

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 831

(Delegate S. Robinson, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Agriculture - Invasive Plants - Prevention and Control

This bill establishes an Invasive Plants Advisory Committee within the Maryland Department of Agriculture (MDA) to advise the Secretary of Agriculture in adopting regulations related to invasive plants and to review and report on a science-based risk assessment protocol for invasive plants required to be established under the bill. The Secretary of Agriculture must adopt specified regulations by October 1, 2012, and others by October 1, 2013, which, among other things, establish a science-based risk assessment protocol for invasive plants on which to base the establishment of specified tier 1 and tier 2 plant lists. The bill includes specified prohibitions and requirements applicable to tier 1 and tier 2 plants and related enforcement authority of the Secretary of Agriculture, including penalties. The Secretary is required, by regulation, to phase in the implementation of the bill's requirements giving consideration to the economic impact of the requirements on specified industries.

Fiscal Summary

State Effect: Staffing the committee, developing regulations, and enforcing the bill is expected to be handled by MDA with existing resources. MDA advises it can integrate enforcement into existing routine inspections and handle other potential violations on a complaint basis. Imposition of civil/criminal penalties for violations of the bill's provisions is not expected to materially affect State finances.

Local Effect: Imposition of existing criminal penalty provisions is not expected to materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Invasive Plants Advisory Committee

The bill establishes an Invasive Plants Advisory Committee within MDA to (1) advise the Secretary of Agriculture regarding regulations necessary to carry out the provisions of the bill; and (2) conduct an annual review of the science-based risk assessment protocol for invasive plants required to be established under the bill and report to the Secretary regarding any proposed changes to the protocol. MDA must provide staff for the committee. Committee members may not receive compensation but are entitled to reimbursement for expenses.

Establishment of Risk Assessment Protocol

The Secretary of Agriculture must, by October 1, 2012, and with the advice of the Invasive Plants Advisory Committee, adopt regulations 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 that invasive plants cause in the State, including economic, ecological, and environmental harm as well as harm to human health.

Establishment of Lists of Tier 1 and Tier 2 Invasive Plants

By October 1, 2013, the Secretary must, with the advice of the committee, adopt regulations that, among other things, (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; and (3) phase in the implementation of the bill's requirements regulating invasive plants with consideration of the economic impact of the requirements on nurseries, landscapers, plant wholesalers, plant retailers, and any other industry.

“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.

Regulation of Tier 1 and Tier 2 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.

Enforcement of Tier 1/Tier 2 Plant Prohibitions/Requirements

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 issue a written condemnation seizure order, mark or tag the plant in a conspicuous manner, and provide written notice to the owner, tenant, or person in charge of the premises. Upon 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, the Secretary must destroy the plant, prepare a statement of facts and a statement of the expense of the destruction, and 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.

On finding a tier 2 plant that does not meet the signage requirement, the Secretary must issue a stop-sale order; mark or tag the plant in a conspicuous manner; and 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 bill also authorizes the Secretary to bring an action for an injunction against a person to (1) enforce the bill's prohibitions/requirements or an order of the Secretary; or (2) prevent or restrain a violation of the bill's prohibitions/requirements. In an action for an injunction, the Secretary does not have to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violations. An injunction must be issued without bond.

A person that violates the bill's prohibitions/requirements is subject to existing penalty and fine provisions in the Agriculture Article. The bill also authorizes the Secretary to, instead of or in addition to any other penalty authorized, impose a civil penalty of up to \$500 per violation on a person that violates the bill or any order issued by the Secretary under the bill. Any civil penalties collected are paid into the general fund.

Current Law: Under the Plant Disease Control Law, the Secretary of Agriculture is required to adopt regulations governing the certification of nurseries and the licensing of dealers and brokers, develop a system for establishing plant standards, develop a program for preventing the sale or distribution of plants that may be infested or infected with dangerously injurious pests, and establish reasonable service fees. The Secretary is required to inspect each nursery in the State at least once each year to determine if the nursery stock is infested or infected with dangerously injurious plant pests.

Under the Maryland Weed Control Law, the existence of growth of certain species of plants is declared to be noxious. The Secretary of Agriculture is authorized to, among other things, institute programs of control and eradication and to enter into agreements with counties, subdivisions of the State, adjoining states, and federal agencies to do so.

No person may import or transport a noxious weed in the State in any form capable of growth or contaminate any uninfested land with a noxious weed through specified actions. Each landowner or person who possesses and manages land infested with a noxious weed is required to eradicate or control the noxious weed on that land by using practices that the Secretary prescribes, including mowing, cultivating, or treating with an approved herbicide.

No person may transport or sell sod for planting purposes that, among other things, contains prohibited noxious weeds in any amount or that contains restricted noxious weeds except under specified conditions.

Under the Agriculture Article, a person who violates a provision of the article is guilty of a misdemeanor and, unless another penalty is specifically provided, is subject to a fine of up to \$500 and/or imprisonment for up to three months. A person found guilty of a second or subsequent violation is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: According to the U.S. National Arboretum, an invasive plant has the ability to thrive and spread aggressively outside its natural range, and a naturally aggressive plant may be especially invasive when introduced to a new habitat. The U.S. National Arboretum, however, indicates that all invasive plants are not equally invasive, with some only colonizing small areas and others dominating large areas in just a few years.

MDA indicates that many other states, including a number of eastern states, have invasive plant laws that vary greatly in scope, complexity, restrictiveness, and degree of enforcement. MDA advises that most states with invasive plant laws have been able to handle enforcement with existing resources.

Small Business Effect: Small business nurseries, plant dealers, and landscapers may be affected by the establishment of tier 1 and tier 2 invasive plant lists and the bill's associated prohibitions and requirements. The Maryland Nursery and Landscape Association indicates that identification of species currently in the market as tier 1 plants may significantly impact those businesses, though the impact will depend on the market size of the affected species. Presumably any impact may be mitigated by the required phase in of the bill's prohibitions/requirements. Retail outlets and persons providing landscaping services may also be impacted by the bill's provisions requiring that signs be posted for tier 2 plant displays and that lists of tier 2 plants be provided to landscaping customers.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Office of the Attorney General, Department of Natural Resources, Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Maryland Nursery and Landscape Association, U.S. National Arboretum, Department of Legislative Services

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