

# HOUSE BILL REPORT

## SHB 2466

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### As Passed Legislature

**Title:** An act relating to ballast water management.

**Brief Description:** Creating a ballast water monitoring program.

**Sponsors:** By House Committee on Natural Resources (originally sponsored by Representatives Regala, Ericksen, Buck, Linville, Anderson, Barlean and Mitchell).

### Brief History:

#### Committee Activity:

Natural Resources: 1/21/00, 2/1/00 [DPS].

#### Floor Activity:

Passed House: 2/10/00, 97-0.

Senate Amended.

Passed Senate: 2/28/00, 45-0.

House Concurred.

Passed House: 3/6/00, 97-0.

Passed Legislature.

### Brief Summary of Substitute Bill

- Establishes a ballast water management and monitoring program.

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### HOUSE COMMITTEE ON NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Buck, Republican Co-Chair; Regala, Democratic Co-Chair; Anderson, Democratic Vice Chair; G. Chandler; Clements; Doumit; Eickmeyer; Ericksen; Pennington; Rockefeller and Stensen.

**Staff:** Andrea Leder (786-7093), Bill Lynch (786-7092).

### Background:

In 1998, the Zebra Mussel and European Green Crab Task Force presented recommendations regarding the introduction of aquatic nuisance species in Washington

State. The task force focused on four ways aquatic nuisance species may be introduced. One way the task force studied is through ballast water. In its final report, the task force included recommendations addressing introduction of aquatic nuisance species through ballast water.

At the national level, a new U.S. Coast Guard interim rule relating to ballast water and aquatic nuisance species went into effect this past summer. The rule established voluntary ballast water management guidelines that apply to vessels with ballast tanks operating in all United States waters. Along with other voluntary provisions, vessels operating beyond the 200-mile-wide Exclusive Economic Zone (EEZ) are asked to use at least one of five ballast water management practices provided in the rule. An exemption is provided if there are concerns about the safety of the vessel, its crew, or its passengers.

The rule's mandatory reporting requirements apply to vessels carrying ballast water into U.S. waters after operating beyond the EEZ. Limited vessel exceptions are provided. The rule details the specific information vessels must submit and when it must be submitted.

To maintain nationwide consistency and avoid potential conflicts and duplication, the Coast Guard has asked any political entity looking at the ballast water issue to first consider its rule prior to taking action. However, this regulation is not intended to preempt any state, regional, or local efforts that exceed, but do not conflict, with the standards detailed in the rule.

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### **Summary of Bill:**

Ballast water management and monitoring guidelines are established for vessels entering Washington waters. These guidelines apply to all vessels carrying ballast water into state waters except for:

- vessels traversing the internal waters of Washington in the Strait of Juan de Fuca, bound for a port in Canada, and not entering or departing a U.S. port;
- vessels discharging ballast water or sediments only at the location where the ballast water or sediments originated, so long as there is no mixture with ballast water or sediments from areas other than open sea waters;
- vessels not discharging ballast water in Washington waters;
- crude oil tankers' trade that do not exchange or discharge ballast water into Washington waters;
- military and Coast Guard vessels; or
- vessels on innocent passage. Innocent passage involves a foreign vessel traversing the territorial sea of the United States and not entering or departing a U.S. port, or not navigating the internal waters of the United States.

Discharge of ballast water into state waters is authorized if the nonexempt vessel has conducted an open sea exchange of its ballast. An open sea exchange means an exchange that occurs 50 or more nautical miles offshore. If the U.S. Coast Guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for compliance. An exemption is provided if the vessel's master "reasonably determines" an exchange would threaten the safety of the vessel or its crew, or is not feasible due to vessel design limitations or equipment failure. If a vessel relies on this exemption, then it may discharge its ballast into state waters, subject to any treatment requirements.

After July 1, 2002, discharge of ballast into state waters is authorized only if there has been an open sea exchange or if the vessel has treated its ballast water to meet the standards set by the Department of Fish and Wildlife. When weather or extraordinary circumstances make access to treatment unsafe for the vessel and its crew, the master may delay compliance until it is safe to complete the treatment.

Neither the open sea exchange or treatment requirements apply to vessels discharging ballast water or sediments originating solely within the waters of Washington, the Columbia River system, or the internal waters of British Columbia.

All nonexempt vessels must report ballast water management information to the Department of Fish and Wildlife, using the U.S. Coast Guard's ballast water management forms. Vessels may rely on a recognized marine trade association (RMTA) to collect and forward this information to the department.

To monitor the effectiveness of national and international efforts to prevent the introduction of non-indigenous species, all nonexempt vessels must submit non-indigenous species ballast water monitoring data. Vessels may contract with an RMTA to randomly sample vessels within that association's membership and provide data to the department. Vessels that do not belong to an RMTA must submit individual ballast tank sample data to the department for each voyage.

Civil penalties are provided and may be imposed by the director of Fish and Wildlife or the director's designee. The penalties address violations relating to ballast water discharge, reporting, and monitoring requirements. The department, in cooperation with members of the U.S. Coast Guard, may enforce the requirements.

The department, public ports, and shipping industry must promote the creation of a pilot project. The focus of this project is to develop equipment or methods to treat ballast water and establish operational methods that do not increase the cost of ballast water treatment at smaller ports.

The department is given rulemaking authority to develop treated ballast water discharge standards, to establish the frequency, manner, and form for reporting ballast water information, and to develop ballast water monitoring, sampling, and testing protocols.

These rules must be developed in consultation with advisors from regulated industries and potentially effected parties.

The Department of Fish and Wildlife is required to submit two reports to the Legislature summarizing results of the state's ballast water management program and making recommendations to improve it. The first report is due on or before December 1, 2001. This report must describe how the costs of the treatment will be "substantially equivalent" among ports where the treatment is required. The second report must be submitted on or before December 1, 2004.

The departments of Fish and Wildlife and Ecology must invite representatives from the U.S. Department of Defense to discuss the Department of Defense's efforts regarding ballast water management. The state agencies must submit a report summarizing the results of these discussions to the Legislature by December 31, 2001.

The natural resources committees of the Legislature must review this program and its implementation by December 31, 2005. If needed, the committees are to make recommendations to the 2006 Legislature.

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**Appropriation:** None.

**Fiscal Note:** Requested January 14, 2000.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) Washington is at risk for ballast water introductions. The bill is intended to be complimentary to Coast Guard rule. The bill's major provisions include making exchange as mandatory as possible and providing a treatment alternative to exchange. The suggestions to postpone implementation are a mistake. Inclusion of coastal shipping is an important feature of this bill. Many pathways for introduction of aquatic nuisance species exist, and ballast water is probably the most significant. Prevention is the key, and that is what this bill does.

**Testimony Against:** (Original bill) Ports are engaged in competitive business and want a level playing field. Protocols and discharge standards are aggressive, but based on the assumptions that the state has the power to do this and that a ballast water treatment system will be available in two years and not cost-prohibitive. Money levied in fines is expended without legislative appropriation. Those vessels that carry ballast water, but do not intend to discharge it, should be exempt. It is important to have consistency in regulations for tankers that move up and down the coast. Definitions of certain terms should be added to improve clarity. Sections dealing with ballast water exchange and treatment, reporting and monitoring, and penalties need to be tightened. A legislative

review of this program should be included. A delay in implementation would allow time to further develop this program.

**Testified:** (In support) Scott Smith, Department of Fish and Wildlife; Harry Hutchins, Puget Sound Steamship Operators Association; Mark Sytsma, Portland State University; David Secord, University of Washington; Len Barson, The Nature Conservancy; Bruce Wishart, People for Puget Sound; Diane Cooper, Pacific Coast Shellfish Growers; and Steve Tilley, Puget Sound Water Quality Action Team.

(In support with concerns) Eric Johnson, Washington Public Ports Association; Dan Riley, Western States Petroleum Association; and Christopher O'Brien, Alaska Tanker Company.

(Opposed) Rick Wickman, Columbia River Steamship Operators Association.