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BILL ANALYSIS

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Senate Bill 332 (Substitute S-1)  
Sponsor: Senator Patricia L. Birkholz  
Committee: Natural Resources and Environmental Affairs

Date Completed: 4-13-05

### **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 facilitate the formation of a "Great Lakes Aquatic Nuisance Species Coalition" to implement water pollution laws that prohibit the discharge of aquatic nuisance species (ANS) into the Great Lakes.**
- Prohibit a person from discharging into the State's waters an organism that is or may become injurious.**
- Require all oceangoing vessels engaging in port operations to obtain a permit from the DEQ beginning January 1, 2007.**
- Require a permit applicant to demonstrate that the vessel would not discharge ANS, or, if the vessel would discharge ballast water or other waste or waste effluent, that the vessel operator would use environmentally sound technology and methods to prevent the discharge of ANS.**
- Allow the DEQ to promulgate rules to implement the bill's permit provisions.**

The bill is described below in further detail.

#### Great Lakes Aquatic Nuisance Species Coalition

The bill would require the DEQ to facilitate the formation of a Great Lakes Aquatic Nuisance Species Coalition in order to address discharges of ANS that damage water quality, aquatic habitat, or fish or wildlife. The Coalition would have to be formed through an agreement entered into with other states in the Great Lakes Basin to implement on a Basin-wide basis water pollution laws that prohibit the discharge of ANS into the Great Lakes. The DEQ would have to seek to enter into an agreement that would take effect by January 1, 2007. Before entering into the agreement, the DEQ would have to consult with the Department of Natural Resources. Upon entering into the agreement, the DEQ would have to notify the Canadian Great Lakes provinces of the agreement's terms. The DEQ would have to seek funding from the Great Lakes Protection Fund to implement the Coalition.

The bill also would add the control of ANS to the scope of the DEQ's functions. Currently, the Department is designated the State agency to cooperate and negotiate with other governments, governmental units, and governmental agencies in matters concerning the State's water resources, including flood control, beach erosion control, and water quality control, planning, development, and management.

## Injurious Discharge

Part 31 prohibits a person from directly or indirectly discharging into the State's waters a substance that is or may become injurious to any of the following:

- The public health, safety, or welfare.
- Domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.
- The value or utility of riparian lands.
- Livestock, wild animals, birds, fish, aquatic life, or plants, or their growth or propagation.
- The value of fish and game.

The bill would add the environment to that list. The bill also would prohibit the discharge of an injurious or potentially injurious organism into the State's waters.

The bill specifies that, unless a discharge were authorized by a permit, order, or rule of the DEQ, a discharge into Michigan waters from an oceangoing vessel of any ballast water would be prima facie evidence of a violation and would subject the responsible person to the penalties prescribed in Section 3115. (Prima facie evidence is evidence sufficient to establish a given fact unless it is rebutted or contradicted.)

(Under Section 3115, the DEQ may request the Attorney General to commence a civil action for appropriate relief for a violation of the Act or a provision of a permit or order issued or rule promulgated under the Act. In addition to any other relief, the court must impose a civil fine of at least \$2,500 and may award reasonable attorney fees and costs to the prevailing party. The maximum fine the court may impose is \$25,000 per day of violation.

Additionally, a person who at the time of the violation knew or should have known that he or she discharged a substance contrary to the Act, or contrary to a permit, order, or rule, is guilty of a felony and must be fined between \$2,500 and \$25,000 for each violation. The court may impose an additional fine of up to \$25,000 for each day the unlawful discharge occurred. For a subsequent conviction, the court must impose a fine of between \$25,000 and \$50,000 per day of violation. The court also may sentence the defendant to imprisonment for up to two years or impose probation.

If the court finds that a civil defendant's actions pose or posed a substantial endangerment to the public health, safety, or welfare, the court must impose an additional fine of between \$500,000 and \$5.0 million. If the court finds that a criminal defendant's actions pose or posed a substantial endangerment to the public health, safety, or welfare, the court must impose an additional fine of at least \$1.0 million and a sentence of five years' imprisonment.)

## Oceangoing Vessel Permit

Beginning January 1, 2007, the bill would require all oceangoing vessels engaging in port operations in Michigan to obtain a permit from the DEQ. The Department would have to issue a permit for an oceangoing vessel only if the applicant could demonstrate that the vessel would not discharge ANS or, if the vessel discharged ballast water or other waste or waste effluent, that the vessel's operator would use environmentally sound technology and methods, as determined by the DEQ, to prevent the discharge of ANS.

The DEQ would have to cooperate to the fullest extent practical with other Great Lakes Basin states, the Canadian Great Lakes provinces, the Great Lakes Panel on ANS, the Great Lakes Fishery Commission, the International Joint Commission, and the Great Lakes Commission to ensure the development of standards for ANS control that were broadly protective of the State's waters and other natural resources.

## Rule Promulgation

The bill would authorize the DEQ to promulgate rules to implement the proposed provisions related to permits for oceangoing vessels.

Currently, the DEQ may not promulgate new rules under Part 31 after December 31, 2006. The bill would make an exception for rules authorized under the bill.

MCL 324.3103 et al.

Legislative Analyst: Julie Koval

## **FISCAL IMPACT**

The creation and facilitation of a Great Lakes Aquatic Nuisance Species Coalition would increase administrative costs for the Department. The bill identifies the Great Lakes Protection Fund for this purpose. The Fund balance and annual revenue are anticipated to be insufficient to support the current appropriation of \$2.5 million for research grants and administration. The new purpose would put additional strain on this Fund source.

The bill would establish a new permit program for oceangoing vessels engaging in port operations to be administered by the Department. The cost of the program would depend on the number of vessels, the level of compliance, and enforcement actions required. The bill would provide no funding mechanism for the program.

The bill would expand what constitutes an illegal discharge into waters of the State. This could result in additional civil and criminal fines from increased violations, as well as increased costs to the correctional system. Civil fines are deposited into the General Fund and criminal fines benefit local libraries.

Fiscal Analyst: Jessica Runnels

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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.