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House Bill 4579 (Substitute H-2 as passed by the House)  
Sponsor: Representative Rebekah Warren  
House Committee: Great Lakes and Environment  
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 5-13-09

### **CONTENT**

**The bill would amend Part 413 (Transgenic and Nonnative Species) of the Natural Resources and Environmental Protection Act to do the following:**

- **Remove yellow flag iris (*Iris pseudacorus*) and a hybrid or genetically engineered variant of yellow flag iris from the definition of "prohibited species".**
- **Expand the definition to include particular bird, crustacean, mammal, and mollusk species, in addition to fish, insect, and aquatic plant species.**
- **Add certain aquatic plant and fish species to the definition.**
- **Include in the definition of "restricted species" particular mollusk species.**
- **State legislative intent regarding criteria for listing an organism as a prohibited or restricted species.**
- **Prescribe increased penalties for illegal possession or introduction of a prohibited or restricted species with intent to harm human health.**
- **Delete a sunset date on annual reporting requirements.**

The bill would take effect 90 days after it was enacted.

### **Prohibited & Restricted Species**

Part 413 prohibits a person from possessing a prohibited or restricted species, except under one or more of the following circumstances:

- The person intends to present a specimen, for identification or similar purposes, to a certified or registered pesticide applicator, to a public or private institution of higher education, or to the Department of Natural Resources (DNR) or any other State, local, or Federal agency with responsibility for the environment or natural resources.
- The person has been presented with a specimen for identification purposes in accordance with Part 413.
- The person possesses the prohibited species in conjunction with otherwise lawful activity to eradicate or control it.
- The possession is pursuant to a permit issued by the DNR for education or research purposes.

The bill would revise the definitions of "prohibited species" and "restricted species" as described below.



Prohibited Aquatic Plants. The definition of "prohibited species" includes certain aquatic plant species and their hybrids or genetically engineered variants, or fragments or seeds of the species or hybrids and genetically engineered variants. The bill would refer to seeds or other propagules of the species, rather than fragments or seeds. In addition, the bill would delete yellow flag iris from the definition, and add cylindro (*Cylindrospermopsis raciborskii*), fanwort (*Cabomba caroliniana*), and starry stonewort (*Nitellopsis obtusa*).

Prohibited Birds, Crustaceans, & Mollusks. The bill would add to the definition of "prohibited species" all of the following, including a hybrid or genetically engineered variant or an egg of the species or of a hybrid or genetically engineered variant:

- Bird: Eurasian collared dove (*Streptopelia decaocto*).
- Crustacean: rusty crayfish (*Orconectes rusticus*).
- Mollusk: brown garden snail (*Helix aspersa*), carthusian snail (*Monacha cartusiana*), giant African snail (*Achatina fulica*), girdled snail (*Hygromia cinctella*), heath snail (*Xerolenta obvia*), and wrinkled dune snail (*Candidula intersecta*).

Prohibited Fish & Insects. The definition of "prohibited species" includes certain fish and insect species, as well as their hybrids or genetically engineered variants. Under the bill, the definition also would include eggs of those species or of their hybrids or genetically engineered variants. Additionally, the bill would add the Eurasian ruffe (*Gymnocephalus cernuus*), the round goby (*Neogobius melanostomus*), and the tubenose goby (*Proterorhinus marmoratus*) to the list of prohibited fish species.

Prohibited Mammals. The bill would add the nutria (*Myocastor coypus*) to the definition of "prohibited species".

Restricted Species. Currently, the definition of "restricted species" includes specified aquatic plants, including hybrids and genetically engineered variants or fragments or seeds of the species or their hybrids or genetically engineered variants. The bill would refer to seeds or other propagules, rather than fragments or seeds.

The bill would add to the definition of "restricted species" any of the following restricted mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: quagga mussel (*Dreissena bugensis*) and zebra mussel (*Dreissena polymorpha*).

#### Legislative Intention

The bill states, "It is the intention of the legislature to list an organism as a prohibited species if all of the following requirements are met:"

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

The bill also states, "It is the intention of the legislature to list an organism as a restricted species if all of the following requirements are met:"

- The organism is not native to Michigan.
- 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 for the organism are available.

### Introduction of Species

Part 413 prohibits a person from introducing a prohibited species, a restricted species, or a genetically engineered or nonnative fish or aquatic plant, unless the introduction is authorized by a permit issued by the DNR or the Michigan Department of Agriculture (MDA), as applicable. Under the bill, this provision also would apply to a genetically engineered or nonnative bird, crustacean, mammal, or mollusk.

### Administration & Enforcement of Part 413

The bill would require the DNR to administer and enforce Part 413, except with respect to insect species. The MDA would have to administer and enforce Part 413 with respect to insect species. In addition, the bill would authorize any peace officer to enforce the criminal provisions of Part 413.

### Penalties

Under Part 413, a person who violates the prohibition against possession of a prohibited or restricted species is subject to a maximum civil fine of \$10,000 or \$5,000, respectively. If a violator knows that the possession is unlawful, the offense is a felony punishable by imprisonment for up to two years and a mandatory fine of at least \$2,000 but not more than \$20,000 for a prohibited species, or a misdemeanor punishable by imprisonment for up to one year and a mandatory fine of at least \$1,000 but not more than \$10,000 for a restricted species. Part 413 prescribes additional criminal penalties for the introduction of prohibited and restricted species.

The penalties also apply to violations involving nonnative and genetically engineered fish, insects, and aquatic plants. Under the bill, the penalties also would apply to violations involving nonnative and genetically engineered birds, crustaceans, mammals, and mollusks.

Currently, a person who violates the prohibition against possession with intent to damage natural, agricultural, or silvicultural resources is guilty of a felony punishable by up to two years' imprisonment and a fine of at least \$1,000 but not more than \$250,000 for a prohibited species, or four years' imprisonment and a fine of at least \$2,000 but not more than \$500,000 for a restricted species. A person who violates the prohibition against introduction with intent to damage natural, agricultural, or silvicultural resources is guilty of a felony punishable by up to three years' imprisonment and a fine of at least \$1,000 but not more than \$500,000 for a restricted species and up to five years' imprisonment and a fine of at least \$2,000 but not more than \$1.0 million for a prohibited species. Under the bill, these penalties also would apply to a person who illegally possessed or introduced a prohibited or restricted species or nonnative or genetically engineered species with intent to damage human health.

### Invasive Species Fund

Currently, the DNR may spend money from the Fund, upon appropriation, only for specified purposes, including public education about preventing the introduction of, controlling, or eradicating prohibited species, restricted species, and other nonnative species and genetically engineered fish, insects, and aquatic plants. Under the bill, the money also could be spent on public education regarding nonnative and genetically engineered birds, crustaceans, mammals, and mollusks.



## Invasive Species Advisory Council

The bill would repeal Section 41321, which established the Council and prescribes its membership. The bill would replace references to the Council with references to the DNR in provisions prescribing the Council's duties. Part 413 requires the Council to submit to the Governor and the Legislature an annual report that makes recommendations on, among other things, additions to or deletions from the lists of prohibited and restricted species. Additionally, the report must make recommendations on the adoption of lists for classes of prohibited and restricted organisms other than fish, insects, and aquatic plants. Under the bill, instead, the DNR would have to submit the report, which would have to contain recommendations on the classes of organisms covered by Part 413 based on criteria set forth in the bill's statements of legislative intent.

Part 413 also requires the annual report to make recommendations on preventing the introduction of and controlling or eradicating invasive or genetically engineered fish, insects, and aquatic plants; and educating citizens about their responsibilities 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. Under the bill, these provisions would include recommendations pertaining to birds, crustaceans, mammals, and mollusks.

The bill would eliminate a July 19, 2010, sunset on the provisions regarding the annual reports and requiring the prescribed duties to be carried out in cooperation with the Aquatic Nuisance Species Council.

MCL 324.41301 et al.

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of unlawfully possessing or introducing restricted species. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue would benefit public libraries.

Additional monitoring and enforcement duties of the Departments of Natural Resources and Agriculture would be covered by existing resources.

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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.