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BILL



ANALYSIS

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House Bill 5555 (Substitute H-2 as reported without amendment)
House Bill 5556 (Substitute H-1 as reported without amendment)
Sponsor: Representative Mike Green
House Committee: Agriculture and Forestry
Senate Committee: Agriculture and Forestry

Date Completed: 4-29-96

RATIONALE

Aquaculture primarily involves the raising of fish to be used for human consumption, as well as the raising of animals for aquaria, ornamental water plants, and plants used for wetland mitigation. According to the Michigan Department of Agriculture, aquaculture was the fastest growing sector of U.S. agriculture from 1980 to 1990, when the industry grew 265%, with the total production value of aquacultural products in 1990 estimated at \$760 million. The aquaculture industry in Michigan, however, did not experience similar growth in the last decade. Some people believe that State law does not afford Michigan aquaculturists the same privileges and rights as it affords other agricultural enterprises. For example, aquaculture is not recognized as a valid agricultural enterprise nor is it statutorily protected. Furthermore, Michigan law treats captive aquatic species used for aquacultural purposes in the same manner as it treats wild aquatic species, which are considered property of the State. Consequently, according to the Department, aquaculturalists have encountered difficulty in transporting and selling products that have been privately propagated, raised, and harvested. The Department also has pointed out that the statute could be an unconstitutional restriction on interstate commerce. Some people believe that Michigan's contribution to this growing segment of the agricultural industry could increase if aquaculture were established as a licensed and regulated agricultural enterprise in the State, in which aquaculturalists were granted rights and obligations similar to those extended to commercial farmers.

CONTENT

House Bill 5555 (H-2) would create the

"Michigan Aquaculture Development Act" to establish and regulate aquaculture as an agricultural enterprise in the State and to do the following:

- Establish a list of approved species for aquacultural production.
- Prohibit a person from engaging in aquaculture unless he or she obtained a registration from the Department of Agriculture as an aquaculture facility or obtained an aquaculture research permit. The bill also would provide for the denial, suspension, or revocation of a registration or permit under certain circumstances.
- Establish fees for an initial application for or renewal of an aquaculture facility registration and an aquaculture research permit.
- Provide for the inspection by the Department of Agriculture of an aquaculture facility or confinement research facility.
- Establish penalties for violations of the bill or a rule promulgated under it.

The bill would take effect 90 days after being enacted.

House Bill 5556 (H-1) would amend the Natural Resources and Environmental Protection Act (NREPA) to exempt from the Act's licensing requirements persons involved in the propagation, rearing, possession, or sale of game fish pursuant to a registration or permit issued under the proposed Michigan Aquaculture Development Act.

The bill also specifies that fish, reptiles, amphibians, mollusks, crustaceans, and any other aquaculture species propagated, reared, produced, or possessed pursuant to a registration or permit issued under the proposed Act would not be the property of the State and could be taken, produced, purchased, acquired, lawfully exported or imported, or possessed only in compliance with that Act. The Department of Natural Resources (DNR) would have to consider a registration under the proposed Act as equivalent to a game fish breeders license for purposes of obtaining a planting permit under the NREPA.

A detailed description of House Bill 5555 (H-2) follows.

Aquaculture Industry

The Department of Agriculture would be required to administer the proposed Act, and could conduct activities designed to develop and assist the aquaculture industry in the manner provided for by law. ("Aquaculture" would mean the commercial husbandry of aquaculture species on the approved list of aquaculture species, including the culturing, producing, growing, using, propagating, harvesting, transporting, importing, exporting, or marketing of aquacultural products under an appropriate permit or registration. "Aquaculture species" would mean aquatic animal organisms, including fish, crustaceans, mollusks, reptiles, or amphibians reared or cultured under controlled conditions in an aquaculture facility.)

Aquaculture would be an agricultural enterprise and would be considered to be part of the State's farming and agricultural industry. The Department's Director would have to assure that aquaculture was afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises. Aquaculture would be a form of agriculture, and aquaculture facilities and uses would be considered to be a form of agricultural facilities and uses. ("Aquaculture facility" would mean a farm or farm operation engaged in any aspect of aquaculture in privately controlled waters capable of holding all life stages of aquaculture species with a barrier or enclosure to prevent their escape into waters of the State. "Privately controlled waters" would mean waters controlled within ponds, vats, raceways, tanks, and any other indoor or outdoor structure wholly within or on the land of an owner or lessor and used with an aquaculture facility or confinement research facility. Privately controlled waters would include those waters diverted for use in an

aquaculture facility by an aquaculturist exercising his or her riparian rights. "Confinement research facility" would mean a facility holding an aquaculture research permit and enclosed in a secure structure and separated from other aquaculture facilities in which aquaculture species were isolated and maintained in complete and continuous confinement to prevent their escape into the environment and to prevent the release of any possible pathogens into the environment.)

Aquacultural products lawfully taken, produced, purchased, possessed, or acquired from within the State or imported into the State would be the exclusive and private property of the aquaculturist. ("Aquacultural products" would mean any products, coproducts, or by-products of aquaculture species.) The bill specifies that it would not prohibit an aquaculturist from exercising riparian rights for water diversion. Water discharged back into the State's waters would have to be pursuant to any appropriate permit issued by the Department of Environmental Quality, if this permit were required.

An aquaculturist harvesting aquaculture species from a registered aquaculture facility or a permitted confinement research facility would be exempt from size, catch, and possession limits, closed seasons, and any other restriction imposed in Parts 459 (propagation of game fish in private waters) and 487 (sport fishing) of the NREPA.

The bill also specifies that it would not give an aquaculturist authority to take wild species from the State's waters and held in trust in violation of the NREPA. Further, the bill specifies that it would not give an aquaculturist authority to release any aquaculture species into any of the State's waters that were not an aquaculture facility unless the aquaculturist first obtained an appropriate permit from the Director of the DNR. The bill specifies an intent that the DNR would have to consider a registration issued under the bill as the equivalent of a game fish breeders license issued under Part 487 of the NREPA. Any movement, importing, or exporting of aquaculture species would have to comply with the Animal Industry Act for purposes of obtaining a planting permit.

Approved Species

The bill would establish a list of approved species for aquaculture production. Only the aquaculture species on the approved list would be allowed for purposes of aquaculture production. The following types of aquaculture species would qualify for

inclusion on the list of approved species: those that were naturally indigenous within the State's waters; those that had been naturalized within the State's waters; those that could not perpetuate in the State's waters; and, those that were held in a confinement research facility for purposes of research that, on the basis of that research, could be recommended to be included on the list of approved aquaculture species.

Approved freshwater species would be as follows: 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, smallmouth bass, 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.

Approved other aquatic organisms would be: prawn and crayfish. Approved salt or brackish water species would be as follows: brine shrimp, shrimp, mahi-mahi, haddock, cod, halibut, snapper, grouper, red drum, tuna, flounder, pompano, snook, and mackerel.

Aquaculture species whose possession was prohibited under the NREPA, would be prohibited for aquaculture or aquaculture research under the bill.

Registration

A person could not engage in aquaculture unless he or she obtained a registration from the Department of Agriculture as an aquaculture facility, obtained an aquaculture research permit, or were otherwise exempt by rule or law. ("Aquaculture research permit" would mean a permit issued by the Department Director to study and culture aquaculture species not included on the approved list for the evaluation of aquacultural potential and to provide a scientific basis for including the species on the approved list.) If the activity in which the aquaculture facility was engaged were required to be regulated under any act, registration under the bill would not exempt the person or aquaculture facility from

requirements imposed under any local, State, or Federal regulation.

The following would be exempt from registration as an aquaculture facility: retail bait outlets, retail ornamental fish facilities, persons using privately controlled waters for noncommercial purposes, public aquariums or zoos, and portable retail fishing concessions.

A person registered or permitted under the bill would be required to keep and maintain records of production, purchases, or imports to establish proof of ownership. A person transporting aquaculture species would have to produce documentation that contained the origin of shipment, registration or permit copies or documentation, documentation demonstrating shipping destination, and any other proof that could be required under the Animal Industry Act.

An aquaculture facility that existed before January 1, 1997, would be required to obtain a registration and/or permit, if applicable, by January 1, 1999, to continue to engage in aquaculture. Any person engaging in aquaculture beginning on or after January 1, 1997, would be required to obtain a registration and/or permit, if applicable, to engage in aquaculture. A completed initial registration application would have to be submitted to the Department at least 60 days before the proposed operation of the aquaculture facility. The Department could not issue an initial aquaculture facility registration or aquaculture research permit unless an applicant demonstrated the following:

- The facility had been inspected by the Director and he or she had determined that it met the bill's standards and requirements and that there were barriers in place to prevent the escape of aquaculture species into the public waters.
- The aquaculture species involved in the facility was on the list of approved aquaculture 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 Fishery Commission.

Within 30 days of receiving an initial registration or permit application, the Director would be required to inspect the aquaculture facility. If the Director determined that the facility conformed to the Act's standards, verified that unlisted aquaculture species were not in the facility, and reviewed and

approved research protocols in the case of a proposed aquaculture research permit, he or she would have to issue a registration or permit within 60 days of receiving the application. The registration or permit application could be denied for not complying with the bill's requirements. The Department would have to notify an applicant of the reasons for a denial within 60 days after receiving an application. The notice would have to specify the deficiencies to be corrected for a registration or permit to be issued.

Without filing a second application, an applicant could request a second inspection after the specified deficiencies had been corrected. The Department could not make more than two preregistration or permitting inspections of the same facility per application. The applicant could request a hearing pursuant to the Administrative Procedures Act on a denial of a registration or permit. The Department could not return a registration or permit fee or a portion of this fee to an applicant if a registration or permit were denied.

A registration and permit issued by the Department would have to contain the following information: the registration or permit number and expiration date; the complete name, business name, business address, and telephone number of the aquaculture facility registration holder or research permit holder; the complete address of the aquaculture facility or confinement research facility location; the list of aquaculture species approved for the registered or permitted facility; and, the complete name, address, and telephone number of the Department contact person regarding aquaculture.

Research of an aquaculture species not on the approved list would be allowed and would have to be conducted pursuant to an aquaculture research permit in a confinement facility. A person who held an aquaculture research permit could not import aquaculture species that were the subject of the research unless he or she complied with the Animal Industry Act. The Director would have to approve the protocol of the aquaculture species, including disposition, for the proposed research period. The applicant for the aquaculture research permit would have to submit the protocol to the Department with the initial or renewal permit application.

Fees

Applications for an aquaculture facility would have to be accompanied by the following fees:

- \$100 for an initial application for an aquaculture facility registration.
- \$75 for a renewal application for an aquaculture facility registration.
- \$250 for an initial application for an aquaculture research permit.
- \$100 for a renewal application for an aquaculture research permit.

Application for a facility registration or a research permit would have to be submitted yearly by October 1. Each registration and permit would be issued for one year beginning October 1 and ending the following September 30. A renewal submitted later than October 31 would require submission of an initial application and initial license fee. An aquaculturist could apply on a form provided by the Department for a modification of the aquaculture facility registration or a confinement research permit to add or remove aquaculture species.

Inspections

The Department or its duly authorized agent would have to have free access at all reasonable hours to any aquaculture facility or confinement research facility to inspect and determine if the proposed Act were being violated and to secure samples or specimens of any aquaculture species after paying or offering to pay fair market value for a sample or specimen. An inspection would have to be conducted under generally recognized practices designed not to jeopardize the health of the aquaculture species. The Director could periodically inspect a registered aquaculture facility and a permitted confinement facility for the following:

- For registered and permitted facilities, confirmation that there were in place procedures or barriers designed to prevent the escape of aquaculture species into the State's waters and confirmation of compliance with other requirements as set forth in the bill or as required by law.
- For registered facilities, confirmation that the aquaculture species were on the approved list.
- For permitted facilities, confirmation that the facility was following approved protocols and all specimens were accounted for.

A person could not knowingly provide false information in a matter pertaining to the Act and could not resist, impede, or hinder the Director in the discharge of his or her duties under the Act.

Permit Denial, Revocation

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 or rules promulgated under it. A proceeding relative to the suspension or revocation of a registration or permit would have to be conducted pursuant to the Administrative Procedures Act (APA). The Director could promulgate rules he or she considered necessary to implement and enforce the bill, pursuant to the APA.

Penalties

A person who violated the bill or a rule promulgated under it would be guilty of a misdemeanor punishable by a fine of at least \$300 and/or imprisonment for at least 30 days. The court could allow the Department to recover reasonable costs and attorney fees incurred in a prosecution resulting in a conviction for a violation. Upon finding that a person had violated any of the bill's provisions or a rule promulgated under it, the Director could do any of the following: issue a warning; impose an administrative fine of at least \$1,000 for each violation after notice and an opportunity for a hearing; and, issue an appearance ticket as described and authorized by the Code of Criminal Procedure. A person aggrieved by an administrative fine could request a hearing pursuant to the APA.

The Director would have to advise the Attorney General of a person's failure to pay an administrative fine imposed under the bill. The Attorney General would have to bring a civil action in a court of competent jurisdiction to recover the fine. Civil penalties would have to be paid to the General Fund. Notwithstanding any other provisions of the bill, the Director could bring an action to do either or both of the following: obtain a declaratory judgment that a method, activity, or practice was a violation of the bill; and/or obtain an injunction against a person who was engaging in a method, activity, or practice that violated the bill.

MCL 324.45902 & 324.48702 (H.B. 5556)

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

According to the Michigan Aquaculture Association, the total wholesale value of trout and bait fish production in the State in 1992 was estimated at \$20 million, which ranked Michigan in seventh place nationwide in the value of trout sold. The Michigan aquaculture industry represents approximately \$4.5 million in annual trout sales from more than 100 commercial aquaculturalists in the State. Compared with the explosive growth of the aquaculture industry nationwide during the 1980s, however, Michigan's aquaculture industry did not fare as well. Aquaculturists in the State believe that the relatively slower growth occurred because the State's statutes pertaining to fish do not afford the aquaculture industry the same rights and privileges as other agricultural enterprises. For example, under the NREPA, all fish, reptiles, amphibians, mollusks, and crustaceans found in the State are declared the property of the State and can be taken only at times and in a manner as provided in the law. Thus, aquaculturists have encountered difficulties in transporting and selling aquacultural products that they privately propagated, raised, and harvested from their own facilities. Because of the lack of statutory definitions and protections, financial institutions have been reluctant to lend capital to these operations. The bills would establish aquaculture as a legally protected and regulated industry in the State, similar to other agricultural activities, so that members of Michigan's fledgling aquaculture industry could expand their existing operations and contribute to the State's economic growth. With the protections afforded the aquaculture industry under the bills, aquaculturists believe that financial institutions would be more willing to provide loans or other capital to those in the aquaculture industry, which would enable them to expand existing facilities or implement new ideas for raising aquatic species.

Supporting Argument

House Bill 5555 (H-2) would establish a list of approved species for aquaculture production; prohibit a person from engaging in aquaculture, unless he or she obtained a registration or research permit from the Department of Agriculture; and, provide for the inspection by the Department of an aquaculture facility or confinement research facility. By providing guidelines for the possession of captive aquatic species for aquaculture production, the bill would help ensure that aquaculture activities did not harm or threaten the State's environment or its

native aquatic species. In fact, the promotion of this industry could benefit the environment. According to the Michigan Aquaculture Association, aquaculture can economically use municipal waste, waste heat from power plants, and agricultural and fisheries processing residues; help preserve biodiversity and genetic resources for threatened or endangered species; provide habitat for waterfowl; and preserve ecosystem integrity.

Legislative Analyst: L. Arasim

FISCAL IMPACT

It is believed that there are 100 aquaculture businesses in Michigan, which would produce revenue to the State of \$10,000 (100 X \$100) the first year and \$7,500 (100 X \$75) each year thereafter. The Department of Agriculture would have additional licensing and regulating duties, which would be accomplished through an existing program manager and the addition of about a half clerical position and some contractual services, supplies and materials paid from the new revenues. There would be no fiscal impact on local governments.

Fiscal Analyst: A. Rich

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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.