

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

Senate Bill 7

(Senator Elfreth)

Invasive and Native Plants - Classification, Listing, and Use

This bill requires the Maryland Department of Agriculture (MDA) to classify as a tier 1 invasive plant or a tier 2 invasive plant each invasive plant species identified in the *Plant Invaders of Mid-Atlantic Natural Areas* publication issued by the National Park Service (NPS) and the U.S. Fish and Wildlife Service (USFWS). The Department of Natural Resources (DNR) must (1) publish on its website a list of native plant species and identify which species may be used as an alternative to the use and planting of tier 2 invasive plants and (2) notify nurseries, landscapers, plant wholesalers, and plant retailers of the bill's provisions. State agencies and entities that receive State funds must prioritize, whenever possible, the planting of native species.

Fiscal Summary

State Effect: General fund expenditures increase by \$233,000 in FY 2023; future years reflect annualization, inflation, and ongoing costs. State revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	233,000	239,200	246,700	252,800	259,800
Net Effect	(\$233,000)	(\$239,200)	(\$246,700)	(\$252,800)	(\$259,800)

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.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Establishment of Risk Assessment Protocol

Chapter 142 of 2011 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.

Chapter 526 of 2021 prohibits State funds from being used to purchase or plant an invasive plant species for an outdoor project except if the plant is commonly used for agricultural or horticultural purposes and is maintained for education or research.

State Expenditures: MDA advises that approximately 75 species are listed in the *Plant Invaders of Mid-Atlantic Natural Areas* publication issued by NPS and USFWS. In order to determine if a listed plant should be classified by MDA as a tier 1 or tier 2 listed plant pursuant to the bill, a weed risk assessment needs to be completed for each species and reviewed by the Invasive Plant Advisory Committee. The department indicates it needs additional personnel to perform this task as each assessment may require 8 to 10 weeks.

As a result, MDA's general fund expenditures increase by \$233,000 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring (1) one administrator to oversee the completion of all weed risk assessments and to chair the Invasive Plants Advisory Committee, which will review the risk assessments as they are completed; (2) one administrative officer to assist with weed risk assessments and related tasks; and (3) one agricultural inspector to assist in the enforcement of invasive plant laws, as the bill expands the number of plants added to the list of tier 1 and tier 2 species. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including travel.

Positions	3.0
Salaries and Fringe Benefits	\$169,971
Vehicle	22,500
Operating Expenses	<u>40,529</u>
Total FY 2023 MDA Expenditures	\$233,000

Future year MDA expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Ongoing activities are anticipated as NPS and USFWS update their publication over time.

Due to the existing general prohibition on the use of State funds to purchase or plant an invasive plant species for an outdoor project, the bill is not anticipated to affect State expenditures for the purchase of plants. For example:

- DNR reports that the bill does not likely have a significant fiscal or operational impact as most departmental programs promote the use of native plants;
- the Department of General Services reports that it does not purchase or use invasive plant species; and
- the Maryland Department of Transportation (MDOT) advises that the department and the Maryland Transportation Authority (MDTA) prohibit all uses of tier 1 and tier 2 listed plants and language to that effect is included in contract documents. As a result, the bill does not have a fiscal effect on MDOT or MDTA.

Small Business Effect: Small businesses may be affected to the extent the bill reduces the number of plants that can be sold in the industry. The bill also requires additional work to verify that signage is properly placed on any tier 2 plants.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 15 (Delegates Luedtke and D. Jones) - Ways and Means and Environment and Transportation.

Information Source(s): Maryland Department of Agriculture; Department of Natural Resources; Department of General Services; Maryland Department of Transportation; Comptroller's Office; Department of Legislative Services

Fiscal Note History: First Reader - January 23, 2022
fnu2/hlb Third Reader - March 21, 2022
Revised - Amendment(s) - March 21, 2022

Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510