



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**BILL ANALYSIS**



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bills 211, 212, and 213 (as enrolled)  
Senate Bills 215 and 507 (as enrolled)  
House Bills 4714, 4715, and 4716 (as enrolled)  
Sponsor: Senator Patricia L. Birkholz (S.B. 211)  
Senator Gerald Van Woerkom (S.B. 212)  
Senator Tony Stamas (S.B. 213)  
Senator Jud Gilbert, II (S.B. 215)  
Senator Raymond E. Basham (S.B. 507)  
Representative Phillip Pavlov (H.B. 4714)  
Representative Goeff Hansen (H.B. 4715)  
Representative David Farhat (H.B. 4716)

Senate Committee: Natural Resources and Environmental Affairs

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

Date Completed: 7-27-05

**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 was suggested that similar measures should be extended to aquatic plants and insects. Additionally, it was 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, 212, 213 and 215 and House Bills 4714, 4715, and 4716 amended 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, insect, or aquatic plant, unless authorized by a permit from the Department of Natural Resources (DNR) or the Michigan Department of Agriculture (MDA).

- **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 amends the Code of Criminal Procedure to include violations related to genetically engineered, nonnative, prohibited, and restricted organisms in the sentencing guidelines.**

Senate Bills 211, 212, 213 and 215 and the House bills were tie-barred to each other. Senate Bill 507 was tie-barred to House Bill 4716. Senate Bill 507 will take effect on September 1, 2005. All of the other bills took effect on July 19, 2005. The bills are described below in further detail.

### **Senate Bill 211**

Under the bill, "prohibited species" means a prohibited aquatic plant species, a prohibited fish species, or a prohibited insect species. Previously, the term "prohibited species" meant 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 are "prohibited fish species".

The bill also designated 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 designated 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 defines "restricted species" as a restricted aquatic plant species. "Restricted aquatic plant species" means 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 bill defines "introduce" as knowingly and 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 is not considered to possess a live organism simply because it is present on land or in waters the person owns, unless the person knowingly introduced it. A person also is not considered to possess a live organism if it is obtained from the environment and the person possesses the organism only at the specific location at which it was obtained, or if the possession is for the purpose of the organism's prompt destruction.

### **Senate Bill 212**

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

- The person intends 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 is presented with a specimen for identification or similar purposes.
- The person possesses the species in conjunction with otherwise lawful activity to eradicate or control the species.
- If the species is not an insect species, the possession is pursuant to a permit issued by the DNR under Section 41306 (which

Senate Bill 213 added) for research purposes.

- If the species is an insect species, the possession is pursuant to a permit issued for education or research purposes by the MDA under Section 41306 or by the U.S. Department of Agriculture.

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

### **Senate Bill 213**

Previously, Section 41305 prohibited a person from knowingly releasing or allowing to be released into Michigan a genetically engineered fish or a nonnative fish that was not naturalized in the release location without a permit issued by the DNR under that section or Section 48735. Under the bill, instead, a person may not introduce a prohibited or restricted species, or a genetically engineered or nonnative fish, insect, or aquatic plant unless the introduction is authorized, as applicable, by one of the following:

- For a fish, by a permit issued by the DNR under Section 48735 (described below).
- For an insect, by a permit issued by the MDA under Section 41306 (which the bill added).
- For an aquatic plant, by a permit issued by the DNR under Section 41306.

(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.)

Under Section 41306, added by the bill, a person must apply for a permit required under Section 41303 or 41305 on a form developed by the DNR or the MDA, as applicable. The application must be accompanied by a fee based on the cost of administering Part 413. The applicable Department must either grant an administratively complete application and issue a permit or deny the application. The DNR or the MDA may revoke or modify a permit after providing an opportunity for a hearing under the Administrative Procedures Act.

### **House Bill 4716**

Previously, a person who violated Section 41303 or who knowingly violated Section 41305 or a permit issued under that section, was guilty of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$250,000. The bill deleted that penalty, and prescribes the penalties shown in Table 1 for a person who violates Section 41303 (as amended by Senate Bill 212) or who violates a condition of a permit issued under Part 413.

Table 1

<b>Violation</b>	<b>Type</b>	<b>Fine</b>		<b>Maximum Imprisonment</b>
		<b>Minimum</b>	<b>Maximum</b>	
Failure to report prohibited or restricted species	Civil	n/a	\$100	n/a
Possession of restricted species or permit violation	Civil	n/a	\$5,000	n/a
Possession of prohibited species or permit violation	Civil	n/a	\$10,000	n/a
Knowing possession of restricted species or willful or grossly negligent permit violation	Misdemeanor	\$1,000	\$10,000	1 year
Knowing possession of prohibited species or willful or grossly negligent 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 penalties for a knowing possession of a restricted or prohibited species, or for possession with intent to damage natural, agricultural, or silvicultural resources do not apply before November 1, 2005, to

violations involving species other than fish.

The bill prescribes the penalties shown in Table 2 for violations of Section 41305 (as amended by Senate Bill 213).

Table 2

<b>Violation</b>	<b>Type</b>	<b>Fine</b>		<b>Maximum Imprisonment</b>
		<b>Minimum</b>	<b>Maximum</b>	
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 knowing it is restricted or nonnative	Misdemeanor	\$1,000	\$10,000	1 year
Introduction of prohibited species/genetically engineered fish or aquatic plant knowing it is 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

The penalties related to an introduction that the person knows is unlawful will not apply before November 1, 2005, to violations involving species other than fish. The other penalties for violations of Section 41305 will not apply before November 1, 2005.

Additionally, under the bill, a person who sells or offers to sell a restricted species is subject to a civil fine of not less than \$1,000 or more than \$10,000. A person who sells or offers to sell a prohibited species is subject to a civil fine of at least \$2,000 but not more than \$20,000.

The bill retained a provision 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.

The bill specifies that Part 413 does not apply to activities authorized under the Michigan Aquaculture Development Act.

#### **Senate Bill 215**

The bill created the Invasive Species Fund within the State Treasury. The DNR must forward to the State Treasurer the civil fines and permit fees collected under Part 413 for deposit into the Fund. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The State Treasurer also must 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 will remain in the Fund and not lapse to the General Fund.

The DNR may 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 bill requires the DNR 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, along with a description and a photograph or drawing of each species.
- Each annual report of the Invasive Species Advisory Council (as House Bill

4715 requires) for at least three years after its issuance.

#### **House Bill 4714**

The bill created the Invasive Species Advisory Council within the DNR. The Council must consist of the Directors of the DNR, the MDA, and the DEQ, or their designees.

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

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

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

The Council must 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 will be repealed five years after the bill's effective date.

#### **House Bill 4715**

The bill requires 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 must submit to the Governor and the Legislature

a report that makes 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 invasive organisms in this State, including a list of infested waterbodies by species.
- Preventing the introduction of and controlling or eradicating invasive or genetically engineered fish, insects, and aquatic plants.
- Restoration or remediation of habitats or species damaged by invasive 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 invasive 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 considers pertinent to the purposes of Part 413.

Additionally, the Council must 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 must 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 will 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 deletes this penalty, and adds the property felony penalties shown in Table 3.

Table 3

<b>Violation</b>	<b>Class</b>	<b>Maximum Imprisonment</b>
Possession of prohibited species	G	2 years
Possession of restricted or nonnative species with intent to damage resources	G	2 years
Possession of prohibited or genetically engineered species with intent to damage resources	F	4 years
Introduction of prohibited or genetically engineered species knowing the organism's identity	G	2 years
Introduction of restricted or nonnative species knowing the introduction is unlawful	G	2 years
Introduction of prohibited or genetically engineered species knowing the introduction is unlawful	F	4 years
Introduction of restricted or nonnative species with intent to damage resources	F	3 years
Introduction of prohibited or genetically engineered species with intent to damage resources	E	5 years

MCL 324.41301 (S.B. 211)  
 324.41303 (S.B. 212)  
 324.41305 et al. (S.B. 213)  
 324.41311 & 324.41313 (S.B. 215)  
 777.13e (S.B. 507)  
 324.41321 (H.B. 4714)  
 324.41323 (H.B. 4715)  
 324.41309 (H.B. 4716)

**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 every 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 quarantine violations are subject to fines of up to \$10,000 or, in some cases, \$250,000. 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 provide a comprehensive strategy appropriately focused on enforcement, public education, control, and prevention.

**Response:** Several of the bills 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 might 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 may 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 are 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. 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 makes 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 include species that the DNR, DEQ, and MDA have agreed pose a threat to Michigan. House Bill 4714 requires the Council to consult with business representatives, academic experts, public interest group representatives, and government officials, ensuring that future additions to the list are supported by science.

### **Opposing Argument**

House Bill 4716 does not prescribe a penalty for the owner of land on which a prohibited or restricted species is present who does 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**

These bills will have an indeterminate fiscal impact on State and local government.

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

There are no data to indicate how many additional offenders will be convicted of violating Section 41303 or 41305 under the 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 will benefit from any additional penal fine revenue collected. Civil fine revenue collected for violations of Part 413 will be deposited into the Invasive Species Fund.

The State will 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.

Fiscal Analyst: Jessica Runnels  
Bethany Wicksall

A0506\s211ea

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.