

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
77 South High Street, 9th Floor, Columbus, OH 43215-6136 ♦ Phone: (614) 466-3615
♦ Internet Web Site: <http://www.lsc.state.oh.us/>

BILL: **H.B. 298** DATE: **October 23, 2007**
STATUS: **As Introduced** SPONSOR: **Rep. Skindell**
LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**
CONTENTS: **Establishes requirements governing the discharge of ballast water by oceangoing vessels in Ohio waters of Lake Erie in order to control aquatic nuisance species**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
General Revenue Fund – Attorney General			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential minimal to moderate increase for civil actions	Potential minimal to moderate increase for civil actions
Aquatic Nuisance Species Prevention Fund (New Fund) – Department of Natural Resources			
Revenues	- 0 -	Gain from fees and civil penalties	Gain from fees and civil penalties
Expenditures	- 0 -	Increase for administering permit and inspection programs and controlling/preventing aquatic nuisance species	Increase for administering permit and inspection programs and controlling/preventing aquatic nuisance species

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.

- The bill creates the Aquatic Nuisance Species Prevention Fund in the state treasury, with revenues provided through permit and inspection fees and civil penalties assessed for violations of the ballast water dumping provisions contained in the bill.
- The costs of administering the permit and inspection programs for oceangoing vessel ballast water will be paid from the Aquatic Nuisance Species Prevention Fund, as well as control, prevention, and reclamation costs relating to aquatic nuisance species.
- The Attorney General may incur additional minimal to moderate administrative costs from the GRF, depending on the number of civil action cases taken.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.



Detailed Fiscal Analysis

The bill places requirements on oceangoing vessels entering the Ohio waters of Lake Erie in order to prevent them from discharging ballast water containing invasive species that could potentially be harmful to the lake and shoreline environment. Ships pump ballast water into their tanks and hold for stability and maneuverability when they are carrying light loads or no cargo at all, though it can also be used for other purposes such as stability in rough seas and to lower a ship in the water to pass under bridges. The ballast water is often picked up at one port and then discharged at the next port where the ship receives cargo.

Coastal waters used as ballast water can contain sediments and organisms which are then transported to other ports and discharged along with the ballast water. These organisms may include nonnative invasive species, or "aquatic nuisance species," which are potentially harmful to ecosystems outside their native habitat, including the Great Lakes. The bill defines an aquatic nuisance species as "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."

Ballast water discharge permit program

The bill requires the Chief of the Division of Wildlife in the Department of Natural Resources (DNR), no later than 12 months after the bill's effective date, to establish a program for the issuance of permits for oceangoing vessels to enter Ohio's portion of Lake Erie. In order to receive a permit, the operator of the vessel must demonstrate either that the vessel will not discharge ballast water or other waste or effluent, or that the operator will use environmentally sound technology and methods (to be identified in rules) to prevent the discharge of aquatic nuisance species in the ballast water or waste.

The bill establishes the Aquatic Nuisance Species Prevention Fund to support this program and all other activities related to the control and prevention of aquatic nuisance species and the reclamation of territory that has been affected by such species. The ballast water discharge permit program will provide revenue to the fund through a permit fee to be established in rules. A permit is valid for one year and is renewable.

Michigan ballast water reporting program

The state of Michigan operates a similar program of issuing permits to vessels entering its state waters of the Great Lakes, enacted in 2005 by Senate Bill 332 of the 93rd Michigan Legislature. The Michigan program allows the discharge of "waste or effluent" by permit holders so long as they meet certain requirements set by the Michigan Department of Environmental Quality (MDEQ) and federal law and regulations. While the permit program proposed in H.B. 298 is not identical to the Michigan program, it is similar enough to allow the Michigan program to provide some guidance as to the fiscal effect H.B. 298 could have on the state of Ohio.

Michigan charges its permit fees based on National Pollution Discharge Elimination System (NPDES) guidelines for United States Environmental Protection Agency-designated major and minor facilities. "Individual permits" are used for major facilities and are customized for a particular facility based on its specific characteristics, while "general permits" are used for minor facilities and are suitable for use by any facility meeting certain eligibility criteria. For oceangoing vessels, the "general permit" fee for minor facilities is used.

MDEQ uses the NPDES general permit application fee of \$75 for a certificate of coverage under the general ballast water discharge permit. The certificate of coverage is valid for five years, and there is a \$150 annual renewal fee for the permit, also under NPDES guidelines. MDEQ lists 224 vessels in compliance with the ballast water law for 2007. Assuming the operator of each vessel paid the annual permit renewal fee of \$150, that represents revenue of \$33,600. In addition, any ship applying for the first time would need to pay the \$75 application fee, which also covers the five-year certificate of coverage. Depending on how many new ships enter service in Michigan's Great Lakes waters, this could provide additional income in the low thousands of dollars. Because 2007 was the first year for Michigan's program, all ships would have had to pay the application fee, resulting in \$16,800 in revenue for the 224 vessels listed as being in compliance.

It should be noted that DNR believes that ship traffic into Ohio ports is greater than that of Michigan ports since Michigan is served primarily by Detroit and a few smaller ports, while Ohio has the large ports of Toledo and Cleveland along with several others on the Lake Erie shoreline. This may create more oceangoing ship traffic and thus a source of greater revenue for Ohio. At this point, DNR is unable to say how much it would charge for permits. However, based on the estimates from the Michigan program, it seems unlikely that the amount brought in from fees alone would cover the costs of administering the program in the Division of Wildlife.

Oceangoing vessel inspections

The bill requires the Chief of the Division of Wildlife to promulgate rules to establish performance standards for ballast water discharge and other means that may be used to spread aquatic nuisance species, including ballast sediment and infestations on other parts of ships. The bill requires the Chief to establish a system of inspections for oceangoing vessels to ensure compliance with the rules, including taking samples of water or sediment in ballast tanks and other parts of the ship. The bill requires the rules to include the provision of inspection fees to be paid by the operators of the vessels being inspected, with fees being paid into the Aquatic Nuisance Species Prevention Fund.

The Michigan law does not require a system of inspections or inspection fees, so there is no point of comparison from which to estimate any potential revenues or costs to DNR from this program. The bill also does not specify that inspections would be required for *all* oceangoing vessels or how often the inspections would be required. Therefore, it is unclear how often inspection fees would be collected from ships subject to inspection. Presumably, some of these issues would be handled in the rule-making process.

If the inspection program is operated in a similar manner to the permit system in Michigan, with similar fees being charged for every vessel to undergo an annual inspection, a similar amount of revenue in the tens of thousands of dollars could be expected. Due to the likelihood of an increased need for staff to perform the inspections, however, it again seems unlikely that fees alone could support this program.

Civil penalties

The bill provides for civil actions against any person who violates Chapter 1535. of the Revised Code, which is enacted in the bill and pertains to the control and prevention of aquatic nuisance species, including the permit program. Either the Chief must request the Attorney General to bring a civil action against violators or other persons may bring civil actions against those they believe have violated or are violating the provisions contained in the bill. The bill requires the Chief of the Division of Wildlife to adopt rules establishing the amount of a civil penalty to be assessed against violators, but requires that the amount be at least \$25,000 for each violation. The amounts of civil penalties are to be collected by the Division of Wildlife and deposited into the newly established Aquatic Nuisance Species Prevention Fund.

There is no data as of yet on violations of the Michigan ballast water program because it has only been in operation since January 1, 2007. However, depending on the number of vessels using Ohio waters, the number of violations incurred (a ship may have multiple violations), and how many of those violations result in civil actions undertaken by the Attorney General and imposition of a civil penalty, as well as the final penalty amount to be determined in rules, the revenue into the Aquatic Nuisance Species Prevention Fund could be as high as the low millions of dollars.

The Attorney General's office may incur some additional costs for the pursuit of civil actions under the bill. These could either be paid for out of the Attorney General's General Revenue Fund operating expenses or the newly established Aquatic Nuisance Species Prevention Fund. The bill states that the new fund is to be used for the administration of Chapter 1535. of the Revised Code, under which the civil remedy provisions fall. The amount required will depend on the number of civil action cases taken by the Attorney General.

Great Lakes Aquatic Nuisance Species Coalition

The bill requires the Chief of the Division of Wildlife, within 12 months of the effective date of the bill, to facilitate the formation of a Great Lakes Aquatic Nuisance Species Coalition through agreements with other states in the Great Lakes basin and with Canadian provinces in the region. The purpose of the Coalition would be to recommend and implement water pollution control laws that prohibit the discharge of aquatic nuisance species from oceangoing vessels. The fiscal impact of the formation and functioning of such a Coalition would likely be reflected in increased administrative costs associated with drafting the relevant agreements in coordination with the other participating states and provinces and the expenses associated with ongoing efforts by the participants, including participant meetings and policymaking endeavors.

Michigan Senate Bill 332, which enacted that state's ballast water permit program, also required the MDEQ, the regulating authority, to facilitate a Coalition using similar language to that contained in H.B. 298 requiring DNR to do the same. As of yet, DNR does not have a cost estimate for its role in facilitating such a Coalition, however, the relevant costs under the bill would likely be paid from the Aquatic Nuisance Species Prevention Fund.

Aquatic Nuisance Species Prevention Fund

The bill establishes the Aquatic Nuisance Species Prevention Fund in the state treasury with the stated purpose of preventing and controlling aquatic nuisance species in the state waters of Lake Erie, the reclamation of aquatic resources in Ohio that have been injured as a result of aquatic nuisance species, and the administration of Chapter 1535. of the Revised Code, encompassing all programs contained in the bill.

The fund is to receive revenue from all money collected by the Chief of the Division of Wildlife under Chapter 1535., including permit and inspection fees and civil penalties paid by violators, as well as investment earnings. Money in the fund will be used to pay the expenses of administering the permit and inspection programs and Ohio's part in facilitating and participating in the Great Lakes Aquatic Nuisance Species Coalition.

LSC fiscal staff: Brian Hoffmeister, Budget Analyst

HB0298IN/rh