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ALLOW, REGULATE AQUACULTURE

House Bills 5555 and 5556
(Substitutes H-1)

Sponsor: Rep. Mike Green
Committee: Agriculture and Forestry

Complete to 3-20-96

A SUMMARY OF HOUSE BILLS 5555 AND 5556 (SUBSTITUTES H-1)

The bills would provide for the establishment, regulation, and protection of "aquaculture" in the state, which would be defined as the commercial husbandry of approved aquatic animal organisms under permit or registration by the Department of Agriculture.

House Bill 5555 would create the Michigan Aquaculture Development Act to establish and regulate aquaculture as an agricultural enterprise in the state, similar to farming and other agricultural industry. Under the bill, the director of the Department of Agriculture would have to assure that aquaculture was afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises. Also, the director would administer the bill's provisions and would have to conduct activities designed to develop and assist the aquaculture industry as provided by law. The bill would take effect 90 days after it was enacted.

Approved species. The bill would establish a list of approved species for aquaculture production, and specifies that only those species on the list could be used for aquaculture purposes. Those species that would qualify for inclusion on the list would include those which 1) were naturally indigenous within the "waters of the state" (groundwaters, lakes, rivers, streams, and all other waters within the state, including the Great Lakes), 2) were naturalized within those waters, 3) could not perpetuate in the waters of the state, and 4) were confined in a research facility for purposes of determining, based on research, whether they should be added to the approved list. Approved species would include the following:

* Among freshwater species, lake sturgeon, paddlefish, arctic grayling, atlantic salmon, brown trout, brook trout, splake, lake trout, chinook salmon, coho salmon, pink salmon, rainbow trout, lake whitefish, lake herring, muskellunge, northern pike, tiger muskie, common carp, goldfish, creek chub, bowfin, redbelly dace, finescale dace, common shiner, golden shiner, emerald shiner, bluntnose minnow, fathead minnow, black bullhead, yellow bullhead, brown bullhead, channel catfish, flathead catfish, burbot, small- and largemouth bass, white crappie, black crappie, hybrid crappie, warmouth, rock bass, green sunfish, bluegill, hybrid bluegill, pumpkinseed, redear sunfish, sauger, walleye, saugeye, yellow perch, bigmouth buffalofish, black buffalofish, white perch, white bass, and tilapia;

* Among other aquatic organisms, prawn and crayfish; and

* Among salt or brackish-waters species, brine shrimp, shrimp, mahi-mahi, haddock, cod, halibut, snapper, grouper, red drum, tuna, flounder, pompano, snook, and mackerel.

However, those aquaculture species not allowed to be in one's possession under the Natural Resources and Environmental Protection Act could not be used for aquaculture or aquaculture research under the bill's provisions.

Registration, exemptions. A person could not engage in aquaculture unless he or she obtained registration or a research permit from the department, or was otherwise exempt by rule or law. If an activity engaged in by an aquaculture facility was regulated under any act, registration under the bill would not exempt the person or facility from requirements imposed under any local, state, or federal regulation. The bill specifically would exempt from registration as aquaculture facilities retail bait outlets, retail ornamental fish facilities, persons using privately controlled waters for noncommercial purposes, public aquariums or zoos, and portable retail fishing concessions.

Ownership of aquaculture. Aquacultural products lawfully taken, produced, purchased, possessed, or acquired from within the state or imported here would be the exclusive property of the aquaculturist, and aquaculturists harvesting aquaculture species under a registration or permit from the department would be exempt from size, catch, and possession limits, closed seasons, and any other restriction imposed under the Natural Resources and Environmental Protection Act. The bill would not prevent an aquaculturist from exercising riparian rights, and water discharged into the waters of the state would have to be done under any appropriate permit, if required, issued by the Department of Environmental Quality.

However, aquaculturists could not take wild aquaculture species from the waters of the state unless a permit to do so were obtained from the DNR, and could not release species into the waters of the state that were not an aquaculture facility unless they first obtained an appropriate permit from the DNR. Under the bill, the department would have to consider a permit or registration issued under the bill as equivalent to a gamefish breeders license issued under the Natural Resources and Environmental Protection Act. Any movement, importing, or exporting of aquaculture species would have to be in compliance with the Animal Industry Act.

Registration, permit application. The bill would require an initial application for registration to be submitted to the department at least 60 days before the proposed operation of a facility. The department could not issue an initial registration or permit unless an applicant demonstrated the following:

- * The director, after inspecting a facility, had determined that it met the standards and requirements prescribed by the bill, and that there were barriers in place to prevent the escape of aquaculture species into public waters;

- * The aquaculture species involved in the facility were on the list of approved species;

- * The owner or his or her agent had received from the director a current copy of the "Great Lakes Fish Disease Control Policy and Model Program" published by the Great Lakes Fisheries Commission.

After receiving an initial registration or permit application, the director would have 30 days to inspect the aquaculture facility involved with the application, and would have to issue a

registration/permit within 60 days if he or she determined that a facility conformed to prescribed standards, verified that unlisted aquaculture species were not in the facility, and reviewed and approved research protocols for a proposed research facility permit. Aquaculture facilities in existence before January 1, 1997, would have to obtain registration by January 1, 1999, in order to continue to engage in aquaculture, and anyone engaging in aquaculture beginning on or after January 1, 1997, would have to obtain a registration or permit--or both, if applicable--to engage in aquaculture.

An application could be denied for failure to comply with the bill's provisions, and the department would have to notify an applicant within 60 days of receiving an application why it was denied and what deficiencies needed correcting for a registration or permit to be issued. An applicant, without applying again, could request a second inspection after problems were corrected, but the department could not make more than two preregistration or prepermitting inspections of the same facility per application. An applicant whose permit or registration application was denied could request a hearing under to the Administrative Procedures Act (APA). The department could not return any portion of a registration or permit fee to an applicant who was denied.

A registration or permit issued by the department would have to contain an identifying number and expiration date; the "complete name" and business name, address, and telephone number of its holder; the complete address of the facility to which it applies; the list of species approved for the facility; and the complete name, address, and telephone number of the department contact person for aquaculture. In addition, an aquaculturist could apply on a form provided by the department for a modification of the registration or permit to add or remove approved species.

The department could deny, suspend, revoke, or limit a registration or permit if an applicant, registrant, or permittee failed to comply with, or violated, the bill's provisions or promulgated rules. Proceedings involving a suspension or revocation would have to be conducted pursuant to the APA.

Fees. Under the bill, an applicant would pay a fee based on the type of application involved, as follows:

- * For an initial aquaculture facility registration, \$100;
- * To renew the registration, \$75;
- * For an initial aquaculture research permit, \$250;
- * To renew the permit, \$100.

Renewal applications for either the registration or permit would have to be submitted no later than October 1 of each year, and both would be issued for a period of one year beginning October 1 and ending September 30. Renewals submitted later than October 31 would require submission of initial application and license fees.

Research permit. Under the bill, research conducted on aquaculture species not on the approved list would have to be done under a permit and only within a confinement research facility. Someone who holds this permit could not import species that were the subject of the research unless he or she complied with the Animal Industry Act. The agriculture department director would have to approve the protocol of the species, including disposition, for the proposed research period, and applicants for such permits would have to submit the protocol to the department with initial or renewal permit applications.

Record-keeping, inspections, action. A person registered or permitted under the bill would have to keep and maintain records of production, purchases, or imports in order to establish proof of ownership. Someone transporting aquaculture species would have to produce documentation containing the origin of shipment, copies or documentation of registrations or permits, documentation demonstrating shipping destination, and any other proof that may be required under the Animal Industry Act upon demand of the director or a law enforcement officer.

The department or its duly authorized agent could enter a facility, at all reasonable hours, to inspect and determine if violations were occurring, and to secure samples or specimens of any aquaculture species after paying or offering to pay fair market value for them. An inspection would have to be conducted under generally recognized practices designed not to jeopardize the health of the species. Also, periodic inspections of facilities could be performed to confirm that procedures existed or barriers were in place that could prevent the escape of aquaculture species into the waters of the state; that a facility was complying with requirements set forth in the bill or otherwise required by law; that aquaculture species involved with the facility were on the approved list; and that a facility was following approved protocols and all specimens were accounted for.

The director, notwithstanding other provisions in the bill, could bring an action either to obtain a declaratory judgment that a method, activity, or practice was a violation, or obtain an injunction against someone involved in such a violation, or both.

Rules promulgation. Pursuant to the APA, the director could promulgate rules he or she considered necessary to implement and enforce the bill.

Violations, penalties. A person could not knowingly provide false information "in a matter pertaining to" the bill's provisions, and could not resist, impede, or hinder the director in the discharge of his or her duties under the bill. Someone who violated the bill or rules promulgated under it would be guilty of a misdemeanor, punishable by a fine of at least \$300 or imprisonment for at least 30 days, or both. A court could allow the department to recover reasonable costs and attorney fees incurred in a prosecution that resulted in a conviction.

Upon finding that someone had violated the bill or rules promulgated under it, the director could do any of the following:

- * Issue a warning.

* Impose an administrative fine of not more than \$1,000 for each violation after providing notice and an opportunity for a hearing. Someone aggrieved by such a fine could request a hearing pursuant to the APA.

* Issue an appearance ticket as described and authorized under the Code of Criminal Procedure.

The director would have to advise the attorney general of a person's failure to pay an administrative fine, and the attorney general would have to bring a civil action in a court of competent jurisdiction to recover the fine. Civil penalties collected would be paid to the general fund.

House Bill 5556 would amend the Natural Resources and Environmental Protection Act (MCL 324.45902 and 324.48702) to exempt persons engaged in aquaculture under the provisions of House Bill 5555 from the act's licensing provisions. Currently, the act requires each place of business where game fish are propagated, reared, or possessed for commercial purposes to be licensed. The act's provisions would not apply to the propagation, rearing, possession, or sale of game fish under a registration or permit issued under House Bill 5555.

In addition, the act specifies that all fish, reptiles, amphibians, mollusks, and crustaceans found in the state are state property and may only be taken during special times and in certain ways. The bill specifies that all of these and any other aquaculture species that were propagated, reared, produced, or possessed under a registration or permit issued under House Bill 5555 would not be state property and could be taken, produced, purchased, acquired, lawfully exported or imported, or possessed only in compliance with the provisions of that bill. Furthermore, the DNR would have to consider a registration or permit under House Bill 5555 as equivalent to a game fish breeders license for purposes of obtaining a planting permit under the NREPA.