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BILL



ANALYSIS

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Senate Bill 508 (Substitute S-1 as reported)
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Senate Bill 510 (Substitute S-1 as reported)
Sponsor: Senator Tom Casperson (S.B. 508)
Senator Howard C. Walker (S.B. 509)
Senator Goeff Hansen (S.B. 510)
Committee: Outdoor Recreation and Tourism

Date Completed: 9-28-11

RATIONALE

Aquatic invasive species (AIS) are waterborne, non-native organisms that can threaten the diversity or abundance of native species; damage the ecological stability of affected waters; and jeopardize commercial, agricultural, aquacultural, and recreational activity. These species have the potential to cause significant environmental, economic, and public health problems because they have been introduced to a habitat in which there are not natural controls, such as predators, parasites, pathogens, and competitors. They can crowd out native species, alter habitats, change predator/prey relationships, and transmit foreign disease or parasites. They also can cause such problems as food chain disruption, reduced biodiversity, clogging of water intakes, and increased weed growth. Furthermore, measures to eliminate AIS from an ecosystem are costly and sometimes result in more harm.

Over the last several years, measures have been enacted to prevent the introduction and spread of invasive species, including AIS, throughout the State. For example, Public Acts 32 and 33 of 2005 require certain oceangoing vessels to have a permit; require permit applicants to use environmentally sound technology and methods to prevent the discharge of aquatic nuisance species in ballast water; and prescribe penalties for unauthorized ballast water discharges. Public Acts 74 through 81 of 2005 list prohibited and restricted species, including particular aquatic

organisms; prohibit the unauthorized possession and introduction of those species; and prescribe penalties for violations. Public Act 91 of 2009 prohibits the placement of a boat in Michigan waters with an aquatic plant attached, and prescribes a civil fine for a violation.

Despite these statutory changes, AIS continue to present a threat to Michigan's environment and economy. The various waterways of the Great Lakes Basin are interconnected, crossing political boundaries and reducing the efficacy of individual state efforts to curb the introduction and spread of harmful non-native species. As a result, there has been increased focus in recent years on a regional approach involving collaboration between all of the Great Lakes states and Canadian provinces. It has been suggested that a State AIS advisory council should be created to examine potential strategies to address AIS and make recommendations aimed at facilitating regional coordination.

CONTENT

The bills would add Part 414 (Aquatic Invasive Species Advisory Council) to the Natural Resources and Environmental Protection Act to create the Advisory Council and require it to make recommendations to address aquatic invasive species.

Senate Bill 509 (S-1) would do the following:

- Create the AIS Advisory Council within the Department of Environmental Quality (DEQ).
- Require the Council to make recommendations to the DEQ on a final update to the Michigan AIS Management Plan.
- Require the Council to provide its recommendations to the Governor upon request.
- Require the Council to submit to the Governor and the Legislature a report containing recommendations on funding to implement the Plan.

Senate Bill 510 (S-1) would do the following:

- Require the Council to submit to the Governor and the Legislature a report containing recommendations for legislation or rules to prevent the introduction and spread of AIS through trade.
- Repeal Part 414 four years after its enactment.

Senate Bill 508 (S-1) would do the following:

- Define terms used in Part 414.
- Require the Council to develop recommendations regarding Michigan's comments on the Federal draft next Vessel General Permit (VGP), including a proposed ballast water treatment standard.
- Require the Council to provide its recommendations to the Governor upon request.

The bills are tie-barred to each other. They are described below in further detail. (The Michigan AIS Management Plan and the VGP are described below under **BACKGROUND.**)

Senate Bill 509 (S-1)

Aquatic Invasive Species Advisory Council

The bill would create the Council within the DEQ. The Council would have to consist of the following people or their designees:

- The DEQ Director.

- The Director of the Department of Natural Resources.
- The Director of the Department of Agriculture and Rural Development.
- The Director of the Michigan Department of Transportation.
- The Attorney General.

In addition, the Council would have to include representatives of the following appointed by the Governor:

- The U.S. Department of the Interior, National Park Service.
- An association of Great Lakes shipping companies.
- The horticulture industry.
- A regional association of businesses that has an international port operator as a member.

The Council also would have to include representatives of the following appointed by the Senate Majority Leader:

- A statewide private conservation organization.
- The Great Lakes Commission created by the Great Lakes Basin Compact.
- A statewide association of businesses.
- An association of Indian tribes.
- A public university with an aquatic research center.

(The Great Lakes Basin Compact was established by joint legislative action of the Great Lakes states in 1955 and granted congressional consent through Public Law 90-419.)

Additionally, the Council would have to include representatives of the following appointed by the Speaker of the House of Representatives:

- A regional or national private conservation organization.
- An association of industries in the Great Lakes region.
- A public utility.
- A statewide association of local units of government.
- A statewide association of aquaculture businesses.

The members first appointed to the Council would have to be appointed within 30 days after the bill took effect. Members would serve for the life of the Council. If a

vacancy occurred, it would have to be filled in the same manner as the original appointment was made. The appointing officer could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The DEQ Director, or his or her designee, would have to call the first Council meeting. At that meeting, the Council would have to elect a chairperson and other officers it considered necessary or appropriate. After the first meeting, the Council would have to meet at least quarterly, or more frequently at the call of the chairperson or if requested by at least three members.

The Council would be subject to the Open Meetings Act and the Freedom of Information Act.

Council members would serve without additional compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as Council members.

The Council could adopt technical advisory committees of individuals with relevant specific technical, scientific, or legal expertise, or relevant expertise in a trade listed in Section 41409, or could appoint such individuals as adjunct members of the Council without voting rights. (Senate Bill 510 (S-1) would add Section 41409. That section pertains to the introduction and spread of AIS through all forms of trade that use the State's waterways.

Council Recommendations

Within 180 days after the bill took effect or within 60 days after the issuance of a draft update to the Michigan Aquatic Invasive Species Management Plan by the DEQ, whichever was later, the Council would have to provide recommendations to the DEQ on a final update to the Plan. The final update would have to address AIS prevention, monitoring, and control and eradication, including rapid response to new infestations. In preparing the final update to the Plan, the DEQ would have to consult with the Council.

The Council would have to give its recommendations to the Governor upon request. The recommendations would be

advisory and nonbinding, and could be used at the discretion of and in the manner determined by the Governor. The recommendations would have to be suitable for the executive branch to use in collaborating with other Great Lakes states and Canadian provinces to create or strengthen regional programs or coordinate state and provincial programs to achieve the bill's purposes.

Within 60 days after a final update to the Plan was issued, the Council would have to submit a report with recommendations on the funding necessary to implement the Plan and the method of providing that funding. The Council would have to submit the report to the Governor, the Senate Majority Leader, the Speaker of the House, and the standing committees of the Senate and House with primary responsibility for natural resources, conservation, agriculture, and commerce.

Legislative Findings

The bill states the following legislative findings:

- "The waters of the Great Lakes basin are precious public natural resources shared and held in trust by the Great Lakes states and provinces."
- "The waters of the Great Lakes basin are interconnected and part of a single hydrologic system."
- "The Great Lakes basin can concurrently serve multiple uses, such as municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, fishing, tourism, the subsistence, economic and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem."
- "AIS are a threat to public health and safety, the environment and natural resources, and the economy. AIS are a serious threat to the ecological integrity and uses of the Great Lakes."
- "Over 180 AIS have become established in the Great Lakes, not including microbes. Ballast water discharge is a major source of introduction of AIS."
- "All forms of trade that utilize the state's waterways have been identified as potential vectors of AIS introduction and spread, through purposeful or incidental

buying, selling, and transport. The overall goal of this state's AIS prevention efforts is to close the open pathways for AIS."

- "This state can effectively address the threat posed by AIS by updating and implementing a comprehensive AIS management plan, developing and adopting model programs to address AIS, and working cooperatively with other Great Lakes states and provinces to ensure a coordinated and consistent response to AIS."

The bill also states a legislative finding that, "The Great Lakes states and Canadian provinces have a shared duty to protect, conserve, restore, improve, and manage the Great Lakes for the use, benefit, and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving, and managing the Great Lakes is through the joint pursuit of unified and cooperative principles, policies, and programs mutually agreed upon, enacted, and adhered to by the Great Lakes states and by the Great Lakes Canadian provinces."

In addition, the bill also states a legislative finding that, "This state's aquatic invasive species management plan provides a strategy to prevent and control AIS in waters of this state, including the Great Lakes. The plan, last updated in 2002, is being updated by the departments of environmental quality, natural resources, and agriculture and rural development to ensure that it provides a comprehensive approach to AIS including ballast water treatment standards and other AIS prevention, AIS monitoring, and AIS control and eradication, including rapid response to new AIS infestations."

Senate Bill 510 (S-1)

Within 240 days after the bill took effect, the AIS Advisory Council would have to submit a report with recommendations for legislation or rules to prevent the introduction and spread of AIS through all forms of trade that use the State's waterways. The Council would have to submit the report to the Governor, the Senate Majority Leader, the Speaker of the House, and the standing committees of the Senate and House with primary responsibility for natural resources,

conservation, agriculture, and commerce. In preparing the report, the Council would have to review the AIS laws of Michigan and other jurisdictions, including the other Great Lakes states.

In the report, the Council would have to make recommendations on all of the following:

- Harmonizing Federal and State law so that aquatic species on Federal lists of either prohibited or permitted species of plants and animals were placed on Michigan's lists.
- Establishing a program for aquatic species in trade to certify that the organisms were free of disease, insect pests, and incidental contamination by other species.
- An education program on safe use practices directed to both buyers and sellers of aquatic species in trade.
- Connecting regulations and education on aquatic species in trade to the protection of Michigan's natural resources as a component of the Pure Michigan tourism advertising campaign.
- Financial and other resources for implementing the recommendations.
- Proposals for collaborating with other Great Lakes states and Canadian provinces to create or strengthen regional programs or coordinate state and provincial programs to achieve the goals set forth in the bill.
- Risk assessment processes to screen aquatic species proposed for trade and to screen pathways of introduction and spread.

The risk assessment processes would have to consider potential net harm to public health and safety, the environment and natural resources, and the economy. The processes would have to place the burden to demonstrate the harmlessness of an aquatic species or pathway on the importer or other person responsible for introduction or distribution. The process for species would have to classify species into three lists: "prohibited", "permitted", and "restricted".

In preparing the report, the Council would have to consult with representatives of organizations and businesses that deal with organisms in trade, including the aquarium, bait, pet, water garden, horticulture, aquaculture, and shipping trades.

To facilitate coordination and minimize duplication in fulfilling its duties, the Council would have to do the following:

- Consider relevant recommendations and reports by other state, regional, Federal, provincial, Canadian, and international bodies and collaborations.
- Consult regularly with the Great Lakes Commission and the DEQ, including the Office of the Great Lakes.

The bill would repeal Part 414 four years after its effective date.

Senate Bill 508 (S-1)

The bill would define "AIS" as a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, tourism, or recreational activities dependent on those waters.

The bill would require the Aquatic Invasive Species Advisory Council to develop recommendations regarding Michigan's comments on the draft next Vessel General Permit and certification response to the permit under Section 401 of Title IV of the Federal Water Pollution Control Act, 33 USC 1341, including a proposed ballast water treatment standard.

("Next vessel general permit" would mean the permit the EPA issued to supersede the VGP. "Vessel general permit" would mean the general permit entitled "Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel" announced at 73 FR 79,473 (December 29, 2008).)

The Council would have to give its recommendations to the Governor upon request. The recommendations would be nonbinding and advisory, and could be used at the discretion of and in the manner determined by the Governor. The Council's recommendations would have to be suitable for use by the executive branch in collaborating with other Great Lakes states to achieve a consistent position on the draft next VGP. ("Great Lakes states" would mean Michigan, Illinois, Indiana, Minnesota,

New York, Ohio, Pennsylvania, and Wisconsin.)

In developing its recommendations, the Council would have to consult regularly with the DEQ, including the Office of the Great Lakes, and the Great Lakes Commission.

Proposed MCL 324.41401 & 324.41411 (S.B. 508)

Proposed MCL 324.41403-324.41407 (S.B. 509)

Proposed MCL 324.41409 et al. (S.B. 510)

BACKGROUND

Michigan AIS Management Plan

The Nonindigenous Aquatic Nuisance Prevention and Control Act, authorized under the National Invasive Species Act, allows states to submit to the nationally appointed Aquatic Nuisance Species Task Force a comprehensive management plan for the prevention and control of AIS.

Michigan's plan was approved in 1996 and updated in 2002. (Another update of the plan is being considered currently.) The 2002 plan includes objectives and recommendations in three specific areas: legislation and policy, information and education, and research and monitoring.

Legislation & Policy. The 2002 updated plan emphasizes the need for coordination of the State's policies, as well as collaboration involving governmental agencies at all levels in the Great Lakes states and Canadian provinces. Among the plan's recommendations is the creation of a State council to assist in the coordination of activities necessary to reduce the economic and environmental impacts of AIS in Michigan. The plan also identifies the development of a risk assessment process for potential and existing AIS as an objective. In addition, the plan suggests the establishment of a rapid response team for areas with new infestations or at risk for AIS introduction.

Information & Education. The plan notes the need for coordinated information and education campaigns targeting recreational boaters as well as industries that can serve as vectors for the introduction of AIS, such as aquaculture and commercial fishing.

Research & Monitoring. The plan proposes increased coordination among various entities regarding data collection and calls for the evaluation of various funding options to build collaborative research networks and provide high-quality information for policy makers.

Vessel General Permit

The U.S. Environmental Protection Agency (EPA) regulates incidental discharges from the normal operation of vessels (excluding military and recreational vessels) through the NPDES Vessel General Permit program. The discharges subject to regulation include ballast water, bilgewater, and graywater. According to the EPA's website, the VGP includes general effluent limits applicable to all discharges; general effluent limits applicable to 26 specific discharge streams; narrative water-quality based effluent limits; inspection, monitoring, recordkeeping, and reporting requirements; and additional requirements applicable to certain vessel types.

The current VGP requirement took effect on February 6, 2009, and will expire on December 19, 2013. The EPA is in the process of developing the next VGP, and plans to propose it by November 30, 2011, and take final action on it within one year. As part of a recent settlement with the State of Michigan and several environmental groups, the EPA has agreed to include in the next draft VGP numeric concentration-based effluent limits for discharges of ballast water expressed as organisms per unit of ballast water volume.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The negative impact of aquatic invasive species on the health and economy of the Great Lakes is considered by many experts to be the most serious threat to the quality of the Great Lakes ecosystem. Once introduced into the Great Lakes, where they have no effective natural predators, AIS are impossible to eradicate and difficult to control. They often can flourish in a broad range of environmental conditions and have a high reproductive capacity. Through

competition with and predation of native species, feeding habits, and the release of foreign pathogens, aquatic invaders have upset the environmental balance of the Great Lakes and caused unprecedented, potentially devastating change. Aquatic invasive species such as the zebra mussel, Eurasian watermilfoil, and round goby cost the Great Lakes region hundreds of millions of dollars every year, jeopardize the multibillion-dollar sport and commercial fishing industries, and spoil recreational opportunities. The threats posed by species that have not yet made it into the Great Lakes system, such as the Asian carp, highlight the need to be proactive in closing all AIS pathways.

While Michigan has enacted legislation to combat AIS, regionally coordinated action on several fronts is critical. Commerce, both interstate and international, is a primary vector through which invasive species are introduced to the Great Lakes ecosystem. The release of ballast water from ships has been particularly problematic in this regard. Although the State has implemented oceangoing vessel permit and ballast water treatment requirements, the utility of these measures is lessened by regulatory inconsistency between all of the Great Lakes states. The proposed Advisory Council could provide a mechanism for the development of regional standards. In addition, as the EPA considers the next VGP, it is important that the Great Lakes states present a unified voice. The Advisory Council would provide recommendations for use by the Governor in achieving consensus on the draft next VGP with Michigan's regional partners.

Overall, the proposed Advisory Council would be an appropriate venue for engaging stakeholders, laying the groundwork for regional collaboration, and enabling the State to be more responsive to harmful invasions. The bills would complement existing efforts, both those unique to Michigan and those involving other states and Canada, to prevent AIS from causing more damage to the State's environment, economy, and way of life.

Response: The State of Michigan, along with several environmental groups, sued the EPA over concerns that the current VGP is insufficient to protect the Great Lakes from AIS. Earlier this year, the parties reached a settlement under which the EPA agreed to include in the draft next VGP

numeric concentration-based effluent limits for ballast water discharges, as well as monitoring requirements for onboard ballast water treatment systems. Under the agreement, the EPA must change the VGP certification process to allow individual states to implement more stringent discharge requirements. Also, the settlement requires the EPA to issue the final next VGP one year before the current VGP expires. Given the timeline and process already established in the settlement, it might not be possible for the proposed Advisory Council to develop VGP recommendations as Senate Bill 508 (S-1) would require.

The 180-day window under Senate Bill 509 (S-1) for the Council to provide its recommendations on the update to the State's AIS Management Plan also is cause for concern. If the Federal Aquatic Nuisance Species Task Force approves a state plan, the state is granted access to Federal resources, including funding. Thus, it is important for Michigan to update its plan and submit it for approval as quickly as possible. Giving the proposed Council 180 days to develop recommendations on the update could delay the process, which is already under way.

On the other hand, the Council should be given more time to make recommendations on preventing the introduction and spread of AIS through trade, under Senate Bill 510 (S-1). This deadline should be extended from 240 days to 365 days. The bill's 240-day timeline would not give the Council enough time to thoroughly examine the issue of AIS in trade and prepare the required comprehensive report.

Aquatic invasive species management efforts should not place additional burdens on various trade sectors, such as agriculture and the nursery industry. These industries are vital to the State's economy, and it is important that the way organisms are designated "invasive" does not unduly restrict their ability to do business.

In another matter, while regional collaboration is an important tool, the bills do not address further Michigan-specific steps that could be taken to prevent the spread of AIS, particularly on inland lakes and other waterways. The Department of Natural Resources should be required to

conduct regular surveys of all of its boat launches in order to identify AIS outbreaks as quickly as possible. In addition, the DEQ's process for permitting AIS treatment activities should be streamlined and expedited. Evidently, the current process can take several months, during which aggressive aquatic plants can spread unchecked, increasing the difficulty and cost involved with eradication and control efforts.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would likely introduce some new, relatively small, administrative costs to the Department of Environmental Quality in administering the Aquatic Invasive Species Advisory Council. Additionally, the bills specify that Council members would serve without compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.