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SENATE BILL NO. 1072

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 29, 2001)

(Patron Prior to Substitute—Senator Bolling)

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 28.2 an article numbered 3, consisting of sections numbered 28.2-109, 28.2-110, and 28.2-111, relating to reporting of ballast water discharge; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 28.2 an article numbered 3, consisting of sections numbered 28.2-109, 28.2-110, and 28.2-111, as follows:

Article 3.

Ballast Water Discharge.

§ 28.2-109. Definitions.

As used in this article, unless the context requires a different meaning:

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

"Commercial vessel" means a self-propelled ship in commerce of 300 gross tons or more. The term "commercial vessel" does not include a vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of § 1103 of the National Invasive Species Act of 1996, or any vessel of the Armed Forces, as defined in 33 U.S.C. § 1322 (A)(14), that is subject to the uniform national discharge standards for vessels of the Armed Forces under 23 U.S.C. § 1322 (N).

"Federal guidelines" means the provisions of 33 C.F.R. Part 151, Subpart D, "Ballast Water Management for Control of Nonindigenous Species in Waters of the United States."

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a vessel.

§ 28.2-110. Filing requirements; penalty.

A. The operator, or a ship agent acting on behalf of the operator, of a commercial vessel that enters into Virginia waters shall file a Ballast Water Control Report form with the Commission (i) within seventy-two hours of the completion of the discharge of ballast water if the commercial vessel discharges ballast water into Virginia waters, or (ii) prior to the commercial vessel's departure from Virginia waters if the commercial vessel does not discharge ballast water into Virginia waters. The operator, or ship agent of an operator, shall not be required to file a Ballast Water Control Report form if the commercial vessel's point of origin is located within the United States Exclusive Economic Zone. A Ballast Water Control Report form shall be deemed to have been filed when it is hand delivered to the Commission, sent by electronic mail or facsimile transmission and received by the Commission, or sent to the Commission by registered or certified mail, return receipt requested.

B. For commercial vessels whose point of origin is located outside the United States Exclusive Economic Zone and whose first port of call within the United States Exclusive Economic Zone is within Virginia waters, the filing of a copy of the completed form submitted by the operator to the National Ballast Water Information Clearinghouse of the Smithsonian Environmental Research Center with the Commission shall be deemed compliance with the reporting requirements of this section.

C. Any operator of a commercial vessel who knowingly fails to file a Ballast Water Control Report form with the Commission within the applicable time period set forth in subsection A, or who knowingly makes any false statement in a Ballast Water Control Report form submitted to the Commission, shall be guilty of a Class 1 misdemeanor.

§ 28.2-111. Adoption of guidelines and forms.

A. The Commission shall adopt the federal guidelines as the guidelines governing voluntary ballast water management practices to be followed by the operators of commercial vessels. The guidelines adopted by the Commission shall not require a commercial vessel to be operated in a manner that may threaten the safety of the commercial vessel, its crew or its passengers.

B. The Commission shall adopt Ballast Water Control Report forms, consistent with the form adopted by the United States Coast Guard and set forth in 33 C.F.R. Part 151, Subpart D, Appendix, to monitor compliance with the guidelines adopted pursuant to this section. The Commission shall adopt procedures to distribute the Ballast Water Control Report form to the operator of a commercial vessel, or to a ship agent for the operator, at the time the commercial vessel enters state waters or as soon thereafter as practicable.

C. The Commission shall submit copies of the forms received from operators of commercial vessels and ship agents acting on behalf of operators of commercial vessels with the National Ballast Water

SENATE SUBSTITUTE

SB1072S1

60 *Information Clearinghouse of the Smithsonian Environmental Research Center on a quarterly basis.*