



Ontario's Proposed *Invasive Species Act, 2014*

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The Minister of Natural Resources introduced Bill 167, Ontario's proposed [Invasive Species Act, 2014](#) for First Reading on February 26, 2014. The legislation would enable rapid regulatory intervention, backed by strong investigative and enforcement tools, to target and combat invasive species that can cause hundreds of millions of dollars in environmental damage. The Bill sets out the legislative framework for identifying non-native invasive species. It also contains provisions to prevent their entry, control their spread and ultimately eradicate them from the province. The proposed legislation was posted to the Environmental Registry (EBR # 012-1120) for public review. The deadline for comments is April 14, 2014.

Invasive species may be designated by regulation or, if immediate action is deemed necessary, by order of the Minister. Invasive species would be classified as either a “significant threat” or a “moderate threat” to the natural environment based on their biological characteristics, the harm they pose, their dispersal ability, and their social or economic impacts.

Prohibitions and Special Preventive Measures

The legislation would prohibit

- ♦ possessing a species designated a significant threat everywhere in Ontario (other than in prescribed areas)
- ♦ depositing, releasing, transporting, propagating, buying, selling, leasing, trading or bringing a significant threat invasive species into the province
- ♦ depositing or releasing a species designated a moderate threat anywhere in Ontario.¹

In certain circumstances, the Minister may prepare a prevention and response plan for a specific significant threat invasive species, setting out measures for its early detection, prevention, control and eradication. The legislation also gives the Lieutenant Governor in Council power to make regulations designating certain areas as invasive species control areas. These regulations would impose specific control measures to prevent the species from spreading.

Exceptions

The Minister may authorize a person in writing to engage in activities that would otherwise be prohibited by the legislation. These authorizations may be issued only for research or education; the prevention, control or eradication of an invasive species; or another purpose prescribed by regulation.

¹ Possessing members of moderate threat invasive species would be prohibited only in provincial parks and conservation reserves.

Inspection Powers

Inspectors would have the authority to enter lands, buildings and structures (although a warrant would be required to enter a dwelling) and to stop and examine a conveyance to determine compliance. They could also survey any area to detect and monitor the spread of invasive species. Inspectors may also issue certain control instruments

- ◆ an inspector's order may prevent persons from carrying out activities that contribute to the spread of the species and may require erecting barriers or signs to prevent accessing the species
- ◆ an inspector may declare land, a building, a structure or a conveyance "an invaded place" and require the control, removal or eradication of the species from the place, and/or restrict access to or movement around the place
- ◆ a compliance order may be issued to any person who is contravening, has contravened or is about to contravene the Act, regulations, conditions in an authorization or an agreement, or a provision in an order made under the Act.

Enforcement Tools

The penalties for contravening the proposed Act are high

- ◆ corporations convicted under the Act would be liable to a fine of up to \$1,000,000 for a first offence and \$2,000,000 for a second or subsequent offence
- ◆ officers, directors, employees or agents of the corporation who "directed, authorized, assented to, acquiesced in or participated in the commission of the offence" are party to the offence, whether or not the corporation has been prosecuted.
- ◆ individuals would be liable to a fine of up to \$250,000 and/or up to one year in jail for a first offence and \$500,000 and/or up to one year for a second or subsequent offence.

If the offence involves more than one animal, plant or other organism, the maximum fine is multiplied by the number of organisms involved. The court can also increase the penalty beyond the maximum to equal any monetary benefit that was acquired by or accrued to the person as a result of the offence.

In addition to imposing a fine or imprisonment, the Court can make any of the following orders

- ◆ order not to engage in any activity that could result in the continuation or repetition of the offence
- ◆ order to take any action considered appropriate to remedy or avoid any harm to the natural environment that resulted (or may result) from the offence
- ◆ order to pay the Crown or any other person for all or part of any costs incurred to remedy or avoid such harm
- ◆ order to take such other steps as are specified in the order to comply with the Act
- ◆ order to pay to the Crown or any other person all or part of any expenses incurred with respect to the seizure, storage or disposition of anything seized in connection with the offence
- ◆ order cancelling or prohibiting the person from holding or applying for an authorization issued under section 10 or any other licence, authorization or permit issued under a statute administered by the Ministry of Natural Resources

- ♦ order to publish, in any manner that the court considers appropriate, the facts relating to the commission of the offence.

An appeal of a conviction under the Act would not stay the effect of any of the above orders. A prosecution for an offence under the Act may not be commenced more than five years after the offence was committed.

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