

NONNATIVE SPECIES: ADD INSECTS AND PLANTS

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House Bill 4714 as enrolled
Public Act 74 of 2005
Sponsor: Rep. Phil Pavlov

Senate Bill 212 as enrolled
Public Act 78 of 2005
Sponsor: Sen. Gerald Van Woerkom

House Bill 4715 as enrolled
Public Act 75 of 2005
Sponsor: Rep. Goeff Hansen

Senate Bill 213 as enrolled
Public Act 79 of 2005
Sponsor: Sen. Tony Stamas

House Bill 4716 as enrolled
Public Act 76 of 2005
Sponsor: Rep. David Farhat

Senate Bill 215 as enrolled
Public Act 80 of 2005
Sponsor: Jud Gilbert, II

Senate Bill 211 as enrolled
Public Acts 77 of 2005
Sponsor: Sen. Patricia L. Birkholz

Senate Bill 507 as enrolled
Public Act 81 of 2005
Sponsor: Sen. Raymond E. Basham

House Committee: Natural Resources, Great Lakes, Land Use, and Environment
Senate Committee: Natural Resources and Environmental Affairs

Second Analysis (9-15-05)

BRIEF SUMMARY: The bills would amend Part 413 of the NREPA to, among other things, regulate the possession and release of certain invasive species of aquatic plants and insects and establish an Invasive Species Advisory Council, an Invasive Species Fund, and a system of penalties for violating Part 413.

FISCAL IMPACT: Any increased workload related to the inclusion of additional plant and insect species will be absorbed within the existing DNR budget unless non-state revenue becomes available.

THE APPARENT PROBLEM:

Part 413 (Transgenic and Nonnative Organisms) of the Natural Resources and Environmental Protection Act prohibits the possession or release of certain nonnative, invasive species of fish, such as the bighead carp, and requires a permit issued by the Department of Natural Resources to release a genetically engineered fish or other nonnative fish. This part was added to NREPA in 2003 in response to an increasing concern over the introduction of nonnative, invasive species of fish in the waters of the state. These fish are often introduced into an area where there are no natural controls and, as a result, cause significant ecological problems.

However, the Part 413 only pertains to invasive species of fish. It has been pointed out that there are a numerous other plants and insects that pose a similar threat to the natural resources and public health of the state, particularly as scientific advances lead to the development of new hybrid or genetically engineered species that will be difficult to manage with existing control mechanisms. Legislation extending Part 413 to include certain invasive species of insects and aquatic plants has been introduced.

THE CONTENT OF THE BILLS:

Part 413 (Transgenic and Nonnative Organisms) of the Natural Resources and Environmental Protection Act regulates the possession and release of certain nonnative, invasive species of fish. The bills would amend Part 413 to, among other things, regulate the possession and release of certain invasive species of aquatic plants and insects and establish an Invasive Species Advisory Council, an Invasive Species Fund, and a system of penalties for violating Part 413. Except for SB 507, the bills are tie-barred to each other.

Senate Bill 211 (MCL 324.41301)

The act includes a list of "prohibited species" of fish that a person is prohibited from possessing or releasing, including the bighead carp, bitterling, black carp, grass carp, ide, Japanese weatherfish, rudd, silver carp, a fish of the snakehead family, and tench. The bill would redefine "prohibited species" to mean a prohibited aquatic plant species, prohibited fish species, or a prohibited insect species. The bill would re-label the list of fish as being "prohibited fish species" and add definitions for "prohibited aquatic plant species" and "prohibited insect species."

The bill would define "prohibited aquatic plant species" to generally mean the following aquatic plants, including a hybrid or genetically engineered variant: African oxygen weed, Brazilian eloda, European frogbit, giant salvinia, giant hogweed, hydrilla, Japanese knotweed, parrot's feather, water chestnut, yellow flag iris, and yellow floating heart.

The bill would define "prohibited insect species" to mean the Asian longhorned beetle and the Emerald Ash Borer, including any eggs, or a hybrid or genetically engineered variant.

The bill also adds a definition for "restricted aquatic plant species," which would include the following plants, include any fragments or seeds, or a hybrid or genetically engineered variant: curly leaf pondweed, Eurasian watermilfoil, flowering rush, phragmites or common reed, and purple loosestrife.

Finally the bill provides that a person would not be considered to possess a live organism under the following circumstances: (1) the organism is present on land or in waters owned by that person, unless that person has knowingly introduced that organism; (2) the organism was obtained from the environment and the person possesses the organism where it was located; or (3) the person possesses the organism for the purpose of destroying it.

Senate Bill 212 (MCL 324.41303)

The act prohibits a person from possessing or releasing those species of fish included in the definition of "prohibited species." The bill, instead, provides that a person would be prohibited from knowingly possessing a prohibited or restricted species, except in certain circumstances, including the following:

- The person intends to present the species for identification or similar purposes to a commercial pesticide applicator, an institution of higher education, or the Department of Natural Resources or another governmental agency with responsibility over the environment or natural resources.
- The person has been presented the species for identification or similar purposes.
- The person possesses the species in conjunction with an otherwise lawful activity to eradicate or control the species.
- The person possesses the species pursuant to a permit issued by the Department of Natural Resources, the state Department of Agriculture (MDA) or the U.S. Department of Agriculture for education or research purposes.

If a person possesses a species for identification or similar purposes, the person would have to notify the DNR, MDA, or Department of Environmental Quality if it is determined that the species is a prohibited or restricted species and found at a location where it is not previously known to be present.

Senate Bill 213 (MCL 324.41305 and 324.41306)

The act prohibits a person from knowingly releasing a genetically engineered or nonnative fish into any area where it is not already naturalized, except as authorized under a permit. The bill would also prohibit the release of a prohibited or restricted aquatic plant or insect species or a genetically engineered or nonnative aquatic plant into any area where it is not already naturalized, except as authorized under a permit by the Department of Natural Resources or Agriculture.

Senate Bill 215 (MCL 324.41311 and 324.41313)

The bill would create the Invasive Species Fund within the state treasury and funded by civil fines and permit fees collected under Part 413. Money in the fund could be expended for the administration of Part 413 and public education efforts about prohibited and restricted species and other nonnative or genetically engineered fish, insects, and aquatic plants.

In addition, the bill would require the Department of Natural Resources to post on its Internet website (www.michigan.gov/dnr) the following information: (1) the requirements of Part 413, (2) penalties that may be imposed for violating Part 413, (3) a list of all prohibited fish, aquatic plant, and insect species, including descriptions and a

photograph or drawing, and (4) each annual report of the advisory council established by HB 4714.

House Bill 4714 (MCL 324.41321)

The bill would establish an Invasive Species Advisory Council, consisting of the directors of the DNR, MDA, and DEQ, or their designees. The director of the DNR would call the first meeting, and the council would have to meet least on a quarterly basis. Staff assistance to the council would be provided by the MDA, DNR, and DEQ. Members would serve without additional compensation, though they could be reimbursed for actual and necessary expenses incurred in the performance of their official duties. In carrying out its duties, the council would consult with affected business, academicians, public interest groups, government officials, and others. The council would be subject to the Open Meetings Act and Freedom of Information Act. The bill would be repealed after its effective date.

House Bill 4715 (MCL 324.41323)

The bill would specify the duties of the advisory council established by House Bill 4714. Specifically, the council would have to submit a report to the governor and legislature, within six months of the bill's effective date, recommending deletions and additions to the list of prohibited and restricted species, and submit an annual report by March 1 of each year that includes recommendations regarding, among other things, other possible classes of prohibited and restricted species; ways of preventing, controlling, and eradicating nonnative or genetically engineered fish insects, and aquatic plants; restoration and remediation efforts; public education efforts; and necessary legislation and funding.

Additionally, the council would be required to establish criteria for identifying bodies of water infested by a prohibited species, and monitor and promote efforts to rescind the federal Environmental Protection Agency's regulation exempting the discharge of ballast water from marine vessels from the National Pollutant Discharge Elimination System permit requirements under the federal Clean Water Act. The council would carryout its duties in conjunction with the Aquatic Nuisance Species Council established by Executive Order 2002-21. The bill would be repealed five years after its effective date.

House Bill 4716 (MCL 324.41309)

The act provides that a person who unlawfully possesses a prohibited species or knowingly releases a genetically engineered or nonnative fish or violates the provisions of a permit issued under Part 413 is guilty of a felony punishable by a fine not exceeding \$250,000 and/or imprisonment for not more five years. The person responsible is also liable for damages to natural resources, including the costs to prevent or minimize damage. The bill establishes a penalty system, described below, for violating Part 413. The person responsible would continue to be liable for any resulting damages.

Violation	Fine	Imprisonment
Failure to notify DNR, DEQ, MDA – MCL 324.41303(2)	Up to \$100	None
Unlawful possession of a restricted species; violate permit – MCL 324.41303(1)	Up to \$5,000	None
Unlawful possession of a prohibited species; violate permit – MCL 324.41303(1)	Up to \$10,000	None
Knowingly unlawfully possessing restricted species; willfully violates permit – MCL 324.41303(1). (Misdemeanor)	Between \$1,000 and \$10,000	Up to 1 year.
Knowingly unlawfully possessing prohibited species; willfully violates permit – MCL 324.41303(1). (Felony)	Between \$2,000 and \$20,000	Up to 2 years.
Unlawful possession of a restricted species or nonnative fish or plant with intent to damage – MCL 324.41303(1). (Felony)	Between \$1,000 and \$250,000	Up to 2 years.
Unlawful possession of a prohibited species or genetically engineered fish with intent to damage – MCL 324.41303(1) (Felony)	Between \$2,000 and \$500,000	Up to 4 years
Sell restricted species	Between \$1,000 and \$10,000	None
Sell prohibited species	Between \$2,000 and \$20,000	None
Introduce restricted species, nonnative fish or plant – MCL 324.41305 (Misdemeanor)	Between \$500 and \$5,000	Up to 6 months
Introduce prohibited species, genetically engineered fish or plant – MCL 324.41305 (Misdemeanor)	Between \$1,000 and \$10,000	Up to 1 year
Knowingly introduce a restricted species, nonnative fish or plant – MCL 324.41305 (Misdemeanor)	Between \$1,000 and \$10,000	Up to 1 year
Knowing introduce prohibited species, genetically engineered fish or plant – MCL 324.41305 (Felony)	Between \$2,000 and \$20,000	Up to 2 years
Knowingly, unlawfully introduce restricted species, nonnative fish or plant – MCL 324.41305 (Felony)	Between \$1,000 and \$250,000	Up to 2 years
Knowingly, unlawfully introduce prohibited species, genetically engineered fish or plant – MCL 324.41305. (Felony)	Between \$2,000 and \$500,000	Up to 4 years
Introduce restricted species, nonnative fish or plant with intent to damage – MCL 324.41305. (Felony)	Between \$1,000 and \$500,000	Up to 3 years
Introduce prohibited species, genetically engineered fish or plant with intent to damage – MCL 324.41305. (Felony)	Between \$2,000 and \$1 million	Up to 5 years

Senate Bill 507 (MCL 777.13e)

The bill would amend the Code of Criminal Procedure to include violations related to genetically engineered, nonnative, prohibited, and restricted organisms in the sentencing guidelines statute.

Under the current law, the possession or release of genetically engineered, nonnative, or prohibited fish is a class E property felony punishable by imprisonment for up to five years. The bill would delete that provision and include violations and penalties provided for in Senate Bill 214, which would amend Part 413 of NREPA to revise penalties for violations of that part. Under the bill, violations for unlawful possession or introduction would be a Class E, F, or G property felony punishable by a maximum term of imprisonment ranging from two to five years.

ARGUMENTS:

For:

The entire package of bills is necessary to guard against the introduction and infestation of nonnative, invasive aquatic plants and insects in the state. These species can severely damage wildlife habitat and may present a serious threat to the public health of the state. As an example, the introduction of the Emerald Ash Borer beetle into the state has had a devastating impact - biologically, economically, and aesthetically – as the state, local communities, businesses, and individuals have expended millions of dollars destroying ash trees in an effort to stem the spread of the infestation to areas outside of the quarantine area and threatening the state's 700 million ash trees. The Giant Hogweed, an invasive plant evident in at least 11 Lower Peninsula counties, can cause severe blisters when a person comes in contact with the plant's sap and is later exposed to sunlight.

Senate Bills 211-213 place greater restrictions on the possession and release of certain nonnative, invasive species of plants and insects. The bills would prohibit an individual from knowingly possessing a prohibited or restricted species, except in certain limited circumstances, and also prohibit the release of a prohibited or restricted aquatic plant or insect species, or a genetically engineered or nonnative aquatic plant into any area where it is not already naturalized, except as authorized under a permit.

Response:

Senate Bill 213, similar to current law, restricts the release of a nonnative fish or aquatic plant into the waters of the state. However, neither the act nor the bill define what is a nonnative fish or plant. This lack of a definition is particularly troublesome to those within the aquaculture industry, as this may unintentionally restrict aquaculture activities or subject individuals to the penalties of Part 413.

For:

House Bills 4714 and 4715 would establish an Invasive Species Advisory Council that would, among other things, recommend other invasive species that should come under the control of Part 413 and ways of preventing, controlling, and eradicating invasive species. The council established by these bills can bring together the staff of the DNR, DEQ, and MDA, and related experts from state universities and federal agencies, and

coordinate activities in an effort to stem the spread of nonnative, invasive species in the state.

For:

House Bill 4716 would update the existing penalty provisions for violating Part 413. Under current law, an individual who knowingly violates the act is guilty of a felony punishable by a fine up to \$250,000 and/or imprisonment up to five years. This provision does not allow for lesser charges to be imposed, but allows for a wide ranging set of penalties that may not be uniformly applied throughout the state. The updated penalty system provided by House Bill 4716 establishes a system that is more tailored to the nature of the violation.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.