

REGULATION OF NONNATIVE AQUATIC SPECIES

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Senate Bill 1072 (H-1) as adopted by the House

Sponsor: Sen. Mike Kowall

House Committee: Natural Resources

Senate Committee: Natural Resources

Complete to 12-14-18

Analysis available at

<http://www.legislature.mi.gov>

(Enacted as Public Act 451 of 2018)

SUMMARY:

Senate Bill 1072 would amend Part 13 (Permits) and Part 413 (Transgenic and Nonnative Organisms) of the Natural Resources and Environmental Protection Act (NREPA) to regulate the sale of nonnative aquatic species.

The bill would amend Part 13 to update terminology and definitions that reflect the changes made in Part 413 relating to permits.

Part 413 currently regulates prohibited and restricted organisms, including harvesting, possessing, transporting, and selling such species.

The bill would update the definition of *aquatic plant* and add that the definition applies to all of Part 413.

Aquatic plant would mean a submergent, emergent, obligate wetland, facultative wetland, or floating-leaf plant or fragment thereof, including a seed or other propagule, and specifically exclude wild rice (*Zizania aquatica* or *Zizania palustris*).

Listing and reviewing prohibited or restricted species

The *relevant commission* currently lists nonaquatic and aquatic species as either prohibited or restricted if certain requirements are met, including a determination of whether the organism has the potential to harm human health or natural, agricultural, or silvicultural resources, or if effective management or control techniques for the organism are not available. The bill would amend this process by requiring that the determination be based on a risk assessment.

Relevant commission, *relevant department*, or *relevant director* means either the Natural Resources Commission (NRC), the Department of Natural Resources (DNR), or the director of the DNR, respectively, for species other than a plant or insect, but including a wiggler; or the Commission of Agriculture and Rural Development, the Department of Agriculture and Rural Development (MDARD), or the director of MDARD, respectively, for plant species or insect species, other than a wiggler. [Wigglers are mayfly nymphs or aquatic insect nymphs or larvae.]

Currently, the relevant department conducts reviews of aquatic species for listing as a prohibited or restricted species. Reviews are subject to certain conditions and standards, but the bill would amend these to do the following:

- Remove outdated requirements that are no longer applicable.
- Add that the relevant department must also review aquatic animals that have been *delisted* as injurious to wildlife and each aquatic plant that has been *removed from designation* as a noxious weed within 180 days after the change in federal listing or designation.

- Remove a provision allowing the relevant department to review a previously unreviewed aquatic species petitioned for listing as a permitted species for which the risk assessment process indicated a high invasive species risk.

Watercraft and baitfish

Part 413 currently regulates boats relating to aquatic plants.

The bill would replace boating references with ***watercraft***, watercraft equipment, and watercraft trailer and would prohibit the transportation of any watercraft over land without first removing all drain plugs from bilges, ballast tanks, and live wells; draining all water from any live wells and bilge; and ensuring that the watercraft, trailer, and any transporting device are free of aquatic organisms, including plants. A law enforcement officer would be able to order an owner or operator to comply with the new requirement.

Watercraft would mean any conveyance used or designed for navigation on water, including, but not limited to, any vessel, ship, boat, motor vessel, steam vessel, vessel operated by machinery, motorboat, sailboat, barge, scow, tugboat, and rowboat.

The bill also would prohibit a person from releasing baitfish into any waters in Michigan. Additionally, a person who collects fish could not use the fish as bait or cut bait, except in the inland lake, stream, or Great Lake where the fish was caught—or in a connecting waterway of the inland lake, stream, or Great Lake where the fish was caught if the fish could freely move between the original location of capture and the location of release.

A person who catches fish, other than baitfish, in a lake, stream, Great Lake, or connecting waterway would only be able to release the fish where it was caught—or in a connecting waterway of where it was caught if it could freely move between the original location and the location of release.

Part 413 also currently requires the DNR to post notices of regulations and prohibitions. The bill would require those notices to include the new regulations described above, as well as the definition of aquatic plant. The owner of a public boat access site would also have to include the regulations and definition in the notice he or she must post at the public boating access site.

Nonnative aquatic species registration

Generally, a person is prohibited from importing, selling, or offering to sell any live aquatic species. The bill would remove this general prohibition to instead require a registration under Part 13 for selling, offering to sell, or possessing for the purpose of selling or offering to sell a live, nonnative aquatic species. A registration would be nontransferable, expire December 31 of the year it was issued, and be separately required for each place where the sale, offer, or possession occurs.

In addition to the exemption provided under Section 41309(14) for (which specifies that Part 413 does not apply to activities authorized under the Michigan Aquaculture Development Act), the above prohibitions would also not apply to the following:

- Activities authorized under Part 459 (Propagation of Game Fish in Private Waters).
- The sale or offer for sale of aquatic species, other than prohibited species or restricted species, for human consumption.

- The one-time sale or offer for sale of aquatic species if the sale or offer involved not more than 20 organisms of a single species.

To obtain a registration, a person would have to submit an application to the DNR containing the name and address of the applicant, the description of the premises where the aquatic species are to be sold or offered for sale, and any relevant additional information required by the DNR. The department would have to issue a registration to a registrant.

A registrant would be required to do *all* of the following:

- Maintain the registration certificate conspicuously posted at the registered location.
- Maintain electronic records of the species and number of individuals of each species purchased (but not for species that are unable to survive in freshwater or in Michigan's climate), the date of purchase or sale, and other relevant information as required by the department, but only until a report is submitted.
- By March 1 each year (beginning in 2020), submit to the DNR a report consolidating the previously stated electronic records for the prior calendar year. However, the first submission would have to cover records maintained since the effective date of the bill.
- Notify the department if the registrant sells or offers for sale a live aquatic species not previously listed in a submitted report (but not for species that are unable to survive in freshwater or in Michigan's climate). If notified under this provision, the department would have to conduct a risk assessment of the aquatic species and take appropriate action.

The bill would also prohibit a person from conducting a trade show for selling or trading aquatic species unless the person had given the DNR at least 10 days' advance written notice of the time, date, and location of the trade show.

Violations

A person who violated the provisions in the bill related to nonnative aquatic species sales registration, or rules promulgated to implement those provisions, could be ordered to pay a civil fine of up to \$1,000. Subsequent violations could result in a misdemeanor punishable by imprisonment for up to 90 days, a fine of up to \$1,000, or both.

In addition to the above penalty, a court or the DNR could suspend or revoke a registration. Additionally, the DNR could refuse to register the person, but only after providing an opportunity for a hearing under the Administrative Procedures Act.

If a registration were suspended or revoked as outlined above, the aquatic species held under the registration would have to be disposed of in a manner approved by the DNR.

Inspections

Under the bill, the DNR or MDARD would have free access to any trade show described above and to any site at all reasonable hours, including an aquaculture facility, but only if there were probable cause to believe that activities subject to the permitting or registration requirements of this part took place. Access could be for any of the following purposes:

- To inspect and determine if this act has been violated. Inspection would be conducted under generally recognized practices designed to not jeopardize the health of the aquatic species.
- To secure (after paying or offering to pay fair market value) samples or specimens of any aquatic species.

Repealer

The bill would repeal Section 41302a, which currently requires that both the DNR and MDARD create a permitted species list for aquatic species when it is the relevant department. The section also specifies how to perform a risk assessment on an aquatic plant.

Finally, the bill would update or remove outdated terminology and references throughout Part 413.

The bill would take effect 90 days after enactment.

MCL 324.1301 et al.

FISCAL IMPACT:

Senate Bill 1072 would increase costs for the Department of Natural Resources by requiring the department to review applications from and issue registrations to prospective nonnative aquatic species dealers. The magnitude of this potential cost increase is unclear, as the number and extent of these applications may vary.

The bill would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of people who violate provisions added by the bill and are ordered to pay civil fines or are convicted of misdemeanors. The fiscal impact on local court systems would depend on the number of new prosecutions and how court caseloads and related administrative costs are affected. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision, and how the costs are financed, vary by jurisdiction. Under Sections 41311 and 41309 of NREPA, civil fine revenue would be deposited into the Invasive Species Fund. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

The following organizations indicated support for the bill:

- Department of Natural Resources (12-5-18)
- Michigan Nursery and Landscape Association (12-5-18)
- Michigan Waterfront Alliance (12-5-18)
- Preuss Pets (12-5-18)

A representative of The Nature Conservancy testified in opposition to the bill. (12-5-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.