

Legislative Analysis



AQUATIC INVASIVE SPECIES ADVISORY COUNCIL

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House Bill 4826
Sponsor: Rep. Frank Foster

Senate Bill 508 (Substitute S-2)
Sponsor: Sen. Tom Casperson

House Bill 4827
Sponsor: Rep. Peter Pettalia

Senate Bill 509 (Substitute (S-2))
Sponsor: Sen. Howard Walker

House Bill 4828
Sponsor: Rep. Amanda Price

Senate Bill 510 (Substitute S-2)
Sponsor: Sen. Geoff Hansen

House Committee: Natural Resources, Tourism, and Outdoor Recreation
Senate Committee: Outdoor Recreation and Tourism

Complete to 10-24-11

A SUMMARY OF HOUSE BILLS 4826-4828 AS INTRODUCED 6-28-11 & SENATE BILLS 508-510 AS PASSED BY THE SENATE

House Bill 4828 and Senate Bill 509 (S-2) would add Part 414 (Aquatic Invasive Species Advisory Council) to the Natural Resources and Environmental Protection Act (NREPA), in order to create an ***Aquatic Invasive Species Advisory Council*** within the Department of Environmental Quality (DEQ) and provide for its membership. The Advisory Council would be required to issue recommendations to the DEQ on the update to the Aquatic Invasive Species Management Plan and to submit a report to the Legislature and Governor with recommendations on the funding necessary to implement the management plan. The bills also contain a long list of legislative "findings" about the value of the Great Lakes and the hazards associated with aquatic invasive species.

House Bill 4826 & Senate Bill 510 (S-2) would require the Advisory Council to submit a report with recommendations for legislation to prevent the introduction and spread of aquatic invasive species. The report would have to make recommendations on certain issues enumerated in the bills.

House Bill 4827 and Senate Bill 508 (S-2) would require the Advisory Council to develop recommendations regarding the "draft next vessel general permit" and certification response to the draft next vessel general permit under the federal Water Pollution Control Act, including a proposed ballast water treatment standard.

[As introduced, House Bills 4826 - 4628 and Senate Bills 508 - 510 are identical. However, as passed, Senate Bills 508-510 contain changes from their original versions that are further explained below.]

FISCAL IMPACT:

Under the provisions of these bills, the Department of Environmental Quality may experience increased administrative expenses related to the Aquatic Invasive Species Advisory Council. These increased administrative costs are not expected to be significant.

House Bill 4828 establishes the Council. The Council's members (16 members under House Bill 4828 and 19 under Senate Bill 509) would serve without compensation, but may be reimbursed for their actual and necessary expenses. These provisions may increase costs to the DEQ by an indeterminate amount, depending upon the amount of refundable expenses of council members; however, any costs would only be incurred for four years because Section 41425 of House Bill 4826 would repeal this new Part 414 of NREPA and effectively eliminate the Council after four years.

DETAILED SUMMARY:

House Bill 4826 and **Senate Bill 510 (S-2)** would add Section 41409 to NREPA.

The bill would require the Aquatic Invasive Advisory Council to submit a report, within 240 days after the bill's effective date, with recommendations for legislation or rules to prevent the introduction and spread of aquatic invasive species through trade, **including the aquarium, bait, pet, water garden, horticulture, aquaculture, and shipping trades** (bolded language not included in SB 510 (S-2)). The report must be submitted to the Governor, Senate Majority Leader, Speaker of the House, and both chamber's standing committees with primary responsibility for Natural Resources, Conservation, Agriculture, and Commerce. The Council would be required to make recommendations on all of the following:

- Risk assessment processes to screen AIS proposed for trade, and to screen pathways of introduction and spread. The assessment processes must consider potential net harm to public health and safety, environment and natural resources, and the economy. The processes must 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 assessment process for species would classify species into three lists: prohibited, permitted, and restricted.
- Harmonizing federal and state law so aquatic species on federal lists of either prohibited or permitted species of plants and animals are placed on Michigan's lists.
- Establishing a program for aquatic species in trade to certify the organisms are free of disease, insect pests, and incidental contamination by other species.
- An education program on safe usage 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 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 of the bill.

The council would be required to do all the following to facilitate coordination and minimize duplication in fulfilling its duties: (1) consider relevant recommendations and reports by other state, regional, federal, provincial, Canadian, and international bodies and collaborations; and (2) regularly consult with the Great Lakes Commission and the Department of Environmental Quality, including the Office of the Great Lakes.

Section 41415 would repeal Part 414 four years after the effective date of the bill.

Senate Bill 510 (S-2) would require the report to make a recommendation on an additional item: *The definition of aquatic invasive species. Before making recommendations under this subdivision, the council would have 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 Council (ISAC) and approved by ISAC on April 27, 2006."*

House Bill 4827 and **Senate Bill 508 (S-2)** would amend NREPA by adding Sections 41401 and 41411.

Section 41401 would add several definitions related to the creation of the Aquatic Invasive Species Advisory Council. Among others, the bill would add the following definitions:

- "Next Vessel General Permit" would mean the permit the EPA issued to supersede the vessel general permit.
- "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."

Section 41411 would require the Council to develop recommendations regarding Michigan's comments on the draft next vessel general permit and the certification response to the draft next vessel general permit under Sec. 401 of Title IV of the federal Water Pollution Control Act, including a proposed ballast water treatment standard. The Council would be required to provide its recommendations to the Governor, upon request, but the recommendations would be nonbinding. The Council's recommendations must be suitable for use by the Executive Branch in collaborating with other Great Lakes states to achieve a consistent position on the draft next vessel general permit. In developing its recommendations, the Council would be required to regularly consult with the Great Lakes Commission and the Department of Environmental Quality, including the Office of the Great Lakes.

Senate Bill 508 (S-2) additionally expands the definition of "*Aquatic Invasive Species*" to mean 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.

House Bill 4828 and **Senate Bill 509 (S-2)** would add Part 414 to NREPA to establish the Aquatic Invasive Species Advisory Council within the DEQ. The bills also contain a long list of legislative "findings" about the value of the Great Lakes and the hazards associated with aquatic invasive species. The new Council would consist of the following members:

- The directors of the DEQ, DNR, Department of Agriculture and Rural Development, Department of Transportation (MDOT), and Attorney General
- The following members appointed by the Governor:
 - Representative of the U.S. Department of the Interior, National Park Service
 - Representative of an association of Great Lakes shipping companies
 - Representative of the horticulture industry
- The following members appointed by the Senate Majority Leader:
 - Representative of a statewide private conservation organization
 - Representative of the Great Lakes commission
 - Representative of a statewide association of businesses
 - Representation of an association of Indian tribes
- The following members appointed by the Speaker of the House of Representatives:
 - Representative of a regional or national private conservation organization
 - Representative of an association of industries in the Great Lakes region
 - Representative of a public utility
 - Representative of a statewide association of local units of governments

(The Senate substitute provides the Senate Majority Leader, Speaker of the House, and the Governor each with one additional appointment to the Council.)

The members first appointed to the Council are to be appointed within 30 days after the effective date of the bill. If a vacancy were to occur, it would be filled in the same manner as the original appointment was made. Council members may be removed by their appointing officer for cause.

The DEQ Director is responsible for calling the first meeting. At this meeting the membership must elect a chairperson and other officers. After the initial meeting the Council would be required to meet at least once quarterly. The Council is permitted to adopt bylaws governing organization and procedure. All meetings conducted by the

Council must be done in accordance with the Open Meetings Act and all writings of the Council are subject to the Freedom of Information Act.

Council membership would be on a voluntary basis but members would be eligible for reimbursement for actual and necessary expenses incurred in the performance of official duties.

Within 180 days after the effective date of this bill or within 60 days of the issuance of a draft update to the Michigan Aquatic Invasive Species management plan by the DEQ, whichever is later, the Council is required to provide recommendations to the DEQ on a final update to the plan. This update must address aquatic invasive species (AIS) prevention, AIS monitoring, and AIS control and eradication.

Within 60 days of the issuance of a final update to the aquatic invasive species management plan, the Council is required to submit a report with recommendations on the funding necessary to implement the plan and any methods for providing that funding. This report must be submitted to the Governor, Senate Majority Leader, Speaker of the House, and the standing House and Senate committees with primary responsibility over natural resources, conservation, agriculture, and commerce.

In addition to the Council membership changes, Senate Bill 509 (S-2) makes the following changes to the introduced version:

- Sec. 41403(G) provides ballast water discharge *has* been a major source of introduction of AIS, instead of *is* a major source.
- Clarifies that council members cannot receive additional *state* compensation for their service.

House Bills 4826-4828 are tie-barred to each other, meaning none of them can take effect unless they are all signed into law.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.