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BILL



ANALYSIS

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Senate Bill 1072 (as enacted)
Sponsor: Senator Mike Kowall
Senate Committee: Natural Resources
House Committee: Natural Resources

PUBLIC ACT 451 of 2018

Date Completed: 4-16-19

CONTENT

The bill amended 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 is free of aquatic organisms.**
- **Prohibit a person from releasing baitfish in Michigan water or using 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The bill also repealed Section 41302a. (Section 41302a required 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 specified how to perform a risk assessment on an aquatic plant.)

The bill took effect on March 21, 2019.

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. (Formerly, "relevant commission", "relevant department", or "relevant director" meant, in part, 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. Under the bill, the terms mean, with respect to a species other than

a plant or insect, *but including* a wiggler, 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, the relevant commission 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 an aquatic or nonaquatic 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 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 must be based on a risk assessment.

Review for Listing or Delisting Aquatic Species

Part 413 requires the relevant department to review each aquatic species 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 listing or delisting. The bill requires 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. Previously, the relevant department also was 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 deleted the latter provision.

Nonnative Aquatic Species & Watercraft

The bill prohibits a person from placing a watercraft, watercraft equipment, or watercraft trailer in the water of the State if the watercraft, watercraft equipment, or watercraft trailer has an aquatic plant attached. Part 413 formerly referred to "boat", "boating equipment", and "boat trailer", respectively. (Under the bill, "watercraft" means any conveyance 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. "Aquatic plant means a submergent, emergent, obligate wetland, facilitative wetland, or

floating-leaf plant or a fragment thereof, including a seed or other propagule. The term does not include wild rice.)

The bill also prohibits a person from transporting any watercraft over land without first doing all of the following:

- Removing all drain plugs from bilges, ballast tanks, and live wells.
- 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 was previously the case, a law enforcement officer may 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 must obey the order.

The bill prohibits a person from releasing baitfish in any waters of the State. A person who collects fish may 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 must release the fish in only one of the following:

- The lake, stream, or Great Lake where the fish was caught.
- 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 requires the Department also to 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 prohibits 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 is nontransferable and expires on December 31 of the year for which it is issued. A separate registration is required for each place where one of these activities occurred.

The bill also prohibits a person from conducting a trade show for selling or trading aquatic species unless the person has 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 specifies that Part 413 does not apply to activities authorized under the Michigan Aquaculture Development Act), the

above prohibitions do 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. The exemption also does not apply to the one-time sale or offering for sale of aquatic species if the sale or offering for sale involves not more than 20 organisms of a single species.

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

A registrant must maintain the registration certificate conspicuously posted at the registered location at all times. A registrant also must maintain, until submitted to the DNR, electronic records of all of the following:

- The species and number of individuals of each aquatic species purchased (unless the species is unable to survive in freshwater or in the State's climate as determined based on guidance developed by the relevant department).
- The date of purchase or sale.
- Other relevant information as required by the Department.

A registrant must, by March 1 of each year, beginning in 2020, submit to the DNR a report consolidating the electronic records listed above for the previous calendar year. However, the first submission must cover records maintained since March 21, 2019.

A registrant also must notify the DNR if he or she sells or offers for sale a live aquatic species not previously listed in a submission above. The Department is required to conduct a risk assessment of the aquatic species and take appropriate action. These requirements do not apply to species that are unable to survive in freshwater or in the State's climate as determined based on guidance developed by the relevant Department.

Penalties

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

If a person violates provisions in the bill related to a registration or rules promulgated under Part 413 to implement those provisions, the DNR may 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 is suspended or revoked, the aquatic species held under the registration must be disposed of only in a manner approved by the DNR.

Inspection

The DNR or MDARD must have free access at all reasonable hours to any site, including an aquaculture facility, as defined under the Michigan Aquaculture Development Act, if there is probable cause to believe that activities subject to the permitting or registration requirements

of Part 413 have taken place, and to any trade show described above for any of the following purposes:

- To inspect and determine if the Act is being violated.
- To secure samples or specimens of any aquatic species after paying or offering to pay fair market value for them.

An inspection must be conducted under generally recognized practices designed not to jeopardize the health of the aquatic species.

MCL 324.1301 et al.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

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

Fiscal Analyst: Josh Sefton

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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.