based on associational privilege. First, the party asserting the right is only required to show some probability that the requested disclosure will harm its First Amendment rights. *Snedigar v. Hoddersen*, 114 Wash.2d 153, 158, 786 P.2d 781 (1990). Once this threshold is met, the burden shifts to the party requesting discovery to establish (1) the relevance and materiality of the information sought, and (2) that reasonable efforts to obtain the information by other means has been unsuccessful. *Id.* at 164, 786 P.2d 781. Finally, even if both of these required showings are made, the court must still balance the claim of privilege against the need for disclosure to determine which is the strongest. *Id.* at 166, 786 P.2d 781.

Eugster v. City of Spokane, 121 Wn. App. 799, 807, 91 P.3d 117 (2004).

As specified in *Right-Price Recreation LLC v. Connells Prairie Cmty. Council*, 105 Wn. App. 813, 21 P.3d 1157 (2001), the law favors non-disclosure and discovery is presumed as a matter of law to have the probability to be harmful when the discovery is of a type of class of requests that are suspect:

We conclude that the ***discovery order here fits within the class of cases where we can assume a potential chilling effect on the group's First Amendment rights. Of particular concern is the scope of the discovery request. Right-Price asks for membership lists, minutes of meetings, and all financial records.*** In addition, Right-Price seeks virtually every document or piece of correspondence the groups generated. As in *Pollard*, we would be naive not to recognize that disclosure of this information would chill the members' First Amendment rights. ***When advocacy groups are required to disclose the identity of their members and the details of all of their activities, the freedom of members to promote their views suffers.*** Privacy and anonymity are often essential to the free exercise of First Amendment rights. *See Talley*, 362 U.S. at 64-65, 80 S.Ct. 536.

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Id., at 824-25. (Emphasis added.)

In addition, to further protect an Association's fundamental rights, the standard for the establishment of relevance is a much higher hurdle than in a typical discovery request:

To establish relevance, *the party seeking discovery must specifically describe the information sought and its importance: "[m]ere speculation that information might be useful will not suffice; litigants seeking to compel discovery must describe the information they hope to obtain and its importance to their case with a reasonable degree of specificity."* *Snedigar*, 114 Wash.2d at 165, 786 P.2d 781 (quoting *Black Panther Party v. Smith*, 661 F.2d 1243, 1268 (D.C.Cir.1981), *vacated by* 458 U.S. 1118, 102 S.Ct. 3505, 73 L.Ed.2d 1381 (1982)). To meet the second requirement, the party seeking discovery must make a "reasonably explicit" showing that every reasonable alternative source of information has been exhausted before the court will order disclosure. *Snedigar*, 114 Wash.2d at 165, 786 P.2d 781.

Id., at 822. (Emphasis added.)

PMSA asserts all rights and privileges hereto and PSP has provided none of the required bases to overcome these presumptions in the law which favor non-disclosure.

Subject to and without waiving said objections or waiving any asserted privileges, PMSA further answers as follows:

PMSA publishes a partial and representative list of some of its membership for the public on its website at <https://www.pmsaship.com/about/members/> which is updated from time to time. This information is, was, and remains available to PSP without a data request, however, for PSP's convenience a copy of this representative membership list from the PMSA website as of March 10, 2023, produced as PMSA_00001 to PMSA_00007.

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DATE PREPARED: March 17, 2023

DOCKET: TP-220513

REQUESTER: Puget Sound Pilots

WITNESS: Capt. Michael Moore

RESPONDER: Capt. Michael Moore,

Pacific Merchant Shipping Assn.

PSP DATA REQUEST NO. 2:

Please describe the nature of the charges by PMSA to vessels calling in Puget Sound. Specifically, address whether the charges are based upon a flat rate, whether there is any charge based on vessel size, whether the charge applies to a round trip voyage to and from Puget Sound or differentiates between inbound and outbound transits and/or harbor moves.

PMSA RESPONSE TO PSP DATA REQUEST NO. 2:

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged. These objections are lodged on the same basis as explained in response to PSP DR No. 1.

PMSA asserts that there is some probability that this requested disclosure will harm its' and its members' protected rights. PSP's request for information regarding PMSA's internal financial records is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is no basis for a finding that any other source of relevant information has been exhausted in this process.

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REQUESTER: Puget Sound Pilots	Pacific Merchant Shipping Assn.

PSP DATA REQUEST NO. 3:

Does PMSA charge its members any annual membership fee? If so, what are those fees?

PMSA RESPONSE TO PSP DATA REQUEST NO. 3:

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged. These objections are lodged on the same basis as explain in response to PSP DR No. 1.

PMSA asserts that there is some probability that this requested disclosure will harm its' and its members' protected rights. PSP's request for information regarding PMSA's internal financial records is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is no basis for a finding that any other source of relevant information has been exhausted in this process.

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PSP DATA REQUEST NO. 4:

In calendar years 2019, 2020, 2021 and 2022, what was PMSA's annual budget?

PMSA RESPONSE TO PSP DATA REQUEST NO. 4:

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged. These objections are lodged on the same basis as explained in response to PSP DR No. 1.

PMSA asserts that there is some probability that this requested disclosure will harm its' and its members' protected rights. PSP's request for information regarding PMSA's internal financial records is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is no basis for a finding that any other source of relevant information has been exhausted in this process.

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PSP DATA REQUEST NO. 5:

For each of the calendar years 2010 through 2022 and the first quarter of 2023, provide a list of the charges or rate schedule utilized to bill PMSA members for membership fees and to bill oceangoing vessels for PMSA charges on a per voyage or transit basis.

PMSA RESPONSE TO PSP DATA REQUEST NO. 5:

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged. These objections are lodged on the same basis as explained in response to PSP DR No. 1.

PMSA asserts that there is some probability that this requested disclosure will harm its' and its members' protected rights. PSP's request for information regarding PMSA's internal financial records is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is no basis for a finding that any other source of relevant information has been exhausted in this process.

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PSP DATA REQUEST NO. 6:

How does PMSA collect its membership fees? Provide a description of the process from beginning to end.

PMSA RESPONSE TO PSP DATA REQUEST NO. 6:

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged. These objections are lodged on the same basis as explained in response to PSP DR No. 1.

PMSA asserts that there is some probability that this requested disclosure will harm its' and its members' protected rights. PSP's request for information regarding PMSA's internal financial records is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is no basis for a finding that any other source of relevant information has been exhausted in this process.

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WITNESS: Capt. Michael Moore

RESPONDER: Capt. Michael Moore,

Pacific Merchant Shipping Assn.

PSP DATA REQUEST NO. 7:

How does PMSA collect the per vessel charges for vessels transiting to or from Puget Sound? Provide a description of the process from beginning to end.

PMSA RESPONSE TO PSP DATA REQUEST NO. 7:

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged. These objections are lodged on the same basis as explained in response to PSP DR No. 1.

PMSA asserts that there is some probability that this requested disclosure will harm its' and its members' protected rights. PSP's request for information regarding PMSA's internal financial records is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is no basis for a finding that any other source of relevant information has been exhausted in this process.

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DOCKET: TP-220513	RESPONDER: Capt. Michael Moore,
REQUESTER: Puget Sound Pilots	Pacific Merchant Shipping Assn.

PSP DATA REQUEST NO. 8:

Provide a representative sample of the PMSA invoices issued to PMSA members and to vessels calling Puget Sound ports utilized in 2019, 2020, 2021 and 2022.

PMSA RESPONSE TO PSP DATA REQUEST NO. 8:

PMSA objects to this Data Request on the basis that it is untimely as it related only to issues already resolved and waived by PSP, not reasonably calculated to lead to admissible evidence, and privileged. These objections are lodged on the same basis as explained in response to PSP DR No. 1.

PMSA asserts that there is some probability that this requested disclosure will harm its' and its members' protected rights. PSP's request for information regarding PMSA's internal financial records is not only of the "class of cases" which courts can "assume" are of "particular concern," but has no relevance to this rate case. Moreover, PSP does not attempt to provide a description of the basis of why the information is sought in the first instance or of its potential relevance, and there is no basis for a finding that any other source of relevant information has been exhausted in this process.

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PACIFIC MERCHANT SHIPPING ASSOCIATION
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REQUESTER: Puget Sound Pilots	Pacific Merchant Shipping Assn.

PSP DATA REQUEST NO. 9:

Did the PMSA or any of its members submit written or oral testimony on the oil spill financial responsibility bills in the Washington Legislature that ultimately were enacted as RCW 88.40.020 in 2022? If so, provide copies of any written testimony or written submission of any kind and, if the testimony was oral, identify the date, time, place and person so testifying.

PMSA RESPONSE TO PSP DATA REQUEST NO. 9:

To the best of PMSA's knowledge, there was only one bill in 2022 which was enacted as RCW 88.40.020, HB 1691. PMSA did not submit written or oral testimony regarding HB 1691.

The records regarding who provided testimony in support or opposition to any bill in the Washington State Legislature is available online, including for HB 1691 at <https://app.leg.wa.gov/billssummary?BillNumber=1691&Year=2021&Initiative=false>

This information is, was, and remains available to PSP without a data request, however, for PSP's convenience PMSA produces here a copy of the HB 1691 "House Bill Report" as PMSA_00008 to PMSA_00016. The HB 1691 House Bill Report demonstrates that neither PMSA nor PSP testified in any capacity, support or opposition, to this legislation.



Member List



APM TERMINALS



PMSA'S OPPOSITION TO PSP'S
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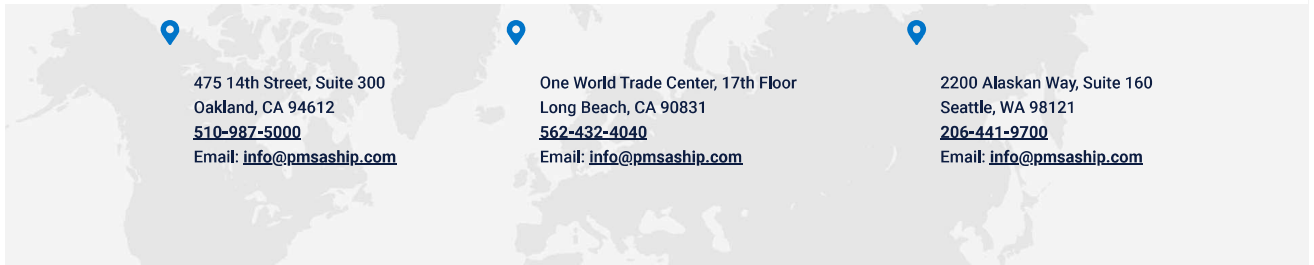


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**PMSA'S OPPOSITION TO PSP'S
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HOUSE BILL REPORT
HB 1691**

As Reported by House Committee On:
Environment & Energy
Appropriations

Title: An act relating to financial responsibility requirements related to oil spills.

Brief Description: Concerning financial responsibility requirements related to oil spills.

Sponsors: Representatives Gregerson, Lekanoff, Fitzgibbon, Ramel, Sells, Bateman, Duerr, Valdez, Davis, Fey, Macri, Peterson, Senn, Simmons, Pollet and Kloba.

Brief History:

Committee Activity:

Environment & Energy: 1/13/22, 1/21/22 [DPS];
Appropriations: 1/31/22, 2/3/22 [DP2S(w/o sub ENVI)].

Brief Summary of Second Substitute Bill

- Requires the owners or operators of vessels subject to financial responsibility demonstration requirements under existing law to obtain a certificate of financial responsibility (COFR) from the Department of Ecology (Ecology), and provides that COFRs may not have a term greater than two years and are conclusive evidence that the COFR holder is the party responsible for a vessel or facility for purposes of determining liability under state water pollution laws.
- Adds federally recognized Indian tribes to the list of entities that owners or operators of stationary oil facilities must be able to compensate in the event of a reasonable worst-case oil spill, in order to demonstrate required financial responsibility to Ecology.
- Requires Ecology rules related to vessel and facility demonstrations of financial responsibility through self-insurance to meet certain standards, and adds certificates of deposit, letters of credit, and protection and indemnity club membership as acceptable options for vessels and

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

facilities to demonstrate financial responsibility to Ecology.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Berry, Fey, Goehner, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Without recommendation. Signed by 2 members: Representatives Abbarno and Boehnke.

Staff: Jacob Lipson (786-7196).

Background:

Oil Spill Contingency Planning Requirements and Spill Penalties.

The Department of Ecology (Ecology) administers an oil spill preparedness, prevention, and response program. Among other laws implemented by Ecology's oil spills program, operators of vessels and facilities, including oil refineries, terminals, pipelines, and railroads that are involved in the bulk transfer of oil, must put in place oil spill contingency plans that outline containment and remediation responses to potential oil spills. The contingency plans of facilities and vessels must be designed to be capable of removing oil and minimizing damage to the environment from a worst-case spill of oil. For facilities, a worst-case spill is defined as the largest foreseeable spill into state waters from the facility in adverse weather conditions; for vessels, a worst-case spill is a spill of the entire cargo and fuel of the vessel in adverse weather conditions.

Under state water pollution control laws, oil spills in state waters are subject to civil penalties of up to \$10,000 per day per violation, plus additional criminal penalties for willful violations. Parties responsible for oil spills must also pay natural resource damages associated with the spill according to either a prescribed schedule or based on an assessment of the damages to natural resources. Beyond environmental penalties and natural resource damages, strict liability is established for damages to public or private property due to oil spills, including loss of income, the means of producing revenue, or economic benefits resulting from an injury due to loss of real property or natural resources.

Financial Assurance Requirements for Facilities and Vessels.

Facilities such as oil refineries and terminals must demonstrate to Ecology the financial ability to compensate the state and local governments for damages from a reasonable worst-case spill. In calculating this amount, Ecology is directed to consider matters including the amount of oil that could be spilled from the facility into navigable waters, the frequency of

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facility operations, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility.

Likewise, certain vessels including barges and tank vessels that use state waters or ports must also document their financial ability to pay for oil spill removal costs, natural-resource damages, and related expenses. Depending on the type and size of vessel, and whether the vessel transports hazardous substances or oil, and whether it does so in bulk as cargo or as fuel for the vessel, the financial assurance that a vessel owner or operator must demonstrate to Ecology ranges from five hundred thousand dollars to one billion dollars. The hazardous substances subject to financial responsibility requirements are substances identified in a United States Environmental Protection Agency rule adopted in 2003.

Financial responsibility must be demonstrated to Ecology by providing evidence of insurance, surety bonds, qualification as a self-insurer, or other evidence of financial responsibility. The owner or operator of a vessel may also file a certificate with Ecology indicating compliance with federal or another states' financial responsibility demonstration requirements if those requirements require the same or greater financial responsibility to be demonstrated. Financial responsibility requirements do not apply to vessels or facilities owned or operated by the federal government, state government, or local governments, or to certain oil spill response barges.

Ecology has adopted rules to implement the financial assurance requirements applicable to certain vessels, but has not adopted rules to implement the financial assurance requirements applicable to facilities. The 2021-2023 Operating Budget included a proviso requiring Ecology to adopt financial assurance rules applicable to facilities.

Federal and Other State Oil Spill Financial Assurance Provisions.

Under the federal Oil Pollution Act of 1990, the United States Coast Guard administers a program that requires certain vessels and facilities that pose a substantial threat of oil discharge to obtain a certificate of financial responsibility after demonstrating the ability to meet a maximum amount of liability specified in federal law. Under state law, Ecology is authorized to enforce these federal financial responsibility requirements.

Other states, including California and Alaska, also require certain vessels and facilities to obtain certificates of financial responsibility after demonstrating the ability to pay specified amounts of damages in the event of an oil spill.

Summary of Substitute Bill:

Certificates of Financial Responsibility.

The owner or operator of a vessel or facility required to document financial responsibility to the Department of Ecology (Ecology) must do so by obtaining a certificate of financial responsibility (COFR) from Ecology, or by relying upon an equivalent certificate issued by

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another state or the federal government. A COFR:

- is a written acknowledgment by Ecology that the owner or operator of a facility or vessel, or the owner of the oil, has demonstrated to Ecology's satisfaction that the entity has a financial ability to pay for costs and damages caused by an oil spill;
- is conclusive evidence that the person holding it is the party responsible for a specified vessel, facility or oil for purposes of determining liability under state water pollution control laws;
- may not have a term greater than two years; and
- may cover multiple vessels or facilities owned or operated by the same person, in which case the terms of the COFR are based on the vessel or facility that represents the greatest financial risk in the event of a spill.

Ecology must reevaluate the validity of a COFR upon being notified of an oil spill, discharge, or other potential liability by the owner or operator of a vessel or facility. Ecology may suspend or revoke a COFR if it determines that the COFR holder is likely to no longer have the financial resources to pay damages for the spill, discharge, or other liability and still have remaining resources sufficient to meet the financial responsibility demonstration requirements. If a COFR applies to multiple vessels or facilities, and a spill occurs for which Ecology determines the COFR holder may be liable in an amount exceeding 5 percent of the amount of the COFR, then the COFR immediately is rendered inapplicable to any vessel or facility not associated with the spill. If a COFR is rendered inapplicable, suspended, or revoked, the owner or operator of the vessel or facility may receive a new COFR upon demonstrating an ability to meet the financial responsibility requirements in addition to paying all reasonably estimated anticipated damages arising from the spill.

Calculations of the Amount of Financial Responsibility Demonstrated by Oil Facilities.

Oil facilities must demonstrate to Ecology financial responsibility sufficient to compensate damages to affected federally recognized Indian tribes, in addition to the state, counties, and cities. Ecology must adopt a rule to calculate the damages that might occur from a reasonable worst-case spill from a facility by considering the worst-case amount of oil that could be spilled, as calculated in the applicant's oil spill contingency plan, in addition to the current criteria that Ecology must consider.

Other.

In order to maintain consistency with federal regulations, Ecology may update, by rule, the hazardous substances whose transport by vessel triggers financial responsibility demonstration requirements.

Certificates of deposit, letters of credit, and protection and indemnity club membership are added as acceptable options for vessels and facilities to demonstrate financial responsibility to Ecology. Ecology rules allowing self-insurance must require an applicant to thoroughly demonstrate the security of the applicant's financial position, and must be no less protective than the qualification standards for self-insurance in other jurisdictions. Ecology may

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require a self-insurer to demonstrate a greater monetary amount of financial responsibility than applicants relying on an alternative method of self-insurance

Various technical corrections and clarifications are included.

A severability clause is included.

Substitute Bill Compared to Original Bill:

The substitute bill:

- extends the maximum term of a certificate of responsibility (COFR) to two years;
- clarifies that an equivalent COFR issued by another state may be used in lieu of a Washington COFR, in addition to being usable as a method of obtaining a Washington COFR;
- restores the authorization, but does not require, that the Department of Ecology (Ecology) enforce federal financial assurance requirements established under the 1990 Oil Pollution Act;
- clarifies that a COFR is conclusive evidence that the person holding the certificate is the responsible party for a vessel, facility or oil for purposes of determining liability under state water quality laws that establish penalties and damages for oil spills;
- directs that Ecology must adopt a rule for the demonstration of financial responsibility by oil facilities that considers the worst case amount of oil that could be spilled, as measured in the applicant's oil spill contingency plan, in addition to the criteria required in current law (the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility); and
- authorizes facilities to demonstrate financial responsibility through self-insurance, but: (1) requires Ecology rules allowing self-insurance to require an applicant to thoroughly demonstrate the security of the applicant's financial position; (2) requires Ecology rules to be no less protective than the qualification standards for self-insurance in other jurisdictions; and (3) authorizes Ecology to require a self-insurer to demonstrate a greater monetary amount of financial responsibility than applicants relying on an alternative method of self-insurance.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

**PMSA'S OPPOSITION TO PSP'S
MOTION TO COMPEL DISCOVERY**

(In support) Financial responsibility laws were first enacted decades ago, and the process of trying to modernize them began in the Legislature years ago. Oil transportation has gotten safer as a result of the state's new regulatory requirements added over the past decade, but oil financial responsibility program implementation has remained a high-priority unfunded program to reduce oil spill risks. The goal of financial responsibility laws is to ensure that companies responsible for oil vessels and facilities are able to pay for damages and cleanup costs in the event that a spill occurs. Oil spills inevitably happen because oil transportation is an inherently risky business. This bill will ensure that state and federal taxpayers do not have to bear the costs of a big oil spill when one occurs, and that spill recovery actions will not be slowed by a lack of available cleanup funds. A foreseeably large oil spill could result in costs and damages of hundreds of millions or billions of dollars. Volumes of oil arriving in Washington by ship, according to Ecology's quarterly reports, have been increasing significantly since late 2020, demonstrating the increasing likelihood of a spill. Self-insurance is not a viable form of financial responsibility because companies can shuffle assets through bankruptcies, mergers, and acquisitions. Other types of fossil fuel businesses, such as coal companies in recent years, have been able to evade environmental liabilities through the bankruptcy process. This proposal is a first step towards broader risk bonding requirements on companies involved in the fossil fuel supply chain that make them bear the externalized costs of their activities, including the costs of climate adaptation.

(Opposed) The bill increases regulatory complexity and costs for ship operators. Washington does not need a stand-alone program to ensure financial responsibility and has long relied on federal certificates of financial responsibility as sufficient. The shipping industry has operated safely and with few incidents without this program in place. The Department of Ecology (Ecology) does not have the staff or skills to manage a financial assurance certificate program. Establishing a state certificate program will create a regulatory patchwork where vessel operators need to obtain as many as three different certificates to operate on the West Coast. The California program upon which this proposal is based is challenging for vessel owners and operators, as certificates expire after a year, and government regulators do not always act on renewal applications in a timely manner. The reasonable per-barrel costs that oil facilities must demonstrate financial responsibility for should be given a more specific cost range.

(Other) Washington's oil spills program is widely considered to be the best in the nation. The option for facilities to self-insure to meet financial responsibility requirements should be assured. The proposed new standard basing financial responsibility demonstration amounts on a reasonable per-barrel cleanup cost should be amended to be less ambiguous, in order to facilitate obtaining financial products that would ensure satisfaction of that requirement. The director of Ecology should not have a blanket directive to revoke a facility or vessel's certificate in the event of the spill, which could lead to hasty decision-making based on perceptions. Instead, Ecology should re-examine financial information carefully in the event of a spill before deciding whether to revoke a certificate.

Persons Testifying: (In support) Representative Mia Gregerson, prime sponsor; Laura

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Feinstein, Sightline Institute; John Talberth; Jase Brooks, Department of Ecology; Lovel Pratt, Friends of the San Juans; and David Perk, 350 Seattle.

(Opposed) Amber Carter, Columbia River Steamship Operators Association; and Peter Godlewski.

(Other) Tom Wolf, BP America; and Greg Hanon, Communico.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 24 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; MacEwen, Assistant Ranking Minority Member; Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 7 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Boehnke, Chandler, Harris, Hoff and Jacobsen.

Minority Report: Without recommendation. Signed by 1 member: Representative Corry, Assistant Ranking Minority Member.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment & Energy:

The second substitute bill makes the following changes:

- clarifies that the requirement that vessels obtain a certificate of financial responsibility (COFR) does not apply until a date specified in rules to be adopted by the Department of Ecology (Ecology);
- requires a certificate holder to notify Ecology in the event of a spill in another jurisdiction for which it may be liable and for which damages may exceed 5 percent of the total amount reflected in the COFR;
- requires Ecology to reevaluate a COFR upon being notified of a spill in Washington or a spill in another jurisdiction that may exceed 5 percent of the amount of the COFR, but eliminates the requirement that a COFR be immediately rendered inapplicable in the event of a spill that exceeds 5 percent of the amount of the COFR;
- provides that if Ecology determines that a COFR holder no longer has financial resources to pay both damages from a spill and meet the state's financial responsibility demonstration requirements, Ecology's determination to suspend or

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revoke the COFR is effective 10 days from making that determination;

- requires Ecology to expeditiously review applications for a new COFR from owners or operators whose certificates have been revoked, and authorizes Ecology to issue temporary COFRs; and
- authorizes owners or operators of multiple vessels or facilities to either obtain a single COFR for all of their vessels and facilities or separate COFRs covering subsets of their vessels and facilities.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The financial instruments in this bill would protect the public from expensive oil spills. Oil tankers carry a large amount of oil and make a lot of trips, and Washington has seen multiple oil spills. Loading and transportation of oil presents risks, and the financial responsibility should be put with the oil industry, where it belongs. Vessel traffic has increased, and studies that have modeled the impacts and costs of oil spills show that it could cost a lot. The bill would require vessel and facility owners to compensate tribes in addition to state and local governments. The amendment in the policy committee to allow self-insurance is concerning, because the state must be assured that oil vessels and facilities will cover the costs of a spill, and more financial health monitoring will be required.

(Opposed) Canceling coverage for vessels not directly associated with an oil spill could have devastating effects on the supply chain. The certification process in this bill is very intensive compared to the current policy for requiring vessels to have documentation of financial responsibility. The fiscal note estimates that the Department of Ecology (Ecology) will need two years for rulemaking, which creates a period of noncompliance after the bill goes into effect. Senate Bill 5747 is preferable to this bill.

(Other) The new Certificate of Financial Responsibility (COFR) would be applicable to an entire fleet, but would also be automatically revoked for an entire fleet due to a spill that is estimated to be worth more 5 five percent of the COFR. That 5 percent threshold should be changed to something closer to 50 percent. There is no obligation for the Director of Ecology (Director) to reevaluate a new submission for financial responsibility to get a fleet back online. There should be a time frame in which the Director is obliged to respond to an operator who was attempting to prove they had replaced their financial responsibility in the event of an oil spill.

Persons Testifying: (In support) Laura Feinstein, Sightline Institute; Jamie Stephens, San

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Juan County; and Lovel Pratt, Friends of the San Juans.

(Opposed) Amber Carter, Columbia River Steamship Operators Association.

(Other) Brad Tower, Arrow Marine Services.

Persons Signed In To Testify But Not Testifying: None.