

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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March 29, 2001

This is a draft of the proposal to restrict the release of ballast water, based on the New York legislation which I was provided.

The U.S. Coast Guard has imposed requirements concerning ballast water. Generally, a transoceanic vessel coming into the Great Lakes must exchange its ballast water in the ocean, keep its ballast water on board the vessel while it is in U.S. waters, or use an alternative method of treating its ballast water that is approved by the Coast Guard (I am not certain whether the Coast Guard has approved any alternative methods.) However, the salt water exchange requirement does not apply if it would threaten the safety of the vessel, and, apparently, salt water exchange does not always kill all of the organisms in ballast tanks. Also, according to the 2000 Lake Superior Lakewide Management Plan, many ships enter the Great Lakes fully loaded and report to the Coast Guard that they have no ballast on board, so the Coast Guard requirements do not apply. However, some water and sediment typically remains in an "empty" ballast tank.

It is possible that if enacted this proposal would be challenged as being beyond the authority of a state because of its effect on interstate and international commerce. Article I, section 8, of the U.S. Constitution, gives Congress the power to regulate commerce with foreign nations and among the states. I have not located a court case that deals directly with this issue. A ship entering the Great Lakes could be subject to conflicting requirements relating to ballast water imposed by different states, however, and this fact might influence a court's decision.

This draft contains a delayed effective date to give DNR time to promulgate rules.

Please contact me with any questions or redraft instructions.

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