

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4579

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 41303, 41305, 41306, 41309, 41311, 41313, and
41323 (MCL 324.41303, 324.41305, 324.41306, 324.41309, 324.41311,
324.41313, and 324.41323), section 41303 as amended by 2005 PA 78,
section 41305 as amended and section 41306 as added by 2005 PA 79,
section 41309 as amended by 2005 PA 76, sections 41311 and 41313 as
added by 2005 PA 80, and section 41323 as added by 2005 PA 75, and
by adding section 41302.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 41302. (1) THE COMMISSION OF NATURAL RESOURCES MAY BY
2 ORDER ADD TO OR DELETE FROM THE LIST OF PROHIBITED SPECIES OR
3 RESTRICTED SPECIES UNDER SECTION 41301 ANY SPECIES OTHER THAN AN
4 INSECT OR PLANT SPECIES. BEFORE ISSUING AN ORDER UNDER THIS

1 SUBSECTION, THE COMMISSION OF NATURAL RESOURCES SHALL CONSULT WITH
2 THE DEPARTMENT OF AGRICULTURE. AFTER THE CONSULTATION, AND AT LEAST
3 30 DAYS BEFORE THE COMMISSION OF NATURAL RESOURCES ISSUES THE
4 ORDER, THE DEPARTMENT OF NATURAL RESOURCES SHALL POST A COPY OF THE
5 PROPOSED ORDER ON THE DEPARTMENT OF NATURAL RESOURCES' WEBSITE AND
6 SHALL SUBMIT A COPY OF THE PROPOSED ORDER TO ALL OF THE FOLLOWING:

7 (A) THE LEGISLATURE.

8 (B) THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF
9 REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ANY OF THE
10 FOLLOWING:

11 (i) AGRICULTURAL ISSUES.

12 (ii) ENVIRONMENTAL ISSUES.

13 (iii) NATURAL RESOURCES ISSUES.

14 (2) THE COMMISSION OF AGRICULTURE MAY BY ORDER ADD TO OR
15 DELETE FROM THE LIST OF PROHIBITED SPECIES OR RESTRICTED SPECIES
16 UNDER SECTION 41301 ANY INSECT OR PLANT SPECIES. BEFORE ISSUING AN
17 ORDER UNDER THIS SUBSECTION, THE COMMISSION OF AGRICULTURE SHALL
18 CONSULT WITH THE DEPARTMENT OF NATURAL RESOURCES. AFTER THE
19 CONSULTATION, AND AT LEAST 30 DAYS BEFORE THE COMMISSION OF
20 AGRICULTURE ISSUES THE ORDER, THE DEPARTMENT OF AGRICULTURE SHALL
21 POST A COPY OF THE PROPOSED ORDER ON THE DEPARTMENT OF
22 AGRICULTURE'S WEBSITE AND SHALL SUBMIT A COPY OF THE PROPOSED ORDER
23 TO ALL OF THE FOLLOWING:

24 (A) THE LEGISLATURE.

25 (B) THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF
26 REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ANY OF THE
27 FOLLOWING:

1 (i) AGRICULTURAL ISSUES.

2 (ii) ENVIRONMENTAL ISSUES.

3 (iii) NATURAL RESOURCES ISSUES.

4 (3) THE COMMISSION OF NATURAL RESOURCES OR THE COMMISSION OF
5 AGRICULTURE, AS APPLICABLE, SHALL LIST A SPECIES AS A PROHIBITED
6 SPECIES OR RESTRICTED SPECIES IF THE COMMISSION OF NATURAL
7 RESOURCES OR COMMISSION OF AGRICULTURE, RESPECTIVELY, DETERMINES
8 THE FOLLOWING:

9 (A) FOR A PROHIBITED SPECIES, ALL OF THE FOLLOWING
10 REQUIREMENTS ARE MET:

11 (i) THE ORGANISM IS NOT NATIVE TO THIS STATE.

12 (ii) THE ORGANISM IS NOT NATURALIZED IN THIS STATE OR, IF
13 NATURALIZED, IS NOT WIDELY DISTRIBUTED IN THIS STATE.

14 (iii) ONE OR MORE OF THE FOLLOWING APPLY:

15 (A) THE ORGANISM HAS THE POTENTIAL TO HARM HUMAN HEALTH OR TO
16 SEVERELY HARM NATURAL, AGRICULTURAL, OR SILVICULTURAL RESOURCES.

17 (B) EFFECTIVE MANAGEMENT OR CONTROL TECHNIQUES FOR THE
18 ORGANISM ARE NOT AVAILABLE.

19 (B) FOR A RESTRICTED SPECIES, ALL OF THE FOLLOWING
20 REQUIREMENTS ARE MET:

21 (i) THE ORGANISM IS NOT NATIVE TO THIS STATE.

22 (ii) THE ORGANISM IS NATURALIZED AND WIDELY DISTRIBUTED IN THIS
23 STATE.

24 (iii) ONE OR MORE OF THE FOLLOWING APPLY:

25 (A) THE ORGANISM HAS THE POTENTIAL TO HARM HUMAN HEALTH OR TO
26 HARM NATURAL, AGRICULTURAL, OR SILVICULTURAL RESOURCES.

27 (B) EFFECTIVE MANAGEMENT OR CONTROL TECHNIQUES FOR THE

1 **ORGANISM ARE AVAILABLE.**

2 Sec. 41303. (1) Subject to subsection (2), a person shall not
3 knowingly possess a live organism if the organism is a prohibited
4 species or restricted species, except under 1 or more of the
5 following circumstances:

6 (a) The person intends to present a specimen of the prohibited
7 species or restricted species, for identification or similar
8 purposes, to a person who is a certified applicator or registered
9 applicator under part 83, to a public or private institution of
10 higher education, or to the department **OF NATURAL RESOURCES, THE**
11 **DEPARTMENT OF AGRICULTURE**, or any other state, local, or federal
12 agency with responsibility for the environment, ~~or~~ natural
13 resources, **OR AGRICULTURE**.

14 (b) The person has been presented with a specimen of a
15 prohibited species or restricted species for identification or
16 similar purposes under subdivision (a).

17 (c) The person possesses the prohibited species or restricted
18 species in conjunction with otherwise lawful activity to eradicate
19 or control the prohibited species or restricted species.

20 (d) If the prohibited species or restricted species is not an
21 insect **OR PLANT** species, the possession is pursuant to a permit
22 issued for education or research purposes by the department **OF**
23 **NATURAL RESOURCES** under section 41306. If the prohibited species or
24 restricted species is an insect **OR PLANT** species, the possession is
25 pursuant to a permit issued for education or research purposes by
26 the department of agriculture under section 41306 or by the United
27 States department of agriculture.

1 (2) A person described in subsection (1) (b) or (c) shall
2 notify the department **OF NATURAL RESOURCES**, the department of
3 agriculture, or the department of environmental quality if the
4 prohibited species or restricted species was found at a location
5 where it was not previously known to be present.

6 Sec. 41305. A person shall not introduce a prohibited species,
7 a restricted species, or a genetically engineered or nonnative fish
8 ~~or~~-aquatic plant, **BIRD, CRUSTACEAN, FISH, MAMMAL, OR MOLLUSK** unless
9 the introduction is authorized by 1 of the following, as
10 applicable:

11 (a) For a fish, by a permit issued by the department **OF**
12 **NATURAL RESOURCES** under section 48735.

13 (b) For ~~a prohibited species or restricted species that is an~~
14 insect **OR PLANT**, by a permit issued by the department of
15 agriculture under section 41306.

16 (c) For ~~an aquatic plant~~, **ANY OTHER SPECIES**, by a permit
17 issued by the department **OF NATURAL RESOURCES** under section 41306.

18 Sec. 41306. (1) A person shall apply for a permit that section
19 41303 or 41305 describes as being issued by the department **OF**
20 **NATURAL RESOURCES** or the department of agriculture under this
21 section on a form developed by the department **OF NATURAL RESOURCES**
22 or the department of agriculture, respectively. The application
23 shall be accompanied by a fee based on the cost of administering
24 this part. The department **OF NATURAL RESOURCES** or the department of
25 agriculture, respectively, shall either grant an administratively
26 complete application and issue a permit or deny the application.

27 (2) **IN DETERMINING WHETHER TO GRANT OR DENY AN APPLICATION FOR**

1 A PERMIT FOR INTRODUCTION OF A GENETICALLY ENGINEERED ORGANISM
2 REQUIRED BY SECTION 41305, THE DEPARTMENT OF NATURAL RESOURCES OR
3 THE DEPARTMENT OF AGRICULTURE, AS APPLICABLE, SHALL CONSIDER
4 WHETHER ANY APPLICATION FOR A FEDERAL PERMIT OR APPROVAL FOR THE
5 GENETICALLY ENGINEERED ORGANISM HAS BEEN GRANTED OR DENIED.

6 (3) ~~(2)~~—The department OF NATURAL RESOURCES or the department
7 of agriculture may revoke or modify a permit issued by the
8 department OF NATURAL RESOURCES or the department of agriculture,
9 respectively, under subsection (1) after providing an opportunity
10 for a hearing under the administrative procedures act of 1969, 1969
11 PA 306, MCL 24.201 to 24.328.

12 (4) THE DEPARTMENT OF NATURAL RESOURCES SHALL ADMINISTER AND
13 ENFORCE THIS PART, EXCEPT WITH RESPECT TO INSECT AND PLANT SPECIES.
14 THE DEPARTMENT OF AGRICULTURE SHALL ADMINISTER AND ENFORCE THIS
15 PART WITH RESPECT TO INSECT OR PLANT SPECIES. IN ADDITION, ANY
16 PEACE OFFICER MAY ENFORCE THE CRIMINAL PROVISIONS OF THIS PART.

17 Sec. 41309. (1) A person who violates section 41303(2) is
18 subject to a civil fine of not more than \$100.00.

19 (2) A person who violates section 41303(1), or a condition of
20 a permit issued under this part, with respect to a restricted
21 species is subject to a civil fine of not more than \$5,000.00. A
22 person who violates section 41303(1), or a condition of a permit
23 issued under this part, with respect to a prohibited species is
24 subject to a civil fine of not more than \$10,000.00.

25 (3) A person who violates section 41303(1) knowing the
26 possession is unlawful or who willfully or in a grossly negligent
27 manner violates a condition of a permit issued under this part is

1 guilty as follows:

2 (a) For a violation involving a restricted species, the person
3 is guilty of a misdemeanor and may be imprisoned for not more than
4 1 year and shall be fined not less than \$1,000.00 or more than
5 \$10,000.00.

6 (b) For a violation involving a prohibited species, the person
7 is guilty of a felony and may be imprisoned for not more than 2
8 years and shall be fined not less than \$2,000.00 or more than
9 \$20,000.00.

10 (4) A person who, with intent to damage natural, agricultural,
11 or silvicultural resources **OR HUMAN HEALTH:**

12 (a) Violates section 41303(1) with respect to a restricted
13 species or possesses a nonnative ~~fish or~~ aquatic plant, **BIRD,**
14 **CRUSTACEAN, FISH, INSECT, MAMMAL, OR MOLLUSK** is guilty of a felony
15 and may be imprisoned for not more than 2 years and shall be fined
16 not less than \$1,000.00 or more than \$250,000.00.

17 (b) Violates section 41303(1) with respect to a prohibited
18 species or possesses a genetically engineered ~~fish or~~ aquatic
19 plant, **BIRD, CRUSTACEAN, FISH, INSECT, MAMMAL, OR MOLLUSK** is guilty
20 of a felony and may be imprisoned for not more than 4 years and
21 shall be fined not less than \$2,000.00 or more than \$500,000.00.

22 (5) A person who sells or offers to sell a restricted species
23 is subject to a civil fine of not less than \$1,000.00 or more than
24 \$10,000.00. A person who sells or offers to sell a prohibited
25 species is subject to a civil fine of not less than \$2,000.00 or
26 more than \$20,000.00.

27 (6) A person who violates section 41305 is guilty as follows:

1 (a) For a violation involving a restricted species or a
2 nonnative ~~fish or~~ aquatic plant, **BIRD, CRUSTACEAN, FISH, INSECT,**
3 **MAMMAL, OR MOLLUSK**, the person is guilty of a misdemeanor and may
4 be imprisoned for not more than 6 months and shall be fined not
5 less than \$500.00 or more than \$5,000.00.

6 (b) For a violation involving a prohibited species or a
7 genetically engineered ~~fish or~~ aquatic plant, **BIRD, CRUSTACEAN,**
8 **FISH, INSECT, MAMMAL, OR MOLLUSK**, the person is guilty of a
9 misdemeanor and may be imprisoned for not more than 1 year and
10 shall be fined not less than \$1,000.00 or more than \$10,000.00.

11 (7) A person who violates section 41305 with respect to a
12 restricted species or nonnative ~~fish or~~ aquatic plant, **BIRD,**
13 **CRUSTACEAN, FISH, INSECT, MAMMAL, OR MOLLUSK** and who knows or
14 should know the identity of the restricted species or that the
15 organism, whether a restricted species or other ~~fish or~~ aquatic
16 plant, **BIRD, CRUSTACEAN, FISH, INSECT, MAMMAL, OR MOLLUSK**, is
17 nonnative is guilty of a misdemeanor and may be imprisoned for not
18 more than 1 year and shall be fined not less than \$1,000.00 or more
19 than \$10,000.00.

20 (8) A person who violates section 41305 with respect to a
21 prohibited species or a genetically engineered ~~fish or~~ aquatic
22 plant, **BIRD, CRUSTACEAN, FISH, INSECT, MAMMAL, OR MOLLUSK** and who
23 knows or should know the identity of the prohibited species or that
24 the ~~fish or~~ aquatic plant, **BIRD, CRUSTACEAN, FISH, INSECT, MAMMAL,**
25 **OR MOLLUSK** is genetically engineered, respectively, is guilty of a
26 felony and may be imprisoned for not more than 2 years and shall be
27 fined not less than \$2,000.00 or more than \$20,000.00.

1 (9) A person who violates section 41305 knowing the
2 introduction is unlawful, is guilty as follows:

3 (a) For a violation involving a restricted species or
4 nonnative ~~fish or~~ aquatic plant, **BIRD, CRUSTACEAN, FISH, INSECT,**
5 **MAMMAL, OR MOLLUSK**, the person is guilty of a felony and may be
6 imprisoned for not more than 2 years and shall be fined not less
7 than \$1,000.00 or more than \$250,000.00.

8 (b) For a violation involving a prohibited species or a
9 genetically engineered ~~fish or~~ aquatic plant, **BIRD, CRUSTACEAN,**
10 **FISH, INSECT, MAMMAL, OR MOLLUSK**, the person is guilty of a felony
11 and may be imprisoned for not more than 4 years and shall be fined
12 not less than \$2,000.00 or more than \$500,000.00.

13 (10) A person who, with intent to damage natural,
14 agricultural, or silvicultural resources **OR HUMAN HEALTH**, violates
15 section 41305 is guilty as follows:

16 (a) For a violation involving a restricted species or
17 nonnative ~~fish or~~ aquatic plant, **BIRD, CRUSTACEAN, FISH, INSECT,**
18 **MAMMAL, OR MOLLUSK**, the person is guilty of a felony and may be
19 imprisoned for not more than 3 years and shall be fined not less
20 than \$1,000.00 or more than \$500,000.00.

21 (b) For a violation involving a prohibited species or a
22 genetically engineered ~~fish or~~ aquatic plant, **BIRD, CRUSTACEAN,**
23 **FISH, INSECT, MAMMAL, OR MOLLUSK**, the person is guilty of a felony
24 and may be imprisoned for not more than 5 years and shall be fined
25 not less than \$2,000.00 or more than \$1,000,000.00.

26 ~~—— (11) Subsections (3), (4), and (9) do not apply before~~
27 ~~November 1, 2005 to violations involving species other than fish.~~

1 ~~Subsections (6), (7), (8), and (10) do not apply before November 1,~~
2 ~~2005.~~

3 (11) ~~(12)~~—In addition to any other civil or criminal sanction
4 imposed under this section, a person who violates this part is
5 liable for any damages to natural resources resulting from the
6 violation, including, but not limited to, costs incurred to prevent
7 or minimize such damages.

8 (12) ~~(13)~~—This part does not apply to activities authorized
9 under the Michigan aquaculture development act, 1996 PA 199, MCL
10 286.871 to 286.884.

11 Sec. 41311. (1) The invasive species fund is created within
12 the state treasury.

13 (2) The department **OF NATURAL RESOURCES AND THE DEPARTMENT OF**
14 **AGRICULTURE** shall forward to the state treasurer and the state
15 treasurer shall deposit into the fund civil fines **COLLECTED UNDER**
16 **SECTION 41309** and permit fees collected under ~~this part~~ **SECTION**
17 **41306**. The state treasurer may receive money or other assets from
18 any source for deposit into the fund. The state treasurer shall
19 direct the investment of the fund. The state treasurer shall credit
20 to the fund interest and earnings from fund investments.

21 (3) Money in the fund at the close of the fiscal year shall
22 remain in the fund and shall not lapse to the general fund.

23 (4) The department **OF NATURAL RESOURCES AND THE DEPARTMENT OF**
24 **AGRICULTURE** shall expend money from the fund, upon appropriation,
25 only for 1 or more of the following purposes:

26 (a) The administration of this part, **CONSISTENT WITH SECTION**
27 **41306(4)**.

(b) 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,~~ **BIRDS, CRUSTACEANS, FISH, INSECTS, MAMMALS, AND MOLLUSKS.**

Sec. 41313. The department **OF NATURAL RESOURCES AND THE DEPARTMENT OF AGRICULTURE** shall ~~post on its website~~ **EACH PROVIDE** all of the following **INFORMATION ON ITS WEBSITE:**

(a) Information on the requirements of this part applicable to the public.

(b) The penalties for violating the requirements of this part.

(c) A list of prohibited species and restricted species along with a description and a photograph or drawing of each of those species.

(d) Each annual report of the ~~council~~ **DEPARTMENT** under section 41323, for not less than 3 years after its issuance.

Sec. 41323. (1) The ~~council~~ **DEPARTMENT OF NATURAL RESOURCES** shall do all of the following:

(a) ~~Within 6 months after the effective date of the amendatory act that added this section~~ **BY MARCH 1 OF EACH YEAR,** submit to the governor and the legislature a report that makes recommendations on ~~additions~~ **ALL OF THE FOLLOWING:**

(i) **ADDITIONS** to or deletions from the ~~list of prohibited species and restricted species~~ **CLASSES OF GENETICALLY ENGINEERED OR NONNATIVE ORGANISMS COVERED BY THIS PART.**

~~(b) By March 1 of each year, beginning in 2006, submit to the governor and the legislature a report that makes recommendations on~~

1 ~~all of the following.~~

2 ~~—— (i) The adoption of lists for classes of prohibited and~~
 3 ~~restricted organisms other than fish, insects, and aquatic plants.~~

4 (ii) The status of various prohibited species and other
 5 problematic invasive ~~organisms~~ **SPECIES** in this state, including,
 6 but not limited to, a list of infested waterbodies by species.

7 (iii) Preventing the introduction of and controlling or
 8 eradicating invasive **SPECIES** or genetically engineered ~~fish,~~
 9 ~~insects, and aquatic plants,~~ **BIRDS, CRUSTACEANS, FISH, INSECTS,**
 10 **MAMMALS, OR MOLLUSKS.**

11 (iv) Restoration or remediation of habitats or species damaged
 12 by invasive species or genetically engineered organisms.

13 (v) Prioritizing efforts to prevent violations of and
 14 otherwise further the purposes of this part.

15 (vi) The specific areas of responsibility for various state
 16 departments under this part and the sharing of information on
 17 permits under this part among responsible state departments.

18 (vii) Educating citizens about their responsibilities under
 19 this part and their role in preventing the introduction of and
 20 controlling or eradicating prohibited species, restricted species,
 21 ~~and invasive or~~ **SPECIES, AND** genetically engineered ~~fish, insects,~~
 22 ~~or aquatic plants,~~ **BIRDS, CRUSTACEANS, FISH, INSECTS, MAMMALS, OR**
 23 **MOLLUSKS.**

24 (viii) Simplifying citizen access to state government for
 25 compliance with this part.

26 (ix) Legislation and funding to carry out the ~~council's~~
 27 recommendations **OF THE DEPARTMENT OF NATURAL RESOURCES** and

1 otherwise further the purposes of this part.

2 (x) Other matters that the ~~council~~ **DEPARTMENT OF NATURAL**
3 **RESOURCES** considers pertinent to the purposes of this part.

4 (B) ~~(e)~~ Establish criteria for identifying waterbodies
5 infested by prohibited species.

6 (C) ~~(d)~~ Monitor and promote efforts to rescind the exemption
7 under 40 CFR 122.3(a) for ballast water discharges.

8 (2) The ~~council~~ **DEPARTMENT OF NATURAL RESOURCES** shall carry
9 out its reporting and other duties **UNDER THIS SECTION** in
10 cooperation with the aquatic nuisance species council created under
11 Executive Order No. 2002-21 **AND THE DEPARTMENT OF AGRICULTURE**.

12 ~~—— (3) This section is repealed effective 5 years after the~~
13 ~~effective date of the amendatory act that added this section.~~

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.

16 Enacting section 2. This amendatory act does not take effect
17 unless Senate Bill No. 280 of the 95th Legislature is enacted into
18 law.