

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 979

(Delegate Foley, *et al.*)

Environment and Transportation

Education, Energy, and the Environment

Agriculture - Invasive Plant Species - Regulation (Biodiversity and Agriculture Protection Act)

This bill alters the regulatory approach for controlling “invasive plant” species in the State. The bill repeals the existing two-tiered regulatory approach and instead establishes a regulatory approach that generally involves (1) assessments of nonnative plant species by “expert assessors” to determine the invasiveness rank of each such species; (2) the review of such assessments and related data; and (3) the determination by the Secretary of Agriculture whether such species should be classified as “prohibited invasive plants” and included on a *Consolidated List of Maryland Invasive Plant Species* or placed on a watch list. Specified regulations must be adopted; among other things, the regulations must classify as prohibited invasive plants all terrestrial plants classified by regulation before January 1, 2024, as tier 1 invasive plants; tier 2 plants must be assessed and either classified as prohibited invasive plants or placed on the watch list. The bill makes other related and conforming changes. **The bill takes effect June 1, 2024.**

Fiscal Summary

State Effect: No effect in FY 2024. The FY 2025 budget as passed by the General Assembly includes funding for three new positions for the Maryland Department of Agriculture’s (MDA) Plant Protection and Weed Management Program; it is anticipated that MDA can handle the bill’s changes with those budgeted positions, as discussed below. State expenditures (multiple funds) for various State agencies, as landowners and lessees, may increase beginning in FY 2025. The application of existing penalty provisions to violations of the bill is not anticipated to materially affect State finances.

Local Effect: Local governments, as landowners and lessees, may incur additional costs beginning in FY 2025, as discussed below. The application of existing penalty provisions to violations of the bill is not anticipated to materially affect local finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

“Classify as a prohibited invasive plant” means the Secretary is including an invasive plant on the *Consolidated List of Maryland Invasive Plant Species* in accordance with the bill.

“Early detection rapid response (EDRR) plant species” means a nonnative plant species that (1) is not yet widespread in the State but is at risk of becoming established as an invasive species and causing significant damage and (2) has been found in at least one native species habitat in the State or has not yet been found in the State.

“Expert assessor” means an individual or a team within MDA or the Department of Natural Resources (DNR) or a qualified independent assessor. “Qualified independent assessor” means an individual or a team that (1) possesses at least two years of field experience in invasive plant species in Maryland or nearby jurisdictions, as specified, and (2) has assessed invasive plant species without supervision from MDA, DNR, or the Invasive Plants Advisory Committee.

The definition of “invasive plant,” as modified by the bill, means any living part of plant species or its subspecies that did not evolve in the State and, if introduced within the State, will cause or is likely to cause, as determined by the Secretary, (1) economic harm; (2) ecological harm; (3) environmental harm; or (4) harm to human health. “Invasive plant” includes a commercial or noncommercial plant that is terrestrial or aquatic.

“Invasive plant species status assessment protocol” means a protocol based on the NatureServe’s 2004 protocol (“*An Invasive Species Assessment Protocol: Evaluating Non-Native Plants for Their Impact on Biodiversity. Version 1*”).

“Invasiveness rank” means a rank assigned to a nonnative species to signify its level of invasiveness based on the results of an invasive assessment protocol. It includes an invasiveness significance ranking of high, medium, low, or insignificant.

The term “tier 1 invasive plant” is renamed to be “prohibited invasive plant,” which includes invasive plant species that cause or are likely to cause severe harm within the State. The term “tier 2 invasive plant” is repealed.

“Watch list” means a list of plant species that (1) have been assessed by an expert assessor in accordance with the bill; (2) were not determined by the assessment to be eligible for classification as a prohibited invasive plant; and (3) may be reassessed in the future.

Invasive Plant Species Regulations and the Classification of Prohibited Invasive Plants

By October 1, 2024, the Secretary of Agriculture, with the advice of the Secretary of Natural Resources and the Invasive Plants Advisory Committee, must adopt regulations that:

- establish professionally recognized assessment protocols for invasive plants that (1) will serve as a basis for the regulatory approach for controlling invasive plants in the State; (2) consider the harm, as determined by the Secretary, that invasive plants cause in the State, including ecological harm and environmental harm; and (3) may consider additional harm, as determined by the expert assessor, that invasive plants cause in the State, including economic harm and harm to human health;
- govern administrative orders that the Secretary of Agriculture may issue to enforce the regulation of invasive plants; and
- establish a procedure for the approval required for activities involving prohibited invasive plants.

By October 1, 2024, the Secretary, with the advice of the Secretary of Natural Resources and the Invasive Plants Advisory Committee, must also adopt regulations that:

- establish a list of prohibited invasive plants in accordance with the adopted assessment protocol;
- establish a procedure for classification or declassification of an invasive plant as a prohibited invasive plant;
- phase in the implementation of the regulatory requirements with consideration of the economic impact of these requirements on nurseries, landscapers, plant wholesalers, plant retailers, and any other industry; and
- establish a procedure for the disposal of prohibited invasive plants.

The regulations must classify as prohibited invasive plants all terrestrial plants classified by regulation before January 1, 2024, as a tier 1 invasive plant. Each terrestrial plant classified by regulation before January 1, 2024, as a tier 2 invasive plant must be assessed in accordance with the bill by December 31, 2025, and must be (1) classified as a prohibited invasive plant under the regulations adopted pursuant to the bill, if the results of the assessment determine the plant is an invasive plant, or (2) placed on the watch list, if the results of the assessment determine the plant is not an invasive plant.

In addition to those plants, the Secretary may classify, by regulation, a plant species as a prohibited invasive plant in accordance with the bill's provisions. Further, the Secretary of Agriculture must classify as a prohibited invasive plant each plant identified as invasive in

the *Plant Invaders of Mid-Atlantic Natural Areas* issued by the National Park Service (NPS) and the U.S. Fish and Wildlife Service (USFWS) if the plant is assessed as an invasive plant species by an expert assessor in accordance with the bill.

The Secretary must include an invasive plant classified as a prohibited invasive plant on the *Consolidated List of Maryland Invasive Plant Species*.

Assessments Required

An expert assessor must (1) assess a nonnative plant species established in natural areas within the State; (2) determine the invasiveness rank of the nonnative plant species; and (3) notify the Invasive Plants Advisory Committee that the nonnative plant species (1) is assessed as an invasive plant if the invasiveness rank is high or medium or (2) may be placed on the watch list if the invasiveness rank is low or insignificant.

An expert assessor must also (1) assess an EDRR plant species; (2) determine the invasiveness rank of the EDRR plant species; and (3) notify the advisory committee that the EDRR plant species (1) is assessed as an invasive plant if the invasiveness rank is high or medium or (2) may be placed on the watch list if the invasiveness rank is low or insignificant.

In carrying out the above requirements, an expert assessor must follow specified protocols.

Invasive Plants Advisory Committee and the Determination of Prohibited Invasive Plants

The duties of the Invasive Plants Advisory Committee are altered. Under the bill, the advisory committee must:

- conduct an annual review of the assessment protocols adopted under the bill;
- report to the Secretary regarding any proposed changes to an assessment protocol or a replacement of a protocol;
- in consultation with the Secretary and the Secretary of Natural Resources, review the qualifications of the qualified independent assessor;
- report to the Secretary any proposed changes to the qualifications of the qualified independent assessor;
- review invasive plant species assessments to advise the Secretary on which plants to classify as prohibited invasive plants for inclusion on the *Consolidated List of Maryland Invasive Plant Species*; and
- review any data submitted to the committee that indicates a cultivar, selection, or infra-specific hybrid of a prohibited invasive plant is not invasive; if the submitted data is deemed accurate and sufficient, the committee must advise the Secretary to

declassify or preemptively not classify the cultivar, selection, or infra-specific hybrid as a prohibited invasive plant.

If the assessment is accurate and sufficient and the invasive rank is (1) high or medium, the committee must advise the Secretary to classify the plant as a prohibited invasive plant or (2) low or insignificant, the committee must place the plant on the watch list.

The Secretary must determine whether to classify a plant species as a prohibited invasive plant on reviewing the advice of the advisory committee.

Publication and Distribution of Invasive Plant Species Lists

MDA and DNR must each post the *Consolidated List of Maryland Invasive Plant Species* and the watch list on their respective websites. The University of Maryland Extension must post a link to those lists on its website.

On an annual basis, MDA must distribute the lists to nurseries, plant dealers, and plant brokers.

Restrictions on Activities, Exemptions, and Enforcement

Generally, the restrictions on activities related to *tier 1 invasive plants* under current law apply to *prohibited invasive plants* under the bill. Accordingly, except as specified, a person may not propagate, import, transfer, sell, purchase, transport, or introduce any living part of a prohibited invasive plant in the State. However, a person may, in accordance with regulations adopted by MDA, conduct any such prohibited activity if the person receives prior approval from the Secretary and the activity is conducted for the purpose of disposing of the prohibited invasive plant, controlling the prohibited invasive plant, using the prohibited invasive plant for research or educational purposes, or exporting the prohibited invasive plant out of the State.

Also, the bill establishes an exemption from the restrictions specified above for the State Highway Administration (SHA) if the activity is conducted for the purpose of controlling or disposing of a prohibited invasive plant along State highways without prior approval of the Secretary. SHA must control or dispose of prohibited invasive plants along State highways in a manner consistent with regulations adopted by MDA, and MDA must notify SHA of any changes to regulations adopted by MDA that impact the control or disposal of prohibited invasive plants.

Certain provisions that relate to the sale of tier 2 invasive plants are repealed. Existing enforcement provisions that apply to violations of current law relating to *tier 1 invasive plants* apply to *prohibited invasive plants* under the bill. In addition, existing penalty

provisions that apply to violations of current law relating to the regulation of invasive plants apply to violations of the bill.

Current Law:

Invasive Plants Advisory Committee

The Invasive Plants Advisory Committee must (1) advise the Secretary regarding regulations necessary to carry out the regulation of invasive plants; (2) conduct an annual review of the science-based risk assessment protocol for invasive plants; and (3) report to the Secretary regarding any proposed changes to the risk assessment protocol.

Establishment of Risk Assessment Protocol

Chapter 142 of 2011 required the Secretary of Agriculture, with the advice of the Invasive Plants Advisory Committee, to adopt regulations by October 1, 2012, that, among other things, establish a science-based risk assessment protocol for invasive plants that (1) will serve as a basis for creating a two-tiered regulatory approach for controlling invasive plants in the State and (2) considers the harm, as determined by the Secretary, that invasive plants cause in the State, including, economic harm, ecological harm, environmental harm, and harm to human health.

Establishment of Lists of Tier 1 and Tier 2 Invasive Plants and Related Regulations

“Tier 1 invasive plant” includes invasive plant species that cause or are likely to cause severe harm within the State. “Tier 2 invasive plant” includes invasive plant species that cause or are likely to cause substantial negative impact within the State.

Chapter 142 required the Secretary of Agriculture, with the advice of the advisory committee, to adopt regulations that (1) establish a list of tier 1 plants and tier 2 plants in accordance with the adopted risk assessment protocol; (2) establish a procedure for classification or declassification of an invasive plant as a tier 1 invasive plant or a tier 2 invasive plant; (3) phase in the implementation of the requirements regulating invasive plants with consideration of the economic impact of the requirements with consideration of the economic impact of the requirements on nurseries, landscapers, plant wholesalers, plant retailers, and any other industry; (4) establish a procedure for the disposal of tier 1 plants; (5) designate the format, size, and content of a sign required to be posted identifying a tier 2 plant in a retail outlet; and (6) provide for the distribution of a list of tier 2 invasive plants to licensed nurseries, plant dealers, and plant brokers on an annual basis.

Chapters 551 and 552 of 2022 require DNR to publish on its website a list of plant species native to the State. The list must identify native plants that may be used and planted as an alternative to the use and planting of tier 2 invasive plants. Additionally, the Secretary of Agriculture was required to classify as a tier 1 invasive plant or a tier 2 invasive plant each plant identified as invasive in the *Plant Invaders of Mid-Atlantic Natural Areas* publication issued by NPS and USFWS.

Restrictions on Activities Related to Invasive Plants

In general, a person may not propagate, import, transfer, sell, purchase, transport, or introduce any living part of a tier 1 invasive plant in the State. However, a person may conduct these activities, with prior approval from the Secretary, for the purpose of disposing of, controlling, using for research or educational purposes, or exporting a plant out of the State. These restrictions do not apply to the transfer, lease, sale, or purchase of real property on which an invasive plant is located.

In accordance with regulations adopted by the Secretary, a person may not (1) sell or offer for sale at a retail outlet a tier 2 invasive plant unless the retail outlet posts, in a conspicuous manner in proximity to all tier 2 plant displays, a sign identifying the plants as tier 2 plants or (2) provide landscaping services to plant or supply for planting a tier 2 invasive plant unless the person provides to the customer a list of tier 2 invasive plants.

State funds may not be used to purchase or plant an invasive plant species for an outdoor project, except as specified. Further, each entity that receives State funding, and each State agency, must prioritize, whenever possible, the use of plants native to the State for every planting project.

Enforcement

On finding a tier 1 plant in violation of the prohibition against a person propagating, importing, transferring, selling, purchasing, transporting, or introducing any living part of a tier 1 invasive plant in the State, the Secretary may (1) issue a written condemnation seizure order; (2) mark or tag the plant in a conspicuous manner; and (3) provide written notice to the owner, tenant, or person in charge of the premises. On notice from the Secretary, a person must dispose of a tier 1 plant in accordance with regulations adopted by the Secretary. If a tier 1 plant is not disposed of in accordance with that requirement, the Secretary must (1) destroy the plant; (2) prepare a statement of facts and a statement of the expense of the destruction; and (3) provide copies of the statements to the Attorney General. The Attorney General must institute a proceeding to collect the expenses due to the Secretary. A copy of the statements prepared by the Secretary is sufficient evidence to prove a claim for the expenses.

If the Secretary finds that a tier 2 plant that does not meet the signage requirement, the Secretary must (1) issue a stop-sale order; (2) mark or tag the plant in a conspicuous manner; and (3) give specified written notice to the owner, tenant, or person in charge of the premises. A stop-sale order remains in effect until the required signage is posted.

The Secretary may bring an action for an injunction against a person to (1) enforce the provisions related to the regulation of invasive plants or an order of the Secretary under those provisions or (2) prevent or restrain a violation of those provisions. In an action for an injunction, the Secretary does not have to allege or prove that (1) an adequate remedy at law does not exist or (2) substantial or irreparable damage would result from the continued violations. An injunction must be issued without bond.

Criminal and Civil Penalties for Violations

A person that violates any provision relating to the regulation of invasive plants is subject to the penalties and fines set forth in Title 12 of the Agriculture Article. Under Title 12, a person who violates any provision of the Agriculture Article is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500 and/or imprisonment for up to three months, with costs imposed in the discretion of the court. For a second or subsequent offense, a person is subject to a fine of up to \$1,000 and/or imprisonment for up to one year, with costs imposed in the discretion of the court. A second or subsequent violation is one that has occurred within two years of any prior violation and that arises out of a separate set of circumstances.

Instead of or in addition to any other authorized penalty, the Secretary may impose a civil penalty of up to \$500 per violation on a person that violates the provisions relating to the regulation of invasive plants or any order issued by the Secretary under those provisions. Any civil penalties collected are paid into the general fund.

State Expenditures:

Maryland Department of Agriculture

Pursuant to current regulations ([COMAR 15.06.04.06](#)), prior to January 1, 2024, 6 plants were classified as tier 1 invasive plants and 13 plants were classified as tier 2 invasive plants. Under the bill, each terrestrial plant classified by regulation before January 1, 2024, as a tier 1 invasive plant must be classified as a prohibited invasive plant in the regulations required to be adopted under the bill by October 1, 2024. Further, each terrestrial plant classified by regulation before January 1, 2024, as a tier 2 invasive plant must be assessed pursuant to the bill by December 31, 2025, and must either be classified as a prohibited invasive plant or placed on the watch list, depending on the results of the assessment. MDA advises that, in addition to the existing tier 1 plants and any existing tier 2 plants that are

classified as prohibited invasive plants pursuant to those provisions, approximately 100 additional invasive plant species are anticipated to be classified as prohibited invasive plants due to the bill's requirements – with the list anticipated to increase over time.

Because the bill establishes requirements relating to invasive plant species assessments and the review of those assessments, among other things, the bill results in an increase in workload for MDA's Plant Protection and Weed Management Program. MDA advises that this program has been understaffed in recent years and that it needs to hire additional staff to handle the increase in workload resulting from the bill. Specifically, MDA advises that it needs to hire (1) two administrators to complete assessments, conduct outreach to the industry, and generally manage the regulatory program as altered by the bill and (2) one inspector to assist with enforcement.

The fiscal 2025 budget as passed by the General Assembly includes three new positions (two administrators and one inspector) – and \$196,626 in associated general funds – for MDA's Plant Protection and Weed Management Program. Although the budgeted funds and positions are not contingent on the enactment of this bill, MDA advises that the three new positions and the associated general funds included in the fiscal 2025 budget as passed by the General Assembly *are sufficient to meet the requirements of the bill*. Accordingly, it is anticipated that MDA can implement the bill's requirements using those budgeted resources. (In the out-years, anticipated costs associated with those positions total more than \$200,000 annually.)

State Agencies as Landowners or Lessees

Due to the likely expansion of the number of invasive plants that are considered prohibited invasive plants under the bill (compared to tier 1 invasive plants under current law), the existing general prohibition on the use of State funds to purchase or plant an invasive plant species for an outdoor project may affect State expenditures (multiple funds) for the purchase of plants. Additionally, affected State agencies may incur costs for projects on State-owned or State-leased property to remove and dispose of any prohibited invasive plants.

Although the bill authorizes SHA to conduct certain generally prohibited activities for the purpose of controlling or disposing of a prohibited invasive plant without prior approval of the Secretary of Agriculture, SHA estimates that Transportation Trust Fund expenditures increase by approximately \$30,000 annually to remove and dispose of additional invasive plants under the bill.

Local Expenditures: The prohibition on the purchase of prohibited invasive plants may affect local government expenditures related to the purchase of plants. Additionally, local

governments may incur costs related to projects on local government-owned or local government-leased property to remove and dispose of any prohibited invasive plants.

Small Business Effect: Small business nurseries, plant dealers, and landscapers are likely affected by the bill's changes to the regulation of invasive plants, particularly due to the anticipated expansion of the list of prohibited invasive plants under the bill compared to the existing list of tier 1 invasive plants under current law. The impact may be mitigated, at least to a certain extent, by the required phase in of the bill's requirements.

Additional Comments: NatureServe is a nonprofit organization dedicated to providing the scientific knowledge that forms the basis for effective conservation action. [*An Invasive Species Assessment Protocol: Evaluating Non-Native Plants for Their Impact on Biodiversity*](#) was published in January 2004.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 915 (Senator Brooks) - Education, Energy, and the Environment.

Information Source(s): Maryland Environmental Service; Anne Arundel, Baltimore, Cecil, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; cities of Frederick and Havre de Grace; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of Agriculture; Department of Budget and Management; Department of General Services; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Baltimore City Public Schools; Montgomery County Public Schools; NatureServe; Department of Legislative Services

Fiscal Note History:
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