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House Bill 4603 (Substitute H-1 as passed by the House)
Sponsor: Representative David Palsrok
House Committee: Natural Resources, Great Lakes, Land Use and Environment
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 5-9-05

CONTENT

The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act to provide that, unless the discharge were authorized by a permit, order, or rule of the Department of Environmental Quality (DEQ), a discharge into the State's waters from an oceangoing vessel of any ballast water would be prima facie evidence of a violation of Part 31 and would subject the responsible person to the penalties prescribed in Section 3115 of the Act. (Prima facie evidence is evidence sufficient to establish a given fact unless it is rebutted or contradicted.)

(Under Section 3115, the DEQ may request the Attorney General to commence a civil action for appropriate relief for a violation of Part 31 or a provision of a permit or order issued or rule promulgated under Part 31. In addition to any other relief, the court must impose a civil fine of at least \$2,500 and may award reasonable attorney fees and costs to the prevailing party. The maximum fine the court may impose is \$25,000 per day of violation.

Additionally, a person who at the time of the violation knew or should have known that he or she discharged a substance contrary to Part 31, or contrary to a permit, order, or rule, is guilty of a felony and must be fined between \$2,500 and \$25,000 for each violation. The court may impose an additional fine of up to \$25,000 for each day the unlawful discharge occurred. For a subsequent conviction, the court must impose a fine of between \$25,000 and \$50,000 per day of violation. The court also may sentence the defendant to imprisonment for up to two years or impose probation.

If the court finds that a defendant's actions pose or posed a substantial endangerment to the public health, safety, or welfare, the court must impose an additional fine of between \$500,000 and \$5.0 million in a civil action, or an additional fine of at least \$1.0 million and a sentence of five years' imprisonment in a criminal action.)

The bill is tie-barred to Senate Bill 332, which would amend Part 31 to do the following:

- Require the DEQ to facilitate the formation of an interstate "Great Lakes Aquatic Nuisance Species Coalition" to implement water pollution laws that prohibit the discharge of aquatic nuisance species (ANS) into the Great Lakes.
- Require all oceangoing vessels engaging in port operations to obtain a permit from the DEQ beginning January 1, 2007, and prescribe a permit fee.
- Require a permit applicant to demonstrate that the vessel would not discharge ANS, or, if the vessel would discharge ballast water or other waste or waste effluent, that the vessel

operator would use environmentally sound technology and methods to prevent the discharge of ANS.

MCL 324.3109

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people would be subject to the penalties under Section 3115 for discharging the ballast water of an oceangoing vessel into the waters of the State. Additional civil fine revenue collected from civil defendants would benefit the State's General Fund. Additional penal fine revenue collected from criminal defendants would benefit public libraries. Local governments would incur any additional costs, which vary by county, for offenders sentenced to serve time in local facilities. The State would incur the costs of felony probation at an average annual cost of \$2,000 per offender, and the cost of incarceration in a State facility at an average annual cost of \$28,000 per offender.

Fiscal Analyst: Bethany Wicksall

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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.