

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 491 (Senator Kramer)
 Education, Health, and Environmental Affairs

Regulation of Invasive Plants - Bamboo - Prohibitions

This bill includes bamboo under the definition of a “tier 1 invasive plant,” making it subject to existing prohibitions applicable to tier 1 invasive plants and establishes an additional prohibition against allowing bamboo to spread or to grow without proper upkeep and containment. The bill establishes civil penalty provisions applicable to violations of that prohibition. The bill also authorizes a governing body of a county to regulate the upkeep and containment of bamboo and to enforce any such regulation, as specified.

Fiscal Summary

State Effect: General fund expenditures increase by \$435,900 in FY 2021; future years reflect annualization and ongoing costs. General fund revenues increase from any penalties assessed for violations.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	-	-	-	-	-
GF Expenditure	\$435,900	\$370,000	\$378,100	\$389,600	\$401,500
Net Effect	(\$435,900)	(\$370,000)	(\$378,100)	(\$389,600)	(\$401,500)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not expected to have a direct, material effect on local government finances, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Under provisions regulating invasive plants, the bill includes bamboo under the definition of “tier 1 invasive plant” and defines “bamboo” as the tier 1 invasive plant that is characterized by aggressive spreading behavior, including bamboo species in the genus *Phyllostachys*.

Pursuant to existing provisions, a person is prohibited from propagating, importing, transferring, selling, purchasing, transporting, or introducing any living part of a tier 1 invasive plant in the State, except under limited specified circumstances. The Secretary of Agriculture has specified existing authority to enforce that prohibition, and a person who violates the prohibition is subject to existing criminal and civil penalties.

In addition to those existing provisions, the bill prohibits a person from allowing bamboo to (1) grow without proper upkeep and appropriate containment measures, including barriers or trenches or (2) spread from the property of the person to the adjoining property of another person or a public right-of-way. Upon finding bamboo in violation of this prohibition, the Secretary of Agriculture must provide written notice to the owner of the property on which the bamboo originated. On written notice from the Secretary, the owner must dispose of or contain the bamboo in accordance with regulations adopted by the Secretary. In addition, a person that violates the prohibition is subject to a civil penalty of up to \$50 for a first violation and up to \$200 for a second or subsequent violation. A series of violations may not result in civil penalties that exceed \$3,000 in one calendar year.

The bill also authorizes the governing body of a county to adopt and enforce any rule or regulation to govern the upkeep and containment of bamboo. However, a person is not subject to a penalty under local provisions if the person is subject to a penalty established under the bill (mentioned above) for the same violation, and vice versa.

Current Law: Chapter 142 of 2011 established the existing provisions regulating invasive plants, to which the bill’s provisions are added.

Establishment of Risk Assessment Protocol

Chapter 142 required the Secretary of Agriculture to – with the advice of a newly established Invasive Plants Advisory Committee – adopt regulations that, among other things, establish a science-based risk assessment protocol for invasive plants that (1) serves 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

Chapter 142 also required the Secretary to – with the advice of the committee – (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 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.

Chapter 142 also authorizes the Secretary to bring an action for an injunction against a person to (1) enforce the prohibitions/requirements or an order of the Secretary; or (2) prevent or restrain a violation of the 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 prohibitions/requirements under Chapter 142 is subject to generally applicable criminal penalty and fine provisions in the Agriculture Article. The Secretary is also authorized 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 prohibitions/requirements or any order issued by the Secretary. Any civil penalties collected are paid into the general fund.

Background: Bamboo has not been classified as a tier 1 invasive plant, but there are currently three types of bamboo that have been classified as tier 2 invasive plants: (1) *Nandina domestica* (heavenly bamboo); (2) *Phyllostachys aurea* (golden bamboo); and (3) *Phyllostachys aureosulcata* (yellow groove bamboo). Weed risk assessments prepared by the Invasive Plants Advisory Committee for *Phyllostachys aurea* and *Phyllostachys aureosulcata* discuss the ability of both to spread through rhizomatous growth (underground stems).

State Expenditures: General fund expenditures increase by \$435,886 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring one administrator, one agricultural inspector, four long-term contractual agricultural inspectors, and a part-time assistant Attorney General to enforce the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- The Maryland Department of Agriculture (MDA) expects to receive a significant, ongoing number of complaints about bamboo across the State that it will need to respond to, requiring the establishment of a new program, consisting of an administrator to oversee the program, an agricultural inspector to lead four long term contractual agricultural inspectors to respond to complaints in different regions of the State (from two new field offices), and a part-time assistant Attorney General to pursue penalties or other enforcement actions. MDA currently receives a regular number of complaints about bamboo and expects, if the bill is enacted, that the number will increase and that it will need to act on those complaints.

- MDA does not have existing staff that can absorb the responsibility for enforcing the bill. MDA’s current enforcement of the invasive plant provisions enacted under Chapter 142 of 2011 is limited to nurseries; the department does not regulate property owners under those provisions.

Regular Positions	2.5
Long-term Contractual Positions	4.0
Salaries and Fringe Benefits	\$256,435
Vehicles (Purchase)	100,000
Other Operating Expenses	<u>79,451</u>
Total FY 2021 State Expenditures	\$435,886

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The Department of General Services, the Department of Natural Resources, and the State Highway Administration either (1) do not expect to need to undertake measures to contain bamboo on their property pursuant to the bill or (2) expect to be able to do so with existing resources. The University System of Maryland and Baltimore City Community College also indicate the bill will not affect them.

State Revenues: General fund revenues increase as a result of penalties imposed under the bill; however, the extent of any increase cannot be reliably estimated. MDA indicates that removal of bamboo, or containment measures, can be expensive, which may result in penalties being imposed relatively frequently if landowners are unwilling or unable to pay for the costs of removal or containment.

Local Fiscal Effect: As property owners subject to the bill’s prohibitions, local governments are not expected to be materially affected. If a governing body of a county chooses to regulate the upkeep and containment of bamboo under the authority provided in the bill, county expenditures and revenues may increase.

Small Business Effect: The bill may have a meaningful impact on small businesses in the State as a result of:

- the bill’s prohibition against propagating, importing, transferring, selling, purchasing, transporting, or introducing bamboo in the State, which may negatively affect nurseries, landscapers, or other businesses that currently sell bamboo; or
- the bill’s prohibition against allowing bamboo to spread or grow without proper upkeep and appropriate containment, which may (1) negatively affect any small business with bamboo on its property if it must incur costs to comply with the bill and (2) positively affect landscapers or other businesses that are hired to remove or contain bamboo.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Agriculture; Department of General Services; Department of Natural Resources; Maryland Department of Transportation; University System of Maryland; Baltimore City Community College; Anne Arundel, Charles, Frederick, and Montgomery counties; Maryland Association of Counties; City of Havre de Grace; Department of Legislative Services

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