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SENATE BILL 5748

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State of Washington

60th Legislature

2007 Regular Session

By Senator Jacobsen

Read first time 01/30/2007. Referred to Committee on Natural Resources, Ocean & Recreation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (11) "Vessel" means a (~~self-propelled~~) ship, boat, vessel, barge,  
29 or other floating craft in commerce of three hundred gross tons or  
30 more.

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

33 (13) "Waters of the state" means any surface waters, including  
34 internal waters contiguous to state shorelines within the boundaries of  
35 the state.

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

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

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

9 (b) A vessel (~~((i))~~) that discharges ballast water or sediments  
10 only at the location where the ballast water or sediments originated,  
11 if the ballast water or sediments do not mix with ballast water or  
12 sediments from areas other than open sea waters(~~((i) or (ii) that does  
13 not discharge ballast water in Washington waters))~~); and

14 (c) A vessel that does not discharge unexchanged or untreated  
15 ballast water and is traversing the internal waters of Washington in  
16 the Strait of Juan de Fuca, bound for a port in Canada, and not  
17 entering or departing a United States port, or a vessel in innocent  
18 passage, which is a vessel merely traversing the territorial sea of the  
19 United States and does not (~~((entering or departing))~~) enter or depart a  
20 United States port, or not navigating the internal waters of the United  
21 States(~~((i) and~~

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

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

29 (3) The master or operator in charge of a vessel is responsible for  
30 the safety of the vessel, its crew, and its passengers. Nothing in  
31 this chapter relieves the master or operator in charge of a vessel of  
32 the responsibility for ensuring the safety and stability of the vessel  
33 or the safety of the crew and passengers.

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

36 The owner or operator in charge of any vessel covered by this

1 chapter is required to ensure that the vessel under their ownership or  
2 control does not discharge ballast water into the waters of the state  
3 except as authorized by this section.

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

13 (2) After July 1, 2007, discharge of ballast water into waters of  
14 the state is authorized only if there has been an open sea exchange or  
15 if the vessel has treated its ballast water to meet standards set by  
16 the department consistent with applicable state and federal laws. When  
17 weather or extraordinary circumstances make exchange or access to  
18 treatment unsafe to the vessel or crew, the master of a vessel may  
19 delay compliance (~~with any treatment required under this subsection~~)  
20 until it is safe to complete the treatment subject to possible penalty  
21 depending upon the circumstances involved and the installation  
22 availability of feasible and proven treatment options suitable for the  
23 class of vessel involved.

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

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

36 ~~(a) Actions that the vessel owner or operator will take to~~  
37 ~~implement the ballast water requirements in subsection (2) of this~~

1 ~~section, including treatment methods applicable to the class of the~~  
2 ~~vessel;~~

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

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

8 (+5)) For treatment technologies requiring shipyard modification  
9 that cannot reasonably be performed prior to July 1, 2007, the  
10 department shall provide the vessel owner or operator with an extension  
11 to the first scheduled drydock or shipyard period following July 1,  
12 2007.

13 ((+6)) (4) The department shall make every effort to align ballast  
14 water standards with adopted international and federal standards while  
15 ensuring that the goals of this chapter are met.

16 ((+7)) (5) The requirements of this section do not apply to a  
17 vessel discharging ballast water or sediments that originated solely  
18 within the waters of Washington state, the Columbia river system, or  
19 the internal waters of British Columbia south of latitude fifty degrees  
20 north, including the waters of the Straits of Georgia and Juan de Fuca.

21 ((+8)) (6) Open sea exchange is an exchange that occurs fifty or  
22 more nautical miles offshore. If the United States coast guard  
23 requires a vessel to conduct an exchange further offshore, then that  
24 distance is the required distance for purposes of compliance with this  
25 chapter.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.120 RCW  
27 to read as follows:

28 (1) The department, in consultation with the ballast water work  
29 group created in section 6 of this act, shall collect data necessary to  
30 establish and maintain an inventory of the location and geographic  
31 range of nonindigenous plant and animal populations in the coastal and  
32 estuarine waters of the state that includes open coastal waters and  
33 bays and estuaries. In particular, data must be collected that does  
34 both of the following:

35 (a) Supplements the existing baseline of nonindigenous species  
36 previously developed pursuant to this section, by adding data from

1 investigations of intertidal and nearshore subtidal habitats along the  
2 open coast; and

3 (b) Monitors the coastal and estuarine waters of the state,  
4 including, but not limited to, habitats along the open coast, for new  
5 introductions of nonindigenous species or spread of existing  
6 nonindigenous species populations.

7 (2) Whenever possible, the department shall utilize appropriate,  
8 existing data to create the inventory.

9 (3) The department, in consultation with the ballast water work  
10 group, shall assess the effectiveness of the ballast water controls  
11 implemented through this chapter by comparing the status and  
12 establishment of nonindigenous species populations with the baseline  
13 data collected during this process.

14 (4) The department shall submit a report presenting its assessment  
15 to the legislature and the public by December 1, 2010, and every three  
16 years thereafter.

17 (5) The department shall ensure that information generated by this  
18 monitoring program is of a type and in a format useful for subsequent  
19 studies and reports undertaken for any of the following purposes:

20 (a) The determination of alternative discharge zones;

21 (b) The identification of environmentally sensitive areas to be  
22 avoided for uptake or discharge of ballast water;

23 (c) The long-term effectiveness of discharge control measures;

24 (d) The determination of potential risk zones where uptake or  
25 discharge of ballast water shall be prohibited; and

26 (e) The rate and risk of establishment of nonindigenous species in  
27 the coastal waters of the state, and resulting impacts.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.120 RCW  
29 to read as follows:

30 (1) The department, in consultation with the ballast water work  
31 group created in section 6 of this act and the United States coast  
32 guard, shall develop a program to address and manage nonballast water  
33 ship vectors as a source of nonindigenous species such as hull fouling,  
34 sea chests, and equipment and vessels equipped with ballast tanks that  
35 carry no ballast on board.

36 (2) The department shall adopt rules, guidelines, or best practices  
37 to implement the program.

1 (3) The department shall report to the legislature on the status of  
2 program development and implementation by December 1, 2011.

3 **Sec. 6.** 2004 c 227 s 2 (uncodified) is amended to read as follows:

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

6 (2) The ballast water work group consists of the following  
7 individuals:

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

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

11 (c) Two representatives from the Columbia river steamship  
12 operators;

13 (d) Three representatives from the Washington public ports, one of  
14 whom must be a marine engineer;

15 (e) Two representatives from the petroleum transportation industry;

16 (f) One representative from the Puget Sound water quality action  
17 team;

18 (g) Two representatives from the environmental community;

19 (h) One representative of the shellfish industry;

20 (i) One representative of the tribes;

21 (j) One representative of maritime labor; and

22 (k) One representative from the department (~~(of fish and~~  
23 ~~wildlife)~~).

24 (3) The ballast water work group must (~~(study, and provide a report~~  
25 ~~to the legislature by December 15, 2006, the following issues)~~) carry  
26 out the following tasks and provide a report to the legislature by July  
27 1, 2009:

28 (a) (~~All issues relating to ballast water technology, including~~  
29 ~~exchange and treatment methods, management plans, the associated costs,~~  
30 ~~and the availability of feasible and proven ballast water treatment~~  
31 ~~technologies that could be cost-effectively installed on vessels that~~  
32 ~~typically call on Washington ports;~~

33 (b) ~~The services needed by the industry and the state to protect~~  
34 ~~the marine environment, including penalties and enforcement;~~

35 (c) ~~The costs associated with, and possible funding methods for,~~  
36 ~~implementing the ballast water program;~~

1 ~~(d) Consistency with federal and international standards, and~~  
2 ~~identification of gaps between those standards, and the need for~~  
3 ~~additional measures, if any, to meet the goals of this chapter;~~

4 ~~(e) Describe how the costs of treatment required as of July 1,~~  
5 ~~2007, will be substantially equivalent among ports where treatment is~~  
6 ~~required;~~

7 ~~(f) Describe how the states of Washington and Oregon are~~  
8 ~~coordinating their efforts for ballast water management in the Columbia~~  
9 ~~river system; and~~

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

13 ~~(4) The ballast water work group must begin operation immediately~~  
14 ~~upon the effective date of this section. The Puget Sound water quality~~  
15 ~~action team must provide staff for the ballast water work group. The~~  
16 ~~staff must come from existing personnel within the team)) Work with the~~  
17 ~~state of Oregon to develop a consistent, coordinated, and enforceable~~  
18 ~~ballast water management program for the Columbia river.~~

19 (b) Advise the department as it develops and evaluates the  
20 effectiveness of the program and a program to assess vessel specific  
21 risks.

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

26 (d) Help the department develop and align the state program with  
27 national and regional ballast water management programs.

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

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

37 (g) Outline funding, policy, and program recommendations to support  
38 the state's management program.



1 (h) Expand the scope of the ballast water work group to include  
2 review and recommend a management approach for ship hull fouling as a  
3 vector for introducing invasive species.

4 (i) Review and provide comment on proposed federal legislation,  
5 international and regional other programs, and other policy arenas.

6 (j) Harmonize the state ballast water program with western coastal  
7 states, British Columbia, and Canada.

8 (k) Work with the department's science advisory panel to develop a  
9 science research plan and estimated costs to answer key research and  
10 management questions.

11 (l) Provide recommendations and technical information to assist the  
12 department in determining if and when it is necessary or advisable to  
13 adjust rules and guidance for the ballast water management program to  
14 achieve resource goals and objectives.

15 (m) Other responsibilities, as necessary.

16 ~~((+5))~~ (4) The director must also monitor the activities of the  
17 task force created by the state of Oregon in 2001 Or. Laws 722,  
18 concerning ballast water management. The director shall provide the  
19 ballast water work group with periodic updates of the Oregon task  
20 force's efforts at developing a ballast water management system.

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

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

23 **Sec. 7.** RCW 77.120.070 and 2000 c 108 s 8 are each amended to read  
24 as follows:

25 (1) Except as limited by subsection (2) or (3) of this section, the  
26 director or the director's designee may impose a civil penalty or  
27 warning for a violation of the requirements of this chapter on the  
28 owner or operator in charge of a vessel who fails to comply with the  
29 requirements imposed under RCW 77.120.030 and 77.120.040. The penalty  
30 shall not exceed ~~((five))~~ twenty-seven thousand five hundred dollars  
31 for each day of a continuing violation. In determining the amount of  
32 a civil penalty, the department shall set standards by rule that  
33 consider if the violation was intentional, negligent, or without any  
34 fault, and shall consider the quality and nature of risks created by  
35 the violation. The owner or operator subject to such a penalty may  
36 contest the determination by requesting an adjudicative proceeding  
37 within twenty days. Any determination not timely contested is final

1 and may be reduced to a judgment enforceable in any court with  
2 jurisdiction. If the department prevails using any judicial process to  
3 collect a penalty under this section, the department shall also be  
4 awarded its costs and reasonable attorneys' fees.

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

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

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

14 NEW SECTION. Sec. 8. A new section is added to chapter 77.120 RCW  
15 to read as follows:

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

20 (2) The account is subject to allotment procedures under chapter  
21 43.88 RCW, but an appropriation is not required. Only the director or  
22 the director's designee may authorize expenditures from the account.  
23 Expenditures from the account may be used only to carry out the  
24 purposes of this chapter or support the goals of the chapter through  
25 research and monitoring except:

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

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

32 NEW SECTION. Sec. 9. Section 6 of this act is added to chapter  
33 77.120 RCW.

34 NEW SECTION. Sec. 10. The following acts or parts of acts are  
35 each repealed:

1           (1) RCW 77.120.060 (Report to legislature--Results of chapter) and  
2 2002 c 282 s 4 & 2000 c 108 s 7;  
3           (2) RCW 77.120.080 (Legislative review of chapter--Recommendations)  
4 and 2000 c 108 s 9; and  
5           (3) RCW 77.120.090 (Ballast water information system--Improvements)  
6 and 2002 c 282 s 5.

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