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HOUSE BILL 2466

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State of Washington

56th Legislature

2000 Regular Session

By Representatives Regala, Ericksen, Buck, Linville, Anderson, Barlean and Mitchell

Read first time 01/13/2000. Referred to Committee on Natural Resources.

1 AN ACT Relating to ballast water management; adding a new chapter  
2 to Title 75 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

8 (3) "Exchange" means to replace the water in a ballast tank using  
9 either flow through exchange, empty/refill exchange, or as otherwise  
10 specified by United States coast guard regulations.

11 (4) "Nonindigenous species" means any species or other viable  
12 biological material that enters an ecosystem beyond its historic range,  
13 including such an organism transferred from one country into another.

14 (5) "Person" includes any individual, trust, firm, joint stock  
15 company, or corporation, including, but not limited to, a government  
16 corporation, partnership, or association.

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

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

28 (8) "Voyage" means any transit by a vessel destined for any  
29 Washington port from a port or place outside the waters of the state,  
30 the Columbia river, or the Straits of Georgia or Juan de Fuca.

31 (9) "Waters of the state" means any surface waters, including  
32 internal waters contiguous to state shorelines within the boundaries of  
33 the state.

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

37 (a) A vessel of the United States department of defense or United  
38 States coast guard subject to the requirements of section 1103 of the

1 national invasive species act of 1996, or any vessel of the armed  
2 forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to  
3 the uniform national discharge standards for vessels of the armed  
4 forces under 33 U.S.C. Sec. 1322(n);

5 (b) A vessel that discharges ballast water or sediments only at the  
6 location where the ballast water or sediments originated, if the  
7 ballast water or sediments do not mix with ballast water or sediments  
8 from areas other than midocean waters; or

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

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

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

25 NEW SECTION. **Sec. 4.** No vessel covered by this chapter shall  
26 discharge ballast water into the waters of the state unless at least  
27 one of the following conditions are met:

28 (1) The vessel has conducted an open sea exchange of ballast water  
29 in compliance with methodologies recognized by the United States coast  
30 guard. This subsection does not apply to any vessel if, in the opinion  
31 of the vessel's master, the ballast exchange operation or treatment  
32 will threaten the safety of the vessel, the vessel's crew, or the  
33 vessel design limitations, equipment failure, or any other  
34 extraordinary conditions. A vessel shall exchange its ballast water a  
35 minimum of fifty miles offshore; or

36 (2) Beginning January 1, 2002, the vessel has treated its ballast  
37 water in such a manner that either the department or the United States  
38 coast guard certifies that the ballast water is a minimal threat to

1 introduce a nonindigenous species or pathogen into the waters of the  
2 state. The department shall develop and adopt a discharge standard for  
3 vessel ballast for the purposes of this subsection.

4 The requirements of this section do not apply to a vessel  
5 discharging ballast water or sediments that originated solely within  
6 the waters of Washington state, the Columbia river, or the Straits of  
7 Georgia or Juan de Fuca.

8 NEW SECTION. **Sec. 5.** (1) All vessels covered by this chapter  
9 shall provide to the department the ballast water management  
10 information required by the United States coast guard. Any vessel may  
11 rely on a recognized maritime trade organization to forward this  
12 information to the department.

13 (2) In order to monitor the effectiveness of national and  
14 international efforts to prevent the introduction of invasive species,  
15 all vessels covered by this chapter shall submit monitoring data  
16 describing any nonnative species that might be present in the vessel's  
17 ballast. A vessel covered by this chapter may contract with a  
18 recognized maritime trade organization to randomly sample vessels  
19 within that organization's membership, and provide aggregate data to  
20 the department. Vessels that do not belong to a recognized maritime  
21 trade organization must submit individual ballast tank sample data to  
22 the department for each voyage.

23 (3) The department shall develop and adopt ballast sampling and  
24 testing protocols for use by vessels or their contractors in reporting  
25 data under subsection (2) of this section. These protocols shall  
26 consist of cost-effective, scientifically valid methods to verify that  
27 the ballast does not contain nonnative or pathogenic species. To the  
28 extent practical, these protocols shall utilize easily measured  
29 indicators such as salinity, or checks for species that indicate a  
30 likely presence of nonnative or pathogenic species. All data submitted  
31 to the department under subsection (2) of this section shall be  
32 consistent with these sampling and reporting protocols.

33 NEW SECTION. **Sec. 6.** The legislature recognizes that  
34 international and national laws relating to this chapter are changing  
35 and that state law must adapt accordingly. The department shall submit  
36 to the legislature, and make available to the public, a report that  
37 summarizes the results of this chapter and makes recommendations for

1 improvement to this chapter on or before November 1, 2002. The  
2 department shall strive to fund the provisions of this chapter through  
3 existing resources, cooperative agreements with the maritime industry,  
4 and federal funding sources.

5 NEW SECTION. **Sec. 7.** (1) Except as provided in subsection (2) or  
6 (3) of this section, the director or the director's designee may impose  
7 a civil penalty or warning for a violation of the requirements of this  
8 chapter on the owner, operator, or person in charge of a vessel. The  
9 penalty shall not exceed five thousand dollars for each violation.  
10 Each day of a continuing violation constitutes a separate violation.  
11 In determining the amount of a civil penalty, the department shall  
12 consider if the violation was intentional, negligent, or without any  
13 fault of the person, and shall consider the quality and nature of risks  
14 created by the violation. A person subject to such a penalty may  
15 contest the determination by requesting an adjudicative proceeding  
16 within twenty days. Any determination not timely contested is final  
17 and may be reduced to a judgment enforceable in any court with  
18 jurisdiction. If the department uses any judicial process to collect  
19 a penalty under this section, the department shall also be awarded its  
20 costs and reasonable attorneys' fees.

21 (2) The civil penalty for a person who fails to comply with  
22 reporting requirements of section 5 of this act shall not exceed five  
23 hundred dollars per violation. Each day of a continuing violation  
24 constitutes a separate violation.

25 (3) Any person who knowingly, and with intent to deceive, falsifies  
26 a ballast water control report form is liable for a civil penalty in an  
27 amount not to exceed five thousand dollars per violation, in addition  
28 to any criminal liability that may attach to the filing of false  
29 documents. Each day of a continuing violation constitutes a separate  
30 violation.

31 (4) The department, in cooperation with members of the United  
32 States coast guard acting as ex officio officers under RCW 77.08.010,  
33 may enforce the requirements of this chapter.

34 (5) All penalties and payments collected for violations of any  
35 requirements of this chapter shall be deposited into the exotic species  
36 control account created in section 8 of this act.

1        NEW SECTION.    **Sec. 8.**    The exotic species control account is  
2 created in the custody of the state treasurer. All receipts from  
3 appropriations or fines received under this chapter must be deposited  
4 into the account. Expenditures from the account may be used only for  
5 funding state or regional projects that improve the state's ability to  
6 prevent or control the accidental or unauthorized introduction of  
7 exotic species into state waters. Only the director of fish and  
8 wildlife or the director's designee may authorize expenditures from the  
9 account. The account is subject to allotment procedures under chapter  
10 43.88 RCW, but an appropriation is not required for expenditures.

11        NEW SECTION.    **Sec. 9.**    If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15        NEW SECTION.    **Sec. 10.** Sections 1 through 9 of this act constitute  
16 a new chapter in Title 75 RCW.

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