

As Introduced

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Senator Miller, D.

Cosponsors: Senators Turner, Fedor, Sawyer, Wagoner

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A B I L L

To enact sections 6111.60 to 6111.66 of the Revised 1
Code to establish requirements governing 2
oceangoing vessels on the state waters of Lake 3
Erie in order to control aquatic nuisance species. 4

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

Section 1. That sections 6111.60, 6111.61, 6111.62, 6111.63, 5
6111.64, 6111.65, and 6111.66 of the Revised Code be enacted to 6
read as follows: 7

Sec. 6111.60. As used in sections 6111.60 to 6111.66 of the 8
Revised Code: 9

(A) "Aquatic nuisance species" means a nonindigenous species 10
that threatens the diversity or abundance of native species in or 11
the ecological stability of infested waters or commercial, 12
agricultural, aquacultural, or recreational activities that are 13
dependent on such waters. 14

(B) "Ballast tank" means a tank or hold on an oceangoing 15
vessel that is used for carrying ballast water regardless of 16
whether the tank or hold was designed for that purpose. 17

(C) "Ballast water" means water and suspended matter that are 18
taken on board an oceangoing vessel to control or maintain trim, 19

draught, stability, or stresses of the vessel regardless of how 20
the water and suspended matter are carried. 21

(D) "Environmentally sound technology and methods" means the 22
best available technology, methods, efforts, actions, or programs 23
to prevent introductions or control infestations of aquatic 24
nuisance species that minimize adverse impacts to the structure 25
and function of an ecosystem and adverse effects on nontarget 26
organisms and ecosystems and that emphasize integrated pest 27
management techniques and nonchemical measures. 28

(E) "Oceangoing vessel" means a vessel that operates outside 29
the waters of Lake Michigan, Lake Superior, Lake Huron, and Lake 30
Erie and their tributaries. 31

(F) "Person" includes an individual, partnership, 32
copartnership, firm, company, limited liability company, 33
corporation, association, joint stock company, trust, estate, or 34
other legal entity, or the legal representative or agent of such 35
an entity, that operates oceangoing vessels on the state waters of 36
Lake Erie or that owns such vessels. 37

(G) "Rule" means a rule adopted under section 6111.62 of the 38
Revised Code. 39

(H) "Sediment" means matter that settles out of ballast water 40
within the ballast tank of an oceangoing vessel. 41

(I) "State waters of Lake Erie" means the waters under the 42
jurisdiction of this state in Lake Erie and waters that discharge, 43
flow, or otherwise are transferred into that portion of Lake Erie. 44

(J) "Vector" means the pathway and mechanism of entry for 45
aquatic nuisance species into the state waters of Lake Erie. 46

Sec. 6111.61. (A)(1) Not later than twelve months after the 47
effective date of this section, the director of environmental 48
protection shall establish a program for the issuance of permits 49

under this section. 50

(2) On and after the effective date of rules adopted by the 51
director, no person shall operate an oceangoing vessel that is 52
capable of discharging ballast water on the state waters of Lake 53
Erie without a permit issued by the director under this section. 54

(B) The director or the director's authorized representative 55
may assist an applicant for a permit during the application 56
process by providing guidance and technical assistance. 57

(C) An applicant for a permit shall submit an application to 58
the director on a form that the director prescribes and provides, 59
accompanied by a permit fee in an amount specified by rule. The 60
applicant shall submit with the application a signed affidavit 61
verifying that the applicant's oceangoing vessel is in compliance 62
with the performance standards established in rules. 63

(D) Upon receipt of a complete application, permit fee, and 64
signed affidavit, the director shall issue or deny a permit. If 65
the director issues a permit, the permit shall include an 66
identification number that is unique to that permit and terms that 67
are necessary to ensure compliance with sections 6111.60 to 68
6111.66 of the Revised Code and rules. The director shall issue a 69
permit for an oceangoing vessel only if the operator who applies 70
for the permit can demonstrate either that the oceangoing vessel 71
will not discharge ballast water or other waste or effluent or, if 72
the oceangoing vessel discharges ballast water or other waste or 73
effluent, that the operator of the oceangoing vessel will utilize 74
environmentally sound technology and methods, as identified in 75
rules, that can be used to prevent the discharge of aquatic 76
nuisance species. In addition, the director shall deny a permit if 77
the application contains misleading or false information. 78
Additional grounds for denial of a permit shall be established in 79
rules. 80

(E) A permit is valid for one year and may be renewed. An application for renewal of a permit shall be submitted to the director at least one hundred eighty days prior to the expiration date of the permit and shall comply with the requirements governing applications for permits that are established in this section and in rules. 81
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(F) The director may modify, suspend, or revoke a permit in accordance with rules. 87
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(G) No person that is issued a permit under this section shall violate the terms of the permit, including, but not limited to, any requirement in the permit that the person utilize environmentally sound technology and methods to prevent the discharge of aquatic nuisance species. 89
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Sec. 6111.62. (A) Not later than twelve months after the effective date of this section, the director of environmental protection shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following: 94
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(1) Identify aquatic nuisance species for the purposes of sections 6111.60 to 6111.66 of the Revised Code; 98
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(2) Establish all of the following concerning permits that are issued under section 6111.61 of the Revised Code: 100
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(a) The amount of the fee for a permit; 102

(b) Procedures for the issuance, denial, modification, renewal, suspension, and revocation of permits; 103
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(c) Requirements governing the modification of permits; 105

(d) Grounds for the denial, suspension, or revocation of permits in addition to the grounds established in division (D) of section 6111.61 of the Revised Code. 106
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(3) Establish performance standards for ballast water 109

discharge and the management of other vectors of aquatic nuisance species introduced from oceangoing vessels, including sea chests, anchor chains, hull fouling, and sediment in ballast tanks, for the purpose of eliminating the risk of introduction of plant, animal, and human pathogens into the state waters of Lake Erie. The standards shall identify environmentally sound technology and methods that shall be used to prevent the discharge of aquatic nuisance species. 110
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(4) Establish a system of inspections to be conducted by the environmental protection agency to ensure that oceangoing vessels comply with the rules adopted under division (A)(3) of this section. The rules shall include requirements for sampling of water or sediment, whichever is applicable, in ballast tanks, sea chests, anchor chains, hulls, and any other locations on an oceangoing vessel that the director determines are necessary. The rules also shall establish requirements governing the imposition of inspection fees on oceangoing vessels that are subject to inspection. 118
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(5) Establish the amount of the civil penalty that may be assessed under section 6111.65 of the Revised Code. The amount of the penalty shall be not less than twenty-five thousand dollars for each violation. 128
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(6) Establish any other requirements and procedures that the director determines are necessary to administer and enforce sections 6111.60 to 6111.66 of the Revised Code. 132
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(B) In adopting rules under this section, the director shall consult with the other states and Canadian provinces that border the great lakes in an effort to ensure uniform regulatory policies among the states and provinces. 135
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(C) Beginning January 1, 2010, the director, at least every three years, shall review the rules adopted under division (A)(3) 139
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of this section to determine whether the performance standards 141
established in those rules have prevented the introduction into 142
and the reduction of the spread of aquatic nuisance species within 143
the state waters of Lake Erie. If the director determines that the 144
performance standards have not prevented the introduction into and 145
the reduction of the spread of aquatic nuisance species within the 146
state waters of Lake Erie, the director may adopt revised rules 147
that establish alternative performance standards. 148

(D) No person shall violate a rule adopted under this 149
section. 150

Sec. 6111.63. In order to address discharges of aquatic 151
nuisance species from oceangoing vessels that damage water 152
quality, aquatic habitat, or fish or wildlife, the director of 153
environmental protection shall facilitate the formation of a great 154
lakes aquatic nuisance species coalition. The great lakes aquatic 155
nuisance species coalition shall be formed through an agreement 156
entered into with other states in the great lakes basin and with 157
Canadian great lakes provinces. The purpose of the coalition shall 158
be to recommend and implement on a basin-wide basis water 159
pollution control laws that prohibit the discharge of aquatic 160
nuisance species into the great lakes from oceangoing vessels. The 161
director shall attempt to enter into the agreement so that the 162
agreement is effective not later than twelve months after the 163
effective date of this section. The director shall consult with 164
other appropriate state and federal agencies prior to entering 165
into the agreement, including, but not limited to, the department 166
of natural resources and the United States environmental 167
protection agency. 168

Sec. 6111.64. The director of environmental protection shall 169
cooperate to the fullest extent practicable with other great lakes 170
basin states, the Canadian great lakes provinces, the great lakes 171

panel on aquatic nuisance species, the great lakes fishery 172
commission, the international joint commission, and the great 173
lakes commission to ensure development of standards for the 174
control of aquatic nuisance species that are broadly protective of 175
the waters of the state and other natural resources. 176

Sec. 6111.65. (A) The director of environmental protection 177
may request the attorney general, in writing, to bring an action 178
for a civil penalty in a court of competent jurisdiction against 179
any person who has violated or is violating sections 6111.60 to 180
6111.66 of the Revised Code or a rule adopted or a term of a 181
permit issued under them. The court may impose on the person a 182
civil penalty in the amount established in rules. 183

(B)(1) A person may bring a civil action for a violation of 184
sections 6111.60 to 6111.66 of the Revised Code or a rule adopted 185
or permit issued under them on behalf of the person or on behalf 186
of the state. A person may not bring an action under this division 187
against the state or a political subdivision, a department, board, 188
office, commission, agency, institution, or other instrumentality 189
of the state or a political subdivision, or an officer or employee 190
of the state or a political subdivision. 191

(2) A copy of the complaint and written disclosure of 192
substantially all material evidence and information that the 193
person possesses shall be served on the attorney general pursuant 194
to Civil Rule 4.2(J). The complaint shall be filed in camera, 195
shall remain under seal for at least sixty days, and shall not be 196
served on the defendant until the court so orders. The state may 197
elect to intervene and proceed with the action within sixty days 198
after it receives both the complaint and the material evidence and 199
information. 200

(3) The state, for good cause shown, may file motions with 201
the court requesting extensions of the time during which the 202

complaint remains under seal. Such a motion may be supported by 203
affidavits or other submissions in camera. The defendant shall not 204
be required to respond to a complaint filed under this division 205
until twenty-eight days after the complaint is unsealed and served 206
on the defendant pursuant to Civil Rule 4. 207

(4) Before the expiration of the sixty-day period established 208
in division (B)(2) of this section or any extensions obtained 209
under division (B)(3) of this section, the state shall either 210
proceed with the action or notify the court that it declines to 211
proceed with the action. If the state proceeds with the action, 212
the state shall conduct the action. If the state declines to 213
proceed with the action, the person bringing the action has the 214
right to conduct the action. 215

(5) When a person brings an action under division (B)(1) of 216
this section, no person other than the state may intervene or 217
bring a related action based on the facts underlying that pending 218
action. 219

(C)(1) If the state proceeds with an action under division 220
(B) of this section, it has the primary responsibility for 221
prosecuting the action and is not bound by an action of the person 222
bringing the action. The person bringing the action has the right 223
to continue as a party to the action, subject to the limitations 224
established in division (C)(2) of this section. 225

(2)(a) The state may dismiss an action brought under division 226
(B) of this section notwithstanding the objections of the person 227
initiating the action if the person has been notified by the state 228
of the filing of the motion to dismiss and the court has provided 229
the person with an opportunity for a hearing on the motion. 230

(b) The state may settle an action brought under division (B) 231
of this section with the defendant notwithstanding the objections 232
of the person initiating the action if the court determines, after 233

a hearing, that the proposed settlement is fair, adequate, and 234
reasonable under all the circumstances. Upon a showing of good 235
cause, the court may hold the hearing in camera. 236

(c) Upon a showing by the state that unrestricted 237
participation during the course of the litigation by the person 238
initiating the action would interfere with or unduly delay the 239
state's prosecution of the case or would be repetitious, 240
irrelevant, or for purposes of harassment, the court, in its 241
discretion, may impose limitations on the person's participation, 242
including, but not limited to, all of the following: 243

(i) Limiting the number of witnesses that the person may 244
call; 245

(ii) Limiting the length of the testimony of witnesses; 246

(iii) Limiting the person's cross-examination of witnesses; 247

(iv) Otherwise limiting the participation by the person in 248
the litigation. 249

(d) Upon a showing by the defendant that unrestricted 250
participation during the course of the litigation by the person 251
initiating an action under division (B) of this section would be 252
for purposes of harassment or would cause the defendant undue 253
burden or unnecessary expense, the court may limit participation 254
by the person initiating the action in the litigation. 255

(3) If the state declines to proceed with an action brought 256
by a person under division (B) of this section and the person 257
conducts the action, the state may request to be served with 258
copies of all pleadings filed in the action and to be supplied 259
with copies of all deposition transcripts at the state's expense. 260
When the person proceeds with the action, the court, without 261
limiting the status and rights of the person initiating the 262
action, may permit the state to intervene at a later date upon a 263
showing of good cause. 264

(4) Whether or not the state proceeds with the action, upon a 265
showing by the state that certain discovery by the person 266
initiating the action would interfere with the state's 267
investigation or prosecution of a civil matter arising out of the 268
same facts, the court may stay that discovery for a period of not 269
more than sixty days. The showing shall be conducted in camera. 270
The court may extend the sixty-day period upon a further showing 271
in camera that the state has pursued the criminal or civil 272
investigation or proceedings with reasonable diligence and any 273
proposed discovery in the civil action will interfere with the 274
ongoing criminal or civil investigation or proceedings. 275

(D)(1) Except as otherwise provided in this division, if the 276
state proceeds with an action brought by a person under division 277
(B) of this section, the person shall receive at least fifteen per 278
cent, but not more than twenty-five per cent of the proceeds of 279
the action or settlement of the claim, depending on the extent to 280
which the person substantially contributed to the prosecution of 281
the action. If the action is one that the court finds to be based 282
primarily on disclosures of specific information, other than 283
information provided by the person bringing the action, the court 284
may award the sums that it considers appropriate, but in no case 285
more than ten per cent of the proceeds, taking into account the 286
significance of the information and the role of the person 287
bringing the action in advancing the case to litigation. Any 288
payment to a person under this division shall be made from the 289
proceeds. The person shall also receive an amount for reasonable 290
expenses that the court finds to have been necessarily incurred 291
plus reasonable attorney's fees and costs. All expenses, fees, and 292
costs shall be awarded against the defendant. 293

(2) If the state does not proceed with an action brought by a 294
person under division (B) of this section, the person bringing the 295
action or settling the claim shall receive an amount that the 296

court decides is reasonable for collecting the civil penalty and 297
damages. The amount shall be not less than twenty-five per cent 298
and not more than thirty per cent of the proceeds of the action or 299
settlement and shall be paid out of the proceeds. The person also 300
shall receive an amount for reasonable expenses that the court 301
finds to have been necessarily incurred plus reasonable attorney's 302
fees and costs. All expenses, fees, and costs shall be awarded 303
against the defendant. 304

(3) If the state does not proceed with the action and the 305
person bringing the action conducts the action, the court may 306
award to the defendant its reasonable attorney's fees and expenses 307
if the defendant prevails in the action and the court finds that 308
the claim of the person bringing the action was clearly frivolous, 309
clearly vexatious, or brought primarily for purposes of 310
harassment. 311

(E)(1) A person may not bring an action under division (B) of 312
this section that is based on allegations or transactions that are 313
the subject of a civil action proceeding in which the state is 314
already a party. 315

(2) A person may not bring an action under this section that 316
is based on the public disclosure of allegations or transactions 317
in a criminal, civil, legislative, or administrative hearing, 318
report, audit, or investigation, or from the news media, unless 319
the person bringing the action has direct and independent 320
knowledge of the information on which the allegations are based 321
and has voluntarily provided the information to the state before 322
filing an action based on the information under this section. This 323
division does not apply to the bringing of an action by the state. 324

(F) The state is not liable for expenses that a person incurs 325
in bringing an action under this section. 326

Sec. 6111.66. (A) All money collected by the director of 327

environmental protection under sections 6111.60 to 6111.66 of the 328
Revised Code and all money from actions brought under section 329
6111.65 of the Revised Code shall be deposited in the state 330
treasury to the credit of the aquatic nuisance species prevention 331
fund, which is hereby created in the state treasury. All 332
investment earnings of the fund shall be credited to the fund. 333

(B) Money in the fund shall be used by the director for all 334
of the following: 335

(1) Prevention of the introduction of aquatic nuisance 336
species into the state waters of Lake Erie; 337

(2) Control of the spread of aquatic nuisance species that 338
exist in the state waters of Lake Erie prior to the effective date 339
of this section; 340

(3) Reclamation of aquatic resources in the state that have 341
been injured as a result of aquatic nuisance species; 342

(4) The administration of sections 6111.60 to 6111.66 of the 343
Revised Code and rules adopted under them. 344