

2001 DRAFTING REQUEST

Bill

Received: 01/26/2001

Received By: traderc

Wanted: As time permits

Identical to LRB:

For: Scott Gunderson (608) 266-3363

By/Representing: Mike Bruhn

This file may be shown to any legislator: NO

Drafter: traderc

May Contact:

Addl. Drafters:

Subject: Environment - water quality

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Limit discharge of ballast water

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|------------------------|------------------------|----------------|----------------------------|---------------------------------|-----------------|
| /1 | traderc 03/26/2001 | wjackson 03/27/2001 | pgreensl 03/29/2001 | _____ | lrb_docadmin 03/29/2001 | lrb_docadminState 04/05/2001 | |

FE Sent For:

Act Intro

<END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1? | traderc | 1 WLJ 3/27 | 3/29 DQ | 3/29 JF/PS | | | |

FE Sent For:

<END>

Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section 266-3561

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.
Use this form only for bill draft requests. Attach more pages if necessary.

Date 1/23/01

Legislator, agency, or other person requesting this draft Rep. Gunderson

Person submitting request (name and phone number) Rep. Gunderson

Persons to contact for questions about this draft (names and phone numbers) MIKE BRUNN
266-3363

Describe the problem, including any helpful examples. How do you want to solve the problem?

Prohibit the discharge of ballast water because it may contain harmful substances or nuisance aquatic species.

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

I have included a copy of N.Y. Legislation, we'd like our draft to mirror the N.Y. Proposal.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes:

Anyone who asks? YES NO

Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION**

submitted in accordance with Assembly Rule III, Section 1(e)

(X) Memo on original draft of bill
() Memo on amended bill

BILL NUMBER: Assembly 2337

Senate 1164

SPONSORS: Assembly Richard A. Smith

Senator: Dale M. Volker

TITLE OF BILL: AN ACT to amend the Environmental Conservation Law, in relation to requiring the sterilization of certain ballast water.

PURPOSE OR GENERAL IDEA OF BILL: To prohibit the discharge of ballast water that may pollute the waters of the State by introducing harmful substances and to prevent the entrance of aquatic nuisance species into the waters of the state.

SUMMARY OF SPECIFIC PROVISIONS: Section one defines the terms "ballast water" and "sterilized." Section two of this bill would prohibit the operation of a vessel on the waters of the state that contains ballast water that was acquired outside of the waters of the state unless such ballast water is sterilized. Section three would prohibit the discharge of ballast water without a permit and require the DEC to establish a ballast water and sediment inspection program. Section four would establish a penalty for violation of not less than twenty-five hundred dollars a day and not more than twenty-five thousand dollars a day.

JUSTIFICATION: The amount of ballast water discharged into the Great Lakes each year is approximately six million metric tons. This ballast water increases the likelihood of the introduction of non-native aquatic species which can cause great ecological damage and which can impact tourism and economical interests in and around the Great Lakes. This bill would prohibit the discharge of ballast water likely to contain non-native species into the waters of the State of New York.

PRIOR LEGISLATIVE HISTORY: 1999-2000: A11369/S8156

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: First day of January after it becomes law.

Legislative Bill Drafting Commission
02427-01-1

S.

SENATE

501164

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

A.
ASSEMBLY

A02337

IN ASSEMBLY--Introduced by M. of A.

--read once and referred to the
Committee on

ENVCONLA

(Prohibits transporting ballast
water from outside the state into
the state unless sterilized pursuant
to the requirements of the depart-
ment of environmental conservation)

En Con L. ballast water steriliz

AN ACT

to amend the environmental conserva-
tion law, in relation to requiring
the sterilization of certain ballast
water

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The Senators whose names are circled below wish to join me
in the sponsorship of this proposal

| | | |
|--------------------------|-----------------|------------------|
| s55 Alessi | s21 Kruger | s11 Padavan |
| s57 Balboni | s22 Kuhl | s29 Paterson |
| s40 Bonacic | s22 Lachman | s60 Rath |
| s42 Breslin | s42 Luck | s41 Saund |
| s57 Brown | s39 Larkin | s19 Sampson |
| s43 Bruno | s01 LaValle | s17 Sannago |
| s25 Connor | s37 Leibell | s30 Schneiderman |
| s49 DeFrancisco | s51 Libous | s50 Seward |
| s64 Dollinger | s15 Maltese | s09 Skelos |
| s27 Duane | s09 Marcellino | s12 Smith, A. |
| s32 Espada | s24 Marchi | s10 Smith, M. |
| s44 Farley | s20 Markowitz | s35 Spano |
| s08 Fuschillo | s61 Maziarz | s38 Stachowski |
| s23 Gemick | s56 McGee | s45 Stafford |
| s31 Gonzalez | s17 Meier | s16 Stawicki |
| s04 Hannon | s28 Mendez | s03 Trunzo |
| s33 Haskell- Thompson | s18 Montgomery | s34 Velilla |
| s13 Hayes | s38 Morahan | s59 Walker |
| s18 Hoffmann | s53 Nozzolo | s46 Wright |
| s04 Johnson | s14 Onorato | s26 |
| | s36 Oppenheimer | |

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish
to join me in the sponsorship of this proposal

| | | |
|------------------|------------------|---------------------|
| s049 Abbasc | a133 Ganti | a017 O'Connell |
| s001 Acampora | s036 Gianone | s051 Ortiz |
| s022 Alfano | s066 Chok | a110 Orloff |
| s074 Arsovo | s040 Gordon | s150 Parment |
| s045 Aubry | s064 Gottfried | s088 Paulin |
| a130 Bacalles | s065 Grannin | s058 Perry |
| s021 Barra | s057 Green | s023 Pheffer |
| s007 Borrappa | s077 Greene | s068 Powell |
| s055 Bovland | s092 Gromack | a107 Prensuss |
| s008 Boyle | s098 Gunzher | s084 Fredow |
| a115 Bragman | a142 Hayes | s073 RAVEZ |
| s044 Brennan | s083 Hcastic | s031 Rhodd-Cummins |
| s086 Brodsky | s014 Herbst | s078 Rivera, J. |
| a171 Brown | a113 Higgins | s076 Rivera, P. |
| s147 Burhing | s048 Hilkund | a134 Robach |
| a113 Butler | s018 Hill Hooper | s063 Sanders |
| a101 Cahill | a144 Hoyt | s029 Scarborough |
| s094 Calhoun | s042 Jacobs | a140 Schumminger |
| a106 Canestrari | a131 John | a112 Scozzafava |
| s026 Caravazza | s082 Kaufman | a139 Seeman |
| a108 Casak | s096 Kirwan | s039 Seddio |
| a119 Christensen | s080 Klein | s038 Semencro |
| s033 Clark | a129 Kolb | a013 Siddikman |
| s046 Cohen, A. | a135 Koon | s062 Silver |
| s028 Cohen, M. | s012 Labriola | a146 Smith |
| s093 Colman | s034 Lofacceto | s087 Spano |
| s047 Colton | s059 Lavelle | s091 Stephens |
| s010 Conte | s050 Lentol | s061 Strunette |
| s032 Cook | s005 Levy | s047 Stringer |
| a122 Crouch | a109 Little | s069 Sullivan, E.C. |
| s045 Cymbrowicz | s053 Lopez | a117 Sullivan, F.T. |
| s100 D'Andrea | s125 Luzzo | s011 Sweeney |
| s079 Davis | a111 Macee | a103 Tedesco |
| s138 DeMonte | a120 Magmarelli | s002 Thiele |
| a116 Desano | s099 Manning | s085 Tucci |
| s075 Diaz | s030 Markez | a143 Tolosa |
| s016 DiNapoli | s089 Manusov | a105 Tonko |
| a123 Dinga | s027 Maversohn | s053 Towne |
| s081 Dinowitz | a104 McEneaney | a115 Townsend |
| s003 Eddington | s025 McLaughlin | s056 Vann |
| s004 Englebright | s097 Miller | s060 Vitaliano |
| a136 Errigo | s052 Millman | a124 Warner |
| s072 Espailas | s095 Mills | s041 Weinstein |
| a111 Evc | a122 Morelli | s020 Weisenberg |
| s071 Farrell | a019 Murray | s024 Weprin |
| a102 Faso | a137 Nesbitt | s006 Wertz |
| s015 Ferrara | s037 Nulan | a127 Winner |
| a126 Finch | s043 Nuzman | a148 Wirth |
| s009 Flanagan | a114 Nortz | s070 Wright |
| s090 Gelf | a128 Ocho | a172 Young |

1) Single house bill introduced and printed separately in either or both houses: Sign 2
copies, circle names of co-sponsors and deliver in the introduction clerk of the house
together with 4 copies of the introducer's memorandum

2) Lim-bill introduced simultaneously in both houses and printed as one bill: Senate
and Assembly introducer sign the same copy of the bill, circle the names of co-sponsors
and return it to the introduction clerk of either house with the remaining copies and 4
copies of the introducer's memorandum
LBDC 11/15/00

12/05/00

2

02427-01-1

1 Section 1. Section 17-0105 of the environmental conservation law is
2 amended by adding three new subdivisions 24, 25 and 26 to read as
3 follows:

4 24. "Ballast water" means water and associated solids taken on board a
5 vessel to control or maintain trim, draft, stability, or stresses on the
6 vessel, without regard to the manner in which it is carried.

7 25. "Sediments" means any matter settled out of ballast water within a
8 vessel.

9 26. "Sterilized" means the treatment of ballast water or sediments, or
10 both, by filtration, thermal methods, ultraviolet light, biocides, or
11 other technique approved by the department, to destroy or remove all
12 living biological organisms.

13 § 2. The environmental conservation law is amended by adding three new
14 sections 17-0513, 17-0709 and 71-1902 to read as follows:

15 § 17-0513. Ballast water discharge.

16 1. A person shall not operate a vessel on the waters of the state that
17 contains ballast water that was acquired outside of the waters of the
18 state unless the ballast water and any sediments have been sterilized as
19 required by the rules and regulations of the department.

20 2. Notwithstanding the provisions of section 17-0701 of this article,
21 unless authorized by a permit issued under section 17-0709 of this arti-
22 cle, the discharge of ballast water or sediments, or both, directly or
23 indirectly, into any of the waters of the state shall be considered
24 prima facie evidence of a violation of this section and shall subject
25 the responsible person to the penalties and remedies provided in section
26 71-1902 of this chapter.

27 § 17-0709. Ballast water discharge permit.

12/05/00

3

02427-01-1

1 1. A person shall not discharge ballast water or sediments, or both,
2 directly or indirectly, into the waters of the state unless the
3 discharge is authorized by a permit issued by the department.

4 2. An application for a permit under this section shall be submitted
5 in the manner required by the department and shall contain the informa-
6 tion required by the department and an application fee as provided in
7 this section.

8 3. The department shall establish a ballast water and sediments
9 inspection program that assures that aquatic nuisance species do not
10 enter the waters of the state through the direct or indirect discharge
11 of ballast water or sediments, or both.

12 4. The department shall assess application fees and inspection fees in
13 amounts necessary to implement this section.

14 5. The department shall promulgate such rules and regulations as it
15 deems necessary to effectuate the provisions of this section and section
16 17-0513 of this article.

17 § 71-1902. Enforcement of sections 17-0513 and 17-0709.

18 Any person violating any provision of section 17-0513 or 17-0709 shall
19 be guilty of an offense, and punishable by a fine of not less than twen-
20 ty-five hundred dollars per day of violation nor more than twenty-five
21 thousand dollars per day of violation.

22 § 3. This act shall take effect on the first day of January next
23 succeeding the date on which it shall have become a law; provided that
24 the commissioner of environmental conservation is authorized to promul-
25 gate any and all rules and regulations and take any other measures
26 necessary to implement this act on its effective date on or before such
27 date.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2271/1

RCT./:....

WLJ

2001 BILL

DNofe

GEN

1 AN ACT ...; relating to: the regulation of ballast water, aquatic nuisance species,
2 granting rule-making authority, making an appropriation, and providing a
3 penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits the operation of a vessel on the waters of this state if the vessel contains ballast water that was acquired outside of the waters of this state, or sediment from ballast water that was acquired outside of the waters of this state, unless the ballast water and any sediments have been sterilized in compliance with rules to be promulgated by the department of natural resources (DNR). The bill also prohibits the discharge of ballast water or sediments from ballast water into the waters of this state without a permit issued by DNR.

The bill requires DNR to administer an inspection program to ensure that aquatic nuisance species do not enter the waters of this state through the discharge of ballast water or sediment. Aquatic nuisance species are species that are not native to this state and that threaten native species or a commercial or recreational activity that is dependent on infested waters. The bill requires DNR to establish fees for ballast water discharge permits and for inspections conducted under the inspection program.

*

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 20.370 (4) (ai) [✓] of the statutes is created to read:

2 20.370 (4) (ai) ^(=m) *Water resources* - *ballast water regulation*. All moneys received
3 under ~~s.~~ [✓] 281.37 (5) (b) for ballast water regulation under s. 281.37. [✓]

4 SECTION 2. 281.37 [✓] of the statutes is created to read:

5 **281.37 Ballast water regulation.** (1) DEFINITIONS. In this section:

6 (a) "Aquatic nuisance species" has the meaning given in s. 30.1255 (1). [✓]

7 (b) "Ballast water" means water taken on board a vessel to control or maintain
8 ^{the} a vessel's trim, draft, or stability, or to control stresses on ^{the} a vessel.

9 (c) "Sediment" means matter that settles out of ballast water in a vessel.

10 (d) "Sterilized" means treated by filtration, thermal methods, ultraviolet light,
11 biocides, or another technique that is approved by the department, to destroy or
12 remove living organisms.

13 (2) STERILIZATION OF BALLAST WATER. A person may not operate a vessel on the
14 waters of the state if the vessel contains ballast water that was acquired outside of
15 the waters of the state ^{contains} or sediment from ballast water that was acquired outside of
16 the waters of the state unless ^{any} the ballast water and any ^{SET} sediments have been
17 sterilized in compliance with rules promulgated under sub. (5) (a). [✓]

18 (3) DISCHARGE OF BALLAST WATER. (a) A person may not discharge ballast water
19 or sediments into the waters of the state unless the discharge is authorized by a
20 permit issued by the department under this subsection.

BILL

1 (b) A person required to have a permit under this subsection shall provide the
2 information required by the department and pay the fee specified under sub. (5) ^b ~~a~~.

3 (4) INSPECTION PROGRAM. The department shall administer a ballast water and
4 sediment inspection program to ensure that aquatic nuisance species do not enter
5 the waters of the state through the discharge of ballast water or sediment.

6 (5) RULES. The department shall promulgate rules for the administration of
7 this section including rules that do all of the following:

8 (a) Specify requirements for sterilizing ballast water and sediment to ensure
9 that aquatic nuisance species do not enter the waters of the state through the
10 discharge of ballast water or sediment.

11 (b) Specify fees for issuing permits and conducting inspections under this
12 section.

13 (6) PENALTY. Any person who violates this section shall be required to forfeit
14 not less than \$2,500 and not more than \$25,000 per day of violation.

15 SECTION 3. 281.98[✓] of the statutes is amended to read:

16 281.98 Penalties. (1) Except as provided in ss. 281.37 (6)[✓], 281.47 (1) (d),
17 281.75 (19)[△] and 281.99 (2), any person who violates this chapter or any rule
18 promulgated or any plan approval, license[△] or special order issued under this chapter
19 shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of
20 continued violation is a separate offense. While an order is suspended, stayed or
21 enjoined, this penalty does not accrue. [△]

22 (2) In addition to the penalties provided under sub. (1) or s. 281.37 (6)[✓] or 281.99
23 (2), the court may award the department of justice the reasonable and necessary
24 expenses of the investigation and prosecution of a violation of this chapter, including
25 attorney fees. The department of justice shall deposit in the state treasury for

BILL**SECTION 3**

1 deposit into the general fund all moneys that the court awards to the department or
2 the state under this subsection. Ten percent of the money deposited in the general
3 fund that was awarded under this subsection for the costs of investigation and the
4 expenses of prosecution, including attorney fees, shall be credited to the
5 appropriation account under s. 20.455 (1) (gh).

6 (3) In addition to the penalties under sub. (1) or s. 281.37 (6),[✓] the court may
7 order the defendant to abate any nuisance, restore a natural resource, or take, or
8 refrain from taking, any other action as necessary to eliminate or minimize any
9 environmental damage caused by the defendant.

History: 1995 a. 227; 1997 a. 27; 1999 a. 147.

10 **SECTION 4. Effective date.**

11 (1) This act takes effect on the first day of the 13th month beginning after
12 publication.

13 (END)

Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2271/1dn

RCT./:....

Wlj

This is a draft of the ⁹proposal to restrict the release of ballast water, based on the New York legislation which 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 8⁹ 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 could be subject to conflicting requirements relating to ballast water imposed by different states, however, and this fact might influence a court's decision.

entering the Great Lakes

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

*This draft
"contains a
delayed effective
date to enable
time to promulgate rules"*

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2271/1dn
RCT:wlj:pg

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.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

March 29, 2001

MEMORANDUM

To: Representative Gunderson

From: Rebecca C. Tradewell, Managing Attorney

Re: LRB-2271 Limit discharge of ballast water

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7290 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.