



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 Bill 211 (as introduced 2-17-05)
Senate Bill 212 (Substitute S-2)
Senate Bill 213 (as introduced 2-17-05)
Senate Bill 214 (Substitute S-1)
Senate Bills 215 and 216 (as introduced 2-17-05)
Senate Bill 217 (Substitute S-2)
Sponsor: Senator Patricia L. Birkholz (S.B. 213)
Senator Gerald Van Woerkom (S.B. 214)
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: 5-17-05

CONTENT

The bills 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.
- Prohibit a person from possessing a prohibited species, subject to certain exceptions, or introducing a prohibited species.
- Prohibit a person from knowingly introducing a genetically engineered or nonnative fish, insect, or aquatic plant.
- Revise the violations subject to penalties under Part 413, and prescribe a civil fine for failing to report the presence of a prohibited species to the Department of Natural Resources (DNR), the Michigan Department of Agriculture (MDA), or the Department of Environmental Quality (DEQ).
- Require the DNR to post on its website information regarding

prohibited species and related violations.

- Create the Nonnative Species Advisory Council, and prescribe its duties.

The bills are tie-barred to each other. They are described below in further detail.

Senate Bill 211

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, curly leaf pondweed, Eurasian

watermilfoil, European frogbit, flowering rush, giant salvinia, hydrilla, Japanese knotweed, parrot's feather, 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), 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".

With reference to an organism, the term "introduce" would mean 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.

Senate Bill 212 (S-2)

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 species, except under any of the following circumstances:

- The person intended to present a specimen of the prohibited species, 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 of a prohibited species for identification or similar purposes.
- The person possessed the prohibited 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 41305 (which Senate Bill 213 would amend) for research purposes, by the 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 DEQ if the prohibited species were found at a location where it was not known previously to be present.

A person would not be considered knowingly to possess a live organism simply because the organism was present on land or in water that person owned, unless the person knowingly introduced the organism.

(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 Agriculture Commissioner. The Commissioner 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

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 either section, a person could not introduce a genetically engineered or nonnative fish, insect, or aquatic plant, knowing that the organism was genetically engineered or nonnative.

(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.)

Senate Bill 214 (S-1)

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. Additionally, the person is liable for any damage to natural resources resulting from the violation, including costs incurred to prevent or minimize the damage. Under the bill, the penalties would apply to a person who violated Section 41303 or a permit under that section, who violated Section 41305, or who knowingly violated a permit under Section 41305.

A person who was presented with a specimen of a prohibited species for identification or similar purposes, or who possessed a prohibited species in conjunction with lawful eradication or control activities, and failed to notify the DNR, MDA, or DEQ that the species was found at a location where it previously was not known to be present would be subject to a maximum civil fine of \$100.

Senate Bill 215

The bill would require the DNR to post on its website information on the requirements of Part 413 applicable to the public, the penalties for violating the requirements of Part 413, and a list of prohibited species.

Senate Bill 216

The bill would create the Nonnative Species Advisory Council, which would consist of four members appointed by the Senate Majority Leader and three members appointed by the Speaker of the House. The members first appointed to the Council would have to be

appointed within 60 days after the bill's effective date.

Council members would serve for terms of two years or until a successor was appointed, whichever was later, except that two of the members first appointed by the Senate Majority Leader and one of the members first appointed by the Speaker would serve for one year.

The Senate Majority Leader or the Speaker could remove a member whom he or she had appointed for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The first Council meeting would have to be called by the Senate Majority Leader. At the first meeting, the Council would have to elect from among its members a chairperson and other officers 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 at least two members.

The Council would be subject to the Open Meetings Act and the Freedom of Information Act.

Council members would serve without compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

Senate Bill 217 (S-2)

The bill would require the Nonnative Species Advisory Council 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.)

By March 1 of each year beginning in 2006, the Council also would have to submit to the Governor and the Legislature a report making recommendations on all of the following:

- Additions to or deletions from the list of prohibited species.
- The adoption of lists for classes of prohibited organisms other than fish, insects, and aquatic plants.
- The status of various prohibited species and other problematic nonnative organisms in Michigan, 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.
- Legislation and funding to carry out the Council's recommendations and otherwise further the purposes of Part 413.

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 its effective date.

MCL 324.41301 (S.B. 211)
324.41303 (S.B. 212)
324.41305 (S.B. 213)

324.41309 (S.B. 214)
Proposed MCL 324.41313 (S.B. 215)
Proposed MCL 324.41321 (S.B. 216)
Proposed MCL 324.41323 (S.B. 217)

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bills 211 through 214 (S-1)

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

Additional permit applications could be received by the DEQ for the possession or introduction of the expanded list of prohibited species, which would increase costs for the State; however, the DEQ charges a fee to cover the cost of the permit program. It is unknown how many additional permits would be issued.

There are no data to indicate how many additional offenders would be convicted of a violation of Sections 41303(1), 41303(2), and 41305(1) if the list of prohibited species were expanded. Local governments incur the cost of incarceration in local facilities, which varies 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 a violation of the proposed Section 41303(3) would be deposited into the State's General Fund.

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

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.

Fiscal Analyst: Jessica Runnels
Bethany Wicksall

S0506\S211sb

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.