

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2466

Chapter 108, Laws of 2000

56th Legislature
2000 Regular Session

BALLAST WATER MANAGEMENT

EFFECTIVE DATE: 6/8/00

Passed by the House March 6, 2000
Yeas 97 Nays 0

CLYDE BALLARD
Speaker of the House of Representatives

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate February 28, 2000
Yeas 45 Nays 0

BRAD OWEN
President of the Senate

Approved March 24, 2000

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2466** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 24, 2000 - 2:59 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2466

Passed Legislature - 2000 Regular Session

AS AMENDED BY THE SENATE

State of Washington

56th Legislature

2000 Regular Session

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

Read first time 02/01/2000. Referred to Committee on .

1 AN ACT Relating to ballast water management; adding a new chapter
2 to Title 75 RCW; creating a new section; 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 ramifications and the
10 rapidly changing dimensions of this issue, and the difficulty that any
11 one state has in either legally or practically managing this issue.
12 Recognizing the possible limits of state jurisdiction over
13 international issues, the state declares its support for the
14 international maritime organization and United States coast guard
15 efforts, and the state intends to complement, to the extent its powers
16 allow it, the United States coast guard's ballast water management
17 program.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

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

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

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

27 (8) "Recognized marine trade association" means those trade
28 associations in Washington state that promote improved ballast water
29 management practices by educating their members on the provisions of
30 this chapter, participating in regional ballast water coordination
31 through the Pacific ballast water group, assisting the department in
32 the collection of ballast water exchange forms, and the monitoring of
33 ballast water. This includes members of the Puget Sound marine
34 committee for Puget Sound and the Columbia river steamship operators
35 association for the Columbia river.

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

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

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

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

5 (13) "Waters of the state" means any surface waters, including
6 internal waters contiguous to state shorelines within the boundaries of
7 the state.

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

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

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

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

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

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

35 (3) The master or operator in charge of a vessel is responsible for
36 the safety of the vessel, its crew, and its passengers. Nothing in
37 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 NEW SECTION. **Sec. 4.** The owner or operator in charge of any
4 vessel covered by this chapter is required to ensure that the vessel
5 under their ownership or control does not discharge ballast water into
6 the waters of the state except as authorized by this section.

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

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

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

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

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

36 (1) Vessels covered by this chapter must report ballast water
37 management information to the department using ballast water management

1 forms that are acceptable to the United States coast guard. The
2 frequency, manner, and form of such reporting shall be established by
3 the department by rule. Any vessel may rely on a recognized marine
4 trade association to collect and forward this information to the
5 department.

6 (2) In order to monitor the effectiveness of national and
7 international efforts to prevent the introduction of nonindigenous
8 species, all vessels covered by this chapter must submit nonindigenous
9 species ballast water monitoring data. The monitoring, sampling,
10 testing protocols, and methods of identifying nonindigenous species in
11 ballast water shall be determined by the department by rule. A vessel
12 covered by this chapter may contract with a recognized marine trade
13 association to randomly sample vessels within that association's
14 membership, and provide data to the department.

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

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

21 (5) The department shall adopt rules to implement this section.
22 The rules and recommendations shall be developed in consultation with
23 advisors from regulated industries and the potentially affected
24 parties, including but not limited to shipping interests, ports,
25 shellfish growers, fisheries, environmental interests, interested
26 citizens who have knowledge of the issues, and appropriate governmental
27 representatives including the United States coast guard.

28 (a) The department shall set standards for the discharge of treated
29 ballast water into the waters of the state. The rules are intended to
30 ensure that the discharge of treated ballast water poses minimal risk
31 of introducing nonindigenous species. In developing this standard, the
32 department shall consider the extent to which the requirement is
33 technologically and practically feasible. Where practical and
34 appropriate, the standards shall be compatible with standards set by
35 the United States coast guard and shall be developed in consultation
36 with federal and state agencies to ensure consistency with the federal
37 clean water act, 33 U.S.C. Sec. 1251-1387.

38 (b) The department shall adopt ballast water sampling and testing
39 protocols for monitoring the biological components of ballast water

1 that may be discharged into the waters of the state under this chapter.
2 Monitoring data is intended to assist the department in evaluating the
3 risk of new, nonindigenous species introductions from the discharge of
4 ballast water, and to evaluate the accuracy of ballast water exchange
5 practices. The sampling and testing protocols must consist of cost-
6 effective, scientifically verifiable methods that, to the extent
7 practical and without compromising the purposes of this chapter,
8 utilize easily measured indices, such as salinity, or check for species
9 that indicate the potential presence of nonindigenous species or
10 pathogenic species. The department shall specify appropriate quality
11 assurance and quality control for the sampling and testing protocols.

12 NEW SECTION. **Sec. 6.** The shipping vessel industry, the public
13 ports, and the department shall promote the creation of a pilot project
14 to establish a private sector ballast water treatment operation that is
15 capable of servicing vessels at all Washington ports. Federal and
16 state agencies and private industries shall be invited to participate.
17 The project will develop equipment or methods to treat ballast water
18 and establish operational methods that do not increase the cost of
19 ballast water treatment at smaller ports. The legislature intends that
20 the cost of treatment required by this chapter is substantially
21 equivalent among large and small ports in Washington.

22 NEW SECTION. **Sec. 7.** The legislature recognizes that
23 international and national laws relating to this chapter are changing
24 and that state law must adapt accordingly. The department shall submit
25 to the legislature, and make available to the public, a report that
26 summarizes the results of this chapter and makes recommendations for
27 improvement to this chapter on or before December 1, 2001, and a second
28 report on or before December 1, 2004. The 2001 report shall describe
29 how the costs of treatment required as of July 1, 2002, will be
30 substantially equivalent among ports where treatment is required. The
31 department shall strive to fund the provisions of this chapter through
32 existing resources, cooperative agreements with the maritime industry,
33 and federal funding sources.

34 NEW SECTION. **Sec. 8.** (1) Except as limited by subsection (2) or
35 (3) of this section, the director or the director's designee may impose
36 a civil penalty or warning for a violation of the requirements of this

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

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

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

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

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

28 NEW SECTION. **Sec. 10.** The departments of fish and wildlife and
29 ecology shall invite representatives from the United States department
30 of defense to discuss ways of improving ballast water management in
31 Washington state. The departments, in cooperation with the United
32 States coast guard shall seek input from other coastal states and the
33 Providence of British Columbia in conducting the study and in
34 formulating recommendations. The departments shall provide the most
35 appropriate forum to stimulate dialogue which can result in specific
36 policies and action protocols. The departments shall make
37 recommendations concerning proposals for laws and rules that will

1 guarantee the same level of public and private compliance to protect
2 the marine environment. The legislature wishes to ensure that vessels
3 exempted from this act by section 3(1)(a) of this act are taking
4 adequate precautions to prevent the introduction of nonindigenous
5 species into the waters of the state. The departments of fish and
6 wildlife and ecology shall submit a report to the legislature by
7 December 31, 2001, summarizing the results of these discussions.

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

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

Passed the House March 6, 2000.

Passed the Senate February 28, 2000.

Approved by the Governor March 24, 2000.

Filed in Office of Secretary of State March 24, 2000.