



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1072 (as introduced 6-12-18)
Sponsor: Senator Mike Kowall
Committee: Natural Resources

Date Completed: 9-26-18

CONTENT

The bill would amend Part 13 (Permits) and Part 413 (Transgenic and Nonnative Organisms) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- **Require the relevant commission to base its determination of a species's satisfaction of certain requirements for listing as a prohibited species or restricted species on a risk assessment.**
- **Require the relevant department to review new listings or delistings within 180 days after the change in Federal listing or designation.**
- **Prohibit a person from transporting any watercraft over land without first draining all water from any live wells and bilge, and ensuring that the watercraft was free of aquatic organisms.**
- **Prohibit a person from releasing baitfish in Michigan water or use nonnative baitfish in Michigan water.**
- **Prohibit a person from selling or offering for sale or possessing for the purpose of sale or offering for sale a live, nonnative aquatic species except under a nonnative aquatic species sales registration issued by the Department of Natural Resources (DNR).**
- **Prescribe civil, criminal, and administrative penalties for a registrant's violation.**
- **Allow the DNR or Michigan Department of Agriculture and Rural Development (MDARD) to have free access at all reasonable hours to a site and to any trade show to inspect and secure samples or specimens.**

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

The bill would take effect 90 days after its enactment.

Determination of Listing; Risk Assessment

Under the Part 413, the relevant commission may by order add to or delete a species from the list of prohibited or restricted species. ("Relevant commission", "relevant department", or "relevant director" means the following:

- With respect to a species other than a plant or an insect, except a wiggler, the Natural Resources Commission, DNR, or the Director of the DNR, respectively.

- With respect to a plant species or an insect species, other than a wiggler, the Commission of Agriculture and Rural Development, MDARD, or the Director of MDARD, respectively.

Under the bill, the terms, with respect to a species other than a plant or insect, but including a wiggler, would mean the NRC, DNR, or the Director of the DNR, respectively.)

The relevant commission must list a species (aquatic or nonaquatic) as a prohibited species or restricted species if the relevant commission determines that certain requirements are met. For a prohibited species, also must determine that any of the following apply:

- The organism has the potential to harm human health or to *severely* harm natural, agricultural, or silvicultural resources.
- Effective management or control techniques for the organism are not available.

For the purposes of listing a species as a restricted species, in addition to other requirements, the relevant commission must determine if any of the following apply:

- The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources.
- Effective management or control techniques for the organism are not available.

Under the bill, for the purposes of listing a species as a prohibited species or restricted species, the determination of whether or not the above applied would have to be based on a risk assessment.

Review for Listing or Delisting Aquatic Species

Part 413 prescribes certain requirements for a review by the relevant department of an aquatic species for listing or delisting. Specifically, the relevant department must review each aquatic animal listed as injurious wildlife under the Lacey Act, and each aquatic plant designated as a noxious weed under the Plant Protection Act within 180 days after the change in Federal listing or designation. The bill would require the relevant department to review new listings or delistings on the Federal lists identified above within 180 days after the change in Federal listing or designation.

(The Lacey Act generally prohibits a person from importing, exporting, selling, acquiring fish, wildlife, or plants that are taken, possessed, transported, or sold, in violation of U.S. or Indian law, or interstate or foreign commerce involving fish, wildlife, or plants taken possessed or sold in violation of state or foreign law. The Plant Protection Act is a Federal law enacted to prevent the importation, exportation, and movement of plant pests.)

Under Part 413, the relevant department must review each aquatic species that has the potential to harm human health or natural, agricultural, or silvicultural resources for listing as a prohibited species or restricted species even if the species is not currently on either Federal list described above. The relevant department also is authorized 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. The bill would delete the latter provision.

Nonnative Aquatic Species & Watercraft

Part 413 prohibits a person from placing a boat, boating equipment, or boat trailer in the water of the State if the boat, boating equipment, or boat trailer has an aquatic plant attached. Where the Act refers to "boat", "boating equipment", or "boat trailer", the bill would refer to

"watercraft", "watercraft equipment", or "watercraft trailer" respectively. ("Boat" means a vessel as defined in Section 80104: every description of watercraft used or capable of being used as a means of transportation on water. Under the bill, "watercraft" would mean any contrivance used or designed for navigation on water, including 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 transporting any watercraft over land without first doing both of the following:

- Draining all water from any live wells and bilge.
- Ensuring that the watercraft, trailer, and any conveyance used to transport the watercraft or trailer were free of aquatic organisms, including plants.

Under the bill, as is currently the case, a law enforcement officer could order the owner or operator of a watercraft, watercraft equipment, watercraft trailer, or any conveyance used to transport the watercraft or trailer to transport any watercraft over land. The owner or operator would have to obey the order.

The bill would prohibit a person from releasing baitfish in any waters of the State. A person who collected fish could not to 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 caught fish other than baitfish in a lake, stream, Great Lake, or connecting waterway would have to release the fish in the lake, stream, or Great Lake where the fish was caught, or in a connecting waterway of the 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.

Under Part 413, the DNR must prepare a notice that contains a summary these provisions and must make copies of the notice available to owners of public boating access sites. The Department must include the notice in relevant Department publications and post the notice on its website. The bill would require the Department include the definition of aquatic plant in the notice.

(Under the Act, a person who violates the provisions and requirements related to nonnative aquatic species and watercraft is responsible for a State civil infraction and may be ordered to pay a maximum civil fine of \$100.)

Nonnative Aquatic Species Sales Registration

The bill would add Section 41329 to prohibit a person from selling or offering for sale or possessing for the purpose of sale or offering for sale a live, nonnative aquatic species except as authorized by a nonnative aquatic species sales registration issued by the DNR. A registration would be nontransferable and would expire on December 31 of the year for which it was issued. A separate registration would be required for each place where one of these activities occurred.

The bill also would 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.

In addition to the exemption provided under Section 41309(14) (which species that Part 413 does not apply to activities authorized under the Michigan Aquaculture Development Act), the above prohibitions would not apply to activities authorized under Part 459 (Propagation of Game Fish in Private Waters) of NREPA or the sale or offering for sale aquatic species, other than prohibited species or restricted species, for human consumption.

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

A registrant would have to maintain the registration certificate conspicuously posted at the registered location at all times. A registrant also would have to maintain electronic records of all of the following:

- The species and number of individuals of each aquatic species purchased and sold.
- The date of purchase or sale.
- The name and address of people to whom any aquatic species were sold other than at retail and from whom aquatic species were purchased.
- Other relevant information as required by the Department.

A registrant would have to make the electronic records available to the DNR upon request.

Penalties

A person who violated provisions in the bill related to a nonnative aquatic species sales registration or rules promulgated under Part 413 to implement those provisions could be ordered to pay a civil fine of not more than \$1,000. An individual who violated the provisions or rules related to a registration a second or subsequent time would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both. In addition to the sanctions above, the court could suspend or revoke a registration.

If a person violated provisions in the bill related to a registration or rules promulgated under Part 413 to implement those provisions, the DNR could suspend or revoke the person's registration or refuse to register the person after providing an opportunity for a hearing under the Administrative Procedures Act. If a registration were suspended or revoked, the aquatic species held under the registration would have to be disposed of only in a manner approved by the DNR.

Inspection

The DNR or MDARD would have free access at all reasonable hours to any site, including an aquaculture facility, as defined under the Michigan Aquaculture Development Act, if there were probable cause to believe that activities subject to the permitting or registration requirements of Part 413 took place, and to any trade show described above for any of the following purposes:

- To inspect and determine if the Act were being violated.
- To secure samples or specimens of any aquatic 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 aquatic species.

FISCAL IMPACT

To the extent that changes in the bill lead to increased misdemeanor arrests and prosecutions, it could increase resource demands on law enforcement, court systems, and jails. Any increased civil infraction and penal fine revenue would be dedicated to public libraries.

Fiscal Analyst: Abbey Frazier
Josh Sefton

SAS\S1718\s1072sa

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.