
SUBSTITUTE SENATE BILL 6293

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Natural Resources, Parks & Recreation
(originally sponsored by Senators Jacobsen and Oke)

Read first time 02/02/2000.

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 matter taken on board a
5 vessel to control or maintain trim, draft, stability, or stresses of
6 the vessel, without regard to the manner in which it is carried.

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

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

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

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

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

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

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

36 (10) "Treated ballast water" means ballast water that has undergone
37 some form of treatment to remove or reduce the number of viable
38 biological organisms.

1 (11) "Untreated ballast water" includes exchanged or unexchanged
2 ballast water that has not undergone treatment.

3 (12) "Vessel" means a self-propelled ship in commerce of three
4 hundred gross tons or more.

5 (13) "Voyage" means any transit by a vessel destined for any
6 Washington port.

7 (14) "Waters of the state" means any surface waters, including
8 internal waters contiguous to state shorelines within the boundaries of
9 the state.

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

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

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

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

30 (d) A crude oil tanker engaged in coast-wide trade that does not
31 exchange or discharge ballast water into the waters of the state.

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

37 (3) The master or operator in charge of a vessel is responsible for
38 the safety of the vessel, its crew, and its passengers. Nothing in

1 this chapter relieves the master or operator in charge of a vessel of
2 the responsibility for ensuring the safety and stability of the vessel
3 or the safety of the crew and passengers.

4 NEW SECTION. **Sec. 4.** The owner or operator in charge of any
5 vessel covered by this chapter is required to ensure that the vessel
6 under their ownership or control does not discharge ballast water into
7 the waters of the state except as authorized by this section.

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

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

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

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

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

1 (1) Vessels covered by this chapter must report ballast water
2 management information to the department for each voyage using ballast
3 water management forms that are acceptable to the United States coast
4 guard. Any vessel may rely on a recognized marine trade association to
5 forward this information to the department or directly submit the
6 report to the department. The report shall be submitted before the
7 vessel departs its port of call in Washington.

8 (2) In order to monitor the effectiveness of national and
9 international efforts to prevent the introduction of nonindigenous
10 species, all vessels covered by this chapter must submit monitoring
11 data describing nonindigenous species that might be present in the
12 vessel's ballast. A vessel covered by this chapter may contract with
13 a recognized marine trade association to randomly sample vessels within
14 that association's membership, and provide data to the department.
15 Vessels that do not belong to a recognized marine trade association
16 must submit ballast tank sample data to the department for each voyage.
17 The department may require monitoring data from any vessel that exempts
18 itself from ballast water exchange under section 4(1) of this act.

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

22 NEW SECTION. **Sec. 6.** (1) The shipping vessel industry and the
23 department shall promote the creation of a pilot project to establish
24 a private sector ballast water treatment operation that is capable of
25 servicing vessels at all Washington ports. Federal and state agencies
26 and private industries shall be invited to participate. The project
27 will develop equipment to treat ballast water and establish operational
28 methods that do not increase the cost of ballast water treatment at
29 smaller ports. The legislature intends that the cost of treatment
30 required by this chapter is substantially equivalent among large and
31 small ports in Washington.

32 (2) The department shall adopt rules to implement (a) and (b) of
33 this subsection. The rules and recommendations shall be developed in
34 consultation with advisors from regulated industries and the
35 potentially affected parties, including but not limited to shipping
36 interests, ports, shellfish growers, fisheries, environmental
37 interests, interested citizens who have knowledge of the issues, and

1 appropriate governmental representatives including the United States
2 coast guard.

3 (a) The department shall set standards for the discharge of treated
4 ballast water into the waters of the state. The rules are intended to
5 ensure that the discharge of treated ballast water poses minimal risk
6 of introducing nonindigenous species. In developing this standard, the
7 department shall consider the extent to which the requirement is
8 technologically and practically feasible. Where practical and
9 appropriate, the standards shall be compatible with standards set by
10 the United States coast guard and shall be developed in consultation
11 with federal and state agencies to ensure consistency with the federal
12 clean water act, 33 U.S.C. Sec. 1251-1387.

13 (b) The department shall adopt ballast water sampling and testing
14 protocols for monitoring the biological components of ballast water
15 that may be discharged into the waters of the state under this chapter.
16 Monitoring data is intended to assist the department in evaluating the
17 risk of new, nonindigenous species introductions from the discharge of
18 ballast water, and to evaluate the accuracy of ballast water exchange
19 practices. The sampling and testing protocols must consist of cost-
20 effective, scientifically verifiable methods that, to the extent
21 practical and without compromising the purposes of this chapter,
22 utilize easily measured indices, such as salinity, or check for species
23 that indicate the potential presence of nonindigenous species or
24 pathogenic species. The department shall specify appropriate quality
25 assurance and quality control for the sampling and testing protocols.

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
2 constitute a new chapter in Title 75 RCW.

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