



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

BILL ANALYSIS



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

House Bill 6465 (as passed by the House)
Sponsor: Representative Dan Lauwers
House Committee: Commerce and Trade
Senate Committee: Natural Resources

Date Completed: 12-12-18

CONTENT

The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act to delete the current ballast water discharge requirements for oceangoing vessels that engage in port operations in Michigan, and adopt Federal regulations for ballast water management and control of nonindigenous species in the Great Lakes.

Under the Part 31, all oceangoing vessels engaging in port operations in the State must obtain a permit from the Department of Environmental Quality (DEQ). The Department may issue a permit for an oceangoing vessel only if the applicant can demonstrate that the oceangoing vessel will not discharge aquatic nuisance species or, if the vessel discharges ballast water or other waste or waste effluent, that the operator of the vessel will use environmentally sound technology and methods, as determined by the DEQ, that can be used to prevent the discharge of aquatic nuisance species.

Under the bill, instead, the DEQ would have to issue a permit for an oceangoing vessel only if the applicant could demonstrate that the vessel complied with 33 CFR 151.1510 (found in Subpart C) as then in effect or the oceangoing vessel would utilize environmentally sound technology and methods approved by DEQ that prevented the discharge of aquatic nuisance species. However, all of the following would apply:

- The grant by the Coast Guard of an extension to the implementation schedule under 33 CFR 151.1510(a)(1) or saltwater flushing under 33 CFR 401.30 alone would not be considered compliance with the "Federal Aquatic Nuisance Rule" for the purposes of the bill.
- A vessel discharging ballast water would have to employ a ballast water management system approved under 33 CFR 151.1510(a)(3) or a ballast water treatment method approved by DEQ.
- A vessel would have to carry out an exchange of ballast water or saltwater flushing and comply with other applicable requirements of 33 CFR Part 151, Subpart C, and 33 CFR 401.30.
- A vessel using water from a public water system under 33 CFR 151.1510(a)(4) would have to use a method to sufficiently clean ballast water tanks before using water from a public water supply system as ballast water as approved by DEQ.
- A discharge that could cause or contribute to a violation of a water quality standard would not be authorized by a permit described in the bill.
- If the Rule were amended after the bill's enactment date, and the Director of the DEQ determined that the amended version of the Rule was less protective of the waters of the

State from aquatic nuisance species, the applicant would have to demonstrate that the oceangoing vessel complied with the Rule as in effect immediately before the effective date of the amendment to the Rule.

- If pursuant to a compact of Great Lakes states of which Michigan is a part, the State adopted standards more protective of the waters of Michigan than the version of the Federal Aquatic Nuisance Rule otherwise applicable under these provisions, the standards adopted pursuant to the compact would apply.

The bill would define "Federal Aquatic Nuisance Rule" as 33 CFR Part 151, Subpart C, and applicable requirements of 33 CFR 151.2050, 151.2060, and 151.2070. (These Federal regulations, among others, are described in **BACKGROUND**, below.)

According to the bill, "The intent of the legislature in adopting part the Federal Aquatic Nuisance Rule by reference is to help harmonize regulatory programs in Great Lakes states for preventing the introduction and spread of aquatic nuisance species in the Great Lakes, including ballast water management programs, and to allow regulatory agencies to cooperate in developing stronger programs."

Under the Act, the DEQ is required to cooperate with other Great Lakes Basin states, the Canadian Great Lakes provinces, the Great Lakes Panel on Aquatic Nuisance Species, the Great Lakes Fishery Commission, the International Joint Commission, and the Great Lakes Commission to ensure development of standards for the control of aquatic nuisance species that are broadly protective of the waters of the State and other natural resources.

The bill would delete this requirement.

MCL 324.3112

BACKGROUND

Subpart C of 33 CRF Part 151 is entitled, "Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River". The regulations require the master of each vessel subject to the subpart to employ one of the following ballast water management practices:

- Carry out an exchange of ballast on the waters beyond the Exclusive Economic Zone (an area that extends from the base line of the territorial sea of the United States seaward 200 miles, and the equivalent zone of Canada), in a depth exceeding 2,000 meters, prior to entry into specified waters (which do not include the Great Lakes), such that, at the conclusion of the exchange, any tank from which ballast water will be discharged contains water with a minimum salinity level of 30 parts per thousand.
- Retain the vessel's ballast water on board the vessel, in which case the Captain of the Port (COTP) may seal any tank or hold containing ballast water on board the vessel for the duration of the voyage.
- Install and operate a ballast water management system that has been approved by the Coast Guard in accordance to the subpart.
- Use only water from a U.S. public water system that meets certain Federal requirements.

The regulations also prohibits the separate discharge of sediment from tanks or holds containing ballast water unless it is disposed of ashore in accordance with local requirements.

Upon request, the master of each vessel must provide the COTP with specified information, including whether ballast water is being carried; the original location and salinity, if known, of ballast water taken on before an exchange; the location, date, and time of any ballast

water exchange; and the intended discharge port for ballast water and location for disposal of sediment carried upon entry into the territorial waters of the United States, if ballast water or sediment is to be discharged.

Further regulations are contained in Subpart D, "Ballast Water Management for Control of Nonindigenous Species in Waters of the United States". These include additional requirements for nonindigenous species reduction practices (151.2050); reporting requirements (151.2060), and record-keeping requirements (151.2070).

Under 33 CFR 401.30, every vessel must be adequately ballasted and properly trimmed. Any vessel that is not adequately ballasted or properly trimmed in the opinion of an officer may be refused transit or may be delayed. The Federal regulation also lists requirements that must be met to obtain clearance to transit the seaway.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Environmental Quality and no fiscal impact on local units of government. Under the bill, the DEQ would have to use Federal aquatic nuisance standards used by the U.S. Coast Guard when issuing a port operations permit to the operator of an oceangoing vessel. It is unknown whether this new requirement would affect the amount of work, and hence the cost, associated with permit issuance. It is also unknown how the change would affect demand for the permits. Those seeking a permit currently pay a \$75 application fee as well as an annual renewal fee of \$150, which would remain unchanged under the bill. To the extent that the fees would be sufficient to cover the cost of permit issuance under the bill, any increase in demand for permits that could result from the bill would have a positive fiscal impact on the DEQ. The opposite is also true; if current permit fees were not sufficient to cover the costs of permit issuance, any increase in demand would have a negative fiscal impact.

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.