

As Introduced

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Representative Skindell

**Cosponsors: Representatives Ujvagi, Foley, Stewart, D., Letson, Koziura,
McGregor, J., Yuko, Celeste, Okey, Brady, Chandler, Luckie, Sayre, Fende**

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A B I L L

To enact sections 1535.01 to 1535.07 of the Revised Code to establish requirements governing oceangoing vessels on the state waters of Lake Erie in order to control aquatic nuisance species.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1535.01, 1535.02, 1535.03, 1535.04, 1535.05, 1535.06, and 1535.07 of the Revised Code be enacted to read as follows:

Sec. 1535.01. As used in this chapter:

(A) "Aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species in or the ecological stability of infested waters or commercial, agricultural, aquacultural, or recreational activities that are dependent on such waters.

(B) "Ballast tank" means a tank or hold on an oceangoing vessel that is used for carrying ballast water regardless of whether the tank or hold was designed for that purpose.

(C) "Ballast water" means water and suspended matter that are taken on board an oceangoing vessel to control or maintain trim,

draught, stability, or stresses of the vessel regardless of how 19
the water and suspended matter are carried. 20

(D) "Environmentally sound technology and methods" means the 21
best available technology, methods, efforts, actions, or programs 22
to prevent introductions or control infestations of aquatic 23
nuisance species that minimize adverse impacts to the structure 24
and function of an ecosystem and adverse effects on nontarget 25
organisms and ecosystems and that emphasize integrated pest 26
management techniques and nonchemical measures. 27

(E) "Oceangoing vessel" means a vessel that operates outside 28
the waters of Lake Michigan, Lake Superior, Lake Huron, and Lake 29
Erie and their tributaries. 30

(F) "Person" includes an individual, partnership, 31
copartnership, firm, company, limited liability company, 32
corporation, association, joint stock company, trust, estate, or 33
other legal entity, or the legal representative or agent of such 34
an entity, that operates oceangoing vessels on the state waters of 35
Lake Erie or that owns such vessels. 36

(G) "Rule" means a rule adopted under section 1535.03 of the 37
Revised Code. 38

(H) "Sediment" means matter that settles out of ballast water 39
within the ballast tank of an oceangoing vessel. 40

(I) "State waters of Lake Erie" means the waters under the 41
jurisdiction of this state in Lake Erie and waters that discharge, 42
flow, or otherwise are transferred into that portion of Lake Erie. 43

(J) "Vector" means the pathway and mechanism of entry for 44
aquatic nuisance species into the state waters of Lake Erie. 45

Sec. 1535.02. (A)(1) Not later than twelve months after the 46
effective date of this section, the chief of the division of 47
wildlife shall establish a program for the issuance of permits 48

under this section. 49

(2) On and after the effective date of rules adopted by the 50
chief, no person shall operate an oceangoing vessel that is 51
capable of discharging ballast water on the state waters of Lake 52
Erie without a permit issued by the chief under this section. 53

(B) The chief or the chief's authorized representative may 54
assist an applicant for a permit during the application process by 55
providing guidance and technical assistance. 56

(C) An applicant for a permit shall submit an application to 57
the chief on a form that the chief prescribes and provides, 58
accompanied by a permit fee in an amount specified by rule. The 59
applicant shall submit with the application a signed affidavit 60
verifying that the applicant's oceangoing vessel is in compliance 61
with the performance standards established in rules. 62

(D) Upon receipt of a complete application, permit fee, and 63
signed affidavit, the chief shall issue or deny a permit. If the 64
chief issues a permit, the permit shall include an identification 65
number that is unique to that permit and terms that are necessary 66
to ensure compliance with this chapter and rules. The chief shall 67
issue a permit for an oceangoing vessel only if the operator who 68
applies for the permit can demonstrate either that the oceangoing 69
vessel will not discharge ballast water or other waste or effluent 70
or, if the oceangoing vessel discharges ballast water or other 71
waste or effluent, that the operator of the oceangoing vessel will 72
utilize environmentally sound technology and methods, as 73
identified in rules, that can be used to prevent the discharge of 74
aquatic nuisance species. In addition, the chief shall deny a 75
permit if the application contains misleading or false 76
information. Additional grounds for denial of a permit shall be 77
established in rules. 78

(E) A permit is valid for one year and may be renewed. An 79

application for renewal of a permit shall be submitted to the 80
chief at least one hundred eighty days prior to the expiration 81
date of the permit and shall comply with the requirements 82
governing applications for permits that are established in this 83
section and in rules. 84

(F) The chief may modify, suspend, or revoke a permit in 85
accordance with rules. 86

(G) No person that is issued a permit under this section 87
shall violate the terms of the permit, including, but not limited 88
to, any requirement in the permit that the person utilize 89
environmentally sound technology and methods to prevent the 90
discharge of aquatic nuisance species. 91

Sec. 1535.03. (A) Not later than twelve months after the 92
effective date of this section, the chief of the division of 93
wildlife shall adopt rules in accordance with Chapter 119. of the 94
Revised Code that do all of the following: 95

(1) Identify aquatic nuisance species for the purposes of 96
this chapter; 97

(2) Establish all of the following concerning permits that 98
are issued under section 1535.02 of the Revised Code: 99

(a) The amount of the fee for a permit; 100

(b) Procedures for the issuance, denial, modification, 101
renewal, suspension, and revocation of permits; 102

(c) Requirements governing the modification of permits; 103

(d) Grounds for the denial, suspension, or revocation of 104
permits in addition to the grounds established in division (D) of 105
section 1535.02 of the Revised Code. 106

(3) Establish performance standards for ballast water 107
discharge and the management of other vectors of aquatic nuisance 108

species introduced from oceangoing vessels, including sea chests, 109
anchor chains, hull fouling, and sediment in ballast tanks, for 110
the purpose of eliminating the risk of introduction of plant, 111
animal, and human pathogens into the state waters of Lake Erie. 112
The standards shall identify environmentally sound technology and 113
methods that shall be used to prevent the discharge of aquatic 114
nuisance species. 115

(4) Establish a system of inspections to be conducted by the 116
division of wildlife to ensure that oceangoing vessels comply with 117
the rules adopted under division (A)(3) of this section. The rules 118
shall include requirements for sampling of water or sediment, 119
whichever is applicable, in ballast tanks, sea chests, anchor 120
chains, hulls, and any other locations on an oceangoing vessel 121
that the chief determines are necessary. The rules also shall 122
establish requirements governing the imposition of inspection fees 123
on oceangoing vessels that are subject to inspection. 124

(5) Establish the amount of the civil penalty that may be 125
assessed under section 1535.06 of the Revised Code. The amount of 126
the penalty shall be not less than twenty-five thousand dollars 127
for each violation. 128

(6) Establish any other requirements and procedures that the 129
chief determines are necessary to administer and enforce this 130
chapter. 131

(B) In adopting rules under this section, the chief shall 132
consult with the other states and Canadian provinces that border 133
the Great Lakes in an effort to ensure uniform regulatory policies 134
among the states and provinces. 135

(C) Beginning January 1, 2008, the chief, at least every 136
three years, shall review the rules adopted under division (A)(3) 137
of this section to determine whether the performance standards 138
established in those rules have prevented the introduction into 139

and the reduction of the spread of aquatic nuisance species within 140
the state waters of Lake Erie. If the chief determines that the 141
performance standards have not prevented the introduction into and 142
the reduction of the spread of aquatic nuisance species within the 143
state waters of Lake Erie, the chief may adopt revised rules that 144
establish alternative performance standards. 145

(D) No person shall violate a rule adopted under this 146
section. 147

Sec. 1535.04. In order to address discharges of aquatic 148
nuisance species from oceangoing vessels that damage water 149
quality, aquatic habitat, or fish or wildlife, the chief of the 150
division of wildlife shall facilitate the formation of a Great 151
Lakes aquatic nuisance species coalition. The Great Lakes aquatic 152
nuisance species coalition shall be formed through an agreement 153
entered into with other states in the Great Lakes basin and with 154
Canadian Great Lakes provinces. The purpose of the coalition shall 155
be to recommend and implement on a basin-wide basis water 156
pollution control laws that prohibit the discharge of aquatic 157
nuisance species into the Great Lakes from oceangoing vessels. The 158
chief shall attempt to enter into the agreement so that the 159
agreement is effective not later than twelve months after the 160
effective date of this section. The chief shall consult with other 161
appropriate state and federal agencies prior to entering into the 162
agreement, including, but not limited to, the environmental 163
protection agency and the United States environmental protection 164
agency. 165

Sec. 1535.05. The chief of the division of wildlife shall 166
cooperate to the fullest extent practicable with other Great Lakes 167
basin states, the Canadian Great Lakes provinces, the Great Lakes 168
panel on aquatic nuisance species, the Great Lakes fishery 169
commission, the international joint commission, and the Great 170

Lakes commission to ensure development of standards for the 171
control of aquatic nuisance species that are broadly protective of 172
the waters of the state and other natural resources. 173

Sec. 1535.06. (A) The chief of the division of wildlife may 174
request the attorney general, in writing, to bring an action for a 175
civil penalty in a court of competent jurisdiction against any 176
person who has violated or is violating this chapter or a rule 177
adopted or a term of a permit issued under it. The court may 178
impose on the person a civil penalty in the amount established in 179
rules. 180

(B)(1) A person may bring a civil action for a violation of 181
this chapter or a rule adopted or permit issued under it on behalf 182
of the person or on behalf of the state. A person may not bring an 183
action under this division against the state or a political 184
subdivision, a department, board, office, commission, agency, 185
institution, or other instrumentality of the state or a political 186
subdivision, or an officer or employee of the state or a political 187
subdivision. 188

(2) A copy of the complaint and written disclosure of 189
substantially all material evidence and information that the 190
person possesses shall be served on the attorney general pursuant 191
to Civil Rule 4.2(J). The complaint shall be filed in camera, 192
shall remain under seal for at least sixty days, and shall not be 193
served on the defendant until the court so orders. The state may 194
elect to intervene and proceed with the action within sixty days 195
after it receives both the complaint and the material evidence and 196
information. 197

(3) The state, for good cause shown, may file motions with 198
the court requesting extensions of the time during which the 199
complaint remains under seal. Such a motion may be supported by 200
affidavits or other submissions in camera. The defendant shall not 201

be required to respond to a complaint filed under this division 202
until twenty-eight days after the complaint is unsealed and served 203
on the defendant pursuant to Civil Rule 4. 204

(4) Before the expiration of the sixty-day period established 205
under division (B)(2) of this section or any extensions obtained 206
under division (B)(3) of this section, the state shall either 207
proceed with the action or notify the court that it declines to 208
proceed with the action. If the state proceeds with the action, 209
the state shall conduct the action. If the state declines to 210
proceed with the action, the person bringing the action has the 211
right to conduct the action. 212

(5) When a person brings an action under division (B)(1) of 213
this section, no person other than the state may intervene or 214
bring a related action based on the facts underlying that pending 215
action. 216

(C)(1) If the state proceeds with an action under division 217
(B) of this section, it has the primary responsibility for 218
prosecuting the action and is not bound by an action of the person 219
bringing the action. The person bringing the action has the right 220
to continue as a party to the action, subject to the limitations 221
established in division (C)(2) of this section. 222

(2)(a) The state may dismiss an action brought under division 223
(B) of this section notwithstanding the objections of the person 224
initiating the action if the person has been notified by the state 225
of the filing of the motion to dismiss and the court has provided 226
the person with an opportunity for a hearing on the motion. 227

(b) The state may settle an action brought under division (B) 228
of this section with the defendant notwithstanding the objections 229
of the person initiating the action if the court determines, after 230
a hearing, that the proposed settlement is fair, adequate, and 231
reasonable under all the circumstances. Upon a showing of good 232

cause, the court may hold the hearing in camera. 233

(c) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court, in its discretion, may impose limitations on the person's participation, including, but not limited to, all of the following: 234
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(i) Limiting the number of witnesses that the person may call; 241
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(ii) Limiting the length of the testimony of witnesses; 243

(iii) Limiting the person's cross-examination of witnesses; 244

(iv) Otherwise limiting the participation by the person in the litigation. 245
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(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating an action under division (B) of this section would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit participation by the person initiating the action in the litigation. 247
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(3) If the state declines to proceed with an action brought by a person under division (B) of this section and the person conducts the action, the state may request to be served with copies of all pleadings filed in the action and to be supplied with copies of all deposition transcripts at the state's expense. When the person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may permit the state to intervene at a later date upon a showing of good cause. 253
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(4) Whether or not the state proceeds with the action, upon a 262

showing by the state that certain discovery by the person 263
initiating the action would interfere with the state's 264
investigation or prosecution of a civil matter arising out of the 265
same facts, the court may stay that discovery for a period of not 266
more than sixty days. The showing shall be conducted in camera. 267
The court may extend the sixty-day period upon a further showing 268
in camera that the state has pursued the criminal or civil 269
investigation or proceedings with reasonable diligence and any 270
proposed discovery in the civil action will interfere with the 271
ongoing criminal or civil investigation or proceedings. 272

(D)(1) Except as otherwise provided in this division, if the 273
state proceeds with an action brought by a person under division 274
(B) of this section, the person shall receive at least fifteen per 275
cent, but not more than twenty-five per cent of the proceeds of 276
the action or settlement of the claim, depending on the extent to 277
which the person substantially contributed to the prosecution of 278
the action. If the action is one that the court finds to be based 279
primarily on disclosures of specific information, other than 280
information provided by the person bringing the action, the court 281
may award the sums that it considers appropriate, but in no case 282
more than ten per cent of the proceeds, taking into account the 283
significance of the information and the role of the person 284
bringing the action in advancing the case to litigation. Any 285
payment to a person under this division shall be made from the 286
proceeds. The person shall also receive an amount for reasonable 287
expenses that the court finds to have been necessarily incurred 288
plus reasonable attorney's fees and costs. All expenses, fees, and 289
costs shall be awarded against the defendant. 290

(2) If the state does not proceed with an action brought by a 291
person under division (B) of this section, the person bringing the 292
action or settling the claim shall receive an amount that the 293
court decides is reasonable for collecting the civil penalty and 294

damages. The amount shall be not less than twenty-five per cent 295
and not more than thirty per cent of the proceeds of the action or 296
settlement and shall be paid out of the proceeds. The person also 297
shall receive an amount for reasonable expenses that the court 298
finds to have been necessarily incurred plus reasonable attorney's 299
fees and costs. All expenses, fees, and costs shall be awarded 300
against the defendant. 301

(3) If the state does not proceed with the action and the 302
person bringing the action conducts the action, the court may 303
award to the defendant its reasonable attorney's fees and expenses 304
if the defendant prevails in the action and the court finds that 305
the claim of the person bringing the action was clearly frivolous, 306
clearly vexatious, or brought primarily for purposes of 307
harassment. 308

(E)(1) A person may not bring an action under division (B) of 309
this section that is based on allegations or transactions that are 310
the subject of a civil action proceeding in which the state is 311
already a party. 312

(2) A person may not bring an action under this section that 313
is based on the public disclosure of allegations or transactions 314
in a criminal, civil, legislative, or administrative hearing, 315
report, audit, or investigation, or from the news media, unless 316
the person bringing the action has direct and independent 317
knowledge of the information on which the allegations are based 318
and has voluntarily provided the information to the state before 319
filing an action based on the information under this section. This 320
division does not apply to the bringing of an action by the state. 321

(F) The state is not liable for expenses that a person incurs 322
in bringing an action under this section. 323

Sec. 1535.07. (A) All money collected by the chief of the 324
division of wildlife under this chapter and all money from actions 325

brought under section 1535.06 of the Revised Code shall be 326
deposited in the state treasury to the credit of the aquatic 327
nuisance species prevention fund, which is hereby created in the 328
state treasury. All investment earnings of the fund shall be 329
credited to the fund. 330

(B) Money in the fund shall be used by the chief for all of 331
the following: 332

(1) Prevention of the introduction of aquatic nuisance 333
species into the state waters of Lake Erie; 334

(2) Control of the spread of aquatic nuisance species that 335
exist in the state waters of Lake Erie prior to the effective date 336
of this section; 337

(3) Reclamation of aquatic resources in the state that have 338
been injured as a result of aquatic nuisance species; 339

(4) The administration of this chapter and rules adopted 340
under it. 341