

**CHAPTER 722**

AN ACT

SB 895

Relating to ballast water management; creating new provisions; and amending ORS 783.600.

Whereas the Legislative Assembly finds that aquatic nuisance species have the potential to cause economic and environmental damage to this state and that current national efforts to stop the introduction of aquatic nuisance species through ballast water from shipping vessels do not adequately reduce the risk of new introductions into the waters of this state; and

Whereas the Legislative Assembly finds that no treatment technology currently exists to adequately address the issue of ballast water management and that research into treatment technologies and consistent federal standards must be developed in order to fully address this issue; and

Whereas the Legislative Assembly finds that deep ocean exchange of ballast water is an interim partial solution that is available to ocean-going vessels and has yet to be fully implemented by industry; and

Whereas the Legislative Assembly recognizes the international ramifications and rapidly changing dimensions of this issue and the difficulty that any one state has in legally, cost effectively or practically managing this issue; and

Whereas recognizing the possible limits of state jurisdiction over international issues, the Legislative Assembly declares its support for the efforts of the United Nations International Maritime Organization and the United States Coast Guard; and

Whereas the State of Oregon intends to complement, to the extent practical and cost effective, the United States Coast Guard's ballast water management program and recommend necessary changes and improvements to the United States Coast Guard in the program; and

Whereas the Legislative Assembly recognizes that the State of Oregon and the State of Washington face certain special legal issues arising from the shared waters of the Columbia River; and

Whereas the Legislative Assembly intends that, when practical and cost effective, implementation of sections 1 to 5 of this 2001 Act shall be coordinated with related rules and regulations adopted by the State of Washington and the State of California; and

Whereas the Legislative Assembly recognizes that ballast water should be managed from the federal level and urges the United States Congress to strengthen the federal ballast water program and, with regional input, apply consistent rules and standards for all waters of the United States; and

Whereas the Legislative Assembly fully intends for this 2001 Act to conform to future federal laws on ballast water management; now, therefore,

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** As used in sections 1 to 5 of this 2001 Act, unless the context requires otherwise:

(1) "Aquatic nuisance species" means any species or other viable biological material that enters an ecosystem beyond its historic range.

(2) "Ballast water" means any water and associated sediment used to manipulate the trim and stability of a vessel.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a vessel used solely for commercial fish harvesting, of 300 gross tons or more.

(4) "Coastal exchange" means replacing the ballast water taken onboard at a North American coastal port in one of the following manners:

(a) For vessels departing from a North American coastal port located south of the parallel 40 degrees north latitude, and traveling northward into the waters of this state, the replacement of ballast water at sea south of the parallel 40 degrees north latitude; or

(b) For vessels departing from a North American coastal port located north of the parallel 50 degrees north latitude, and traveling southward into the waters of this state, the replacement of ballast water at sea north of the parallel 50 degrees north latitude.

(5) "Department" means the Department of Environmental Quality.

(6) "Oil" means oil, gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse and any other petroleum related product.

(7) "Open sea exchange" means a replacement of ballast water that occurs in an area no less than 200 nautical miles from any shore and where the water depth exceeds 2,000 meters.

(8) "Passenger vessel" means a ship of 300 gross tons or more carrying passengers for compensation.

(9) "Sediment" means any matter that settles out of ballast water.

(10) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(11) "Tank vessel" means a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue other than:

(a) A vessel carrying oil in drums, barrels or other packages;

(b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(12) "Vessel" means a tank vessel, cargo vessel or passenger vessel.

(13) "Voyage" means any transit by a vessel destined for any Oregon port.

(14) "Waters of this state" means natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean that is in the boundaries of Oregon.

**SECTION 2.** (1) This section and section 3 of this 2001 Act apply to all vessels carrying ballast water into the waters of this state from a voyage, except a vessel that:

(a) Discharges ballast water or sediment only at the location where the ballast water or sediment originated, if the ballast water or sediment are not mixed with ballast water or sediment from areas other than open sea waters;

(b) Does not discharge ballast water in waters of this state;

(c) Traverses only the internal waters of this state;

(d) Traverses only the territorial sea of the United States and does not enter or depart an Oregon port or navigate the waters of this state; or

(e) Discharges ballast water or sediment that originated solely from waters located between the parallel 40 degrees north latitude and the parallel 50 degrees north latitude.

(2) Sections 2 to 4 of this 2001 Act do not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal or international laws or regulations. Ballast water containing oil or noxious liquid substances shall be discharged in accordance with the applicable requirements.

(3) Nothing in this section:

(a) Requires an open sea exchange or coastal exchange if the owner or operator in charge of a vessel determines that performing an open sea exchange or coastal exchange would threaten the safety or stability of the vessel or the safety of the vessel's crew or passengers because of any extraordinary condition, including but not limited to adverse weather, vessel design limitations or equipment failure.

(b) Exempts the owner or operator in charge of a vessel from the reporting requirements under section 4 of this 2001 Act, whether or not ballast water is carried or discharged in the waters of this state.

**SECTION 3.** (1) Except as authorized by this section, the discharge of ballast water in the waters of this state is prohibited.

(2) An owner or operator of a vessel may discharge ballast water in the waters of this state:

(a) If the owner or operator has conducted an open sea exchange, or a coastal exchange, if applicable, of ballast water prior to entering the waters of this state; or

(b) Without performing an open sea exchange or a coastal exchange of ballast water if the owner or operator reasonably believes that an exchange would threaten the safety of the vessel or if the exchange is not feasible due to vessel design limitations or equipment failure.

(3) An owner or operator who discharges ballast water in the waters of this state under

subsection (2)(b) of this section is subject to the reporting requirements under section 4 of this 2001 Act.

**SECTION 4.** (1) Owners or operators of vessels regulated under sections 2 to 4 of this 2001 Act must report ballast water management information to the Department of Environmental Quality at least 24 hours prior to entering the waters of this state. The department may work with maritime associations to establish the manner and form of such reporting.

(2) The department may verify compliance with sections 2 to 4 of this 2001 Act by relying on tests conducted by the United States Coast Guard or on other tests determined to be appropriate by the department.

**SECTION 5.** (1) The Director of the Department of Environmental Quality shall establish a task force to study and recommend appropriate changes and additions to sections 2 to 4 of this 2001 Act, including but not limited to changes based upon the following considerations:

(a) Shipping industry compliance with sections 2 to 4 of this 2001 Act;

(b) Practical and cost-effective ballast water treatment technologies;

(c) Appropriate standards for discharge of treated ballast water in waters of this state;

(d) The degree to which open sea exchange and coastal exchange of ballast water decreases the risk of transporting aquatic nuisance species into the waters of Oregon;

(e) The compatibility of sections 2 to 4 of this 2001 Act with new laws enacted by the United States Congress, regulations promulgated by the United States Coast Guard and ballast water management programs established by the States of Washington and California and the Province of British Columbia;

(f) Research requirements for ballast water treatment technology and other areas of concern related to the possible introduction of aquatic nuisance species;

(g) Amendments to the National Invasive Species Act of 1996 (P.L. 104-332) for a single national system of regulation; and

(h) How ballast water management is consistent with and made a part of efforts to eradicate invasive species throughout Oregon.

(2) Subject to available funding from gifts, grants or donations, Portland State University may, from the appropriate department, provide staff and coordination assistance to the task force.

(3) The director shall consider appointing persons to the task force who represent federal, state, State of Washington, maritime, environmental and academic interests.

(4) Two members of the Legislative Assembly appointed jointly by the President of the Senate

and the Speaker of the House of Representatives shall act in an advisory capacity to the task force.

(5) The task force shall report its recommendations to the appropriate House of Representatives and Senate committees of the Seventy-second Legislative Assembly by January 2003.

**SECTION 6.** The Director of the Department of Environmental Quality shall establish the task force specified in section 5 of this 2001 Act no later than 60 days after the effective date of this 2001 Act.

**SECTION 7.** (1) Except as provided in subsection (2) of this section, the Director of the Department of Environmental Quality may impose a civil penalty on the owner or operator of a vessel for failure to comply with the requirements of sections 2 to 4 of this 2001 Act. The penalty imposed under this section may not exceed \$5,000 for each violation. In determining the penalty imposed, the director shall consider

whether the violation was intentional, negligent or without any fault and shall consider the quality and nature of risks created by the violation. The owner or operator of a vessel subject to such a penalty may contest the determination by requesting a hearing under ORS 183.413 to 183.470.

(2) The civil penalty for a violation of the reporting requirements of section 4 of this 2001 Act may not exceed \$500 per violation.

**SECTION 8.** ORS 783.600 is amended to read:

783.600. *[No person, whether an officer of a vessel or not, shall]* **Except as provided in section 3 of this 2001 Act, a person may not** discharge the ballast of any vessel into the navigable portions or channels of any of the bays, harbors or rivers of this state, or within the jurisdiction of this state, so as to injuriously affect such portions or channels of such bays, harbors or rivers, or to obstruct navigation thereof.

Approved by the Governor July 2, 2001  
Filed in the office of Secretary of State July 2, 2001  
Effective date January 1, 2002