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**SUBSTITUTE SENATE BILL 5748**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By** Senate Committee on Natural Resources, Ocean & Recreation  
(originally sponsored by Senator Jacobsen)

READ FIRST TIME 02/28/07.

1            AN ACT Relating to ballast water management; amending RCW  
2 77.120.010, 77.120.020, 77.120.030, 77.120.070, 90.48.020, and  
3 90.48.030; amending 2004 c 227 s 2 (uncodified); adding new sections to  
4 chapter 77.120 RCW; repealing RCW 77.120.060, 77.120.080, and  
5 77.120.090; and prescribing penalties.

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

7            **Sec. 1.** RCW 77.120.010 and 2000 c 108 s 2 are each amended to read  
8 as follows:

9            The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

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

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

17            (3) "Empty/refill exchange" means to pump out, until the tank is  
18 empty or as close to empty as the master or operator determines is

1 safe, the ballast water taken on in ports, estuarine, or territorial  
2 waters, and then refilling the tank with open sea waters.

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

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

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

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

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

28 (10) "Untreated ballast water" includes exchanged or unexchanged  
29 ballast water that has not undergone treatment, boat, barge, or other  
30 floating craft.

31 (11) "Vessel" means a (~~self-propelled~~) ship (~~in-commerce~~),  
32 boat, barge, or other floating craft of three hundred gross tons or  
33 more, United States and foreign, carrying, or capable of carrying,  
34 ballast water into the coastal waters of the state after operating  
35 outside of the coastal waters of the state, except those vessels  
36 described in RCW 77.120.020.

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

1 (13) "Waters of the state" means any surface waters, including  
2 internal waters contiguous to state shorelines within the boundaries of  
3 the state.

4 **Sec. 2.** RCW 77.120.020 and 2000 c 108 s 3 are each amended to read  
5 as follows:

6 (1) This chapter applies to all vessels carrying ballast water into  
7 the waters of the state from a voyage, except:

8 (a) A vessel of the United States department of defense or United  
9 States coast guard subject to the requirements of section 1103 of the  
10 national invasive species act of 1996, or any vessel of the armed  
11 forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to  
12 the uniform national discharge standards for vessels of the armed  
13 forces under 33 U.S.C. Sec. 1322(n);

14 (b) A vessel ~~((i))~~ that discharges ballast water or sediments  
15 only at the location where the ballast water or sediments originated,  
16 if the ballast water or sediments do not mix with ballast water or  
17 sediments from areas other than open sea waters ~~((; or (ii) that does  
18 not discharge ballast water in Washington waters))~~; and

19 (c) A vessel in innocent passage, merely traversing the ~~((internal  
20 waters of Washington in the Strait of Juan de Fuca, bound for a port in  
21 Canada,))~~ territorial sea of the United States and not entering or  
22 departing a United States port, ~~((or a vessel in innocent passage,  
23 which is a vessel merely traversing the territorial sea of the United  
24 States and not entering or departing a United States port,))~~ or not  
25 navigating the internal waters of the United States ~~((; and~~

26 ~~(d) A crude oil tanker that does not exchange or discharge ballast  
27 water into the waters of the state))~~, and that does not discharge  
28 ballast water into the waters of the state.

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

34 (3) The master or operator in charge of a vessel is responsible for  
35 the safety of the vessel, its crew, and its passengers. Nothing in  
36 this chapter relieves the master or operator in charge of a vessel of

1 the responsibility for ensuring the safety and stability of the vessel  
2 or the safety of the crew and passengers.

3 **Sec. 3.** RCW 77.120.030 and 2004 c 227 s 3 are each amended to read  
4 as follows:

5 (1) The owner or operator in charge of any vessel covered by this  
6 chapter is required to ensure that the vessel under their ownership or  
7 control does not discharge ballast water into the waters of the state  
8 except as authorized by this section.

9 ~~((1) Discharge into waters of the state is authorized if the  
10 vessel has conducted an open sea exchange of ballast water. A vessel  
11 is exempt from this requirement if the vessel's master reasonably  
12 determines that such a ballast water exchange operation will threaten  
13 the safety of the vessel or the vessel's crew, or is not feasible due  
14 to vessel design limitations or equipment failure. If a vessel relies  
15 on this exemption, then it may discharge ballast water into waters of  
16 the state, subject to any requirements of treatment under subsection  
17 (2) of this section and subject to RCW 77.120.040.))~~

18 ~~(2) ((After July 1, 2007,))~~ Discharge of ballast water into waters  
19 of the state is authorized only if there has been an open sea exchange  
20 or if the vessel has treated its ballast water to meet standards set by  
21 the department consistent with applicable state and federal laws.  
22 ~~((When weather or extraordinary circumstances make access to treatment  
23 unsafe to the vessel or crew, the master of a vessel may delay  
24 compliance with any treatment required under this subsection until it  
25 is safe to complete the treatment.~~

26 ~~(3) Masters, owners, operators, or persons in charge shall submit  
27 to the department an interim ballast water management report by July 1,  
28 2006, in the form and manner prescribed by the department. The report  
29 shall describe actions needed to implement the ballast water  
30 requirements in subsection (2) of this section, including treatment  
31 methods applicable to the class of the vessel. Reports may include a  
32 statement that there are no treatment methods applicable to the vessel  
33 for which the report is being submitted.~~

34 ~~(4) The ballast water work group created in section 1, chapter 282,  
35 Laws of 2002 shall develop recommendations for the interim ballast  
36 water management report. The recommendations must include, but are not  
37 limited to:~~

1       ~~(a) Actions that the vessel owner or operator will take to~~  
2 ~~implement the ballast water requirements in subsection (2) of this~~  
3 ~~section, including treatment methods applicable to the class of the~~  
4 ~~vessel;~~

5       ~~(b) Necessary plan elements when there are not treatment methods~~  
6 ~~applicable to the vessel for which the report is being submitted, or~~  
7 ~~which would meet the requirements of this chapter; and~~

8       ~~(c) The method, form, and content of reporting to be used for such~~  
9 ~~reports.)~~

10       (3) The department, in consultation with the ballast water work  
11 group, or similar collaborative forum, shall adopt by rule standards  
12 for the discharge of ballast water into the waters of the state and  
13 their implementation timelines. The standards are intended to ensure  
14 that the discharge of ballast water poses minimal risk of introducing  
15 nonindigenous species. In developing these standards, the department  
16 shall consider the extent to which the requirement is technologically  
17 and practically feasible. Where practical and appropriate, the  
18 standards must be compatible with standards set by the United States  
19 coast guard, the federal clean water act (33 U.S.C. Sec. 1251-1387), or  
20 the international maritime organization.

21       (4) If the master, operator, or person in charge of a vessel  
22 decides that the open sea exchange or treatment of ballast waters would  
23 threaten the safety of the vessel, its crew, or its passengers, because  
24 of adverse weather, vessel design limitations, equipment failure, or  
25 any other extraordinary conditions, the master, operator, or person in  
26 charge of a vessel must chemically treat the ballast water prior to  
27 discharge to ensure that aquatic invasive species are destroyed. A  
28 master, operator, or person in charge of a vessel who relies on this  
29 exemption must file documentation defined by the department, subject  
30 to: (a) Payment of a fee not to exceed five thousand dollars; (b)  
31 discharging only the minimal amount of ballast water operationally  
32 necessary; (c) documenting the location of the discharge, chemical used  
33 to treat the ballast water, and amount of chemical applied; (d)  
34 ensuring that ballast water records accurately reflect any reasons for  
35 not complying with the mandatory requirements; and (e) any other  
36 requirements identified by the department by rule as provided in  
37 subsections (3) and (6) of this section.

1 (5) For treatment technologies requiring shipyard modification  
2 (~~that cannot reasonably be performed prior to July 1, 2007, the~~  
3 ~~department shall provide the vessel owner or operator with an extension~~  
4 ~~to the first scheduled drydock or shipyard period following July 1,~~  
5 ~~2007)), the department may enter into a compliance plan with the vessel  
6 owner. The compliance plan must include a timeline consistent with  
7 drydock and shipyard schedules for completion of the modification. The  
8 department shall adopt rules for compliance plans under this  
9 subsection.~~

10 (6) For an exemption claimed in subsection (4) of this section, the  
11 department shall adopt rules for defining exemption conditions,  
12 requirements, compliance plans, and recommended chemicals for treatment  
13 and corresponding dose concentration levels to meet the intent of this  
14 section.

15 (~~(6)~~) (7) The department shall make every effort to align ballast  
16 water standards with adopted international and federal standards while  
17 ensuring that the goals of this chapter are met.

18 (~~(7)~~) (8) The requirements of this section do not apply to a  
19 vessel discharging ballast water or sediments that originated solely  
20 within the waters of Washington state, the Columbia river system, or  
21 the internal waters of British Columbia south of latitude fifty degrees  
22 north, including the waters of the Straits of Georgia and Juan de Fuca.

23 (~~(8)~~) (9) Open sea exchange is an exchange that occurs fifty or  
24 more nautical miles offshore. If the United States coast guard  
25 requires a vessel to conduct an exchange further offshore, then that  
26 distance is the required distance for purposes of compliance with this  
27 chapter.

28 **Sec. 4.** 2004 c 227 s 2 (uncodified) is amended to read as follows:

29 (1) The director of the department (~~(of fish and wildlife)~~) must  
30 establish the ballast water work group.

31 (2) The ballast water work group consists of the following  
32 individuals:

33 (a) One staff person from the governor's executive policy office.  
34 This person must act as chair of the ballast water work group;

35 (b) Two representatives from the Puget Sound steamship operators;

36 (c) Two representatives from the Columbia river steamship  
37 operators;

- 1 (d) Three representatives from the Washington public ports, one of  
2 whom must be a marine engineer;
- 3 (e) Two representatives from the petroleum transportation industry;
- 4 (f) One representative from the Puget Sound water quality action  
5 team;
- 6 (g) Two representatives from the environmental community;
- 7 (h) One representative of the shellfish industry;
- 8 (i) One representative of the tribes;
- 9 (j) One representative of maritime labor; ~~((and))~~
- 10 (k) One representative from the department ~~((of fish and  
11 wildlife))~~;
- 12 (l) One representative from the department of ecology; and
- 13 (m) One representative from the cruise ship industry.
- 14 (3) ~~The ballast water work group must ((study, and provide a report  
15 to the legislature by December 15, 2006, the following issues))~~ begin  
16 operation immediately upon the effective date of this section. The  
17 Puget Sound action team or its successor agency must provide staff for  
18 the ballast water work group from existing personnel within the action  
19 team. The ballast water work group must:
- 20 (a) ~~((All issues relating to ballast water technology, including  
21 exchange and treatment methods, management plans, the associated costs,  
22 and the availability of feasible and proven ballast water treatment  
23 technologies that could be cost-effectively installed on vessels that  
24 typically call on Washington ports;~~
- 25 (b) ~~The services needed by the industry and the state to protect  
26 the marine environment, including penalties and enforcement;~~
- 27 (c) ~~The costs associated with, and possible funding methods for,  
28 implementing the ballast water program;~~
- 29 (d) ~~Consistency with federal and international standards, and  
30 identification of gaps between those standards, and the need for  
31 additional measures, if any, to meet the goals of this chapter;~~
- 32 (e) ~~Describe how the costs of treatment required as of July 1,  
33 2007, will be substantially equivalent among ports where treatment is  
34 required;~~
- 35 (f) ~~Describe how the states of Washington and Oregon are  
36 coordinating their efforts for ballast water management in the Columbia  
37 river system; and~~

1 ~~(g) Describe how the states of Washington, Oregon, and California~~  
2 ~~and the province of British Columbia are coordinating their efforts for~~  
3 ~~ballast water management on the west coast.~~

4 ~~(4) The ballast water work group must begin operation immediately~~  
5 ~~upon the effective date of this section. The Puget Sound water quality~~  
6 ~~action team must provide staff for the ballast water work group. The~~  
7 ~~staff must come from existing personnel within the team)) Provide a~~  
8 ~~report to the legislature by July 1, 2009, on the progress of the work~~  
9 ~~group on the tasks listed in this section, and report on compliance~~  
10 ~~with this act, and recommendations for improvements, if any, to the~~  
11 ~~ballast water program;~~

12 (b) Work with the state of Oregon to develop a consistent,  
13 coordinated, and enforceable ballast water management program for the  
14 Columbia river that is acceptable to both states;

15 (c) Advise the department as it develops a program to establish and  
16 maintain an inventory of introduced nonindigenous plants and animals in  
17 state waters in and adjacent to ports, harbors, oil transfer  
18 facilities, grain elevators, and other ship-berthing facilities and  
19 evaluate the effectiveness of the program and a program to assess  
20 vessel-specific risks;

21 (d) Help the department review the needs of the ballast water  
22 program, including research investments, and identify unmet needs, and  
23 work through the Puget Sound action team's and the department's  
24 internal budget development process to secure needed funds;

25 (e) Help the department develop and align the state program with  
26 national and regional ballast water management programs;

27 (f) Assist the department by developing a workable technical and  
28 financial assistance program to support the shipping industry to comply  
29 with state ballast water laws and rules;

30 (g) Work with the United States coast guard and the department of  
31 ecology to improve coordination and integration of vessel inspection  
32 procedures among agencies that board and inspect vessels and identify  
33 ways to minimize apparent duplication of effort, work more effectively  
34 with vessel masters and crew, and recommend changes to state law to  
35 streamline the program, if needed;

36 (h) Outline funding, policy, and program recommendations to support  
37 the state's management program;



1 (i) Coordinate, in association with the departments of fish and  
2 wildlife, ecology, and natural resources, the Puget Sound action team,  
3 the Washington invasive species council, and other interested parties,  
4 the development of a management approach for nonballast water ship  
5 vectors as a source of nonindigenous species such as ship hull fouling,  
6 sea chests and equipment, and vessels equipped with ballast tanks that  
7 carry no ballast onboard;

8 (j) Review and provide comment on proposed federal legislation,  
9 international and regional programs, and other policy arenas;

10 (k) Harmonize the state ballast water program with western coastal  
11 states, British Columbia, and Canada;

12 (l) Work with the department's science advisory panel to develop a  
13 science research plan and estimated costs to answer key research and  
14 management questions;

15 (m) Provide recommendations and technical information to assist the  
16 department in determining if and when it is necessary or advisable to  
17 adjust rules and guidance for the ballast water management program to  
18 achieve resource goals and objectives;

19 (n) Other responsibilities, as necessary.

20 ~~((+5))~~ (4) The director must also monitor the activities of the  
21 task force created by the state of Oregon in 2001 Or. Laws 722,  
22 concerning ballast water management. The director shall provide the  
23 ballast water work group with periodic updates of the Oregon task  
24 force's efforts at developing a ballast water management system.

25 ~~((+6)(a) The ballast water work group expires June 30, 2007.~~

26 ~~(b) This section expires June 30, 2007.))~~

27 **Sec. 5.** RCW 77.120.070 and 2000 c 108 s 8 are each amended to read  
28 as follows:

29 ~~(1) ((Except as limited by subsection (2) or (3) of this section,))~~  
30 The department may establish by rule schedules for any penalty allowed  
31 in this chapter. The schedules may provide for the incremental  
32 assessment of a penalty based on criteria established by rule.

33 (2) The director or the director's designee may impose a civil  
34 penalty or warning for a violation of the requirements of this chapter  
35 on the owner or operator in charge of a vessel who fails to comply with  
36 the requirements imposed under RCW 77.120.030 and 77.120.040. The  
37 penalty shall not exceed ((five)) twenty-seven thousand five hundred

1 dollars for each day of a continuing violation. In determining the  
2 amount of a civil penalty, the department shall set standards by rule  
3 that consider if the violation was intentional, negligent, or without  
4 any fault, and shall consider the quality and nature of risks created  
5 by the violation. The owner or operator subject to such a penalty may  
6 contest the determination by requesting an adjudicative proceeding  
7 within twenty days. Any determination not timely contested is final  
8 and may be reduced to a judgment enforceable in any court with  
9 jurisdiction. If the department prevails using any judicial process to  
10 collect a penalty under this section, the department shall also be  
11 awarded its costs and reasonable attorneys' fees.

12 ~~((2) The civil penalty for a violation of reporting requirements~~  
13 ~~of RCW 77.120.040 shall not exceed five hundred dollars per violation.~~

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

19 ~~(4))~~ (3) The department, in cooperation with the United States  
20 coast guard, may enforce the requirements of this chapter.

21 NEW SECTION. Sec. 6. A new section is added to chapter 77.120 RCW  
22 to read as follows:

23 The department may assess a fee for any exemptions allowed under  
24 this chapter. Such a fee may not exceed five thousand dollars. The  
25 department may establish by rule schedules for any fee allowed in this  
26 chapter. The schedules may provide for the incremental assessment of  
27 a penalty based on criteria established by rule.

28 NEW SECTION. Sec. 7. A new section is added to chapter 77.120 RCW  
29 to read as follows:

30 (1) The ballast water management account is created in the custody  
31 of the state treasurer. All receipts from legislative appropriations,  
32 gifts, grants, donations, penalties, and mitigation fees received under  
33 this chapter must be deposited into the account.

34 (2) The account is subject to allotment procedures under chapter  
35 43.88 RCW, but an appropriation is not required. Only the director or  
36 the director's designee may authorize expenditures from the account.

1 Expenditures from the account may be used only to carry out the  
2 purposes of this chapter or support the goals of this chapter through  
3 research and monitoring except:

4 (a) Expenditures may not be used for the salaries of permanent  
5 department employees; and

6 (b) Penalties deposited into the account may be used, in  
7 consultation with the ballast water work group created in section 4 of  
8 this act, only to support basic and applied research and carry out  
9 education and outreach related to the state's ballast water management.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.120 RCW  
11 to read as follows:

12 The department may issue a special operating authorization for  
13 passenger vessels conducting or assisting in research and testing  
14 activities to determine the presence of invasive species in ballast  
15 water collected in the waters of southeast Alaska north of latitude  
16 fifty-four degrees thirty minutes north to sixty-one degrees ten  
17 minutes north, extending to longitude one hundred forty-nine degrees  
18 thirty minutes west. Such testing and research shall be reviewed by  
19 the ballast water work group and the findings included in the report to  
20 the legislature referenced in section 4 of this act.

21 **Sec. 9.** RCW 90.48.020 and 2002 c 161 s 4 are each amended to read  
22 as follows:

23 Whenever the word "person" is used in this chapter, it shall be  
24 construed to include any political subdivision, government agency,  
25 municipality, industry, public or private corporation, copartnership,  
26 association, firm, individual or any other entity whatsoever.

27 Wherever the words "waters of the state" shall be used in this  
28 chapter, they shall be construed to include lakes, rivers, ponds,  
29 streams, inland waters, underground waters, salt waters and all other  
30 surface waters and watercourses within the jurisdiction of the state of  
31 Washington.

32 Whenever the word "pollution" is used in this chapter, it shall be  
33 construed to mean such contamination, or other alteration of the  
34 physical, chemical or biological properties, of any waters of the  
35 state, including change in temperature, taste, color, turbidity, or  
36 odor of the waters, or such discharge of any liquid, gaseous, solid,

1 radioactive, or other substance into any waters of the state as will or  
2 is likely to create a nuisance or render such waters harmful,  
3 detrimental or injurious to the public health, safety or welfare, or to  
4 domestic, commercial, industrial, agricultural, recreational, or other  
5 legitimate beneficial uses, or to livestock, wild animals, birds, fish  
6 or other aquatic life. "Pollution" shall not include emergency  
7 discharge of ballast water as provided under RCW 77.120.030(4).

8       Wherever the word "department" is used in this chapter it shall  
9 mean the department of ecology.

10       Whenever the word "director" is used in this chapter it shall mean  
11 the director of ecology.

12       Whenever the words "aquatic noxious weed" are used in this chapter,  
13 they have the meaning prescribed under RCW 17.26.020.

14       Whenever the words "general sewer plan" are used in this chapter  
15 they shall be construed to include all sewerage general plans, sewer  
16 general comprehensive plans, plans for a system of sewerage, and other  
17 plans for sewer systems adopted by a local government entity including  
18 but not limited to cities, towns, public utility districts, and water-  
19 sewer districts.

20       **Sec. 10.** RCW 90.48.030 and 1987 c 109 s 123 are each amended to  
21 read as follows:

22       The department shall have the jurisdiction to control and prevent  
23 the pollution of streams, lakes, rivers, ponds, inland waters, salt  
24 waters, water courses, and other surface and underground waters of the  
25 state of Washington. The department shall not have jurisdiction over,  
26 and this chapter shall not apply to, emergency discharge of ballast  
27 water as provided under RCW 77.120.030(4).

28       NEW SECTION. **Sec. 11.** Section 4 of this act is added to chapter  
29 77.120 RCW.

30       NEW SECTION. **Sec. 12.** The following acts or parts of acts are  
31 each repealed:

32       (1) RCW 77.120.060 (Report to legislature--Results of chapter) and  
33 2002 c 282 s 4 & 2000 c 108 s 7;

34       (2) RCW 77.120.080 (Legislative review of chapter--Recommendations)  
35 and 2000 c 108 s 9; and

1           (3) RCW 77.120.090 (Ballast water information system--Improvements)  
2   and 2002 c 282 s 5.

--- END ---