



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1485

Introduced 02/10/05, by Rep. Julie Hamos

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.640 new

Creates the Aquatic Invasive Species Prevention Act. Provides that the Environmental Protection Agency must promulgate rules that set performance standards for ballast water discharge and the management of other vectors of aquatic invasive species introduced from ocean-going vessels into the Great Lakes. Sets forth that the Agency shall administer a permit program requiring the compliance of ocean-going vessels to the standards created by the Agency. Provides for the creation of an Aquatic Invasive Species Prevention Fund for use by the Agency for prevention, control, and reclamation efforts related to aquatic invasive species. Authorizes any person to bring a civil lawsuit for the enforcement of the provisions of the Act. Provides that the Agency shall suspend enforcement of the Act's provisions if a federal law is enacted after the effective date of the Act that requires ballast water management practices equivalent to or more restrictive than those required in the Act. Makes other changes.

LRB094 10131 RSP 40392 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Aquatic Invasive Species Prevention Act.

6 Section 5. Statement of intent. It is the intent of this
7 Act to prevent the introduction and to minimize the spread of
8 aquatic invasive species within the State waters of the Great
9 Lakes.

10 Section 10. Definitions. For the purposes of this Act:

11 "Agency" means the Illinois Environmental Protection
12 Agency.

13 "Attorney General" means the Attorney General of the State
14 of Illinois.

15 "Department" means the Illinois Department of Natural
16 Resources.

17 "Fund" means the Aquatic Invasive Species Prevention Fund.

18 "Ocean-going vessels" means ships operating outside of
19 Lake Michigan, Lake Superior, Lake Huron, and Lake Erie and
20 their tributaries.

21 "Person" means an individual, partnership, co-partnership,
22 firm, company, limited liability company, corporation,
23 association, joint stock company, trust, estate, other legal
24 entity, or its legal representative or agent operating or
25 owning ocean-going vessels on the State waters of the Great
26 Lakes.

27 "Stakeholders" means citizens, organizations, agencies,
28 businesses, or others injured by the release or likely release
29 of aquatic invasive species.

30 "State waters of the Great Lakes" means the surface water
31 under jurisdiction of the State of Illinois in the Great Lakes

1 and waters that discharge, flow into, or otherwise are
2 transferred into the Great Lakes.

3 "Vector" means the pathway and mechanism of entry for
4 aquatic invasive species into the 4 upper Great Lakes.

5 Section 15. Standards for ocean-going vessels.

6 (a) Any person operating an ocean-going vessel equipped
7 with ballast tanks entering State waters of the Great Lakes
8 must comply with performance standards that:

9 (1) have the goal of eliminating risk of introduction
10 of non-native species, including plant, animal, and human
11 pathogens, into the State waters of the Great Lakes;

12 (2) are supported by comprehensive findings of
13 scientific and policy research;

14 (3) are measurable; and

15 (4) are environmentally protective and sound.

16 (b) No later than 12 months after the effective date of
17 this Act, the Agency shall promulgate final rules for
18 performance standards for ballast water discharge and the
19 management of other vectors of aquatic invasive species
20 introduction from ocean-going vessels, including sea chests,
21 anchor chains, hull fouling, and solid sediment in ballast
22 tanks, that require either:

23 (1) a 95% volumetric exchange of water on the open
24 ocean in each ballast tank containing water to be
25 discharged into the State waters of the Great Lakes as
26 demonstrated by a computer model or dye study reviewed and
27 approved by the Agency; or

28 (2) ballast water treatment using the best available
29 technology for a given class of ships, provided the
30 treatment delivers at least a 95% kill or removal of live
31 aquatic vertebrates, macroinvertebrates, phytoplankton,
32 zooplankton, and macroalgae present in both water and
33 sediment from ballast tanks using environmentally sound
34 methods as demonstrated in large-scale pilot studies
35 reviewed and accepted by the Agency.

1 (c) In promulgating rules under this Section, the Agency
2 shall consult with the other states and Canadian provinces
3 bordering the Great Lakes and, when possible, promote uniform
4 regulatory policies among these governing bodies.

5 Section 20. Permits; fees; fines.

6 (a) No later than 12 months after the effective date of
7 this Act, a person shall not operate on the State waters of the
8 Great Lakes an ocean-going vessel capable of discharging
9 ballast water, whether equipped with a ballast water tank
10 system or otherwise, unless the vessel has been issued a permit
11 by the Agency and the vessel is equipped with all the necessary
12 equipment to discharge the ballast water or sediment in
13 compliance with the permit and the standards promulgated under
14 this Act. An application for a permit under this subsection
15 shall be submitted in the manner required by the Agency and
16 shall contain the information required by the Agency. The
17 Agency shall assess permit application and inspection fees in
18 amounts necessary to implement the provisions of this Act.

19 (b) Beginning January 1, 2008, a person operating an
20 ocean-going vessel electing to utilize 95% volumetric exchange
21 to satisfy performance standards is required to pay a fee to be
22 determined by the Agency, but not less than \$1,000, to the
23 Agency prior to each discharge of ballast water into the State
24 waters of the Great Lakes.

25 (c) A person determined to be in violation of the standards
26 promulgated by the Agency under Section 15 of this Act is
27 subject to a fine to be determined by the Agency, but not less
28 than \$25,000 per violation.

29 Section 25. Notification. Any person operating an
30 ocean-going vessel must issue a report via fax or e-mail to the
31 Agency at least 24 hours prior to any port operation undertaken
32 while on the State waters of the Great Lakes detailing
33 compliance with the permit required under Section 20.

1 Section 30. Aquatic Invasive Species Prevention Fund;

2 (a) The Aquatic Invasive Species Prevention Fund is created
3 as a special fund in the State treasury.

4 (b) The Agency shall use this Fund, subject to
5 appropriation, for the following purposes, not in order of
6 priority:

7 (1) further prevention of aquatic invasive species;

8 (2) further control of the spread of existing aquatic
9 invasive species; and

10 (3) reclamation of aquatic resources injured as a
11 result of aquatic invasive species.

12 (c) The Agency shall deposit all moneys collected under
13 this Act into the Fund.

14 (d) Interest generated by the Fund shall be reinvested in
15 the Fund.

16 Section 35. Monitoring. The Agency shall, in cooperation
17 with the Department, establish a regular inspection system to
18 ensure that the standards under this Act are being achieved.

19 Section 40. Review and enforcement.

20 (a) Any person may bring a civil action to enforce the
21 provisions of this Act and be eligible to recover reasonable
22 attorney fees and costs.

23 (b) The Attorney General may recover damages as a result of
24 enforcement actions taken under this Act, which shall be
25 deposited in the Fund and shall be adequate for, at a minimum,
26 the reclamation of aquatic resources damaged by unauthorized
27 releases.

28 (c) At least every 3 years beginning on January 1, 2008,
29 the Agency shall evaluate the effectiveness of the performance
30 of the standards promulgated under this Act and determine
31 whether they have been effective in preventing the introduction
32 and minimizing the spread of aquatic invasive species within
33 the State waters of the Great Lakes. If the Agency determines
34 that the performance standards have not been effective in

1 achieving a complete prohibition on introductions of new
2 aquatic invasive species for the vectors covered in this Act
3 for State waters of the Great Lakes, the Agency may promulgate
4 revised performance standards removing the option for
5 ocean-going vessels to utilize 95% volumetric exchange of
6 ballast water, and shall promulgate additional or alternative
7 performance standards to accomplish the goals of this Act.

8 (d) The Agency shall suspend enforcement of the
9 requirements of this Act if a federal law is enacted or federal
10 regulations are promulgated after the effective date of this
11 Act that require vessels operating on the Great Lakes to comply
12 with ballast water management practices that are equal to or at
13 least as restrictive as those described in this Act. If a
14 federal law is enacted or federal regulations are promulgated,
15 as described in this subsection, the Agency shall review the
16 effectiveness of the federal law or regulations in preventing
17 the introduction of new aquatic invasive species within the
18 Great Lakes every 3 years. If, as a result of this review, the
19 Agency determines that reinstating the enforcement of the
20 requirements of this Act and the rules promulgated under this
21 Act would be more effective than the federal law or regulations
22 in preventing the introduction and minimizing the spread of
23 aquatic invasive species, the Agency shall reinstate
24 enforcement of the requirements of this Act and the rules
25 promulgated under this Act.

26 Section 45. Research.

27 (a) The Department, in cooperation with the Agency and
28 Attorney General, shall prepare, within 6 months after the
29 effective date of this Act, a report detailing the specific
30 sources of and the extent of the damage caused to the aquatic
31 resources of the State by the introduction of aquatic invasive
32 species through the following vectors: ocean-going vessels,
33 intentional and unintentional release from aquaculture
34 operations both within and outside of the State, pet and
35 aquarium trade, and live food fish sales. The report shall

1 identify the types and amount of information that should be
2 collected to establish the specific vector of an aquatic
3 invasive species at the time of discovery of an introduction
4 into State waters. The Department shall also identify the types
5 and amounts of information that should be collected to
6 establish the types and amounts of damages associated with
7 infestations of invasive species in State waters of the Great
8 Lakes in ecologic and economic terms.

9 (b) The Attorney General, in cooperation with the Agency
10 and the Department, shall prepare, within 6 months after the
11 completion of the report required under subsection (a), an
12 assessment of the options available to the State and a legal
13 justification for taking action, or alternatively not taking
14 action, to compel repair of the existing damages described in
15 the Department's report. This assessment shall include a
16 determination of what information is required to attach legal
17 liability for a new aquatic invasion to a specific vessel
18 owner, vessel operator, port, aquaculture facility, retail or
19 wholesale food store, bait dealer, or pet dealer. Any monetary
20 damages recovered due to legal actions associated with this
21 work shall be paid into the Aquatic Invasive Species Prevention
22 Fund.

23 (c) The Department shall establish, within 18 months after
24 the effective date of this Act, and in cooperation with the
25 Agency and the Attorney General, a research and sampling
26 program for all ocean-going vessels entering the State waters
27 of the Great Lakes. The Department shall, based on the findings
28 of the above studies, collect the data required to determine
29 the geographic source, specific vector, and legal liability for
30 the introduction of any potential aquatic invasive species
31 present in the ballast water tanks, sea chests, anchor chains,
32 hulls, and other locations on an ocean-going vessel.

33 (d) All ocean-going vessels entering State waters of the
34 Great Lakes shall be made available for inspection and
35 sampling, both prior to and after ballast water discharge
36 activities, by the Agency, the Department, and the Attorney

1 General as needed for completion of the research specified in
2 this Section.

3 Section 50. Rules The Agency shall adopt rules to implement
4 and administer this Act.

5 Section 90. The State Finance Act is amended by adding
6 Section 5.640 as follows:

7 (30 ILCS 105/5.640 new)

8 Sec. 5.640. The Aquatic Invasive Species Prevention Fund.