

CHAPTER 88

HB 1258-FN - FINAL VERSION

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2000 SESSION

00-2030

08/10

HOUSE BILL ***1258-FN***

AN ACT relative to invasive plant, insect, and fungal species.

SPONSORS: Rep. L. Pratt, Coos 4; Rep. Babson, Carr 5; Rep. Melcher, Hills 11; Rep. Owens, Merr 6; Rep. Philbrick; Carr 4; Sen. Russman, Dist 19; Sen. Disnard, Dist 8

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill:

I. Requires the commissioner of agriculture, markets, and food to conduct research and educational activities which address the effects of invasive plant, insect, and fungal species upon the state.

II. Requires the commissioner to make recommendations for control of invasive species.

III. Creates an invasive species committee to advise the commissioner on matters relating to invasive species.

IV. Requires the commissioner to publish annually lists of invasive species that present potential or immediate danger to the environmental and economic interests of the state.

V. Provides the commissioner with authority to prohibit collection, possession, transportation, sale, propagation, transplantation, or cultivation of listed species.

VI. Allows the commissioner to accept grants, gifts, bequests, and donations which support the purposes of this bill.

VII. Provides the commissioner with rulemaking authority to carry out the provisions of this bill.

VIII. Provides the commissioner with authority to administer and enforce the provisions of this bill.

IX. Provides penalties for violations of the provisions of this bill.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to invasive plant, insect, and fungal species.

Be it Enacted by the Senate and House of Representatives in General Court convened:

88:1 New Subdivision; Invasive Species. Amend RSA 430 by inserting after section 50 the following new subdivision:

Invasive Species

430:51 Declaration of Purpose. The purpose of this subdivision is to recognize the adverse environmental and economic effects of invasive plant, insect, and fungal species upon the state; to establish the means by which the state shall address and minimize such adverse effects; to promote research and educational activities dealing with invasive species so as to achieve the best possible protection of agricultural, forest, wildlife, and other natural resources of the state and of human health; and to prevent and control the spread of invasive species in the state.

430:52 Definitions. In this subdivision:

I. "Alien species" means with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating or reproducing that species, that is not native to that ecosystem.

II. "Commissioner" means the commissioner of agriculture, markets, and food.

III. "Committee" means the invasive species committee as established by this subdivision.

IV. "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

V. "Fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

VI. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising 6-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than 6 legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

VII. "Invasive species" means an alien species whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

VIII. "Native species" means with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

IX. "Person" means any individual, governmental entity, firm, partnership, corporation, company, society, association, or any organized group of persons whether incorporated or not, and every officer, agent, or employee thereof.

430:53 Powers and Duties of the Commissioner.

I. The commissioner shall conduct research and educational activities which address the environmental and economic effects of invasive species upon the state. The commissioner shall solicit support for and participation by other state and federal government entities, the University of New Hampshire and private entities in such activities.

II. The commissioner shall disseminate information on and make recommendations for control of invasive species.

III. The commissioner shall consult with the invasive species committee and prepare and publish by April 1 annually a list of invasive species deemed to present an immediate danger to the health of native species, to the environment, to commercial agricultural or forest crop production, or to human health. The commissioner shall have authority to prohibit collection, possession, importation, transportation, sale, propagation, transplantation or cultivation by any person of any species so listed. Such list shall be known as the "New Hampshire prohibited invasive species list."

IV. The commissioner shall consult with the invasive species committee and prepare and publish by April 1 annually a list of species which present the potential for environmental or economic harm but for which such potential may be reduced or eliminated

by cultural or biological practices. Such list shall be known as the "New Hampshire restricted invasive species list."

V. The commissioner shall apply for and accept grants, gifts, bequests and donations which support the purposes of this subdivision.

430:54 Committee Established.

I. The invasive species committee is hereby established to advise the commissioner on matters relating to invasive species in the state. It shall consist of the following 9 members:

(a) The state entomologist.

(b) The commissioner of environmental services, or designee.

(c) The commissioner of resources and economic development, or designee.

(d) The commissioner of transportation, or designee.

(e) The executive director of fish and game, or designee.

(f) The dean of the college of life sciences and agriculture of the University of New Hampshire, or designee.

(g) Three persons appointed by the governor with the advice and consent of the executive council who shall each serve for a term of 3 years. One shall represent horticultural interests, one shall represent environmental interests, and one shall represent the general public.

II. The committee shall annually choose one of its members to serve as chairperson.

430:55 Administrative Authority; Inspection; Rulemaking. The commissioner of agriculture, markets, and food shall adopt rules in accordance with RSA 541-A for carrying out provisions of this subdivision. The commissioner shall, in person or by deputy or agent, have free access at all reasonable hours to any place, building or vehicle in which prohibited species may be harbored. The commissioner shall have general authority to administer and enforce the provisions of this subdivision and the rules adopted under this subdivision, and to prosecute violations thereof.

430:56 Hearings. When the commissioner learns of any violation of any provision of this subdivision, notice of such violation, together with a copy of the findings, shall be given to the person or persons concerned. Persons so notified shall be afforded a hearing under rules adopted by the commissioner. Affidavits under oath may be received by the commissioner.

430:57 Penalties.

I. Any person who is convicted of violating any provision of this subdivision or rule adopted under this subdivision shall be guilty of a misdemeanor. For any subsequent offense, a person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Any person who violates any provision of this subdivision or any rule adopted or order issued under this subdivision shall, in addition, be liable for a civil forfeiture not to exceed \$5,000 for each violation, for each day of a continuing violation, which may be collected in a civil action or in connection with an action for injunctive relief brought by the attorney general.

III. Any person who violates any provision of this subdivision, or any rule or order of the commissioner, shall be subject to the imposition of an administrative fine levied by the commissioner, not to exceed \$1,000 for each violation.

88:2 Effective Date. This act shall take effect upon its passage.

(Approved: April 27, 2000)

(Effective Date: April 27, 2000)

LBAO

00-2030

12/6/99

HB 1258-FN - FISCAL NOTE

AN ACT relative to invasive plant, insect, and fungal species.

FISCAL IMPACT:

The Administrative Office of the Courts (AOC), Judicial Council and Department of Corrections have determined this bill may increase state and county expenditures by an indeterminable amount in FY 2001 and each year thereafter. There will be no fiscal impact on local expenditures or state, county and local revenue.

METHODOLOGY:

The AOC stated this bill creates a new category of misdemeanor and felony level offense. The AOC has determined this legislation will have little, if any, fiscal impact on the Branch as it will not significantly impact caseload.

The Judicial Council assumed that any cases arising from the enactment of this law for which the Indigent Defense Fund may be liable, will in the first instance be handled by the Public Defender or contract attorneys who accept these cases on a fixed fee basis of \$250 for each misdemeanor charge. If an assigned counsel attorney must be used, the hourly rate of \$60, with a fee cap of \$1,000 for misdemeanor cases will apply. If a motion to exceed the fee cap is approved and/or "services other than counsel" are approved, these will also be chargeable to the Indigent Defense Fund. The Council is unable to predict the number of cases or trials which may arise as a result of the passage of this legislation, therefore, they are unable to estimate the dollar amount of the anticipated costs of such representation.

The Department of Corrections is unable to determine how many individuals would be convicted of a felony and serve time in the state prison. The average cost of incarceration for FY 1999 was \$19,358 per inmate. The average cost of probation/parole supervision was \$842 per offender.

The Department of Agriculture stated any costs of administering this program will be borne by the Department's existing budget. The work falls within the scope of normal activities already being carried out by the Department.