

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 808

(Delegate Ghrist, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

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Weed Control - Noxious Weeds - Regulations and Penalties

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This bill repeals the existing list of noxious weeds in statute and instead requires the Secretary of Agriculture to adopt regulations establishing the list of noxious weeds. The bill also establishes penalties for violations of the provisions regulating noxious weeds.

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Fiscal Summary

**State Effect:** General fund expenditures may increase by \$426,900 in FY 2020 and by at least \$368,100 annually thereafter. Transportation Trust Fund (TTF) expenditures may increase significantly – potentially by \$1 million annually in FY 2020 and 2021 and by \$200,000 annually thereafter. Nonbudgeted expenditures may also increase. General and/or special fund penalty revenues may increase.

**Local Effect:** County expenditures and revenues related to weed control programs may increase by an indeterminate amount. **The bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:**

*Establishment of Noxious Weed List by Regulation*

The bill repeals the existing list (in statute) of plants considered to be noxious weeds in the State and instead requires the Secretary of Agriculture to adopt regulations to establish a

list of plants that are considered to be noxious weeds in the State. The bill also eliminates a requirement that a public hearing be held before the Secretary designates a plant which adversely affects or threatens agricultural production, as a noxious weed.

### *Penalties*

A person who violates State law provisions regulating noxious weeds is subject to criminal penalties under Title 12 of the Agriculture Article. (Pursuant to Title 12, a person who violates any provision of the article is guilty of a misdemeanor and subject to a fine of up to \$500 and/or imprisonment for up to three months. For a second or subsequent offense, a person is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.)

Instead of pursuing the penalties and fines under Title 12, the Secretary may impose a penalty of (1) for a first violation, not more than \$500; (2) for a second violation, not more than \$1,000; or (3) for a third or subsequent violation, not more than \$2,000. Those alternate penalties must be distributed to a special fund, to be used only for the control and eradication of a noxious weed.

**Current Law:** Plants considered to be noxious weeds in the State are (1) thistles belonging to the asteraceae or compositae family, including Canada, musk, nodding, plumeless, and bull thistle; (2) Johnsongrass or hybrids that contain Johnsongrass as a parent; and (3) shatter cane and wild cane.

The Secretary of Agriculture has specified authority to address noxious weeds, including investigating the extent of growth and infestation of a noxious weed, instituting programs of control and eradication, and working cooperatively with local governments, other states, and the federal government. The Secretary and a county may cooperatively conduct surveys of infestation in a county, provide technical assistance to landowners, and effect a program of mowing, spraying, or other control or eradication practices.

A person is prohibited from importing or transporting a noxious weed in the State in any form capable of growth, or contaminating uninfested land by movement of rootstocks, seed, soil, mulch, nursery stock, farm machinery, or any other artificial medium.

Each landowner, including a landowner of public land, or person who possesses and manages land infested with a noxious weed must 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.

Each failure to comply with State law provisions addressing noxious weeds must be reported to the State's Attorney for the county in which the violation occurs. The State's Attorney must prosecute all violations and bring an action to enjoin any nuisance.

However, a landowner or other person who possesses and manages the land may enter into a written agreement with the Secretary which sets forth a program for the eradication or control of a noxious weed, and if all the terms and conditions of the agreement are met, there is no violation of the law as to the land covered by the agreement.

A violation of any provision of the Agriculture Article (within which the noxious weed provisions are located) is a misdemeanor and subject to fines and/or imprisonment specified under Title 12 of the article.

**Background:** The Maryland Department of Agriculture (MDA) indicates that the Maryland Weed Control Program (within MDA) is responsible for the control and eradication of designated noxious weeds in order to reduce their economic and aesthetic impact on farmers and landowners. In a January 2018 MDA report required by Chapter 246 of 2018, the department indicates that noxious weeds (Johnsongrass, shattercane, and thistles) can cause losses in excess of \$25 million annually to Maryland agriculture due to reduced yields, decline of quality of crops and forages, and increased control costs. According to MDA, increased expenses are also incurred for roadside and noncrop property management.

The report required under Chapter 246 is focused on the invasive weed Palmer amaranth, its financial impact on the agricultural industry in the State, necessary actions each stakeholder must take to reduce the impact of Palmer amaranth, and the cost of each action. According to MDA, Palmer amaranth first became a problem in Maryland approximately five to six years ago. It was initially limited to the Lower Eastern Shore of Maryland and lower Southern Maryland, but has rapidly spread to all of the Eastern Shore and Southern Maryland, as well as areas of Central Maryland. The report concludes that the best recommendation for controlling Palmer amaranth is adding it to an updated noxious weed law with funding for additional new personnel, equipment, and support.

### **State Expenditures:**

#### *MDA's Weed Control Program*

General fund expenditures may increase by \$426,923 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate assumes that the noxious weed list may be expanded by regulation, pursuant to the bill, including the possible addition of Palmer amaranth to the list. The estimate reflects the cost of (1) three full-time employees to manage the department's responsibilities to control and eradicate an expanded list of noxious weeds in cooperation with county weed control programs; (2) two contractual, seasonal employees to assist with investigation and surveying for noxious weeds during the spring and summer months; (3) vehicles, supplies, and equipment for those five employees; (4) office space rental (for regional offices); and (5) cost-share funding for

counties (\$5,000 per county per year) to enlist the assistance of county weed control programs in investigating and controlling noxious weeds.

MDA indicates that it has no capacity among its existing staff to undertake an expanded noxious weed control program. An expanded program is expected to require the number of additional staff discussed above, in part due to the difficulty of controlling Palmer amaranth and the greater level of effort expected to be needed in comparison to existing control efforts for the plants currently listed as noxious weeds. MDA indicates that the help of county weed control programs will also be needed for outreach, inspection, and follow up with farmers and land managers, and cost-sharing arrangements that have been used in the past – in which MDA provides funding to the county programs, which is matched by county funding – will be an important part of a control program.

The bill requires special fund revenues from fines collected under the alternate penalty provisions established by the bill to be used for the control and eradication of a noxious weed. However, it is uncertain how much revenue will be generated from the fines and, as a result, for the purposes of this fiscal and policy note, it is assumed that general funds are needed to support any increase in MDA expenditures.

Full-time Positions	3
Seasonal Contractual Positions	2
Salaries and Fringe Benefits	\$159,629
Cost-share Grants to Counties	86,250
Vehicles	110,000
Other Operating Expenses	<u>71,044</u>
<b>Total FY 2020 MDA Expenditures</b>	<b>\$426,923</b>

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

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

*Maryland Department of Transportation and Maryland Transportation Authority Efforts to Control Palmer Amaranth*

The State Highway Administration (SHA) is expected to incur significant costs to control any additional noxious weed species on its lands along State highways, as a landowner/manager subject to the State law requirement that landowners or land managers control a noxious weed on their land. SHA may incur costs of as much as \$1 million per year in the first two fiscal years (TTF expenditures), and \$200,000 annually thereafter, to

control Palmer amaranth, and costs of approximately \$100,000 annually per additional species added to the noxious weed list. The Maryland Transportation Authority (MDTA), which is responsible for the State's toll facilities, may also incur increased (nonbudgeted, toll-supported) expenditures, of a smaller magnitude than SHA's costs, to control Palmer amaranth or other added noxious weed species on land managed by MDTA.

### *Other State Lands*

The Department of Natural Resources (DNR) may also incur costs to control additional noxious weed species. DNR's Forest Service, for example, estimates it incurs contractual services (county weed control programs) costs of \$15,000 annually to control Palmer amaranth on State forest lands. Other State agencies may need to control Palmer amaranth or other additional noxious weed species on land that they manage, but that presumably can be accomplished through existing landscape maintenance programs.

**State Revenues:** General and/or special fund revenues may increase overall due to fines paid, under the Title 12 (general funds) or the alternate penalty provisions (special funds), for violations of the noxious weed requirements resulting from any species added to the noxious weed list pursuant to the bill. The magnitude of any increase in revenues cannot be reliably estimated. MDA indicates that if species are added to the noxious weed list, the number of violations may be significant, but it is unclear how many violations will result in fines as opposed to agreements for corrective action.

**Local Fiscal Effect:** County expenditures and revenues may increase, potentially significantly in at least some cases, as a result of involvement of county weed control programs in efforts to control additional noxious weed species such as Palmer amaranth. In addition, counties that do not currently have weed control programs may need to establish programs. As mentioned above, if counties enter into cost-share agreements with MDA to assist in outreach, inspection, and follow up with farmers and land managers, county revenues increase, reflecting receipt of cost-share funding from MDA, and county expenditures also increase, reflecting county matching spending. County expenditures also increase, as a landowner/manager, to control additional noxious weed species such as Palmer amaranth on county lands and rights-of-way. In addition, SHA indicates that it hires county weed control programs to conduct weed control on its lands, and DNR may also need to hire county weed control programs; therefore, county revenues and expenditures may also increase as a result of conducting inspection and spraying on behalf of SHA and/or DNR.

**Small Business Effect:** Small business farms may be meaningfully impacted if the bill causes a given farm to undertake control efforts that otherwise are not undertaken by the farm. MDA has indicated, however, that farms already have an economic incentive to control Palmer amaranth on their lands, since Palmer amaranth can affect crop yields.

Farms that are already undertaking control efforts may meaningfully benefit from the bill if overall control efforts under the bill lessen the spread of Palmer amaranth or other species and lessen the impacts of noxious weeds on farm operations.

Small business seed and feed suppliers may be meaningfully impacted if suppliers need to modify their products or business practices to ensure a species such as Palmer amaranth is not spread through seed and feed used in the State.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture; Maryland Department of Transportation; Department of Natural Resources; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of General Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Scott D. Kennedy

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