



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

House Bill 4714 (Substitute H-2 as passed by the House)  
House Bill 4715 (Substitute H-3 as passed by the House)  
House Bill 4716 (Substitute H-4 as passed by the House)  
Sponsor: Representative Phillip Pavlov  
House Committee: Natural Resources, Great Lakes, Land Use and Environment  
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 6-20-05

## **CONTENT**

**The bills would amend Part 413 (Transgenic and Nonnative Organisms) of the Natural Resources and Environmental Protection Act to create the Invasive Species Advisory Council and prescribe its duties, and revise the penalties under Part 413 and the violations subject to those penalties.**

The bills are tie-barred to each other and to Senate Bills 211, 212, 213, and 215, which would amend Part 413 of the 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 without a permit.
- Create the "Invasive Species Fund", and require permit fees and fines collected under Part 413 to be deposited into the Fund.

The House bills are described below in further detail.

### **House Bill 4714 (H-2)**

The bill would create the Invasive Species Advisory Council within the Department of Natural Resources (DNR). The Council would have to consist of the Directors of the DNR, the Michigan Department of Agriculture (MDA), and the Department of Environmental Quality (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.

### **House Bill 4715 (H-3)**

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 (as Senate Bill 211 would establish). 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 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 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 DEQ, DNR, MDA, and the Michigan Department of 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.

### **House Bill 4716 (H-4)**

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.

(Section 41303 prohibits a person from possessing or releasing a live prohibited species. Senate Bill 212 (S-3) would amend Section 41303 to prohibit a person, instead, from knowingly possessing a prohibited or restricted species, subject to certain exceptions. The bill also would require a person to notify the DNR, MDA, or DEQ of a prohibited or restricted species under certain circumstances.

Section 41305 currently 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. Senate Bill 213 (S-2) would amend Section 41305 to prohibit a person, instead, from introducing a prohibited or restricted species, or a genetically engineered or nonnative fish, insect, or aquatic plant, without a permit.)

The bill would delete the current penalty, and prescribe the penalties shown in Table 1 for a person who violated Section 41303 or who violated a condition of a permit issued under Part 413.

Table 1

Violation	Type	Fine		Maximum Imprisonment
		Minimum	Maximum	
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 knowingly possessing a restricted or prohibited species, or for possession with intent to damage natural, agricultural, or silvicultural resources would not apply before November 1, 2005, to violations involving species other than fish.

The bill would prescribe the penalties shown in Table 2 for violations of Section 41305.

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 knowing it was restricted or nonnative	Misdemeanor	\$1,000	\$10,000	1 year
Introduction of prohibited species/genetically engineered fish or aquatic plant knowing 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

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

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 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 would not apply to activities authorized under the Michigan Aquaculture Development Act.

Proposed MCL 324.41321 (H.B. 4714)

Proposed MCL 324.41323 (H.B. 4715)  
MCL 324.41309 (H.B. 4716)

Legislative Analyst: Julie Koval

### **FISCAL IMPACT**

These bills, along with Senate Bills 211 (S-2), 213 (S-2), and 215 (S-3), would have an indeterminate fiscal impact on State and local government.

The package 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 and the MDA 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 Section 41303 or 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. Under Senate Bill 215 (S-3), civil fine revenue collected for violations of Part 413 would be deposited into the proposed Invasive Species Fund.

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

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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.