



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 211 (Substitute S-1 as reported)
Senate Bill 212 (Substitute S-3 as reported)
Senate Bill 213 (Substitute S-1 as reported)
Senate Bill 214 (Substitute S-2 as reported)
Senate Bill 215 (Substitute S-2 as reported)
Senate Bill 216 (Substitute S-2 as reported)
Senate Bill 217 (Substitute S-4 as reported)
Senate Bill 507 (as reported without amendment)
Sponsor: Senator Patricia L. Birkholz (S.B. 211 & 507)
Senator Gerald Van Woerkom (S.B. 212)
Senator Tony Stamas (S.B. 213)
Senator Liz Brater (S.B. 214)
Senator Jud Gilbert, II (S.B. 215)
Senator Bruce Patterson (S.B. 216)
Senator Jason E. Allen (S.B. 217)

Committee: Natural Resources and Environmental Affairs

Date Completed: 6-7-05

RATIONALE

As humans migrate across the globe, numerous species are transported from their native locations and introduced in new ones, either intentionally or by accident. While many species are unable to survive under the conditions of their new environment, some experience dramatic proliferation in the absence of the natural competitors, predators, and diseases that normally would keep their population growth in check. This unchecked spread can threaten the survival and diversity of native species, change natural habitats, jeopardize public health, damage property, and discourage tourism.

Public Act 270 of 2003 amended the Natural Resources and Environmental Protection Act to prohibit the possession or release of certain fish species, and prohibit the release of a genetically engineered or nonnative fish without a permit. In light of the harmful impact of invasive, genetically engineered, and nonnative organisms other than fish, it has been suggested that similar measures should be extended to aquatic plants and insects. Additionally, it has been suggested

that the penalties for possession, sale, and introduction of such organisms should be revised, and that a fund and an advisory council be created to facilitate the State's efforts in addressing the problems the organisms cause.

CONTENT

Senate Bills 211 (S-1) through 217 (S-4) would amend Part 413 (Transgenic and Nonnative Organisms) of the Natural Resources and Environmental Protection Act to do the following:

- Define "prohibited species" as "prohibited aquatic plant species", "prohibited insect species", or "prohibited fish species", and define those terms.
- Define "restricted species" as "restricted aquatic plant species", and define that term.
- Prohibit a person from possessing a prohibited or restricted species, subject to certain exceptions.

- **Prohibit a person from knowingly introducing a prohibited or restricted species, or a genetically engineered or nonnative fish or aquatic plant, unless authorized by a permit from the Department of Natural Resources (DNR).**
- **Authorize the DNR to revoke or modify a permit based on a public hearing.**
- **Revise the penalties under Part 413, as well as the violations subject to those penalties.**
- **Create the "Invasive Species Fund", and require permit fees and fines collected under Part 413 to be deposited into the Fund.**
- **Require the DNR to post on its website information regarding prohibited and restricted species and related violations.**
- **Create the Invasive Species Advisory Council, and prescribe its duties.**

Senate Bill 507 would revise the sentencing guidelines in the Code of Criminal Procedure to include the possession or release of any genetically engineered, nonnative, or prohibited organism.

Senate Bills 211 (S-1) through 217 (S-4) are tie-barred to each other. Senate Bill 507 is tie-barred to Senate Bill 214. The bills are described below in further detail.

Senate Bill 211 (S-1)

Under the bill, "prohibited species" would mean a prohibited aquatic plant species, a prohibited fish species, or a prohibited insect species. Currently, the term "prohibited species" means any of the following species, or their eggs or a hybrid or genetically engineered variant: bighead carp, bitterling, black carp, grass carp, ide, Japanese weatherfish, Rudd, silver carp, a fish of the snakehead family, and tench. Under the bill, those species would be "prohibited fish species".

The bill also would designate the following species, or any of their fragments or seeds or a hybrid or genetically engineered variant, as "prohibited aquatic plant species": African oxygen weed, Brazilian elodea, European frogbit, giant salvinia, hydrilla, Japanese knotweed, parrot's

feather, water chestnut, yellow flag iris, and yellow floating heart.

Additionally, the bill would designate the Asian longhorned beetle and the emerald ash borer, or their eggs or a hybrid or genetically engineered variant, as "prohibited insect species".

The bill would define "restricted species" as a restricted aquatic plant species. "Restricted aquatic plant species" would mean any of the following, or any of their fragments or seeds or a hybrid or genetically engineered variant: curly leaf pondweed, Eurasian watermilfoil, flowering rush, Phragmites, and purple loosestrife (except for cultivars developed and recognized to be sterile and approved by the Director of Agriculture under the Insect Pest and Plant Disease Act).

With reference to an organism, the term "introduce" would mean willfully to stock, place, plant, release, or allow the release of the organism in this State at any specific location where the organism is not already naturalized.

The bill specifies that, for purposes of Part 413, a person would not be considered to possess a live organism simply because it was present on land or in waters the person owned, unless the person knowingly had introduced it. A person also would not be considered to possess a live organism if it were obtained from the environment and the person possessed the organism only at the specific location at which it was obtained, or if the possession were for the purpose of the organism's prompt destruction.

Senate Bill 212 (S-3)

Under Section 41303, a person is prohibited from possessing or releasing a live prohibited species. The bill, instead, would prohibit a person from introducing a prohibited species or knowingly possessing a live organism if it were a prohibited or restricted species, except under any of the following circumstances:

- The person intended to present a specimen, for identification or similar purposes, to a certified or registered pesticide applicator, to a public or private institution of higher education, or to the DNR or any other State, local, or Federal

agency with responsibility for the environment or natural resources.

- The person was presented with a specimen for identification or similar purposes.
- The person possessed the species in conjunction with otherwise lawful activity to eradicate or control the species.
- The possession was pursuant to a permit issued by the DNR under Section 41306 (which Senate Bill 213 (S-1) would add) for research purposes, by the Michigan Department of Agriculture (MDA) under Section 18 of the Insect Pest and Plant Disease Act (described below), or by the U.S. Department of Agriculture.

A person who was presented with a specimen for identification or similar purposes, or who possessed a prohibited species in conjunction with lawful eradication or control activity would have to notify the DNR, the MDA, or the Department of Environmental Quality (DEQ) if the prohibited species were found at a location where it was not known previously to be present.

(Under Section 18 of the Insect Pest and Plant Disease Act, a person is prohibited from selling, bartering, offering for sale, or moving, transporting, delivering, shipping, or offering for shipment, into or within Michigan, any living insects in any stage of their development, or living fungi, bacteria, nematodes, viruses, or other living plant parasitic organisms without a permit from the MDA Director. The Director may issue a permit only after he or she has determined that the species in question is not injurious to plants or plant products, if not already present in the State, or has not been found to be seriously injurious to warrant its being refused entrance or movement, if known to be established already within the State's borders.)

Senate Bill 213 (S-1)

Section 41305 prohibits a person from knowingly releasing or allowing to be released into Michigan a genetically engineered fish or a nonnative fish that is

not naturalized in the release location without a permit issued by the DNR under that section or Section 48735. Under the bill, instead, unless authorized by a permit issued under Section 48735 or Section 41306 (described below), a person could not introduce a prohibited or restricted species, or a genetically engineered or nonnative fish or aquatic plant.

(Section 48735 prohibits a person from taking from any of the State's inland waters any fish in any manner for the purpose of fish culture or scientific investigation without obtaining a permit from the DNR. The Department may issue permits to possess live game fish in public or private ponds, pools, or aquariums under its own rules and regulations. A person may not import or bring any live game fish, including viable eggs, from outside of the State, or plant any spawn, fry, or fish in any of the State's public waters or any waters under the State's jurisdiction, without a permit that states the species, number, and approximate size or age, and the name and location of the waters where the species is to be planted. A genetically engineered variant of a fish species specifically must be identified in the permit.)

The bill also would add Section 41306 to require a person to apply for a permit required under Section 41303 or 41305 on a form developed by the DNR. The application would have to be accompanied by a fee based on the cost of administering Part 413. The DNR could revoke or modify a permit after providing an opportunity for a hearing under the Administrative Procedures Act.

Senate Bill 214 (S-2)

Currently, a person who violates Section 41303 or who knowingly violates Section 41305 or a permit issued under that section, is guilty of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$250,000. The bill would delete this provision, and prescribe the penalties shown in Table 1 for violations of Section 41303 (as Senate Bill 212 (S-3) would amend) or a permit condition.

Table 1

Violation	Type	Fine		Maximum Imprisonment
		Minimum	Maximum	
Failure to report prohibited or restricted species (as required by Senate Bill 212 (S-3))	Civil	n/a	\$100	n/a
Possession of restricted species	Civil	n/a	\$5,000	n/a
Possession of prohibited species	Civil	n/a	\$10,000	n/a
Knowing possession of restricted species or willful or reckless permit violation	Misdemeanor	\$1,000	\$10,000	1 year
Knowing possession of prohibited species or willful or reckless permit violation	Felony	\$2,000	\$20,000	2 years
Possession of restricted species/nonnative fish or aquatic plant with intent to damage natural, agricultural, or silvicultural resources	Felony	\$1,000	\$250,000	2 years
Possession of prohibited species/genetically engineered fish or aquatic plant with intent to damage natural, agricultural, or silvicultural resources	Felony	\$2,000	\$500,000	4 years

The bill would prescribe the penalties shown in Table 2 for violations of Section 41305 (as Senate Bill 213 (S-1) would amend).

Table 2

Violation	Type	Fine		Maximum Imprisonment
		Minimum	Maximum	
Introduction of restricted species/nonnative fish or aquatic plant	Misdemeanor	\$500	\$5,000	6 months
Introduction of prohibited species/genetically engineered fish or aquatic plant	Misdemeanor	\$1,000	\$10,000	1 year
Introduction of restricted species/nonnative fish or aquatic plant by person who knew it was restricted or nonnative	Misdemeanor	\$1,000	\$10,000	1 year
Introduction of prohibited species/genetically engineered fish or aquatic plant by person who knew it was prohibited or genetically engineered	Felony	\$2,000	\$20,000	2 years
Knowing unlawful introduction of restricted species/nonnative fish or aquatic plant	Felony	\$1,000	\$250,000	2 years
Knowing unlawful introduction of prohibited species/genetically engineered fish or aquatic plant	Felony	\$2,000	\$500,000	4 years
Introduction of restricted species/nonnative fish or aquatic plant with intent to damage natural, agricultural, or silvicultural resources	Felony	\$1,000	\$500,000	3 years
Introduction of prohibited species/genetically engineered fish or aquatic plant with intent to damage natural, agricultural, or silvicultural resources	Felony	\$2,000	\$1.0 million	5 years

Additionally, a person who sold or offered to sell a restricted species would be subject to a civil fine of not less than \$1,000 or more than \$10,000. A person who sold or offered to sell a prohibited species would be subject to a civil fine of at least \$2,000 but not more than \$20,000.

The bill would retain a provision specifying that, in addition to any other civil or criminal sanction, the person is liable for any damage to natural resources resulting from a violation of Part 413, including costs incurred to prevent or minimize the damage.

Senate Bill 215 (S-2)

The bill would create the Invasive Species Fund within the State Treasury. The DNR would have to forward to the State Treasurer the civil fines and permit fees collected under Part 413 for deposit into the Fund. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer also would have to direct the investment of the Fund, and credit to it the interest and earnings. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

The DNR could spend the Fund money, upon appropriation, only for the administration of Part 413 and public education about preventing the introduction of, controlling, or eradicating prohibited species, restricted species, and other nonnative species and genetically engineered fish, insects, and aquatic plants.

Additionally, the DNR would have to post on its website all of the following:

- Information on the requirements of Part 413 applicable to the public.
- A list of prohibited species and restricted species.
- Each annual report of the Invasive Species Advisory Council (as Senate Bill 217 (S-4) would require) for at least three years after its issuance.

Senate Bill 216 (S-2)

The bill would create the Invasive Species Advisory Council within the DNR. The Council would have to consist of the Directors of the DNR, the MDA, and the DEQ, or their designees.

The DNR Director would have to call the first Council meeting, at which the Council would have to elect from among its members a chairperson and other officers as it considered necessary or appropriate. After the first meeting, the Council would have to meet at least quarterly, or more frequently at the call of the chairperson or if requested by a member.

A majority of the members would constitute a quorum for the transaction of business at a Council meeting. A majority of the members would be required for official Council action. The Council would be subject to the Freedom of Information Act and the Open Meetings Act.

Council members would serve without additional compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. The DNR, the MDA, and the DEQ would have to provide staff and services to the Council.

The Council would have to consult with representatives of businesses affected by Part 413, academic experts, public interest group representatives, government officials, and others as necessary for the exercise of its powers and performance of its duties under Part 413.

The section creating the Council would be repealed five years after the bill's effective date.

Senate Bill 217 (S-4)

The bill would require the Invasive Species Advisory Council to submit to the Governor and the Legislature within six months after the bill's effective date a report making recommendations on additions to or deletions from the lists of prohibited and restricted species. Beginning in 2006, by March 1 of each year, the Council also would have to submit to the Governor and the Legislature a report that made recommendations on all of the following:

- The adoption of lists for classes of prohibited and restricted organisms other than fish, insects, and aquatic plants.
- The status of various prohibited species and other problematic nonnative organisms in this State, including a list of infested waterbodies by species.

- Preventing the introduction of and controlling or eradicating nonnative or genetically engineered fish, insects, and aquatic plants.
- Restoration or remediation of habitats or species damaged by nonnative species or genetically engineered organisms.
- Prioritizing efforts to prevent violations of and otherwise further the purposes of Part 413.
- The specific areas of responsibility for various State departments under Part 413 and the sharing of information on permits under Part 413 among responsible State departments.
- Educating citizens about their responsibilities under Part 413 and their role in preventing the introduction of and controlling or eradicating prohibited and restricted species and nonnative or genetically engineered fish, insects, or aquatic plants.
- Simplifying citizen access to State government for compliance with Part 413.
- Legislation and funding to carry out the Council's recommendations and otherwise further the purposes of Part 413.
- Other matters that the Council considered pertinent to the purposes of Part 413.

Additionally, the Council would have to establish criteria for identifying waterbodies infested by prohibited species, and monitor and promote efforts to rescind the exemption under 40 CFR 122.3(a) for ballast water discharges.

(Under 40 CFR 122.3(a), any discharge incidental to the normal operation of a vessel (e.g., ballast water) is exempt from the Federal Clean Water Act's requirement for a National Pollutant Discharge Elimination System permit. In March 2005, the United States District Court for the Northern District of California ordered the U.S. Environmental Protection Agency (EPA) to repeal this exemption. To date, the EPA has not done so.)

The Council would have to carry out its reporting and other duties in cooperation with the Aquatic Nuisance Species (ANS) Council created under Executive Order 2002-21.

(Executive Order 2002-21 created the ANS Council within the Office of the Great Lakes as an advisory body to the Office and the

Departments of Environmental Quality, Natural Resources, Agriculture, and Transportation. The members include the Director of the Office of the Great Lakes, the Directors of the four State Departments, and four public members appointed by the Governor. The ANS Council must advise the Office and the Departments on the State's efforts to prevent and control ANS introduction and spread, informational and educational activities, the coordination of research and monitoring ANS activities, and revising and updating Michigan's ANS State Management Plan, as necessary.)

The section added by the bill would be repealed five years after the bill's effective date.

Senate Bill 507

Currently, the possession or release of a genetically engineered, nonnative, or prohibited fish is a class E property felony punishable by imprisonment for up to five years. The bill would refer to an organism instead of a fish.

- MCL 324.41301 (S.B. 211)
- 324.41303 (S.B. 212)
- 324.41305 et al. (S.B. 213)
- 324.41309 (S.B. 214)
- Proposed MCL 324.41311 & 324.41313 (S.B. 215)
- Proposed MCL 324.41321 (S.B. 216)
- Proposed MCL 324.41323 (S.B. 217)
- MCL 777.13e (S.B. 507)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Due to its geography, there are numerous pathways by which invasive species can enter the State. Oceangoing vessels have released aquatic organisms into the Great Lakes with their ballast water discharges. The Canadian border crossing in Detroit accommodates the second highest volume in the nation, and between that crossing and the one in Port Huron, 1.3 million commercial vehicles travel back and forth every year. Additionally, nonnative species are transported into and around the State via rail, air traffic, the nursery trade, mail-order and internet sales, and smugglers.

Occasionally, a species intentionally introduced in an area to help control another species becomes a nuisance itself.

Because Michigan's economy is heavily reliant on agriculture and tourism, it is particularly vulnerable to the destructive impacts of nuisance species, both foreign and native. For example, *Ralstonia solanacearum*, a bacterium, threatens the State's geranium industry (the largest in the country), as well as multimillion dollar crops of peppers, tomatoes, and potatoes.

Soybean rust, a spore that is transported on trade winds, has been established in the southeastern United States and, because it cannot be quarantined, is expected to appear in Michigan this summer. In addition to affecting soybean production (which contributes more than \$800 million each year to the State's economy), soybean rust could be used as a terrorist agent, some people believe.

The emerald ash borer, a beetle native to Asia that arrived in the Detroit area 12 to 15 years ago, has killed 15.0 million ash trees in Michigan since 2002. Twenty counties in southeastern Michigan and 19 other infested areas are under quarantine, meaning that ash trees or wood must be chipped to one inch or smaller to be moved outside of the area in question. The State has set up checkpoints, and anyone found to be violating the quarantine is subject to a \$100 fine (which could be increased under other proposed legislation). The dead trees lower the State's aesthetic value, and can contribute to reduced property values.

Another species with the potential for negative impacts on the environment, and thus, the State's economy, is Phragmites, an aggressive reed that grows around wetlands to form dense, fence-like mats. The reed, which can reach 10 feet in height, obscures views of the Saginaw Bay in some places and has rendered the beach at the Bay City State Recreation Area unusable.

Nuisance species constitute a significant threat to the environment, public health and safety, and the economy. According to the National Wildlife Foundation, invasive species cause at least \$137 billion each year in economic losses. Clearly, it is vital that the State take action to eradicate or control the harmful species already present, and

prevent the transport of new invasive species across its borders. The bills would provide a comprehensive strategy appropriately focused on enforcement, public education, control, and prevention.

Response: Several of the bills would refer to violating Part 413 "knowingly". Although "knowingly" is a generally accepted legal term defined in *Black's Law Dictionary*, under the bills, an otherwise law-abiding citizen potentially could be considered to have committed a violation. Reportedly, some people use some of the designated plant species in personal water gardens and landscaping, and do not intend to sell or introduce the plants in other locations. The bills also could present problems for nonprofit groups holding easements for conservation purposes. Many of these easements are monitored by local volunteers who might be unaware of some nuisance species. Especially with regard to species that already are well-established in Michigan, it is important to ensure that otherwise innocent landowners were not subject to jail time or burdensome fines.

Opposing Argument

Some concerns have been expressed about the lists of prohibited and restricted species under Senate Bill 211 (S-1). First, the lists should be based on scientific documentation that demonstrates that those species are problematic in Michigan, or would be problematic if introduced in the State. Second, with the exception of purple loosestrife, the bill would make no distinction between the designated restricted aquatic plant species and their cultivars, or genetic variants. The cultivars of some of the other listed species do not exhibit the same harmful characteristics as those species, and should be exempt from the bill.

Response: The prohibited and restricted species lists under Senate Bill 211 (S-1) include species that the DNR, DEQ, and MDA have agreed pose a threat to Michigan. Senate Bill 216 (S-2) would require the proposed Council to consult with business representatives, academic experts, public interest group representatives, and government officials, ensuring that future additions to the lists were supported by science.

Opposing Argument

Senate Bill 214 (S-2) would not prescribe a penalty for the owner of land on which a prohibited or restricted species was present

who did not take measures to control or eliminate it. While not responsible for introducing the species on the land, the owner should bear some responsibility for removing or destroying a species he or she knows to be prohibited or restricted in order to prevent its spread to other locations.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bills 211 (S-1) through 214 (S-2)

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

The bills would create a new permit program regulating the possession or introduction of prohibited and restricted species. The new program would increase costs for the State; however, the DEQ could collect permit fees to cover the cost of administering the permit program. It is unknown how many permits would be issued.

There are no data to indicate how many additional offenders would be convicted for violating Sections 41303 and 41305 under the proposed changes. Local governments incur the cost misdemeanor probation and incarceration in local facilities, which vary by county. The State incurs the cost of felony probation at an average annual cost of \$2,000 per offender, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000 per offender. Public libraries would benefit from any additional penal fine revenue collected. Civil fine revenue collected for violations of Part 413 would be deposited into the proposed Invasive Species Fund.

Senate Bills 215 (S-2), 216 (S-2), and 217 (S-4)

The State would incur minimal costs related to posting information on the DNR website and reimbursing Council members for actual and necessary expenses for performance of official duties.

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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.