

2 **SHB 2466** - S COMM AMD

3 By Committee on Natural Resources, Parks & Recreation

4 ADOPTED 2/28/00

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature finds that some
8 nonindigenous species have the potential to cause economic and
9 environmental damage to the state and that current efforts to stop the
10 introduction of nonindigenous species from shipping vessels do not
11 adequately reduce the risk of new introductions into Washington waters.

12 The legislature recognizes the international ramifications and the
13 rapidly changing dimensions of this issue, and the difficulty that any
14 one state has in either legally or practically managing this issue.
15 Recognizing the possible limits of state jurisdiction over
16 international issues, the state declares its support for the
17 international maritime organization and United States coast guard
18 efforts, and the state intends to complement, to the extent its powers
19 allow it, the United States coast guard's ballast water management
20 program.

21 NEW SECTION. **Sec. 2.** The definitions in this section apply
22 throughout this chapter unless the context clearly requires otherwise.

23 (1) "Ballast tank" means any tank or hold on a vessel used for
24 carrying ballast water, whether or not the tank or hold was designed
25 for that purpose.

26 (2) "Ballast water" means any water and matter taken on board a
27 vessel to control or maintain trim, draft, stability, or stresses of
28 the vessel, without regard to the manner in which it is carried.

29 (3) "Empty/refill exchange" means to pump out, until the tank is
30 empty or as close to empty as the master or operator determines is
31 safe, the ballast water taken on in ports, estuarine, or territorial
32 waters, and then refilling the tank with open sea waters.

33 (4) "Exchange" means to replace the water in a ballast tank using
34 either flow through exchange, empty/refill exchange, or other exchange
35 methodology recommended or required by the United States coast guard.

1 (5) "Flow through exchange" means to flush out ballast water by
2 pumping in midocean water at the bottom of the tank and continuously
3 overflowing the tank from the top until three full volumes of water
4 have been changed to minimize the number of original organisms
5 remaining in the tank.

6 (6) "Nonindigenous species" means any species or other viable
7 biological material that enters an ecosystem beyond its natural range.

8 (7) "Open sea exchange" means an exchange that occurs fifty or more
9 nautical miles offshore. If the United States coast guard requires a
10 vessel to conduct an exchange further offshore, then that distance is
11 the required distance for purposes of compliance with this chapter.

12 (8) "Recognized marine trade association" means those trade
13 associations in Washington state that promote improved ballast water
14 management practices by educating their members on the provisions of
15 this chapter, participating in regional ballast water coordination
16 through the Pacific ballast water group, assisting the department in
17 the collection of ballast water exchange forms, and the monitoring of
18 ballast water. This includes members of the Puget Sound marine
19 committee for Puget Sound and the Columbia river steamship operators
20 association for the Columbia river.

21 (9) "Sediments" means any matter settled out of ballast water
22 within a vessel.

23 (10) "Untreated ballast water" includes exchanged or unexchanged
24 ballast water that has not undergone treatment.

25 (11) "Vessel" means a self-propelled ship in commerce of three
26 hundred gross tons or more.

27 (12) "Voyage" means any transit by a vessel destined for any
28 Washington port.

29 (13) "Waters of the state" means any surface waters, including
30 internal waters contiguous to state shorelines within the boundaries of
31 the state.

32 NEW SECTION. **Sec. 3.** (1) This chapter applies to all vessels
33 carrying ballast water into the waters of the state from a voyage,
34 except:

35 (a) A vessel of the United States department of defense or United
36 States coast guard subject to the requirements of section 1103 of the
37 national invasive species act of 1996, or any vessel of the armed
38 forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to

1 the uniform national discharge standards for vessels of the armed
2 forces under 33 U.S.C. Sec. 1322(n);

3 (b) A vessel (i) that discharges ballast water or sediments only at
4 the location where the ballast water or sediments originated, if the
5 ballast water or sediments do not mix with ballast water or sediments
6 from areas other than open sea waters; or (ii) that does not discharge
7 ballast water in Washington waters;

8 (c) A vessel traversing the internal waters of Washington in the
9 Strait of Juan de Fuca, bound for a port in Canada, and not entering or
10 departing a United States port, or a vessel in innocent passage, which
11 is a vessel merely traversing the territorial sea of the United States
12 and not entering or departing a United States port, or not navigating
13 the internal waters of the United States; and

14 (d) A crude oil tanker that does not exchange or discharge ballast
15 water into the waters of the state.

16 (2) This chapter does not authorize the discharge of oil or noxious
17 liquid substances in a manner prohibited by state, federal, or
18 international laws or regulations. Ballast water containing oil,
19 noxious liquid substances, or any other pollutant shall be discharged
20 in accordance with the applicable requirements.

21 (3) The master or operator in charge of a vessel is responsible for
22 the safety of the vessel, its crew, and its passengers. Nothing in
23 this chapter relieves the master or operator in charge of a vessel of
24 the responsibility for ensuring the safety and stability of the vessel
25 or the safety of the crew and passengers.

26 NEW SECTION. **Sec. 4.** The owner or operator in charge of any
27 vessel covered by this chapter is required to ensure that the vessel
28 under their ownership or control does not discharge ballast water into
29 the waters of the state except as authorized by this section.

30 (1) Discharge into waters of the state is authorized if the vessel
31 has conducted an open sea exchange of ballast water. A vessel is
32 exempt from this requirement if the vessel's master reasonably
33 determines that such a ballast water exchange operation will threaten
34 the safety of the vessel or the vessel's crew, or is not feasible due
35 to vessel design limitations or equipment failure. If a vessel relies
36 on this exemption, then it may discharge ballast water into waters of
37 the state, subject to any requirements of treatment under subsection
38 (2) of this section and subject to section 5 of this act.

1 (2) After July 1, 2002, discharge of ballast water into waters of
2 the state is authorized only if there has been an open sea exchange or
3 if the vessel has treated its ballast water to meet standards set by
4 the department. When weather or extraordinary circumstances make
5 access to treatment unsafe to the vessel or crew, the master of a
6 vessel may delay compliance with any treatment required under this
7 subsection until it is safe to complete the treatment.

8 (3) The requirements of this section do not apply to a vessel
9 discharging ballast water or sediments that originated solely within
10 the waters of Washington state, the Columbia river system, or the
11 internal waters of British Columbia south of latitude fifty degrees
12 north, including the waters of the Straits of Georgia and Juan de Fuca.

13 (4) Open sea exchange is an exchange that occurs fifty or more
14 nautical miles offshore. If the United States coast guard requires a
15 vessel to conduct an exchange further offshore, then that distance is
16 the required distance for purposes of compliance with this chapter.

17 NEW SECTION. **Sec. 5.** The owner or operator in charge of any
18 vessel covered by this chapter is required to ensure that the vessel
19 under their ownership or control complies with the reporting and
20 sampling requirements of this section.

21 (1) Vessels covered by this chapter must report ballast water
22 management information to the department using ballast water management
23 forms that are acceptable to the United States coast guard. The
24 frequency, manner, and form of such reporting shall be established by
25 the department by rule. Any vessel may rely on a recognized marine
26 trade association to collect and forward this information to the
27 department.

28 (2) In order to monitor the effectiveness of national and
29 international efforts to prevent the introduction of nonindigenous
30 species, all vessels covered by this chapter must submit nonindigenous
31 species ballast water monitoring data. The monitoring, sampling,
32 testing protocols, and methods of identifying nonindigenous species in
33 ballast water shall be determined by the department by rule. A vessel
34 covered by this chapter may contract with a recognized marine trade
35 association to randomly sample vessels within that association's
36 membership, and provide data to the department.

1 (3) Vessels that do not belong to a recognized marine trade
2 association must submit individual ballast tank sample data to the
3 department for each voyage.

4 (4) All data submitted to the department under subsection (2) of
5 this section shall be consistent with sampling and testing protocols as
6 adopted by the department by rule.

7 (5) The department shall adopt rules to implement this section.
8 The rules and recommendations shall be developed in consultation with
9 advisors from regulated industries and the potentially affected
10 parties, including but not limited to shipping interests, ports,
11 shellfish growers, fisheries, environmental interests, interested
12 citizens who have knowledge of the issues, and appropriate governmental
13 representatives including the United States coast guard.

14 (a) The department shall set standards for the discharge of treated
15 ballast water into the waters of the state. The rules are intended to
16 ensure that the discharge of treated ballast water poses minimal risk
17 of introducing nonindigenous species. In developing this standard, the
18 department shall consider the extent to which the requirement is
19 technologically and practically feasible. Where practical and
20 appropriate, the standards shall be compatible with standards set by
21 the United States coast guard and shall be developed in consultation
22 with federal and state agencies to ensure consistency with the federal
23 clean water act, 33 U.S.C. Sec. 1251-1387.

24 (b) The department shall adopt ballast water sampling and testing
25 protocols for monitoring the biological components of ballast water
26 that may be discharged into the waters of the state under this chapter.
27 Monitoring data is intended to assist the department in evaluating the
28 risk of new, nonindigenous species introductions from the discharge of
29 ballast water, and to evaluate the accuracy of ballast water exchange
30 practices. The sampling and testing protocols must consist of cost-
31 effective, scientifically verifiable methods that, to the extent
32 practical and without compromising the purposes of this chapter,
33 utilize easily measured indices, such as salinity, or check for species
34 that indicate the potential presence of nonindigenous species or
35 pathogenic species. The department shall specify appropriate quality
36 assurance and quality control for the sampling and testing protocols.

37 NEW SECTION. **Sec. 6.** The shipping vessel industry, the public
38 ports, and the department shall promote the creation of a pilot project

1 to establish a private sector ballast water treatment operation that is
2 capable of servicing vessels at all Washington ports. Federal and
3 state agencies and private industries shall be invited to participate.
4 The project will develop equipment or methods to treat ballast water
5 and establish operational methods that do not increase the cost of
6 ballast water treatment at smaller ports. The legislature intends that
7 the cost of treatment required by this chapter is substantially
8 equivalent among large and small ports in Washington.

9 NEW SECTION. **Sec. 7.** The legislature recognizes that
10 international and national laws relating to this chapter are changing
11 and that state law must adapt accordingly. The department shall submit
12 to the legislature, and make available to the public, a report that
13 summarizes the results of this chapter and makes recommendations for
14 improvement to this chapter on or before December 1, 2001, and a second
15 report on or before December 1, 2004. The 2001 report shall describe
16 how the costs of treatment required as of July 1, 2002, will be
17 substantially equivalent among ports where treatment is required. The
18 department shall strive to fund the provisions of this chapter through
19 existing resources, cooperative agreements with the maritime industry,
20 and federal funding sources.

21 NEW SECTION. **Sec. 8.** (1) Except as limited by subsection (2) or
22 (3) of this section, the director or the director's designee may impose
23 a civil penalty or warning for a violation of the requirements of this
24 chapter on the owner or operator in charge of a vessel who fails to
25 comply with the requirements imposed under sections 4 and 5 of this
26 act. The penalty shall not exceed five thousand dollars for each
27 violation. In determining the amount of a civil penalty, the
28 department shall consider if the violation was intentional, negligent,
29 or without any fault, and shall consider the quality and nature of
30 risks created by the violation. The owner or operator subject to such
31 a penalty may contest the determination by requesting an adjudicative
32 proceeding within twenty days. Any determination not timely contested
33 is final and may be reduced to a judgment enforceable in any court with
34 jurisdiction. If the department prevails using any judicial process to
35 collect a penalty under this section, the department shall also be
36 awarded its costs and reasonable attorneys' fees.

1 (2) The civil penalty for a violation of reporting requirements of
2 section 5 of this act shall not exceed five hundred dollars per
3 violation.

4 (3) Any owner or operator who knowingly, and with intent to
5 deceive, falsifies a ballast water management report form is liable for
6 a civil penalty in an amount not to exceed five thousand dollars per
7 violation, in addition to any criminal liability that may attach to the
8 filing of false documents.

9 (4) The department, in cooperation with the United States coast
10 guard, may enforce the requirements of this chapter.

11 NEW SECTION. **Sec. 9.** By December 31, 2005, the natural resources
12 committees of the legislature must review this chapter and its
13 implementation and make recommendations if needed to the 2006 regular
14 session of the legislature.

15 NEW SECTION. **Sec. 10.** The departments of fish and wildlife and
16 ecology shall invite representatives from the United States department
17 of defense to discuss ways of improving ballast water management in
18 Washington state. The departments, in cooperation with the United
19 States coast guard shall seek input from other coastal states and the
20 Providence of British Columbia in conducting the study and in
21 formulating recommendations. The departments shall provide the most
22 appropriate forum to stimulate dialogue which can result in specific
23 policies and action protocols. The departments shall make
24 recommendations concerning proposals for laws and rules that will
25 guarantee the same level of public and private compliance to protect
26 the marine environment. The legislature wishes to ensure that vessels
27 exempted from this act by section 3(1)(a) of this act are taking
28 adequate precautions to prevent the introduction of nonindigenous
29 species into the waters of the state. The departments of fish and
30 wildlife and ecology shall submit a report to the legislature by
31 December 31, 2001, summarizing the results of these discussions.

32 NEW SECTION. **Sec. 11.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. Sec. 12. Sections 1 through 9 and 11 of this act
2 constitute a new chapter in Title 75 RCW."

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5 ADOPTED 2/28/00

6 On page 1, line 1 of the title, after "management;" strike the
7 remainder of the title and insert "adding a new chapter to Title 75
8 RCW; creating a new section; and prescribing penalties."

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