

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



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 955 (Substitute S-1)
Sponsor: Senator Ken Sikkema
Committee: Natural Resources and Environmental Affairs

Date Completed: 9-19-00

CONTENT

The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act to do the following:

- **Require the Department of Environmental Quality (DEQ) to promulgate rules to prevent the introduction and minimize the spread of aquatic nuisance species within the Great Lakes.**
- **Prohibit the operation of an oceangoing vessel capable of discharging ballast water unless it had been issued a permit and had equipment necessary to discharge ballast water and/or sediments in compliance with the permit and rules.**
- **Require the DEQ to issue permits for the discharge of ballast water and assess application and inspection fees.**
- **Create the "Aquatic Nuisance Species Prevention Fund".**
- **Suspend enforcement of the bill's requirements and the rules if a Federal law were enacted or rules were promulgated to require ballast water management practices.**

("Aquatic nuisance species" would mean a nonindigenous species that threatened the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters. "Ballast water" would mean water and associated solids taken on board a vessel to control or maintain trim, draft, stability, or stresses on the vessel, without regard to the manner in which it was carried. "Sediments" would mean any matter settled out of ballast water within a vessel.)

Rules

Within 12 months after the bill's effective date, the DEQ would have to promulgate rules to prevent the introduction and minimize the spread of aquatic nuisance species within the Great Lakes. The rules would have to apply to all vessels capable of discharging ballast water and/or sediments, whether equipped with ballast water tank systems or otherwise, that operated on the Great Lakes within this State's jurisdiction; protect the safety of each vessel, its crew, and passengers, if any; take into consideration different vessel operating conditions; be based on the best scientific information available; and include such other matters as the DEQ considered appropriate.

The rules also would have to establish ballast water management practices that would minimize the amount of sediments accumulated in ballast tanks and minimize the spread of aquatic nuisance species in the Great Lakes. The ballast water management practices would have to do all of the following:

- Require ballast water exchange procedures or other approved procedures to be used if the U.S. Fish and Wildlife Service certified that an aquatic nuisance species had established a niche community in a specific harbor and the DEQ determined that such procedures would result in substantial prevention of the spread of aquatic nuisance species.
- Minimize the exchange of ballast water in areas of known sewer discharge to avoid the risk of uptake of bacteria and pathogens.
- Require the rinsing of ballast water tanks to remove sediments.

- Require that uptake of ballast water be conducted in a manner to minimize uptake of sediments.
- Require vessels to take only the minimum amount of ballast water required to depart the dock safely and to complete the uptake of ballast water in deeper waters, when practical and safe.
- Require the use of pumps when taking on ballast water.
- Require the operator of a vessel to examine sea chest suction screens periodically.
- Require vessel operators to file with the DEQ an annual report that described the vessel's compliance with the rules promulgated under the bill.

For oceangoing vessels, the rules would have to ensure, using the best available technology and practices, that ballast water and/or sediments likely to contain aquatic nuisance species were not directly or indirectly discharged into the Great Lakes within the State's jurisdiction; and the rules would have to require the use of environmentally sound treatment methods for ballast water and/or sediments, such as sterilization, in preventing the introduction and spread of aquatic nuisance species. (The bill would define "oceangoing vessel" as a vessel that operated on the Great Lakes or the St. Lawrence waterway (the St. Lawrence River, the St. Lawrence riverway, and the Gulf of St. Lawrence) after operating in waters outside of the Great Lakes or the St. Lawrence waterway. "Sterilization" would mean the treatment of ballast water and/or sediments by filtration, application of biocides or ultraviolet light, thermal method, or other treatment techniques approved by the DEQ, to destroy or remove all living biological organisms.)

In promulgating these rules, the Department would have to consult with the other states and Canadian provinces bordering the Great Lakes and the St. Lawrence waterway, and, where possible, promote uniform regulatory policies among them.

At least every five years, the DEQ would have to evaluate the effectiveness of the rules and determine whether they had been effective in preventing the introduction and minimizing the spread of aquatic nuisance species within the Great Lakes. If the Department determined that the rules had not been effective, it would have to promulgate additional or alternative rules to accomplish this objective.

Permit & Fund

The bill would prohibit a person from operating on the Great Lakes within the State's jurisdiction, an oceangoing vessel capable of discharging ballast water, whether equipped with a ballast water tank system or otherwise, unless that vessel had been issued a permit by the DEQ and the vessel was equipped with all equipment necessary to discharge ballast water and/or sediments, if necessary, in compliance with the permit and the rules promulgated under the bill. A permit application containing the information required by the Department and an application fee would have to be submitted in the manner required by the DEQ.

The Department would have to assess application and inspection fees in amounts necessary to implement these permit requirements. All application and inspection fees received by the Department would have to be forwarded to the State Treasurer for deposit into the Aquatic Nuisance Species Prevention Fund, which would be created within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, would have to direct the Fund's investment, and would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and could not lapse to the General Fund.

The Department could spend money from the Fund, upon appropriation, only to implement the bill's permit requirements.

Violation

Among other things, Part 31 prohibits a person directly or indirectly from discharging into the waters of the State a substance that is or may become injurious to the public health, safety, or welfare; to uses that are being or may be made of the water; to the value or utility of riparian lands; or to livestock, wild animals, birds, fish, aquatic life, or plants. The bill provides that the discharge of ballast water and/or sediments directly or indirectly into the Great Lakes within the State's jurisdiction contrary to Part 31, a permit issued under part 31, or the rules promulgated under Part 31 would be considered prima facie evidence of a violation of Part 31 and would subject the responsible person to the penalties and remedies provided in Section 3115 of the

Act (which establishes civil and criminal penalties for violations). (Prima facie evidence is evidence that is sufficient to establish a given fact, unless it is rebutted.)

Federal Law or Regulations

The DEQ would have to suspend enforcement of the bill's permit requirements and rules if, after the bill's effective date, a Federal law were enacted or Federal regulations were promulgated and required vessels operating on the Great Lakes to comply with ballast water management practices designed to minimize the spread of aquatic nuisance species in the Great Lakes and require the treatment of ballast water and sediments for oceangoing vessels.

If such a Federal law were enacted or Federal regulations were promulgated, every three years the DEQ would review the effectiveness of the Federal law or regulations in preventing the introduction and minimizing the spread of aquatic nuisance species within the Great Lakes.

If as a result of the review, the Department determined that reinstating enforcement of the bill's requirements and rules would be more effective than the Federal law or Federal regulations in preventing the introduction and minimizing the spread of aquatic nuisance species, the DEQ would have to reinstate enforcement of the bill's requirements and the rules.

MCL 324.3101 et al.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would result in an indeterminate increase in State Department of Environmental Quality expenditures and revenues. The magnitude of the increase would depend on the type of program and rules the Department would develop, and the level of enforcement. There appear to be no existing State programs that are similar to the regulatory program proposed by the bill. The U.S. Coast Guard currently operates a ballast water management program that has similar features to that proposed in the bill, the purpose of which is to prevent the introduction of nonindigenous aquatic species into United States waters and the Great Lakes specifically. The costs of the Coast Guard's program cannot be specifically identified. The bill does provide that application and inspection fees generated under the provisions of the bill, would be at a level sufficient to cover the costs of operating the program.

Fiscal Analyst: P. Graham

S9900\955sb

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.