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H.B. 6032 AN ACT CLARIFYING PROVISIONS OF THE GENERAL STATUTES
CONCERNING THE USE OF BARRIER SYSTEMS FOR CERTAIN PLANTINGS

Dear Environment Committee,

Jan. 24, 2015

For the record my name is Caryn Rickel of 13 Edgehill Terr., Seymour, CT. I am writing today to you, members of the Environment Committee, to support the intent of H.B. 6032 with the following three additions:

- 1) Clear wording that bamboo shall not be maintained or allowed to Exist within the 40 foot buffer zone regardless of when the bamboo was planted.**
- 2) Enforcement narrowed to Zoning Officers (since DEEP has no resources) with fines payable to the municipality.**
- 3) ADD that the Court can also enforce the 40 foot buffer zone with attorney fees, costs, and disbursements paid to the prevailing party.**

The three additions above will **clarify and enable enforcement** of the 40 foot no bamboo buffer zone which is critical to stop the continual spread and damage to adjoining property to include private and public property, roadways, wetlands, parks, preserves, and open space.

As you know, no one could get enforcement last year. Many desperate calls were made to DEEP but people were told DEEP had no resources to enforce the law. At first, DEEP Bureau Chief William Hyatt explained that the wording of Public Act 14-100 was not clear enough using “not allow to be planted.” As more calls came in for enforcement, people were told DEEP had no resources to enforce the law.

Pullman and Comley, LLC. Attorneys had *no confusion* interpreting Public Act 14-100 and wrote in their 2014 Report on Environmental Law: <http://www.pullcom.com/news-publications-599.html>

Public Act 14-100 returns to a subject addressed last year by PA 13-82, which imposed restrictions on planting and selling “yellow groove” bamboo, a species that spreads readily and is difficult to eradicate once established. On the evidence of committee testimony this year and last, it is a plant with few endearing qualities and fewer friends. The bill passed this year made several important changes to the strictures enacted last year.

- It modifies the buffer zone provision in three distinct respects.

1. It reduces the minimum distance from planting site to property boundary to forty feet (versus one hundred).
But ...
2. It eliminates an exception from the buffer zone for plants “contained by a properly constructed and maintained barrier system.” And ...
3. It deletes a provision that “grandfathered” bamboo planted before October 1, 2013, the effective date of PA 13-82.
4. The cumulative effect of these changes is that yellow groove bamboo must remain within a forty-foot buffer zone, regardless of when it was planted or whether the owner has taken steps to “contain” it. Violation of these modified restrictions will be subject to enforcement by DEEP or municipal authorities. And if these measures fail, the remedies available under the common law of nuisance are available to affected property owners.
5. *This Alert is part of Pullman & Comley's report on environmental legislation in the 2014 session of the Connecticut General Assembly. The main article in this report can be found [here](#).*

While other references also indicate ‘not allow to be planted is past tense’, the law needs to be clarified using ‘not allow to be maintained or exist’.

Clarification should be:

c) No person shall plant running bamboo or allow running bamboo **to be maintained or exist** on his or her property at a location that is forty feet or less from any abutting property or public right-of-way.

<http://pasttenses.com/plant-past-tense> <http://www.wordhippo.com/what-is/the-past-tense-of/plant.html>

Even using “No person shall plant running bamboo or allow running bamboo **to grow** on his or her property at a location that is forty feet or less from any abutting property or public right-of-way.” would be clearer, but would not be clear enough for rhizomes piled up to be discarded, or dumped (which would grow and allow further spread) or running bamboo in pots, as rhizomes easily escape through openings, and break through the bottoms.

The clearest wording is not allow running bamboo **to be maintained or exist** within the 40 foot buffer zone regardless of when the bamboo was planted.

Newtown, CT - has very clear wording, as mentioned above. All three of the ordinances below are clear using not allow to exist in the buffer zone.

Newtown, CT - has defined running bamboo a nuisance with a 40 foot buffer zone on existing bamboo - “ shall not be planted, maintained or otherwise be permitted to exist within 40 feet” of the traveled portion of any public street or sidewalk or within forty 40 feet of the boundary of the property on which it exists. ***Excellent wording shown in the link below:**
<http://ecode360.com/documents/NE0077/source/538855.pdf#search=bamboo>

Orange, CT - has defined running bamboo a nuisance with a 100 foot buffer zone on existing bamboo, with new planting prohibited. Running Bamboo shall not be permitted to exist within any Buffer Zone.
<http://ecode360.com/28393225?highlight=bamboo#28393225>

Bozrah, CT - has declared running bamboo a nuisance with a 40 foot buffer zone on existing bamboo - “ shall not be planted, maintained or otherwise permitted to exist within 40 feet” http://neme-s.org/Bamboo/Bozrah_Ordinance.pdf

The wording should be clarified in HB 6032, even though Public Act 14-100 has clear legislative intent, as shown in the two examples below:

Two Sections: I. Senate Vote Transcript II. OLR Bill Analysis

I. Transcript of the Senate Vote on May 2, 2014 clearly shows 40 ft. buffer is retroactive.

<http://www.cga.ct.gov/2014/trn/S/2014STR00502-R00-TRN.htm> Scroll to SB 72 – shown below are confirmations of legislative intent:

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Yes, through you, Madam President, the LCO Brad (inaudible) who drafted this put it in line 4, the word "or allow running bamboo to be planted on his or her property. " And the intention there, if there's a question of legislative intent, is that -- that this bill it to apply to running bamboo whether it's -- it's planted -- it's existing running bamboo or it's running bamboo that's planted any time after the effective date of this bill. That is the intent (inaudible) apply to all running bamboo, it's retroactive, and it's prospective, both.

THE CHAIR:

Senator Chapin.

SENATOR CHAPIN:

Thank you, Madam President.

II. OLR BILL ANALYSIS: <http://www.cga.ct.gov/2014/BA/2014SB-00072-R000367-BA.htm>

This bill prohibits people from **having** “running bamboo” (i.e., bamboo in the genus *Phyllostachys*, including yellow-groove bamboo) on their property within 40 feet of abutting property or a public right of way. Current law prohibits them from having it on their property within 100 feet of abutting property or a public right of way, unless it is contained by a properly constructed and maintained barrier system or planted above ground in a container.

Under the bill, the 40-foot buffer zone requirement applies regardless of when bamboo is planted. Currently, the 100-foot setback requirement applies only to bamboo planted after October 1, 2013.

There are four additional 2015 Running bamboo bills proposed to clarify and enable enforcement of the 40 foot buffer zone, indicating the *seriousness of the harm* caused by destructive *Phyllostachys* running bamboo. Many people were counting on enforcement of the 40 foot buffer zone to stop the further spread and damage. The four bills below could be consolidated into HB 6032 with the three adjustments needed.

HB 6043 Introduced by Rep. Mitch Bolinsky **AN ACT CLARIFYING THE RUNNING BAMBOO LAW AND PROVIDING FOR LOCAL ENFORCEMENT OF SUCH LAW AND THE AWARD OF ATTORNEY'S FEES AND COURT COSTS FOR CIVIL SUITS BROUGHT TO ENFORCE SUCH PLANTING RESTRICTIONS.**

<http://www.cga.ct.gov/2015/TOB/H/2015HB-06043-R00-HB.htm>

SB 144 Introduced by Sen. Toni Boucher **AN ACT CLARIFYING PROVISIONS OF THE GENERAL STATUTES CONCERNING RUNNING BAMBOO.**

<http://www.cga.ct.gov/2015/TOB/S/2015SB-00144-R00-SB.htm>

SB 145 Introduced by Sen. Toni Boucher **AN ACT CONCERNING CIVIL ACTIONS BROUGHT TO ENFORCE THE LAW CONCERNING RUNNING BAMBOO.**

<http://www.cga.ct.gov/2015/TOB/S/2015SB-00145-R00-SB.htm>

SB 147 Introduced by Sen. Toni Boucher **AN ACT REQUIRING LOCAL ZONING ENFORCEMENT OFFICERS TO ENFORCE RESTRICTIONS CONCERNING THE PLANTING OF RUNNING BAMBOO.** <http://www.cga.ct.gov/2015/TOB/S/2015SB-00147-R00-SB.htm>

Raised House Bill 6032 should include the adjustments to the language shown below to accomplish the intended effect of enforcement of the 40 foot buffer zone on existing bamboo.

Clarify the wording to: c) No person shall plant running bamboo or allow running bamboo **to be maintained or exist** on his or her property at a location that is forty feet or less from any abutting property or public right-of-way. This language would be clearer...because planted could be viewed as the act of putting it in the ground. If there were an old stand that someone found on a property they bought, they could say I did not allow it to be planted and thus I'm not liable, and allow it to continue to spread and invade abutting properties.

Narrowing enforcement to zoning officers with fines payable to the municipality would enable local enforcement.

Adding that the Court could also enforce the 40 foot buffer zone with attorney fees, costs and disbursements paid to the prevailing party, would allow for civil suits to *enforce* the 40 foot buffer zone. A bamboo victim cannot claim attorney fees, which can be as high as \$45,000. The

bamboo victim is not made whole and suffers a great financial loss in order to save his property from the damage caused by running bamboo.

Connecticut follows the general American Rule in which litigants pay their own attorneys regardless of whether they win. In order to collect attorney's fees and costs in any particular civil case, there has to be a statute which authorizes it.

One minor wording change is suggested – it should read: **“attorney’s fees and costs”** (in lieu of “attorney’s fees and court costs.” Using attorney’s fees and costs will cover everything. The wording **“attorney’s fees and court costs”** does not cover the likely expense of expert witnesses required for such cases, as it narrows it down to just court filing fees. It is important to use “attorney’s fees and costs”, or to use “attorney’s fees, costs, and disbursements.” Important to note that attorney’s fees and costs will include additional disbursements such as expert witness fees, while using attorney’s fees and court costs would be interpreted as such, and there is a danger that court costs would be construed as only court filing fees and such.

It is important that the language be clear to include disbursements - additional fees for expert witnesses in a civil suit, as these fees can range over \$5,000.and are in addition to court costs.

Laws have recently passed with full bans on planting and/or maintenance of existing bamboo *indicating the seriousness of the harm* caused by destructive *Phyllostachys* running bamboo.

Malverne, NY - Video showing damage in Malverne, NY

<http://landing.newsinc.com/shared/video.html?freewheel=90733&sitection=repam&VID=24790045>

Video showing damage - by Steve Greenspan - Yellow groove bamboo penetrating a building with rhizomes growing inside without sunlight.

https://docs.google.com/file/d/0B1_jkkqZyBKgR1hxRIhobEIPYzg/edit?pli=1

Effective 2014: New York State - has listed both: Yellow groove bamboo - *Phyllostachys aureosulcata* and Golden bamboo - *Phyllostachys aurea* as invasive species.

<http://www.dec.ny.gov/regulations/93848.html> - scroll midway under Section 2: Plants.

New York list: http://www.dec.ny.gov/docs/lands_forests_pdf/islist.pdf

New York State Department of Environmental Conservation in listing 2 species of *Phyllostachys* running bamboo as invasive species: “Invasive species are non-native species that can cause harm to the environment, the economy or to human health. These regulations are expected to help control invasive species, a form of **biological pollution**, by reducing the introduction of new and spread of existing populations, thereby having a positive impact on the environment.”



With *Phyllostachys* invasive running bamboo the invasion and damages are continual each year. Each successive invasion is more destructive than the previous year's invasion. *Phyllostachys* invasive running bamboo is impossible to contain.

Yellow groove running bamboo is like cancer to land. Yellow groove bamboo is the worst continual nuisance I can imagine. Yellow groove destroys land and everything in its path. Yellow groove bamboo robs you of your quality of life and free use of your property.

I founded the Institute of Invasive Bamboo Research. Starting in 2010, I documented approximately 600 invasions of *Phyllostachys aureosulcata* - yellow groove bamboo, with *Phyllostachys bissetii* infestations also widespread in Conn. While most of the infestations in Conn. are these two species, it should be noted several other *Phyllostachys* species have been documented in Conn. – *P. nuda*, *P. dulcis*, *P. nigra*, *P. aurea* and *P. rubromarginata*. They all behave the same to form a monoculture spreading rapidly in all directions, both highly invasive and destructive underground. The genus *Phyllostachys* includes all of them.
[EDDMapS records available for each]

The data collection is part of my research. I also keep the database spreadsheet of invasions for the State of Connecticut. The data is then entered onto EDDMapS (Early Detection and Distribution Mapping System, 2015). Field Researcher Terri Groff has assisted in this documentation.

Phyllostachys aureosulcata - Yellow groove bamboo is a giant temperate timber bamboo from Chekiang Province, China. The bamboo was introduced for trial as a stake and forage bamboo,

and a farm usage crop. This is the most aggressive cold hardy running bamboo with maximum height of 45 feet / cold hardy to -15 F.

The infestations are widespread throughout Connecticut. Yellow groove bamboo is escaping into wetlands, parks, preserves and open space. [Click on county to open EDDMapS records] <http://www.eddmaps.org/distribution/usstate.cfm?sub=55473>

As of Jan. 2015, there are Nine Known Escapes from Cultivation of *Phyllostachys aureosulcata* in Connecticut - <http://presents.bugwood.org/browse/view.cfm?pn=00000189>

To strengthen and clarify HB6032 to enable enforcement will stop the spread.

‘Desperate residents are calling for help’ where the running bamboo is spreading from property to property and street to street. For all these properties, bamboo abatement to stop the damages ‘cannot even begin’ until the bamboo is setback and removed off the property lines so that it does not regenerate back in. **Enforcement of the bamboo buffer zone on existing bamboo is the solution to halt these invasions.** A no bamboo buffer zone on existing bamboo will allow a property owner to protect his property before the bamboo invades. Running bamboo including rhizomes cannot exist in the buffer zone. Running bamboo spreads astonishingly fast, undetected underground with spread in all directions. “When one realizes it is a problem it is almost too late.”

A clear enforceable law will protect both private and public property from the continual spread and damage caused by harmful *Phyllostachys* running bamboo.

Very truly yours,
Caryn Rickel, CPCU
Institute of Invasive Bamboo Research

ATTACHED EXHIBIT A



Infestation in Oakdale, CT EDDMapS No. 2989181
Image by Field Researcher Terri Groff
<http://www.eddmaps.org/AT/distribution/point.cfm?id=2989181>



Infestation in Orange, CT EDDMapS No. 2642210
Image by Caryn Rickel
<http://www.eddmaps.org/AT/distribution/point.cfm?id=2642210>

EXHIBIT A



Yellow groove infestation in Orange, CT EDDMapS No. 2642210 Image by Caryn Rickel



Yellow groove infestation in East Haven, CT EDDMapS No. 3228510 Image by Caryn Rickel

Rhizomes breaking up drainage pipes underground



Running bamboo growing up through asphalt

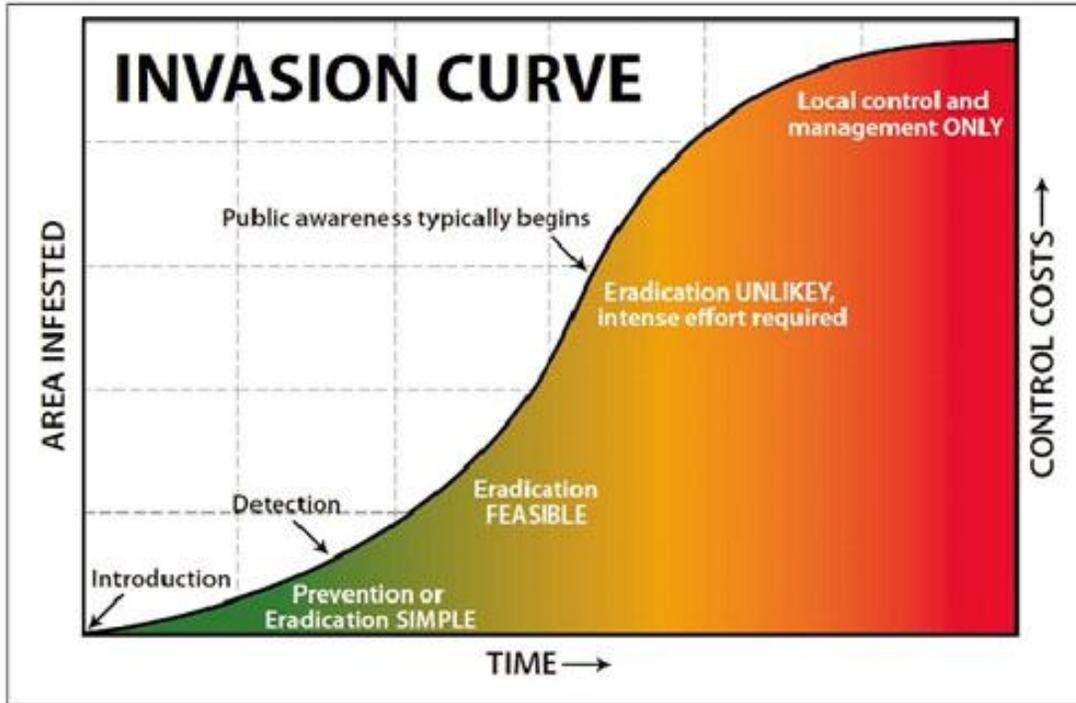




Rhizomes invade under deck with new culms shooting in May



Damage in Bozrah, CT - 2012 - Bamboo grows under siding and up through roof.



Scroll to *Phyllostachys* species to see all records that have been entered:

http://www.eddmaps.org/tools/stateplants.cfm?id=us_ct

Letter dated 6-29-2012 by Curt Johnson - Senior Attorney and Program Director of Connecticut Fund for the Environment - calling for listing yellow groove running bamboo on the Invasive Species List as a first step toward controlling what appears to be one of the most **destructive invasives**. [http://neme-s.org/Bamboo/Bamboo Invasive Letter 6-2012.pdf](http://neme-s.org/Bamboo/Bamboo%20Invasive%20Letter%206-2012.pdf)

EDDMapS link shows infestation on Dogwood Rd., Orange, CT referenced in above letter: <http://www.eddmaps.org/distribution/point.cfm?id=2642210>

Image left: Bamboo removal in Southbury, CT Nov. 2013
Three rhizomes planted in 2002 - turn into a 100 x 100 feet
Bamboo nightmare. Removal video available.



Image below: Milford, CT - May 2013
Yellow groove invading 4 properties - May culms shooting.



<http://www.invasiveplantatlas.org/subject.html?sub=55473>

<http://www.invasive.org/browse/subthumb.cfm?sub=55473&Start=1&display=60&sort=2>