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HOUSE BILL 2549

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State of Washington

58th Legislature

2004 Regular Session

By Representatives Dickerson, Cooper, Hunt, Rockefeller and Chase

Read first time 01/15/2004. Referred to Committee on Fisheries, Ecology & Parks.

1 AN ACT Relating to minimizing the environmental impacts of  
2 commercial passenger vessels; amending RCW 90.48.160, 53.08.080,  
3 90.48.037, 90.48.120, 90.48.144, and 70.146.030; adding a new chapter  
4 to Title 70 RCW; prescribing penalties; and providing an effective  
5 date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Agent for service of process" means an agent upon whom  
10 process, notice, or demand required or permitted by law to be served  
11 upon the owner or operator may be served.

12 (2) "Biomedical waste" has the meaning provided in RCW 70.95K.010.

13 (3) "Commercial passenger vessel" means a vessel not owned by the  
14 government of the United States or a foreign nation that is authorized  
15 and capable of providing overnight accommodations for at least fifty  
16 passengers for hire.

17 (4) "Department" means the department of ecology.

18 (5) "Discharge" means any release, however caused, from a

1 commercial passenger vessel, and includes any escape, disposal,  
2 spilling, leaking, pumping, emitting, or emptying.

3 (6) "Fee" means the environmental compliance fee established in  
4 section 7 of this act.

5 (7) "Graywater" means galley, dishwater, bath, laundry, and other  
6 nonsewage wastewaters that are treated or untreated. The term includes  
7 graywater that is stored in or transferred to a ballast tank or other  
8 holding area on the vessel that may not be customarily used for storing  
9 graywater. Mixtures of graywater and blackwater, regardless of  
10 concentrations, shall be treated under this chapter as graywater.

11 (8) "Hazardous waste" has the same meaning given to both the terms  
12 "hazardous substances" and "hazardous waste" in RCW 70.105.010.

13 (9) "Marine sanctuary" means any portion of the marine waters of  
14 Washington that has been designated as a sanctuary by either the state  
15 or federal government.

16 (10) "Marine waters of Washington" means the Puget Sound, the  
17 Straight of Juan de Fuca from the Washington coast to the Canadian  
18 border, and coastal waters out to three miles from the Washington  
19 coast.

20 (11) "Oily bilge water" includes bilge water that contains used  
21 lubrication oils, oil sludge and slops, fuel and oil sludge, used oil,  
22 used fuel and fuel filters, and oily waste.

23 (12) "Passenger for hire" means vessel passengers that are required  
24 to contribute some form of consideration as a condition of carriage on  
25 the vessel, whether that consideration flows directly or indirectly to  
26 the owner, charterer, operator, agent, or other person having an  
27 interest in the vessel.

28 (13) "Puget Sound port" means a port located within the boundaries  
29 of Puget Sound.

30 (14) "Sewage" means human body wastes and the wastes from toilets  
31 and other receptacles intended to receive or retain human wastes.

32 (15) "Sewage sludge" has the meaning provided in RCW 70.95.030.

33 (16) "Solid waste" has the meaning provided in RCW 70.95.030.

34 (17) "Voyage" means a vessel trip to or from a Puget Sound port  
35 with a majority of the passengers for hire completing the entire vessel  
36 trip. A vessel trip that embarks and concludes from the same Puget  
37 Sound port is considered to be a single voyage if a majority of the  
38 passengers for hire completes the entire vessel trip.

1        NEW SECTION.    **Sec. 2.**    (1) Before entering the waters of Puget  
2 Sound, the owner or operator of each commercial passenger vessel that  
3 intends to operate, or cause to be operated, in Puget Sound must file  
4 both an annual registration and a signed agreement with the department  
5 consistent with this section.

6        (2) The owner or operator of a commercial passenger vessel that is  
7 required to register with the department under this section must also  
8 continuously maintain a designated agent for service of process  
9 whenever a commercial passenger vessel of the owner or operator is in  
10 the waters of Puget Sound. The agent must be an individual resident of  
11 Washington, a domestic corporation, or a foreign corporation having a  
12 place of business in Washington.

13        (3) Consistent with this section, the department shall develop  
14 registration collection policies and registration forms which must, at  
15 a minimum, include the following information:

16        (a) The name of the vessel owner's business and, if different, the  
17 name of the vessel operator's business for each commercial passenger  
18 vessel of the owner or operator that is scheduled to be in the waters  
19 of Puget Sound during that calendar year;

20        (b) The postal address, electronic mail address, telephone number,  
21 and facsimile number for the owner or operator's principal place of  
22 business;

23        (c) The name and address of the agent for service of process  
24 required under subsection (2) of this section; and

25        (d) The name and call sign of, and port of registry for, each of  
26 the owner's or operator's commercial passenger vessels that is  
27 scheduled to either call upon a Puget Sound port or otherwise be in the  
28 waters of Puget Sound during the calendar year.

29        (4) The department may not accept a registration form from an owner  
30 or operator of a commercial passenger vessel under this section unless  
31 the form is accompanied by a signed agreement by the owner or operator  
32 to comply with the terms and conditions placed on vessel discharge by  
33 this chapter, and any rules adopted under this chapter.

34        (5) An owner or operator failing to file both an annual  
35 registration and signed agreement, under this section, is prohibited  
36 from landing, docking, or otherwise calling on a Washington port until  
37 both documents are filed with the department, except under emergency

1 situations where landing at a Puget Sound port is necessary to protect  
2 the safety of the commercial passenger vessel or its passengers or  
3 crew.

4 (6) Registration forms developed by the department under this  
5 section may be paper forms, electronic forms, or both.

6 NEW SECTION. **Sec. 3.** (1) Except as provided in sections 4 and 5  
7 of this act, a person may not, regardless of intent, discharge sewage  
8 sludge, oily bilge water, solid waste, biomedical waste, hazardous  
9 waste, graywater, or untreated sewage from a commercial passenger  
10 vessel into the marine waters of Washington.

11 (2) Except as provided in sections 4 and 5 of this act, a person  
12 may not, regardless of intent, discharge treated sewage from a  
13 commercial passenger vessel into the marine waters of Washington that  
14 exceeds, at the point of discharge, the limits for suspended solids,  
15 fecal coliform counts, and other discharge parameters established by  
16 the department pursuant to section 11 of this act. Any discharge of  
17 treated sewage from a commercial passenger vessel must be in compliance  
18 with RCW 90.48.160.

19 (3) Except as provided in sections 4 and 5 of this act, a person  
20 may not, regardless of intent, discharge any treated sewage from a  
21 commercial passenger vessel that is located in or adjacent to a marine  
22 sanctuary.

23 (4) The owner or operator of a commercial passenger vessel who  
24 becomes aware of a discharge in violation of this section must  
25 immediately report that discharge to the department.

26 NEW SECTION. **Sec. 4.** Section 3 of this act does not apply to  
27 discharges made for the purpose of securing the safety of the  
28 commercial passenger vessel or saving life at sea if all reasonable  
29 precautions have been taken to prevent or minimize the discharge.

30 NEW SECTION. **Sec. 5.** The department may establish alternate terms  
31 and conditions of vessel discharges applicable to an owner or operator  
32 of a commercial passenger vessel who can not practicably comply with  
33 the standard terms and conditions of vessel discharge established in  
34 section 3 of this act, or who wishes to use or test alternative

1 environmental protection equipment or procedures. The department may  
2 set alternative terms and conditions on a case-by-case basis if:

3 (1) The vessel owner and operator establishes to the department's  
4 reasonable satisfaction that equivalent environmental protection can be  
5 attained through other terms or conditions appropriate for the specific  
6 configuration of the owner's or operator's vessel;

7 (2) The vessel owner or operator agrees to make necessary changes  
8 to the vessel to allow it to comply with the standard terms and  
9 conditions established in section 3 of this act, but demonstrates to  
10 the department's reasonable satisfaction that additional time is needed  
11 to make the necessary changes; or

12 (3) An experimental technology or method for pollution control of  
13 a discharge is being used or is proposed as one of the alternative  
14 terms and conditions of vessel discharges and the department determines  
15 that the experimental technology or method has a reasonable likelihood  
16 of success in providing increased protection for the environment.

17 NEW SECTION. **Sec. 6.** (1) The owner or operator of a commercial  
18 passenger vessel must collect information in accordance with the  
19 requirements of this section, maintain the records for three years  
20 after the information was gathered, and provide a report to the  
21 department upon its request with copies and summaries of the records.  
22 The report must also include details on the dates, times, locations,  
23 the volumes or flow rates of any discharge of sewage or other  
24 discharges into the marine waters of Washington, descriptions of the  
25 sampling and testing procedures used, and other information requested  
26 by the department. Reports submitted under this subsection must  
27 include all testing done twenty-one or more days before the report  
28 being requested by the department, and include copies of any reports  
29 filed with the federal government that relate to the discharge of  
30 sewage, graywater, or the offloading of hazardous waste within the  
31 marine waters of Washington or at a Washington port.

32 (2) While a commercial passenger vessel is present in Puget Sound,  
33 the owner or operator must collect routine samples of the vessel's  
34 treated sewage and any other substance that is being discharged into  
35 the marine waters of Washington with a sampling technique that has been  
36 approved by the department before the sample is taken. The number of  
37 samples required to be taken under this subsection is the greater of

1 either once every calendar month that the vessel is present in Puget  
2 Sound, or the number required to be taken under applicable federal law  
3 or regulation.

4 (3) While a commercial passenger vessel is present in Puget Sound,  
5 the department, or an independent contractor hired by the department,  
6 may collect samples, in addition to the samples required under  
7 subsection (2) of this section, of the vessel's treated sewage, and any  
8 other substance from any other vessel source, that is being discharged  
9 into the marine waters of the state.

10 (4) The owner or operator of a vessel that must collect samples  
11 under subsection (2) of this section must have the samples tested to  
12 measure fecal coliform, ammonia, residual chlorine, degree of acidity  
13 or alkalinity, chemical oxygen demand, biochemical oxygen demand, total  
14 suspended solids, and other parameters, including tests for substances  
15 not traditionally associated with sewage, as required by the  
16 department. The analytical testing method used must be approved by the  
17 department before the test being conducted.

18 (5) The owner or operator of the vessel required to conduct  
19 sampling under subsection (2) of this section must pay, or arrange for  
20 payment, for all routine sampling and testing required under this  
21 section. The department is responsible for paying for additional  
22 sampling and testing carried out under the authority granted in  
23 subsection (3) of this section.

24 (6) Nothing in this section relieves the owner or operator of a  
25 commercial passenger vessel from other applicable reporting  
26 requirements in state or federal law.

27 NEW SECTION. **Sec. 7.** (1) Each commercial passenger vessel that  
28 loads or unloads passengers for hire at a Puget Sound port shall be  
29 assessed an environmental compliance fee for each voyage during which  
30 the commercial passenger vessel operates in the marine waters of  
31 Washington. The fee shall be paid to the department in accordance with  
32 payment procedure policies developed by the department.

33 (2) A fee schedule, based on a per passenger for hire basis, must  
34 be established in rule by the department. The schedule must ensure  
35 that the fee is set at the minimum amount to reasonably cover the costs  
36 to the department for the implementation of this chapter; however, in

1 no instance may the fee exceed one dollar and seventy-five cents per  
2 passenger for hire per voyage.

3 (3) The fee collected under this section must be deposited into the  
4 water quality account created in RCW 70.146.030 and used exclusively  
5 for the administration of this chapter.

6 NEW SECTION. **Sec. 8.** The department may engage in the following  
7 activities relating to commercial passenger vessels operating in the  
8 marine waters of the state:

9 (1) Directing in-water monitoring of discharges or releases of  
10 sewage, graywater, bilge water, or any other discharges from commercial  
11 passenger vessels;

12 (2) Monitoring and studying of direct or indirect environmental  
13 effects; and

14 (3) Researching ways to reduce effects on marine waters and other  
15 coastal resources.

16 NEW SECTION. **Sec. 9.** The department may engage in efforts to  
17 encourage and recognize superior environmental protection efforts made  
18 by the owners or operators of commercial passenger vessels that exceed  
19 the requirements of this chapter.

20 NEW SECTION. **Sec. 10.** The department shall assess penalties to a  
21 person found to be in violation of this chapter consistent with RCW  
22 90.48.037, 90.48.120, and 90.48.144. The department may also refuse to  
23 accept a registration application under section 2 of this act from an  
24 owner or operator of a commercial passenger vessel found to have  
25 committed multiple violations of this chapter.

26 NEW SECTION. **Sec. 11.** (1) The department may adopt rules,  
27 pursuant to chapter 34.05 RCW, that are consistent with this chapter if  
28 such rules are determined by the department to be necessary for the  
29 administration of this chapter.

30 (2) The department must adopt rules, pursuant to chapter 34.05 RCW,  
31 that establishes the suspended solids and fecal coliform counts for  
32 sewage limits required to be satisfied in section 3 of this act. Rules  
33 adopted under this subsection may be amended by the department,  
34 pursuant to chapter 34.05 RCW, as deemed necessary by the department.

1 (3) The department may, pursuant to chapter 34.05 RCW, establish  
2 numeric or narrative standards for parameters other than suspended  
3 solids and fecal coliform that apply to sewage and other discharged  
4 substances from commercial passenger vessels, even if the substances  
5 that are the subject of the parameters are not traditionally associated  
6 with sewage. In developing rules under this subsection, the department  
7 must consider information on the environmental effects of the regulated  
8 discharges, the materials and substances handled and generated on the  
9 vessels, vessel movement effects, and the availability of new  
10 technologies for wastewater.

11 (4) In developing rules under this section, the department should  
12 seek to achieve consistency with the strictest vessel discharge  
13 standards required by other jurisdictions in which commercial passenger  
14 vessels visiting Puget Sound frequently travel when consistency is  
15 practicable, scientifically defensible, and in accordance with the laws  
16 of Washington.

17 NEW SECTION. **Sec. 12.** This chapter shall not be construed as  
18 repealing any of the laws governing the pollution of the waters of the  
19 state, but shall be held and construed as ancillary to and  
20 supplementing the same and an addition to the laws now in force.

21 NEW SECTION. **Sec. 13.** The department may cooperate with the  
22 federal government and accept grants of federal funds for carrying out  
23 this chapter. The department may make any application or report  
24 required by an agency of the federal government as an incident to  
25 receiving such grants.

26 NEW SECTION. **Sec. 14.** The department may cooperate with  
27 appropriate agencies of neighboring states and neighboring provinces,  
28 enter into contracts, and make contributions toward interstate and  
29 state-provincial projects to carry out this chapter.

30 **Sec. 15.** RCW 90.48.160 and 1989 c 293 s 2 are each amended to read  
31 as follows:

32 (1) Any person who conducts a commercial or industrial operation of  
33 any type which results in the disposal of solid or liquid waste  
34 material into the waters of the state, including commercial or

1 industrial operators discharging solid or liquid waste material into  
2 sewerage systems operated by municipalities or public entities which  
3 discharge into public waters of the state, shall procure a permit from  
4 either the department or the ~~((thermal power plant))~~ energy facility  
5 site evaluation council as provided in RCW 90.48.262(2) before  
6 disposing of such waste material(~~((:—PROVIDED, That))~~).

7 (2) Nothing in this section shall ~~((not))~~ apply to any person  
8 discharging domestic sewage only into a sewerage system. However, this  
9 section does apply to the owner or operator of a commercial passenger  
10 vessel when he or she is disposing of treated sewage in the marine  
11 waters of Washington as allowed pursuant to section 3 of this act. For  
12 this subsection only, any applicable terms have the same meaning as  
13 assigned to those terms in section 1 of this act.

14 (3) The department may, through the adoption of rules, eliminate  
15 the permit requirements for disposing of wastes into publicly operated  
16 sewerage systems for:

17 ~~((+1))~~ (a) Categories of or individual municipalities or public  
18 corporations operating sewerage systems; or

19 ~~((+2))~~ (b) Any category of waste disposer;  
20 if the department determines such permit requirements are no longer  
21 necessary for the effective implementation of this chapter. The  
22 department may by rule eliminate the permit requirements for disposing  
23 of wastes by upland finfish rearing facilities unless a permit is  
24 required under the federal clean water act's national pollutant  
25 discharge elimination system.

26 **Sec. 16.** RCW 53.08.080 and 1989 c 298 s 2 are each amended to read  
27 as follows:

28 (1) A district may lease all lands, wharves, docks and real and  
29 personal property owned and controlled by it, for such purposes and  
30 upon such terms as the port commission deems proper(~~((:—PROVIDED,~~  
31 That)). However, no lease shall be for a period longer than fifty  
32 years with option for extensions for up to an additional thirty years,  
33 except where the property involved is or is to be devoted to airport  
34 purposes the port commission may lease said property for such period as  
35 may equal the estimated useful life of such work or facilities, but not  
36 to exceed seventy-five years(~~((:—PROVIDED FURTHER, That))~~). Where the  
37 property is held by the district under lease from the United States

1 government or the state of Washington, or any agency or department  
2 thereof, the port commission may sublease said property, with option  
3 for extensions, up to the total term and extensions thereof permitted  
4 by such lease, but in any event not to exceed ninety years.

5 (2) Leases or other agreements entered into by a district and the  
6 owner or operator of a commercial passenger vessel, as that term is  
7 defined in section 1 of this act, regardless of length or type of  
8 facility, must contain provisions to ensure that the commercial  
9 passenger vessel's permission to use the leased property or facility is  
10 contingent on that vessel's compliance with chapter 70.--- RCW  
11 (sections 1 through 14, 21, 22, and 24 of this act).

12 **Sec. 17.** RCW 90.48.037 and 1991 c 200 s 1102 are each amended to  
13 read as follows:

14 The department, with the assistance of the attorney general, is  
15 authorized to bring any appropriate action at law or in equity,  
16 including action for injunctive relief, in the name of the people of  
17 the state of Washington as may be necessary to carry out the provisions  
18 of this chapter, chapter 70.--- RCW (sections 1 through 14, 21, 22, and  
19 24 of this act), or chapter 90.56 RCW.

20 **Sec. 18.** RCW 90.48.120 and 1992 c 73 s 25 are each amended to read  
21 as follows:

22 (1) Whenever, in the opinion of the department, any person shall  
23 violate or creates a substantial potential to violate the provisions of  
24 this chapter, chapter 70.--- RCW (sections 1 through 14, 21, 22, and 24  
25 of this act), or chapter 90.56 RCW, or fails to control the polluting  
26 content of waste discharged or to be discharged into any waters of the  
27 state, the department shall notify such person of its determination by  
28 registered mail. Such determination shall not constitute an order or  
29 directive under RCW 43.21B.310. Within thirty days from the receipt of  
30 notice of such determination, such person shall file with the  
31 department a full report stating what steps have been and are being  
32 taken to control such waste or pollution or to otherwise comply with  
33 the determination of the department. Whereupon the department shall  
34 issue such order or directive as it deems appropriate under the  
35 circumstances, and shall notify such person thereof by registered mail.

1 (2) Whenever the department deems immediate action is necessary to  
2 accomplish the purposes of this chapter, chapter 70.--- RCW (sections  
3 1 through 14, 21, 22, and 24 of this act), or chapter 90.56 RCW, it may  
4 issue such order or directive, as appropriate under the circumstances,  
5 without first issuing a notice or determination pursuant to subsection  
6 (1) of this section. An order or directive issued pursuant to this  
7 subsection shall be served by registered mail or personally upon any  
8 person to whom it is directed, or to the agent for service of process,  
9 as that term is defined in section 1 of this act.

10 **Sec. 19.** RCW 90.48.144 and 1995 c 403 s 636 are each amended to  
11 read as follows:

12 Except as provided in RCW 43.05.060 through 43.05.080 and  
13 43.05.150, every person who:

14 (1) Violates the terms or conditions of a waste discharge permit  
15 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

16 (2) Conducts a commercial or industrial operation or other point  
17 source discharge operation without a waste discharge permit as required  
18 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

19 (3) Violates the provisions of RCW 90.48.080, or other sections of  
20 this chapter, chapter 70.--- RCW (sections 1 through 14, 21, 22, and 24  
21 of this act), or chapter 90.56 RCW or rules or orders adopted or issued  
22 pursuant to (~~either of~~) those chapters, shall incur, in addition to  
23 any other penalty as provided by law, a penalty in an amount of up to  
24 ten thousand dollars a day for every such violation, except that  
25 violations of chapter 70.--- RCW (sections 1 through 14, 21, 22, and 24  
26 of this act) may be penalized in an amount up to twenty-five thousand  
27 dollars for each violation. Each and every such violation shall be a  
28 separate and distinct offense, and in case of a continuing violation,  
29 every day's continuance shall be and be deemed to be a separate and  
30 distinct violation. Every act of commission or omission which  
31 procures, aids or abets in the violation shall be considered a  
32 violation under the provisions of this section and subject to the  
33 penalty herein provided for. The penalty amount shall be set in  
34 consideration of the previous history of the violator and the severity  
35 of the violation's impact on public health and/or the environment in  
36 addition to other relevant factors. The penalty herein provided for

1 shall be imposed pursuant to the procedures set forth in RCW  
2 43.21B.300.

3 **Sec. 20.** RCW 70.146.030 and 2003 1st sp.s. c 25 s 934 are each  
4 amended to read as follows:

5 (1) The water quality account is hereby created in the state  
6 treasury. Moneys in the account may be used only in a manner  
7 consistent with this chapter. Moneys deposited in the account shall be  
8 administered by the department of ecology and shall be subject to  
9 legislative appropriation. Moneys placed in the account shall include  
10 tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390,  
11 principal and interest from the repayment of any loans granted pursuant  
12 to this chapter, and any other moneys appropriated to the account by  
13 the legislature.

14 (2) The department may use or permit the use of any moneys in the  
15 account to make grants or loans to public bodies, including grants to  
16 public bodies as cost-sharing moneys in any case where federal, local,  
17 or other funds are made available on a cost-sharing basis, for water  
18 pollution control facilities and activities, or for purposes of  
19 assisting a public body to obtain an ownership interest in water  
20 pollution control facilities and/or to defray a part of the payments  
21 made by a public body to a service provider under a service agreement  
22 entered into pursuant to RCW 70.150.060, within the purposes of this  
23 chapter and for related administrative expenses. For the period July  
24 1, 2003, to June 30, 2005, moneys in the account may be used to process  
25 applications received by the department that seek to make changes to or  
26 transfer existing water rights and for grants and technical assistance  
27 to public bodies for watershed planning under chapter 90.82 RCW. No  
28 more than three percent of the moneys deposited in the account may be  
29 used by the department to pay for the administration of the grant and  
30 loan program authorized by this chapter.

31 (3) Beginning with the biennium ending June 30, 1997, the  
32 department shall present a biennial progress report on the use of  
33 moneys from the account to the chairs of the senate committee on ways  
34 and means and the house of representatives committee on appropriations.  
35 The first report is due June 30, 1996, and the report for each  
36 succeeding biennium is due December 31 of the odd-numbered year. The

1 report shall consist of a list of each recipient, project description,  
2 and amount of the grant, loan, or both.

3 (4) Environmental compliance fees collected pursuant to section 7  
4 of this act must be deposited into the account and used exclusively for  
5 the department's costs in administering chapter 70.--- RCW (sections 1  
6 through 14, 21, 22, and 24 of this act).

7 NEW SECTION. Sec. 21. If the department determines that a federal  
8 agency must be petitioned in order for any element of this chapter to  
9 take effect, the department may, consistent with 33 U.S.C. Sec.  
10 1322(f)(4)(a), or any other applicable federal law, apply to the  
11 federal government to prohibit the discharge of any sewage, graywater,  
12 bilge water, or any other substance from a commercial passenger vessel  
13 into the waters of Puget Sound.

14 NEW SECTION. Sec. 22. If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. Sec. 23. Sections 1 through 14, 21, 22, and 24 of  
19 this act constitute a new chapter in Title 70 RCW.

20 NEW SECTION. Sec. 24. This act takes effect January 1, 2005.

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