



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 508, 509, and 510 (as enacted)

PUBLIC ACTS 284, 285, & 286 of 2011

Sponsor: Senator Tom Casperson (S.B. 508)

Senator Howard C. Walker (S.B. 509)

Senator Goeff Hansen (S.B. 510)

Senate Committee: Outdoor Recreation and Tourism

House Committee: Natural Resources, Tourism, and Outdoor Recreation

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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 decade, 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. The lists of prohibited and restricted species have been expanded several times through subsequent legislation. Public Act 91 of 2009 prohibits the placement of a boat in Michigan waters if it has 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 was 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 added Part 414 (Aquatic Invasive Species Advisory Council) to the Natural Resources and Environmental Protection Act to create the Aquatic Invasive Species Advisory Council and require it to make recommendations to address aquatic invasive species.

Senate Bill 509 created the AIS Advisory Council within the Department of Environmental Quality (DEQ), and required it to do the following:

- Make recommendations to the DEQ on a final update to the Michigan AIS Management Plan.
- Provide its recommendations to the Governor upon request.
- Submit to the Governor and the Legislature a report containing recommendations on funding to implement the Plan.

Senate Bill 510 required 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.

The bill repeals Part 414 four years after its enactment.

Senate Bill 508 did the following:

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

The bills took effect on December 21, 2011. (The Michigan AIS Management Plan and the VGP are described below under **BACKGROUND**.)

Senate Bill 509

Aquatic Invasive Species Advisory Council

The bill created the Council within the DEQ. The Council consists 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 must 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 must 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 must 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 had to be appointed within 30 days after the bill took effect. Members will serve for the life of the Council. The appointing officer may 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, had to call the first Council meeting. At that meeting, the Council had to elect a chairperson and other officers it considered necessary or appropriate. After the first meeting, the Council must meet at least quarterly, or more frequently at the call of the chairperson or if requested by at least three members.

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

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

The Council may 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 may appoint such individuals as adjunct members of the Council without voting rights. (Senate Bill 510 added Section 41409. That section pertains to the introduction and spread of AIS through trade, and refers specifically to the aquarium, bait, pet, water garden, horticulture, aquaculture, and shipping trades.)

Council Recommendations

Within 180 days after the bill's effective date 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 had to provide recommendations to the DEQ on a final update to the Plan. The final update had 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 had to consult with the Council.

The bill required the Council to give its recommendations to the Governor upon request. The recommendations were advisory and nonbinding, and could be used at the discretion of and in the manner determined by the Governor. The recommendations had 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 had to submit a report with recommendations on the funding necessary to implement the Plan and the method of providing that funding. The Council had 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 legislative findings pertaining to AIS, the Great Lakes basin, the protection and management of the Great Lakes, and the State's AIS Management Plan.

Senate Bill 510

Within 240 days after the bill's effective date, the AIS Advisory Council had to submit a report with recommendations for legislation or rules to prevent the introduction and spread of AIS through trade. The Council had 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 had to review the AIS laws of Michigan and other jurisdictions, including the other Great Lakes states.

In the report, the Council had 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 are placed on Michigan's lists appropriately.
- Establishing a program for aquatic species in trade to certify that the organisms are 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 had to consider potential net harm to public health and safety, the environment and natural resources, and the economy. The processes had 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 had to classify species into three lists: "prohibited", "permitted", and "restricted".

The report also had to include recommendations on the definition of "aquatic invasive species". Before making its recommendations, the Council had to consider and address issues related to the domestication and cultivation of and potential beneficial effects of nonnative species and consider the "Invasive Species Definition Clarification and Guidance White Paper" submitted by the Definitions Subcommittee of the National Invasive Species Advisory Committee (ISAC) and approved by ISAC on April 27, 2006.

In preparing the report, the Council had 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 had 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.

Senate Bill 508

The bill defines "AIS" as an aquatic species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

The bill required 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" means the permit the EPA issued to supersede the VGP (which expired in 2013). "Vessel general permit" means 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 had to give its recommendations to the Governor upon request. The recommendations were nonbinding and advisory, and could be used at the discretion of and in the manner determined by the Governor. The Council's recommendations had 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" means Michigan, Illinois, Indiana, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.)

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

MCL 324.41401 & 324.41411 (S.B. 508)
324.41403-324.41407 (S.B. 509)
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 and again in 2013. The 2013 plan includes objectives and recommendations in the following areas: legislation and policy, regulation, information and education, research and monitoring, and early detection and rapid response (EDRR). The plan identifies four broad goals designed to address different stages of AIS invasion: preventing new introductions of AIS into Michigan waters; limiting the dispersal of established AIS populations throughout Michigan waters; developing a statewide interagency EDRR program to address new invasions; and managing and controlling AIS to minimize the harmful effects resulting from established populations.

The 2013 plan lists the following recommendations applicable to all of the specified goals:

- Promote public/private collaboration to leverage expertise and resources as a mechanism to address Michigan's AIS priorities (described below).
- Continue and enhance State agency communication and coordination.
- Continue and enhance information and education efforts.
- Secure sustainable long-term funding for the State's AIS program to ensure implementation of the plan.

The plan then identifies three tiers of AIS priorities. Tier 1 includes prevention of AIS introduction through canals and waterways, specifically Asian carp through the Chicago Area Waterways System; ballast water discharges; and organisms in trade. The tier 2 priority is development of capacity for EDRR activities, including monitoring and detailed response planning, coordinated at regional and State scales. The tier 3 priority is supporting AIS management and control efforts, especially through technical assistance and the development of best management practices.

Vessel General Permit

The U.S. Environmental Protection Agency (EPA) regulates incidental discharges from the normal operation of vessels longer than 79 feet (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 VGP requirement in effect when the bills were enacted expired on December 19, 2013. The EPA was in the process of developing the next VGP, which it proposed in 2011 and took final action on in March 2013. The EPA included aquatic nuisance species among the pollutants subject to control under the Permit. As part of a 2011 settlement with the State of Michigan and several environmental groups, the EPA agreed to include in the 2013 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 Advisory Council provided a mechanism for the development of regional standards. In addition, as the EPA considered the 2013 VGP, it was important that the Great Lakes states presented a unified voice. The Advisory Council provided recommendations for use by the Governor in achieving consensus on the 2013 VGP with Michigan's regional partners.

Overall, the Advisory Council has been 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 complemented already-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: 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 did not address further Michigan-specific steps that could be taken to prevent the spread of AIS, particularly on inland lakes and other waterways. For example, 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.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills likely introduced some new, relatively small, administrative costs to the Department of Environmental Quality in administering the Aquatic Invasive Species Advisory Council. Additionally, the bills specified 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