

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

Senate Bill 287

(Senator Frosh, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

Nonnative Aquatic Organisms - State of Nuisance - Abatement and Summary
Abatement Procedures

This bill authorizes the Secretary of Natural Resources to adopt regulations that prohibit the importation, possession, or introduction into State waters of a nonnative aquatic organism in order to prevent an adverse impact on an aquatic ecosystem or the productivity of State waters. The bill authorizes the Department of Natural Resources (DNR) to enter and inspect properties to determine if a “state of nuisance” exists and establishes provisions relating to abatement. Finally, criminal penalties for violations of the bill are established.

The bill takes effect June 1, 2003.

Fiscal Summary

State Effect: Potential significant decrease in general/special/federal fund expenditures for DNR to respond to nuisances. Potential minimal increase in general fund revenues due to the bill’s monetary penalty provision.

Local Effect: Potential minimal increase in expenditures due to the bill’s incarceration penalty provision.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A “state of nuisance” means a condition in which a nuisance organism will foreseeably alter and threaten to harm the ecosystem or the abundance and diversity of native or naturalized fish and other organisms.

DNR must give reasonable notice of an intent to enter property pursuant to the bill. When making a determination regarding a state of nuisance, the Secretary must consult appropriate experts and any other available scientific resources. DNR must investigate and determine, to the extent possible, the person who is causing or has caused the state of nuisance. DNR may seize a nuisance organism that has created or will foreseeably create a state of nuisance and may dispose of a seized nuisance organism.

If the Secretary finds that a state of nuisance exists but does not present an imminent danger to the healthy balance of an ecosystem, the Secretary must serve a written notice to the person determined to have caused the nuisance and order the person to abate it. The Secretary may file a complaint in the circuit court for the county where the nuisance exists if the person served with the notice fails to comply with the requirements or if the nuisance is likely to recur. If the responsible person cannot be found, the Secretary must serve the notice to the property owner or occupant. If the property owner or occupant voluntarily abates the state of nuisance, DNR must reimburse all reasonable costs of abatement. If the person consents, DNR may enter the property and abate the state of nuisance. If the person does not voluntarily abate the nuisance and refuses to allow DNR to enter the property, the Secretary may file a complaint in circuit court to seek a court order requiring the person to allow DNR to enter the property and, at DNR's expense, abate the state of nuisance. DNR must make reasonable efforts to repair any property damage or reimburse the person for costs associated with damages caused by abatement activities.

If the Secretary finds that a state of nuisance exists that presents an imminent danger to the healthy balance of an ecosystem, the Secretary may summarily abate the nuisance as provided by the bill. The bill establishes a process by which a person believed to have caused the nuisance would be required to abate it. If such a person fails to do so, the bill authorizes DNR to enter the property and, at the expense of any person determined to have willfully or negligently caused the state of nuisance, abate the nuisance. If a person does not remit payment to the Secretary, the Secretary may file suit. DNR must minimize property damage during abatement activities. If the property owner, tenant, or other occupant did not cause the state of nuisance, DNR must make reasonable efforts to repair any damages caused by abatement activities, or reimburse the person for the damage, and that person is insulated from third party liability for damages claimed as a result of DNR abatement activities.

The bill prohibits a person from interfering with the abatement or refusing to allow entry on any property for the purpose of abating or summarily abating a state of nuisance.

A person who violates the bill's provisions is guilty of a misdemeanor and upon conviction is subject to imprisonment not exceeding 30 days or a fine not exceeding \$2,500 or both.

The bill's provisions do not apply to permitted aquaculture operations and related activities.

Current Law/Background: At the center of media interest during the summer of 2002 was a school of northern snakeheads, popularly known as "frankenfish." In June several hundred snakeheads were found to have spawned in a Crofton pond after the original two fish had been dumped there more than two years earlier. The species, which is native to China, is unusually resilient. Due to concern about the ecosystem, DNR, with the advice of the Snakehead Advisory Committee, eradicated all the snakeheads.

This incident alerted both federal and State authorities to weaknesses in current law regarding the management of nonnative fish species. First, under the federal Lacey Act of 1900 and its 1981 amendments, the importation and interstate movement of "injurious wildlife species" are prohibited without a permit. Because snakeheads were not listed as an "injurious wildlife species," the U.S. Fish and Wildlife Service acted on an expedited basis to adopt regulations banning the importation, transportation, or acquisition of the fish, except under limited circumstances, effective October 4, 2002.

Second, under current statutory law, Maryland does not generally prohibit the release of nonnative fish species. However, such a prohibition is found in regulation – a person is prohibited from introducing, or possessing in order to introduce, a live fish not indigenous to the nontidal waters of the State. It was this provision that was violated by the original release of the snakeheads in the Crofton pond, but because this offense is classified as a misdemeanor, its two-year statute of limitations had expired before the fish were discovered. Nothing in current law covers the release of nonnative fish into tidal waters. In addition, the Secretary of Natural Resources is without explicit authority to adopt regulations covering nonnative fish species, to enter a property where a threat to the ecosystem is believed to exist, or to take steps necessary to abate the threat. The party responsible for the threat is not required to pay the costs of abatement.

This bill is modeled after authority provided to the Department of Health and Mental Hygiene under current law relating to nuisance control.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: By authorizing DNR to enter property, order an abatement, perform an abatement, and be reimbursed by a responsible person for abatement costs, the bill should make it easier and less costly for DNR to respond to a nuisance in the future. Accordingly, general/special/federal fund expenditures for nuisance response would likely decrease under the bill. Because the future existence of a state of nuisance cannot be predicted, however, the impact on State operations and finances cannot be reliably estimated at this time. Abatement costs vary depending on the location and extent of the nuisance, but can be significant. For illustrative purposes only, DNR advises that it spent approximately \$110,000 on abatement of the snakehead fish during the summer of 2002. This included staff time but did not include the cost of scientists and other experts consulted. DNR also advises that because the Crofton pond covered only six surface acres, costs would have been significantly more if this same fish had been found in a larger body of water or in a river system.

The extent to which the bill will reduce DNR's costs for responding to a nuisance will depend largely on the extent to which it can be proved that a responsible person was willful or negligent. It will also depend on the extent to which DNR damages property during abatement activities. DNR would be required to reimburse a property owner, tenant, or other person, if not at fault, for the repair or replacement of property damaged during DNR abatement activities. Any such expenses cannot be predicted at this time.

If DNR chooses to use the authority provided by the bill with respect to adopting regulations to prohibit the importation, possession, or introduction of a nonnative aquatic organism, it could do so with existing resources.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence. Per diem operating costs of local detention facilities are expected to range from \$28 to \$84 per inmate in fiscal 2004.

Small Business Effect: Small businesses involved with the importation and sale of nonnative aquatic organisms (such as pet stores and bait dealers) could be significantly affected to the extent DNR prohibits the importation, possession, or introduction of a nonnative aquatic organism into State waters that is not already prohibited under federal law. Because the extent to which DNR will use the authority provided by the bill is unknown, a reliable estimate of the bill's impact cannot be made at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources, Judiciary (Administrative Office of the Courts), U.S. Fish and Wildlife Service, Department of Legislative Services

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