

HOUSE BILL REPORT

E2SSB 5923

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to aquatic invasive species enforcement and control.

Brief Description: Regarding aquatic invasive species enforcement and control.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Swecker, Jacobsen and Sheldon).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/28/07 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by House Committee)**

- Includes commercial watercraft, watercraft transportation equipment, and watercraft auxiliary equipment in the Aquatic Invasive Species Enforcement and Prevention Programs.
- Creates the crime of unlawfully avoiding aquatic invasive species check stations.
- Exempts the person in possession of contaminated watercraft from criminal penalties relating to invasive species and forfeiture if that person complies with the Department of Fish and Wildlife directives for the proper decontamination of the watercraft and equipment.
- Requires the Department of Fish and Wildlife to develop a programmatic environmental impact statement to address their plan for treatment and response to the introduction of prohibited aquatic invasive species.
- Provides an exemption for emergency discharge of ballast water, and requires the Ballast Water Work Group (BWWG) to make recommendations for treatment under this exemption.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Allows the Department of Fish and Wildlife to issue a special operating authorization for passenger vessels conducting or assisting in research and testing activities.
- Creates new tasks for the BWWG, and invites the Department of Ecology, the Department of Natural Resources, and a representative of the cruise ship industry to be members on the BWWG.
- Increases the penalty fee for unexchanged or untreated ballast water up to \$27,500 per day of continuing violation.
- Creates a Ballast Water Management Account to be used to support the ballast water management program and support research and monitoring.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 14 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Dickerson, Eickmeyer, Grant, Hailey, Kagi, McCoy, Newhouse, Orcutt, Strow and VanDeWege.

Staff: Jaclyn Ford (786-7339).

Background:

Watercraft:

Invasive species are generally considered to be animal or plant species that are thriving in a geographical area where they are not native. The Washington Department of Fish and Wildlife (WDFW) has authority to manage aquatic nuisance species and is charged with tracking and proposing solutions to manage these species.

The Aquatic Invasive Species Prevention Account (Prevention Account) and the Aquatic Invasive Species Enforcement Account (Enforcement Account) were created by the Legislature in 2005. From the fees paid by each annual vessel registration, \$1.50 is deposited into the Prevention Account and 50 cents is deposited into the Enforcement Account.

Funds in the Prevention Account are appropriated to the WDFW to develop an Aquatic Invasive Species Prevention Program (Prevention Program) for recreational watercraft.

Funds from the Enforcement Account are appropriated to the Washington State Patrol (WSP) to develop an Aquatic Invasive Species Enforcement Program (Enforcement Program) for recreational watercraft.

The WDFW and the WSP are required to submit a biennial report to the appropriate legislative committees by December 1, 2007, describing the actions taken in implementing the Aquatic Invasive Prevention and Enforcement Programs, along with suggestions for improvements.

Ballast Water:

All vessels involved in coastal traffic are required to exchange their ballast water at least 50 nautical miles offshore.

Vessels are allowed to discharge non-exchanged ballast water in three circumstances: (1) when it is not safe to perform open ocean exchange, or when design limitations of the vessel or equipment malfunctions prevent exchange; (2) when ships' ballast water originated in Washington and has not been mixed with water or sediments from outside designated areas; and (3) when an approved ballast water treatment system is utilized.

On July 1, 2007, the discharge of improperly exchanged or treated ballast water into Washington waters is prohibited. The safety and design exemption for exchange will no longer be valid unless the ballast water was first treated.

A vessel that discharges improperly exchanged or treated ballast water without a valid exemption may result in a fine of up to \$5,000.

All vessels of 300 gross tons or more, except military vessels, must file a ballast water reporting form. Vessel operators that fail to comply with the reporting requirements may be subject to a \$500 fine. Falsifying a ballast report may result in both a civil and criminal penalty.

Summary of Amended Bill:

Aquatic Invasive Species Enforcement:

Expenditures from the Aquatic Invasive Species Enforcement Account (Enforcement Account) may be appropriated to both the WSP and the WDFW to develop an Aquatic Invasive Species Enforcement Program for recreational and commercial watercraft. Watercraft also includes watercraft transportation equipment, and watercraft auxiliary equipment.

The WSP will use the expenditures from the Enforcement Account to inspect recreational and commercial watercraft at mandatory port-of-entry weigh stations. The WDFW will use the funds to establish random check stations to inspect recreational and commercial watercraft. The WDFW will also provide inspection outside of check stations to persons requesting inspection and provide a receipt indicating the watercraft is not contaminated.

Any person stopped at a check station, or that voluntarily submits to an inspection by a WDFW employee that possesses watercraft or equipment that is contaminated with invasive species is exempt from the criminal penalties relating to invasive species and forfeiture if that person

complies with WDFW directives for the proper decontamination of the watercraft and equipment.

A person is guilty of unlawfully avoiding aquatic invasive species check stations if they fail to obey check station signs, or fail to stop and report at a check station if directed by a uniformed WDFW officer. Unlawfully avoiding aquatic invasive species check stations is a gross misdemeanor.

Aquatic Invasive Species Prevention:

Expenditures from the Aquatic Invasive Species Prevention Account (Prevention Account) may be appropriated to the WDFW to develop an Aquatic Invasive Species Prevention Program for recreational and commercial watercraft. Funds may be used to inspect recreational and commercial watercraft, transportation equipment, and outboard motors.

The WDFW is required to post signs and disseminate information to the public regarding invasive species prevention and inspection. All port districts, privately or publicly owned marinas, state parks, and other state agencies or political subdivisions that own or lease a boat launch must display a sign provided by the WDFW.

The WDFW will develop a plan for treatment and immediate response to the introduction of prohibited aquatic invasive species into Washington waters. This plan will be reviewed under the State Environmental Policy Act, and a programmatic environmental impact statement (EIS) will be developed.

Ballast Water Discharge:

A vessel is defined as a floating craft of 300 gross tons or more capable of carrying ballast water into the coastal waters of the state after operating outside of the coastal waters of the state.

Vessels that are merely traversing the territorial sea of the United States and not entering or departing a United States port; not navigating the internal waters of the United States; or not discharging ballast water into state waters do not have to comply with ballast water discharge requirements.

Discharge of ballast water into state waters is authorized only if there has been an open sea exchange or if the vessel has treated its ballast water. The WDFW, in consultation with the BWVG will adopt, by rule, standards for the discharge of ballast water and implementation timelines.

When weather conditions, vessel limitations, equipment failure, or other extraordinary conditions make ballast water exchange or treatment a threat to the safety of the vessel, passengers, or crew, the vessel may discharge into state waters. This emergency discharge is subject to a fee up to \$5,000, and the discharge must only be the minimum amount of ballast needed for operation. Ballast water records must reflect why the vessel required the discharge, and any other requirements set by rule by the WDFW.

The WDFW will issue rules for exemption conditions, requirements, compliance plans, and alternative ballast water management strategies.

The Ballast Water Work Group:

The BWVG has several responsibilities, including working with Oregon to develop a consistent ballast water management program for the Columbia River, and providing assistance to the WDFW in the implementation and research of the ballast water management program. The Department of Ecology (DOE), the Department of Natural Resources (DNR), and one representative of the cruise ship industry will also be invited to work on the BWVG. The Pacific Merchant Shipping Association will also replace the two representatives previously held by the Puget Sound Steamship Operators.

The WDFW may issue a special operating authorization for passenger vessels conducting or assisting in research and testing activities to determine the presence of invasive species in ballast water. The testing and research will be reviewed by the BWVG and the findings will be included in the BWVG July 1, 2009, report to the Legislature. The WDFW may adopt rules for defining the special operating authorization conditions, requirements, limitations, and necessary fees.

Ballast Water Discharge Penalties:

If a vessel discharges untreated or exchanged ballast water into state waters, regardless of circumstances, there may be a penalty imposed. The penalty may be up to \$27,500 per day of continuing violation. The WDFW will establish a schedule for any penalty or fee allowed under this act. Schedules must be based on criteria established in the WDFW rules.

Ballast Water Management Account:

A Ballast Water Management Account (Ballast Account) is created for the collection of appropriations, gifts, grants, donations, penalties and mitigation fees. Funds deposited into the Ballast Account must be appropriated by the Legislature prior to expenditure.

Expenditures may only be used to support the ballast water management program established by the WDFW and the BWVG, or support the research and monitoring required from the ballast water management program. Penalties deposited into the Ballast Account may only be used, in consultation with the BWVG, to support research and provide education and outreach related to the ballast water management program.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill adds definition sections to define "Recreational and Commercial Watercraft" and "Aquatic Invasive Species." It requires the WDFW to adopt rules governing how and when the owners may request an inspection of their watercraft, and allows the WDFW to coordinate with other states in this effort. It removes the crime of unlawfully introducing a prohibited aquatic animal species, and eliminates requiring the use of a chemical treatment under the emergency ballast discharge exemption. The bill requires the BWVG to make recommendations for treatment of unexchanged ballast water under the emergency ballast

discharge exemption. Recommendations are due to the Legislature by July 1, 2008. It eliminates the definition of pollution that excluded the emergency discharge of ballast water, and eliminates the lack of jurisdiction of the DOE over the emergency discharge of ballast water. It also adds representatives from the Pacific Merchant Shipping Association and the DNR to the BWWG, and makes the Ballast Account an appropriated account.

Appropriation: None.

Fiscal Note: New fiscal note requested on March 28, 2007.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(All testimony comments on the Striking Amendment H-3123.2 by Representative B. Sullivan.)

(In support) Trying to kill invasive species is like trying to kill a fast moving cancer. Zebra mussels and other aquatic invasive species are detrimental to the economy of Washington. The BWWG agrees that this is important legislation. This bill would help reduce the invasion of non-native species into Washington. This bill is positive for the community and is an important educational tool, and would continue to build on successful aquatic invasive species prevention, enforcement, and management programs.

(Opposed) None.

Persons Testifying: Chief Bruce Bjork, Captain Mike Cenci, and Alan Pleus, Washington Department of Fish and Wildlife; Fran McNair, Department of Natural Resources; Steve Robinson, Northwest Indian Fisheries Commission; Melodie Selby, Washington Department of Ecology; Bruce Wishart, People for Puget Sound; Randy Ray, Pacific Merchant Shipping Association; and Joe Daniels, Holland America Line.

Persons Signed In To Testify But Not Testifying: None.