



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 795, 796, and 797 (as enacted)
Senate Bills 799 and 800 (as enacted)
Sponsor: Senator Mike Kowall (S.B. 795)
Senator Arlan Meekhof (S.B. 796)
Senator Phil Pavlov (S.B. 797)
Senator Tom Casperson (S.B. 799)
Senator Howard Walker (S.B. 800)

PUBLIC ACTS 537, 538, & 539 of 2014
PUBLIC ACTS 540 & 541 of 2014

Senate Committee: Natural Resources, Environment and Great Lakes
House Committee: Natural Resources

Date Completed: 2-17-15

CONTENT

Senate Bill 795 amends Part 413 (Transgenic and Nonnative Organisms) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Establish criteria for the listing of an aquatic species as a prohibited or restricted species separate from the criteria that apply to nonaquatic species.
- Establish requirements applicable to the Department of Natural Resources (DNR) or the Michigan Department of Agriculture and Rural Development (MDARD) (the "relevant department") for the review of aquatic species to be added to or deleted from the prohibited and restricted lists.
- Authorize the relevant Department Director to issue an emergency order designating an organism as prohibited or restricted for up to 90 days, under certain circumstances.
- Authorize the relevant Department to issue an order prescribing conditions for the harvest, possession, and transport of naturalized organisms of an aquatic restricted species.
- By April 1, 2017, require the DNR and MDARD to create a list of permitted aquatic species.
- Provide for additions to the permitted species list based on a risk assessment, and allow a person involved in the commercialization or sale of aquatic species to petition the relevant Department to review and add a new species to the list.
- After initial establishment of the permitted list, prohibit a person from importing, selling, or offering to sell any live aquatic species that is not on that list.
- Require the State to compensate at fair market value a person involved in the commercialization or sale of an aquatic species that is lawfully traded in Michigan by April 1, 2015, if the species is later placed on the prohibited or restricted species list.
- Provide that a vehicle, equipment, or other property used in a criminal violation of Part 413 involving an aquatic species is subject to seizure and forfeiture.

Senate Bill 800 amends Parts 413, 473 (Commercial Fishing), and 487 (Sport Fishing) of NREPA to do the following:

- Increase the penalties for the illegal possession or introduction of a prohibited aquatic species, if the offense is committed knowingly.
- Prescribe civil penalties for a person who imports or sells a species not on the list of permitted aquatic species created under Senate Bill 795.

- **Require a court to order a one-year suspension of a person's commercial or sport fishing license or permit, if the person commits a criminal violation of Part 413 or sells a prohibited or restricted aquatic species, and require permanent revocation for a second violation.**
- **Prohibit the DNR from issuing a license or permit to a person whose license or permit is suspended or revoked for the period provided in the court order, if the DNR maintains a database of suspensions or revocations.**
- **Establish conditions for the reinstatement of a suspended license or permit, including payment to the DNR of a \$125 reinstatement fee.**

Senate Bill 796 amends the sentencing guidelines in the Code of Criminal Procedure to reflect the changes under Senate Bill 800 regarding the felony penalties for violations involving aquatic species.

Senate Bill 797 amends the Revised Judicature Act to include a criminal violation of Part 413 of NREPA among the crimes subject to the Act's provisions regarding the seizure and forfeiture of property.

Senate Bill 799 amends the Administrative Procedures Act to provide that a requirement that a person whose license is to be suspended or revoked be given an opportunity to show compliance with all lawful requirements for retention of the license, does not apply with regard to a commercial or sport fishing license or permit suspended or revoked under Senate Bill 800.

The bills will take effect on April 15, 2015.

Senate Bill 795

Designation of Prohibited & Restricted Species

Part 413 prohibits a person from knowingly possessing or introducing a live organism that is a prohibited or restricted species, subject to certain exceptions, and prescribes penalties for a violation of the prohibition (as described below). The definitions of "prohibited species" and "restricted species" include certain aquatic plant, bird, crustacean, fish, insect, mammal, and mollusk species, including a hybrid or genetically engineered variant of the species, or the listed species' fragments, seeds, or eggs, as applicable. Additionally, the Natural Resources Commission and the Agriculture and Rural Development Commission may by order add to or delete from the lists of prohibited and restricted species. The relevant Commission must list a species as prohibited or as restricted if it makes certain determinations specified in Part 413.

Under the bill, "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 DNR Director, respectively.
- With respect to a plant or insect species, other than a wiggler, the Agriculture and Rural Development Commission, MDARD, or the MDARD Director, respectively.

(The bill defines "wiggler" as an aquatic egg, nymph, or larva of an insect. Except as used in that definition, "aquatic" describes an amphibian, crustacean, fish, mollusk, reptile, wiggler or aquatic plant.)

The bill requires the relevant Commission to list a nonaquatic species as prohibited if it determines the following:

- The organism is not native.
- The organism is not naturalized in Michigan or, if naturalized, is not widely distributed.

- The organism has the potential to harm human health or to severely harm natural, agricultural, or silvicultural resources; and/or effective management or control techniques are not available.

Previously, these criteria applied to the decision to list any species as prohibited.

(Under the bill, "nonaquatic" describes a bird, insect other than a wiggler, or mammal. "Native" means indigenous to any location in Michigan.)

The bill requires the relevant Commission to list a nonaquatic species as restricted if it determines the following:

- The organism is not native.
- The organism is naturalized and widely distributed in Michigan.
- The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources; and/or effective management or control techniques are available.

Previously, these criteria also applied to any species.

The bill requires all of the following criteria to be met for an aquatic species to be listed as prohibited:

- The organism is not native or is genetically engineered.
- The organism is not naturalized in Michigan or, if naturalized, is not widely distributed.
- The organism has the potential to harm human health or to severely harm natural, agricultural, or silvicultural resources; and/or effective management or control techniques are not available.

For an aquatic species to be listed as restricted, the bill requires that all of the following conditions are met:

- The organism is not native.
- The organism is naturalized in Michigan.
- The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources; and/or effective management or control techniques are available.

Additionally, by April 15, 2016, the bill requires the relevant Department to review each aquatic species listed as prohibited or restricted as of April 15, 2015. By April 15, 2016, the relevant Department also must review each aquatic animal listed as injurious wildlife under the Federal Lacey Act and each aquatic plant designated as a noxious weed under the Federal Plant Protection Act for listing as a prohibited or restricted species. The relevant Department must review new listings or delistings on the Federal lists within 180 days after the listing or delisting. Also, the bill requires the relevant Department to review each aquatic species that has the potential to harm human health or natural, agricultural, or silvicultural resources for listing as prohibited or restricted, even if the species is not on either Federal list.

The bill permits the relevant Department to review a previously unreviewed aquatic species petitioned for listing as a permitted species for which the risk assessment process prescribed in the bill indicates a high invasive species risk. The relevant Department also may review other aquatic species for listing as prohibited or restricted species.

The bill authorizes the relevant Director to issue an emergency order designating an organism as a prohibited or restricted species if the organism has the potential to harm human health or to severely harm natural, agricultural, or silvicultural resources. An emergency order will be effective for up to 90 days. With regard to an emergency order, the relevant Department must do all of the following:

- Post the proposed order on its website and otherwise publicize the order in a manner that ensures that interested people are given notice of it, the reasons for it, and its proposed effective date.

- Give a copy of the proposed order to each member of the standing committees of the Senate and the House of Representatives that consider legislation pertaining to conservation, the environment, recreation, tourism, or natural resources.
- Post the final emergency order on its website.

The bill also allows the relevant Department to issue an order setting forth the conditions under which naturalized organisms of an aquatic restricted species may be harvested, possessed, and transported.

Permitted Species & Risk Assessment

Before the Natural Resources Commission issues an order to add a species to or delete a species from the prohibited or restricted list, it must consult with MDARD; and before the Agricultural and Rural Development Commission issues such an order, it must consult with the DNR. Under the bill, by April 15, 2017, after consultation and notice in the same manner as required of the Commissions with regard to the prohibited and restricted lists, the DNR and MDARD each must create a permitted species list for aquatic species for which it is the relevant Department. Together, these lists will compose the permitted aquatic species list. The initial list must consist of all of the following:

- All species that are on the list of approved species for aquaculture under the Michigan Aquaculture Development Act as of April 15, 2015, or that are approved under a research permit under that Act.
- All native aquatic species, other than aquatic plants, that by April 15, 2015, were, as live organisms, lawfully in commercial trade in Michigan (as determined by the DNR in consultation with affected industries by April 15, 2016).
- All nonnative aquatic species, other than aquatic plants, that, by April 15, 2015, were, as live organisms, lawfully in wide commercial trade in Michigan for at least five years (as determined by the DNR in consultation with affected industries by April 15, 2016), if there is no evidence of the species causing harm to human health or to natural, agricultural, or silvicultural resources in the Great Lakes region.
- All nonnative aquatic species, other than aquatic plants, that, by April 15, 2015, were, as live organisms, lawfully in commercial trade in Michigan, that do not meet the requirements described above, but are approved by the DNR based on a risk assessment performed by April 15, 2017.
- All aquatic plants, native or nonnative, that, by April 15, 2015, were, as live organisms, lawfully in commercial trade in Michigan (as determined by MDARD in consultation with affected industries, including the horticulture industry, by April 15, 2016).

To perform a risk assessment on an aquatic species other than an aquatic plant, the DNR must use the risk assessment aquatic protocol developed by the U.S. Fish and Wildlife Service, Aquatic Fisheries and Resources Program.

To perform a risk assessment on an aquatic plant, MDARD must use the plant protection and quarantine (PPQ) weed risk assessment protocol developed by the U.S. Department of Agriculture's PPQ, Plant Epidemiology, and Risk Analysis Laboratory, Raleigh, North Carolina. Each cultivar, variety, or hybrid must be assessed separately.

Each Commission periodically must review and may modify or replace the protocol by order consistent with the purposes of Part 413.

If an aquatic species that was not previously a prohibited or restricted species does not pass the risk assessment for permitted species and is reviewed by the relevant Department and placed on the prohibited or restricted species list, the State must compensate at fair market value any person involved in the commercialization or sale of an aquatic species that possesses live organisms of that prohibited or restricted species for the loss of that species product in that person's possession in Michigan when the species was placed on the prohibited or restricted list.

Aquatic species that are, on April 15, 2015, as live organisms, not in commercial trade in Michigan or are unknown to or unanticipated by the relevant Department may be added to the permitted species list upon evaluation using the applicable risk assessment procedure.

After creation of the initial permitted species list, any person involved in the commercialization or sale of aquatic species may petition the relevant Department to review and add a new aquatic species to the permitted list for future commercialization and sale in Michigan. The petitioner will have the burden of demonstrating that the species passes the risk assessment. The petitioner must provide information requested by the relevant Department to perform the risk assessment. The Department must consider any previous background materials generated as a result of a Federal agency review and identified by the petitioner. The petitioner must pay a reasonable fee that does not exceed the Department's administrative costs to review the petitioned species. The Department also may review on its own initiative an aquatic species for placement on the permitted species list.

Before initial establishment of the permitted aquatic species list, the bill prohibits a person from importing, selling, or offering to sell any live aquatic species unless it was lawfully in commercial trade in Michigan on April 15, 2015. After initial establishment of the list, a person may not import, sell, or offer to sell any live aquatic species that is not listed.

Possession of Prohibited Species

Part 413 prohibits a person from knowingly possessing a live organism that is a prohibited or restricted species, except under any of the following circumstances:

- The person intends to present the specimen for identification or similar purposes to a person who is a certified or registered pesticide applicator, to a public or private institution of higher education, or to the DNR, MDARD, or any other State, local, or Federal agency with responsibility for the environment, natural resources, or agriculture.
- The person has been presented with a specimen of a prohibited or restricted species for identification or similar purposes.
- The person possesses the species in conjunction with otherwise lawful activity to eradicate or control it.

Previously, a person also could possess a prohibited or restricted species, other than an insect or plant species, pursuant to a permit issued for education or research purposes by the DNR. Under the bill, a person may possess a prohibited or restricted species pursuant to such a permit issued by the relevant Department.

If the prohibited or restricted species is a plant species or an insect--other than a wiggler, under the bill--possession is allowed pursuant to a permit issued for education or research purposes by the U.S. Department of Agriculture.

The bill also allows possession of an aquatic restricted species in compliance with an order issued by the relevant Department setting forth the conditions under which naturalized organisms of an aquatic restricted species may be harvested, possessed, and transported.

Introduction of Prohibited Species

Part 413 prohibits a person from introducing a prohibited species, a restricted species, or a genetically engineered or nonnative aquatic plant, bird, crustacean, fish, mammal, or mollusk, unless the introduction is authorized by a permit issued by the DNR or MDARD, as applicable. The bill includes a genetically engineered or nonnative insect, except a wiggler.

Seizure & Forfeiture of Property

Under the bill, a vehicle, equipment, or other property used in a criminal violation of Part 413 or a rule promulgated or permit issued under it that involves an aquatic species is subject to seizure

and forfeiture as provided in Chapter 47 of the Revised Judicature Act (which Senate Bill 797 amended).

Senate Bill 800

Penalties

Possession. A person who knowingly violates the prohibition against possession of a prohibited species or who willfully or in a grossly negligent manner violates a condition of a permit issued under Part 413 is guilty of a felony and may be imprisoned for a maximum of two years and must be fined at least \$2,000 but not more than \$20,000.

Under the bill, this penalty applies to a violation involving a prohibited species other than an aquatic species. For a violation involving a prohibited aquatic species, the person may be imprisoned for a maximum of three years and must be fined at least \$2,000 but not more than \$100,000.

Introduction. If a person violates the prohibition against introduction of a prohibited species, the person is guilty of a felony and may be imprisoned for a maximum of two years and must be fined at least \$2,000 but not more than \$20,000. Under the bill, this penalty applies to a violation involving a prohibited species other than an aquatic species. For a violation involving an aquatic species, the person may be imprisoned for a maximum of three years and must be fined at least \$2,000 but not more than \$100,000.

Previously, this provision referred to introduction by a person who knew or should know the species' identity. The bill refers instead to a person who has actual or constructive knowledge of a species' identity.

Import/Sale of Live Aquatic Species. Under Part 413, a person who sells or offers to sell a restricted species is subject to a civil fine of at least \$2,000 and not more than \$20,000. Under the bill, this penalty also applies to a person who imports or sells a live aquatic species not on the list of permitted species established under Senate Bill 795.

Permit/License Suspension

Under the bill, if a person commits a criminal violation of Part 413 or a rule or permit under Part 413, or knowingly sells or offers to sell a species that is not on the permitted list, and the violation involves a prohibited aquatic species, the court must order the suspension for one year of any commercial fishing license or permit under Part 473 or any sport fishing license under Part 487 issued to the person. The person is not be eligible to be issued any such license or permit for one year. If the remaining term of an existing license or permit is less than one year, the court must order that the license or permit be revoked and that the person not be eligible to be issued any such license or permit for one year. For a second violation, the court must order revocation of the license or permit and the person's permanent ineligibility for such a license or permit.

An order under these provisions is self-effectuating. The clerk of the court must send a copy of the order to the DNR.

If a license or permit is ordered to be suspended or revoked and if the DNR maintains a database of suspensions or revocations of licenses under Part 473 or 487, the Department may not issue a license under Part 473 or 487, as applicable, to the person for the period provided in the order.

If a license or permit is suspended, the suspension will remain in effect until the suspension period set forth in the court order has elapsed and the person pays the DNR a reinstatement fee of \$125. Unless a person's license or permit is otherwise suspended, revoked, or denied, it will be reinstated immediately when these conditions are satisfied.

Senate Bill 796

Under the sentencing guidelines, possession of a prohibited species and introduction of a prohibited or genetically engineered species of known identity are class G felonies against property with a statutory maximum of two years' imprisonment. Under the bill, these provisions apply in the case of a nonaquatic species. Comparable violations involving an aquatic species are class F property felonies with a statutory maximum of three years' imprisonment.

Senate Bill 797

Chapter 47 of the Revised Judicature Act provides for the seizure and forfeiture of property that is obtained through the commission of a crime or by the sale or exchange of proceeds of a crime, as well as property used in the commission of a crime. "Crime" means committing, attempting to commit, conspiring to commit, or soliciting another person to commit any of a number of specified offenses in connection with which the forfeiture of property is sought. The bill includes among these offenses a criminal violation of Part 413 of NREPA or a permit issued under Part 413 involving a prohibited aquatic species.

Senate Bill 799

Under the Administrative Procedures Act, before beginning proceedings for the suspension, revocation, annulment, withdrawal, recall, cancelation, or amendment of a license, an agency must notify the licensee of facts or conduct that warrants the intended action.

The licensee must be given an opportunity to show compliance with all lawful requirements for retention of the license, except as otherwise provided in the Support and Parenting Time Enforcement Act and the Regulated Occupation Support Enforcement Act. The bill creates another exception to this requirement for a commercial or sport fishing license or permit suspended or revoked under Part 413 of NREPA (as Senate Bill 800 requires).

MCL 324.41301 et al. (S.B. 795)
777.13e (S.B. 796)
600.4701 (S.B. 797)
24.292 (S.B. 799)
324.41309 et al. (S.B. 800)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 795

The bill will have no fiscal impact on State or local government.

Senate Bill 796

The bill revises the Code of Criminal Procedure to reflect the changes made to the felony penalties in Senate Bill 800.

Senate Bills 797 and 799

The bills will have no fiscal impact on State or local government.

Senate Bill 800

The bill will have a minimal fiscal impact on the Department of Natural Resources and no fiscal impact on local units of government. To the extent that individuals holding hunting or fishing licenses are found guilty of violating the provisions of Part 413 that are subject to license sanctions under the bill, the DNR might lose revenue that it would otherwise receive from future license sales or renewals. However, the DNR will receive revenue from the \$125 license reinstatement fee,

which will likely be a greater amount than what the Department would receive from lost sales. While the number of violations that will be covered under the bill is not known at this time, it is not expected that the number will be very large, so the fiscal impact of the bill on the DNR will be minimal.

The bill also creates increased felony penalties, which might potentially increase the cost to State government for those convicted of the felony offense. Any added imprisonment time will have an average cost of \$35,000 per prisoner per year. There will be no fiscal impact on local government from the increased penalty, except a potential increase in fine revenue, which will benefit public libraries.

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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.