



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #481

### **Ballast Water Fees (DNR -- Environmental Quality)**

[LFB 2013-15 Budget Summary: Page 350, #10]

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#### **CURRENT LAW**

Persons who discharge certain pollutants into the waters of the state from point sources must first obtain a water pollutant discharge elimination system permit from the Department of Natural Resources (DNR). A point source is a specific location, such as a pipe or a vessel, from which pollutants are discharged. DNR issues individual permits with specific conditions for an individual discharger.

Under 2009 Act 28, DNR was authorized to issue a general permit authorizing oceangoing and lake vessels of 79 feet or longer to discharge ballast water into Wisconsin waters, under specified permit requirements. A general permit authorizes discharges from specified categories or classes of point sources. Ballast water is the ocean or lake water that ships pump into, or discharge from, onboard tanks to balance the vessels as they load and unload cargo. DNR issued a ballast water discharge general permit, effective February 1, 2010, with a five year term. As of April 1, 2013, 296 vessels have applied for and received coverage under the Wisconsin general permit, including 187 oceangoing ships, and 109 "lakers" that only travel between Great Lakes ports.

Under 2009 Act 28, DNR is authorized to charge fees for the ballast water discharge permit, and deposit the fees in a program revenue appropriation for program administration. The fees include a: (a) \$1,200 application fee; and (b) \$345 annual permit fee. Currently, the statutory fees end on June 30, 2013. DNR is required to promulgate administrative rules for ballast water application and annual fee amounts to apply as of July 1, 2013. The Department has not promulgated rules for fees after June 30, 2013.

DNR collected \$333,600 in fee revenues in the first year of 2010-11, and \$171,200 in 2011-12. The larger amount in the first year was due to the number of initial application fees.

DNR will collect approximately \$166,500 in 2012-13. In 2012-13, the Department is authorized \$246,900 PR with 3.0 PR positions for administration of the program.

## **GOVERNOR**

Extend the statutory end date for the ballast water fees from June 30, 2013, to June 30, 2015. Repeal the requirement that DNR promulgate administrative rules for ballast water fees to establish an application fee and annual fee amount to apply as of July 1, 2013. There would be no statutory authority for DNR to charge fees after June 30, 2015.

## **DISCUSSION POINTS**

1. Ships fill ballast water tanks when they unload cargo and discharge ballast water as they load cargo in order to balance the vessel in the water. When ships move from one body of water to another and the ship releases ballast water, the discharge can release aquatic invasive species into the second water body. Major examples of invasive species introduced to the Great Lakes by ballast water are zebra mussels and quagga mussels. Invasive species can cause damage to power plant pipes, drinking water facilities, marinas, native species, and ecosystems.

2. More ballast water is discharged into the Lake Superior ports of Superior, Wisconsin, and Duluth, Minnesota than into any other Great Lakes port. When ships load cargo such as corn, grain, iron ore, and coal, they discharge the ballast water they may have taken on when they unloaded in, for example, Detroit, Michigan, or other Great Lakes ports, or in ports around the world. Milwaukee and Green Bay are also major cargo loading ports in Wisconsin.

3. There have been many international and national discussions during the past several years regarding the concerns of ballast water discharge of pollutants and invasive species. In 2004, the International Maritime Organization (IMO), the United Nations agency responsible for the safety of shipping and the prevention of marine pollution from ships, adopted the "International Convention for the Control and Management of Ship's Ballast Water and Sediments." The IMO ballast water discharge management procedures and standards set requirements for how many living biological organisms are allowed in a specified volume of discharged ballast water after treatment. As of March 31, 2013, the IMO Convention is not yet in force but has been ratified by 36 countries representing 29% of world merchant shipping tonnage. It will have the effect of international law 12 months after it is ratified by 30 countries representing 35% of world merchant shipping tonnage. The United States has not ratified it. The IMO standards would phase in ballast water management requirements by 2016, depending on when the ship was built and the capacity of the ballast water tank.

4. In response to U.S. District and Circuit Court orders, the U.S. Environmental Protection Agency (EPA) issued a federal permit known as a vessel general permit (VGP) on December 19, 2008, effective February 6, 2009. The EPA permit required oceangoing ships entering U.S. waterways to exchange the water in ballast tanks at least 200 miles from shore (also known as ballast water exchange) or to rinse empty ballast tanks with salt water to kill aquatic

organisms. There is no EPA permit fee. EPA issued a revised general vessel permit on March 28, 2013, effective December 19, 2013, to replace the 2008 permit. The 2013 EPA permit continues to be consistent with IMO standards, it requires ballast water exchange in most cases for oceangoing vessels, and does not regulate lakers that only operate in the Great Lakes.

5. The U.S. Coast Guard published a final rule on March 23, 2012, effective June 21, 2012, to establish ballast water treatment standards for vessels operating in U.S. waters and adopted the IMO standards. The U.S. Coast Guard rule requires ships to exchange the ballast water in their ballast tanks at sea, but does not require it if a ship installs a treatment system approved by the Coast Guard. The Coast Guard plans to approve types of treatment system for use by vessels in U.S. waters, but has not done so yet. On April 15, 2013, the Coast Guard issued a list of alternate management treatment systems that have been approved by foreign governments. The Coast Guard will test these systems for the next two years to determine if it will approve the systems for use in U.S. waters. The Coast Guard plans to sunset the ballast water exchange requirement for ships that install a treatment system approved by the Coast Guard. The Coast Guard requires testing of treatment systems in salt water before it will approve the system, but does not require testing in fresh water.

6. The Wisconsin general permit for ballast water discharge includes the IMO standards, requires ballast water exchange for oceangoing ships, and specifies use of best management practices for lakers. It is stricter than the EPA permit because it applies to lakers as well as oceangoing ships, and requires ballast water exchange sooner than the EPA permit does. (The EPA permit states that if a vessel has not been in a freshwater port for more than 30 days before entering the Great Lakes, it does not need to perform ballast water exchange before entering. The Wisconsin permit requires it before entering Wisconsin ports, regardless of the number of days since the vessel was last in a fresh water port.) The Wisconsin permit is stricter than Coast Guard standards because it requires ballast water exchange in addition to use of Coast Guard-approved treatment systems, and requires that if treatment system technologies are approved by the Coast Guard, they must have been tested and shown to work in fresh water. (Treatment systems that might eventually be approved by the Coast Guard for use in salt water would not necessarily work in fresh water.)

7. DNR officials indicate the Wisconsin requirements supersede the EPA permit in the state because EPA has delegated authority to administer federal Clean Water Act provisions to Wisconsin. The EPA permit applies in states that do not have their own state permit.

8. Minnesota issued a ballast water discharge general permit on September 24, 2008. Minnesota charges an application fee of \$1,240 and an annual permit fee of \$345. Minnesota adopted the IMO standards and timeline, which means vessels built prior to 2012 will have to install and begin operating ballast water treatment systems by January 1, 2016. DNR officials indicate the Minnesota and Wisconsin ballast discharge requirements are basically the same.

9. It is probable that national and international discussions related to ballast water discharge during the next few years will include issues affecting Wisconsin ports such as: (a) what types of technology will be approved by the Coast Guard for use as treatment systems on oceangoing vessels and lakers; (b) whether any treatment systems approved by the Coast Guard will

be shown to work in fresh water; (c) whether EPA will require the use of ballast water exchange for ships that install Coast Guard-approved treatment systems; and (d) whether the United States and/or enough other countries will adopt the IMO standards to put the international convention into effect as international law.

10. The Wisconsin general permit was issued effective February 1, 2010, and will expire on January 31, 2015. All vessels will continue to be covered under the existing permit until a new permit is issued. DNR officials plan to develop the replacement permit during 2014. When DNR issues a new general permit, all currently-permitted vessels will be required to comply with the terms and conditions of the new permit. Currently-permitted vessels would also have to pay a \$1,200 application fee when the five-year term of their current permit is up for renewal.

11. The three DNR wastewater specialists currently authorized under the program are located in the Madison central office, Superior, and Milwaukee. The Madison staff person issues permits to ship owners, will work on general permit revisions to go into effect in 2015 to reflect changes in federal and state requirements, and coordinates ballast water discharge activities with other states, EPA, and the Coast Guard. The Superior and Milwaukee staff persons inspect Great Lakes ships to determine compliance with discharge permit requirements, provide compliance and technical assistance to ship owners, investigate complaints regarding vessel discharges, identify potential violations and enforcement actions, coordinate actions with other states and federal agencies, and develop and maintain databases.

12. EPA and the Coast Guard do not inspect ships that discharge ballast water in the Great Lakes. DNR officials indicate that the two DNR inspectors are the only ballast water discharge inspectors on the Great Lakes.

13. The bill would end the fees on June 30, 2015. The Governor's Executive Budget Book states "This extension allows the department to continue inspections of ballast water while monitoring whether federal standards are adequate to protect Wisconsin waters." DOA officials indicate the reason the fees would be continued for two years, but not permanently, is that EPA had not completed revision of its general vessel permit as of the time of budget introduction. In addition, they indicated that the two-year extension would allow DNR time to evaluate the ongoing need for the ballast water program, and see whether EPA's new general permit would provide stricter standards than the current permit. Finally, DOA officials indicated that, if DNR determines that the new EPA permit is insufficient, or if there are no other multi-state or multi-national developments in ballast water discharge regulation, DNR could request a legislative change to continue the fees after June 30, 2015, or to reestablish the authority to promulgate fees in rule.

14. Some may argue that enough is currently known about the status of federal actions related to ballast water that it is appropriate to extend the statutory ballast water fees not only beyond the current June 30, 2013, sunset date, but also beyond the June 30, 2015, date in the bill. In addition, some would argue that the inspections and regulatory activities of the current program are a way of slowing the spread of invasive species, especially given the costs of fighting invasive species that are already present in the Great Lakes, and should be continued. Finally, it could be argued that the fees paid by vessels from out-of-state, or from other countries provide a way of supporting state efforts to protect Wisconsin infrastructure (such as municipal and industrial water

intake pipes), recreational boating, and ecosystems from invasive species brought from other parts of the world.

15. Alternatively, some may argue that federal regulations are expected to be sufficient to control ballast water discharges from oceangoing vessels, regulation of vessels that operate only in fresh water is not necessary, inspections are not needed for ships entering Wisconsin ports, and that voluntary compliance of vessels from other states and countries may occur without a state inspection program. Further, some believe the state fees could deter some vessels from using Wisconsin ports.

16. DNR officials indicate that initial implementation of the state program included development of the general permit in 2009 and 2010, filling of the three staff positions in 2010, and implementation of inspections during the 2011 and 2012 shipping seasons. DNR officials indicate the Department considered promulgating fees by rule, but that after 2011 Act 21 took effect and increased the amount of time needed to promulgate rules, the Department decided to instead pursue statutory fee changes to keep the current statutory fees in place after June 30, 2013. However, DNR did not include such a proposal in the Department's 2013-15 biennial budget request.

17. The following table shows revenues and expenditures in 2011-12 through 2014-15. The first year of fee collection in 2010-11 generated \$333,600 in revenue because of the first application fees for coverage under the general permit. DNR anticipates approximately 20 new vessels will apply for the permit in each of 2013-14 and 2014-15, and approximately 300 vessels will pay the annual fee during each year of the 2013-15 biennium. DNR is voluntarily reducing expenditures below authorized levels to help revenues last until application renewal fees are received in 2014-15 or 2015-16.

18. The bill's provision to extend the fees for two years will allow DNR to continue current ballast water regulation and inspection activities during the 2013-15 biennium (Alternative 1a). However, the bill limits or ends the ability of DNR to perform ballast water inspections and enforce the ballast water discharge permit because it repeals the fees on June 30, 2015, and concurrently removes the requirement that DNR promulgate rules to continue charging fees after June 30, 2015. This could impact the development of a Wisconsin ballast water discharge general permit to replace the permit that will expire on January 31, 2015, and create uncertainty about what DNR resources would be available to administer the general permit and program after June 30, 2015. A December 31, 2015, sunset could be considered to allow consideration of program needs in the 2015 legislative session without interrupting program continuity (Alternative 1b).

19. DNR performed 72 inspections of vessels in 2012, approximately half of which were in Superior on Lake Superior, and half in Milwaukee on Lake Michigan. The shipping season extends from approximately March until December or January. A total of 296 vessels have been permitted under the program, some of which are one-time visitors to Wisconsin ports, and some of which return multiple times. All of the permitted ships come from other states or other countries. DNR officials indicate the Department's goal is to inspect approximately 25% of the vessels that visit Wisconsin ports.

**Ballast Water Discharge Permit Fees -- Estimated Revenues and Expenditures  
Under AB 40**

	2011-12	2012-13	2013-14	2014-15
	<u>Actual</u>	<u>Estimated</u>	<u>Bill</u>	<u>Bill</u>
Opening Balance	\$184,600	\$241,300	\$266,600	\$221,100
Revenue				
Application fees (\$1,200)	\$89,100	\$65,700	\$24,000	\$24,000
Annual fees (\$345)	<u>82,100</u>	<u>100,700</u>	<u>103,500</u>	<u>103,500</u>
Total Revenue	\$171,200	\$166,400	\$127,500	\$127,500
Total Available	\$355,700	\$407,700	\$394,100	\$348,600
Expenditures – actual or authorized	\$102,100	\$246,900	\$305,300	\$305,300
Reserves	0	5,300	8,000	15,800
Planned expenditure reductions	0	-123,500	-152,700	-152,700
Transfer to general fund	<u>12,400</u>	<u>12,400</u>	<u>12,400</u>	<u>12,400</u>
Total Expenditures	\$114,500	\$141,100	\$173,000	\$180,800
Closing Balance	\$241,300	\$266,600	\$221,100	\$167,800
Authorized positions	3.00	3.00	3.00	3.00

20. Under the bill, DNR would be able to continue inspections and compliance work, and to collect fees, during the 2013 and 2014 shipping seasons, and during the beginning of the 2015 shipping season. It is anticipated the DNR inspections of ships would be the only ballast water discharge inspections in Wisconsin ports during 2013-15, because EPA and the Coast Guard do not perform ballast water inspections. Under the bill, it is likely the only inspections performed after June 30, 2015, would occur if there is an available ending balance in the ballast water PR account.

21. If the Committee wishes to provide a greater certainty for continuance of the ballast water regulation program, it could continue the fees beyond June 30, 2015, and/or could authorize DNR to promulgate fees by rule. For example, the fees could be continued until June 30, 2015, as recommended by the Governor, but DNR could continue to be required to promulgate fees by rule to go into effect on July 1, 2015 (Alternative 2). DNR officials indicate that they would anticipate keeping the fees at the current statutory level, partly because Minnesota charges almost identical amounts.

22. Another option would be to extend the statutory fees for four years instead of two, with a sunset of June 30, 2017, and require DNR to promulgate fees by rule to go into effect on July 1, 2017 (Alternative 3). This would be anticipated to provide greater certainty to the program, particularly with inspections of vessels in shipping seasons 2013 through 2016, and would allow the state additional time to coordinate state requirements with evolving national and international requirements.

23. The Committee could choose to make the fees permanent (Alternative 4). In

addition, the requirement that DNR promulgate rules for different fee amounts could be repealed (Alternative 4a), so that any changes in the fee amount would have to be made through legislation. DNR could also be authorized to promulgate different fee amounts by rule (Alternative 4b), to provide some degree of flexibility if program revenue needs or fees charged by neighboring states warrant.

24. The table shows that the estimated annual revenue in 2012-13 through 2014-15, is insufficient to pay for the three positions authorized under the program. However, if the current fees are continued beyond June 30, 2015, either through modifying the bill or separate future legislation, it can be anticipated there will be additional application fees received in 2015-16 (or possibly beginning in 2014-15) for coverage under a revised general permit, which could pay for additional staff costs. Currently, the three positions, along with supervisory and other Department staff, are time-coding up to approximately 2.5 FTE (full-time equivalent) of time on ballast water activities. The other portion of the time of the three positions, which occurs mainly during the non-shipping season, is allocated to other wastewater permitting activities and septage management. DNR officials indicate that the Department pays for the non-ballast water activities with wastewater program GPR, available from vacant GPR-funded positions. The Committee could either approve the Governor's recommendation to continue to maintain the three designated positions for the program, and to allow DNR to continue to fund their non-ballast water activities in the non-shipping season with GPR. Alternatively, the Committee could delete \$44,100 PR annually and 0.5 PR position (Alternative 5) of the 3.0 ballast water positions to more closely align authorized expenditures with available revenues and the amount of time being spent on ballast water activities.

25. If the Committee chooses to maintain current law (Alternative 6), no revenue would be received until DNR promulgates rules for fees. Unless DNR utilized emergency rule authority, it is probable no revenue would be received for much of the 2013-15 biennium, and only limited ballast water inspections would be performed in Wisconsin ports from mid-summer of 2013 through the 2014 shipping season.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to repeal the requirement that DNR promulgate administrative rules for ballast water fees to apply as of July 1, 2013. In addition, approve one of the following:

a. Approve the Governor's recommendation to extend the statutory ballast water fees until June 30, 2015. (DNR would not be authorized to charge fees after June 30, 2015.)

b. Extend the statutory ballast water fees until December 31, 2015. (DNR would not be authorized to charge fees after December 31, 2015.)

2. Extend the statutory ballast water fees until June 30, 2015. Require that DNR promulgate administrative rules for ballast water fees to apply as of July 1, 2015.

3. Extend the statutory ballast water fees until June 30, 2017. Require that DNR

promulgate administrative rules for ballast water fees to apply as of July 1, 2017.

4. Provide that the current statutory fee amounts would be permanent by repealing the statutory end date of the ballast water fees. In addition, approve one of the following:

a. Approve the Governor's recommendation to repeal the requirement that DNR promulgate different fee amounts in administrative rule.

b. Authorize DNR to promulgate administrative rules for different ballast water fee amounts than the amounts in statute.

5. In addition to any of Alternatives 1 through 4, delete \$44,100 PR and 0.5 PR position annually from the ballast water fees appropriation.

<b>ALT 5</b>	<b>Change to Bill</b>	
	Funding	Positions
PR	- \$88,200	- 0.50

6. Delete provision. (Under current law, DNR would have to promulgate administrative rules to charge any ballast water fees after June 30, 2013.)

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