

Legislative Analysis



PROHIBIT CERTAIN AQUACULTURE IN GREAT LAKES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5255 as introduced
Sponsor: Rep. Jon Bumstead
Committee: Natural Resources
Complete to 1-29-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5255 would add a new Section 6a and amend existing Section 2 of the Michigan Aquaculture Development Act to prohibit *a net pen aquaculture facility* within the Great Lakes or its connecting waters, or any water body that is openly connected to the Great Lakes or its connecting waters. The bill would take effect 90 days after the date it is enacted into law.

Section 2 of the act contains definitions. The bill would add the following terms:

"Great Lakes" would mean Lake Superior, Lake Michigan, Lake Huron, Lake Erie, and Lake Ontario. "Connecting waters" would mean the St. Mary's River, The Detroit River, Lake St. Clair, and the St. Clair River.

"Net pen aquaculture facility" refers to a facility or operation engaged in any aspect of aquaculture, in any type or size enclosures that are anchored to bottomlands, attached to the shore, or located in open water.

["Aquaculture" is presently defined in the act as "the commercial husbandry of aquaculture species on the approved list of aquaculture species, including, but not limited to, the culturing, producing, growing, using, propagating, harvesting, transporting, importing, exporting, or marketing of aquacultural products under an appropriate permit or registration." This definition would be unchanged by the bill.]

"Openly connected" would mean connected through open waters to the Great Lakes or the connecting waters of the Great Lakes up to the first dam, to which Great Lakes fish have unimpeded access.

Section 6a would add the prohibition on net pen aquaculture.

BACKGROUND ON PENALTIES FOR VIOLATIONS:

A violation of the Michigan Aquaculture Development Act, or a rule promulgated under the act, is punishable by a fine of not less than \$300, or imprisonment for not less than 30 days, or both. The court also may allow the Michigan Department of Agriculture and Rural Development (MDARD) to recover reasonable costs and attorney fees incurred in a prosecution resulting in a conviction for such a violation of subsection.

Upon finding that a person has violated any provisions of the act or a rule promulgated under this act, the director of MDARD may:

- Issue a warning.
- Impose an administrative fine of not more than \$1,000 for each violation after notice and an opportunity for a hearing. A person aggrieved by an administrative fine issued under this section may request a hearing under the Administrative Procedures Act.
- Issue an appearance ticket as described and authorized by the code of criminal procedure.

The director is required to advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general must bring a civil action in a court of competent jurisdiction to recover the fine. Civil penalties collected are paid to the General Fund.

Additionally, the director may bring an action to do one or both of the following:

- Obtain a declaratory judgment that a method, activity, or practice is a violation of this act.
- Obtain an injunction against a person who is engaging in a method, activity, or practice that violates this act.

FISCAL IMPACT:

The bill has no apparent fiscal impact, as explained below.

The Michigan Department of Agriculture and Rural Development (MDARD) has regulatory authority over the aquaculture industry under two public acts.

The Animal Industry Act, Public Act 466 of 1988, gives to the director of MDARD and any designee, including the state veterinarian, general authority over the regulation of livestock, including aquaculture. The act includes aquaculture within the definition of "livestock." In addition, the Michigan Aquaculture Development Act, Public Act 199 of 1996, gives MDARD specific regulatory authority over aquaculture through a registration and permitting process. The title of the Michigan Aquaculture Development Act indicates the act is intended "to define, develop, and regulate aquaculture as an agricultural enterprise in this state."

The Aquaculture Development Act provides for an initial aquaculture facility application fee of \$100.00 and renewal application fees of \$75.00. Under the act, aquaculture research permit fees are \$250.00 for an initial application and \$100.00 for renewal applications. Revenue generated from these fees, and credited to MDARD's restricted Licensing and Inspection Fee Fund, is approximately \$5,000 per year. A list of aquaculture facilities on the MDARD website identified 53 such facilities as of November 2015.

As noted above, the bill would prohibit the operation of a *net pen aquaculture facility*, as defined in the bill, within the Great Lakes or the connecting waters of the Great Lakes or

in any water body that is openly connected to the Great Lakes or the connecting waters of the Great Lakes. This prohibition would not impose additional costs on state or local units of government. As a result, the bill has no apparent fiscal impact.

Legislative Analyst: Josh Roesner
Fiscal Analyst: Austin Scott
William E. Hamilton

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