

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 90

(Delegate Foley, *et al.*)

Environment and Transportation

Education, Energy, and the Environment

Local Government - Regulatory Powers - Regulation of Invasive Bamboo

This bill authorizes the governing body of a county or municipality to regulate (through an ordinance) invasive bamboo, including prohibiting a person from: (1) selling invasive bamboo; (2) planting invasive bamboo; and (3) allowing invasive bamboo to grow on the property of the person without proper upkeep and appropriate containment measures, including barriers or trenches. The bill also authorizes the governing body of a county or municipality to provide for the enforcement of an ordinance adopted under the bill by requiring any damages caused by invasive bamboo to be mitigated and establishing a civil fine.

The bill defines “invasive bamboo” as bamboo characterized by aggressive spreading behavior, including bamboo species in the genus *Phyllostachys*.

Fiscal Summary

State Effect: None.

Local Effect: County and municipal governments can implement the regulation of invasive bamboo with existing resources. Potential increase in local fine revenues.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Establishment of Lists of Tier 1 and Tier 2 Invasive Plants

Chapter 142 of 2011 required the Secretary of Agriculture to – with the advice of the Invasive Plants Advisory Committee – (1) establish a list of tier 1 plants and tier 2 plants and (2) establish a procedure for classification or declassification of an invasive plant as a tier 1 invasive plant or a tier 2 invasive plant. “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.

Most recently, Chapters 551 and 552 of 2022 required the Department of Natural Resources 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 must 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 the National Park Service and the U.S. Fish and Wildlife Service.

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).

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 of Agriculture, 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 of Agriculture, 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.

Small Business Effect: The bill may have a meaningful impact on small businesses depending upon whether a county or municipal government decides to regulate invasive bamboo. Additional local regulations may (1) negatively affect small businesses that incur costs to comply with potential restrictions pertaining to invasive bamboo and (2) positively benefit landscaping businesses that are hired to remove or contain invasive bamboo.

Additional Information

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

Designated Cross File: None.

Information Source(s): Carroll, Harford, and Queen Anne's counties; Department of Natural Resources; Maryland Association of Counties; Department of Legislative Services

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