SB 496

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 496 (Senator Madaleno, *et al.*)
Education, Health, and Environmental Affairs

Poultry Litter Management Act

This bill makes a person or company that owns poultry that is raised by a contract grower at the contract grower's contract operation (an "integrator") responsible for the removal and delivery of all of the manure produced by the poultry owned by the integrator that is not able to be fully utilized under a certified nutrient management plan developed for the contract operation or for adjacent land under the contract grower's control ("excess manure"). Public funds may not be used to pay for the transportation of manure under the bill. The bill establishes various requirements applicable to integrators, contract growers, and manure brokers or transporters working under contract with integrators, with respect to the placement of poultry at a contract operation and the management and delivery of manure. Penalties for violations and a contract grower's ability to take court action are established.

Fiscal Summary

State Effect: General fund expenditures increase by $254,700 in FY 2017 to hire additional Maryland Department of Agriculture (MDA) personnel to implement and enforce the bill. Future years reflect annualization and inflation. General fund revenues may increase due to the bill's penalty provisions for those cases heard in the District Court.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
GF Expenditure	$254,700	$278,300	$288,600	$299,300	$310,500
Net Effect	($254,700)	($278,300)	($288,600)	($299,300)	($310,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Revenues may increase due to the bill's penalty provisions for those cases heard in the circuit courts. Expenditures are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Responsibility for Excess Manure

An integrator may only place poultry at a contract operation that maintains an unexpired nutrient management plan that the contract grower represents has been fully implemented. An integrator is responsible for the removal and delivery of all excess manure in accordance with specified requirements and must remove the excess manure at no cost to the contract grower. An integrator must remove excess manure from a contract operation at least once every calendar year.

Delivery of Excess Manure

An integrator, or manure broker or transporter working under contract with an integrator, must deliver excess manure only to (1) an agricultural operation that has capacity to accept manure for land application, which must be demonstrated by its unexpired nutrient management plan; (2) an alternate-use facility that has capacity to provide indoor storage of all excess manure; and (3) a storage facility that has the capacity to provide indoor storage for all excess manure. The bill also specifies requirements relating to biosecurity and public health or safety regulations for an integrator that removes manure or a manure transporter working under contract with an integrator.

Election of Contract Grower to Retain Excess Manure

A contract grower may voluntarily elect to retain all or part of the manure produced by an integrator's poultry and an integrator may not charge a fee for a contract grower to retain manure that is not excess manure. If a contract grower wishes to retain any excess manure, the contract grower must receive permission in writing from the integrator, approving the amount to be retained, and obtain a manure "alternative use plan" approval from MDA for any amount of excess manure retained. An "alternative use plan" is a plan that is designed to use manure in a manner that does not result in any additional nutrient loads to the Chesapeake Bay watershed.

Recordkeeping

Integrators and manure brokers or manure transporters working under contract with integrators must maintain specified written records of all manure removed from contract

operations. The records must be submitted to MDA annually and made publicly available by the department on request.

Penalties

The bill establishes specified criminal penalties and civil penalties (collected in a civil action in circuit court) for violations of the bill's provisions and considerations to be taken in to account in the assessment of a civil penalty. In addition to any other available remedies, MDA is also authorized to impose specified administrative penalties after providing an opportunity for a hearing. The Secretary of Agriculture may not settle any claim for a civil penalty without the concurrence of the Attorney General, and any settlement must subject the integrator to an enhanced schedule of inspections by MDA and demonstrate to the satisfaction of MDA and the Attorney General that similar practices or activities that gave rise to the violation have ceased with respect to the removal and proper use of manure for other contract growers.

Contract Grower's Ability to Take Court Action

A contract grower that suffers damages because of an integrator's violation of the bill's provisions may bring an action to obtain appropriate legal and equitable relief, including damages. To obtain injunctive relief, a contract grower may not be required to post a bond, prove the absence of an adequate remedy at law, or show the existence of special circumstances unless the court, for good cause, orders otherwise. If a contract grower prevails in an action, the court must award the contract grower reasonable attorney's fees and litigation expenses.

Current Law/Background:

Manure Transport Program

The Manure Transport Program is a cost-share program established in statute and MDA regulations to assist in the transportation of excess poultry or livestock manure from farms that do not have sufficient land to use the manure for crop production in accordance with a nutrient management plan or that have land that is phosphorus over-enriched. The program is intended to protect water quality by fostering efficient land application of manure and alternative waste management and use technologies. The program is funded by both the State and, in the case of poultry litter, the commercial poultry producer industry. The Governor's proposed fiscal 2017 budget includes $2.1 million for the program ($947,045 for poultry and $1.1 million for nonpoultry), which includes $590,000 in funding contributed by poultry companies.

Nutrient Management

Pursuant to the Water Quality Improvement Act of 1998 (Chapters 324 and 325), agricultural operations with $2,500 or more in gross annual income and livestock operations with 8,000 pounds or more of live animal weight must have and comply with a nutrient management plan for nitrogen and phosphorus. A nutrient management plan is prepared to "manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable nutrients and to maintain productivity."

MDA certifies and licenses nutrient management consultants and businesses to prepare nutrient management plans for farm operations and also issues certificates to farm operators to develop their own plans. In consultation with the Nutrient Management Advisory Committee, MDA is required, by regulation, to prescribe the criteria, form, and content for certified nutrient management plans applicable to licensees and certificate holders and also to establish specified continuing education, recordkeeping, and reporting requirements.

Under MDA regulations, a person who manages or owns an agricultural operation, with certain exceptions, must revise and update the operation's nutrient management plan at least once every three years from the date the current plan was prepared. In addition, specified changes in an agricultural operation may require the operator to modify or update a plan when the information in the plan is inadequate, incomplete, or fails to address a change.

The State has begun a phased-in transition to the use of the Phosphorous Management Tool (PMT), developed by the University of Maryland, to determine phosphorous application rates under nutrient management plans. The PMT is intended to identify critical areas where there is high potential for phosphorus loss due to high potential for transport to nearby surface waters and a large source of phosphorus, and also to encourage the use of management practices in those critical source areas that protect water quality. Transition to the PMT is expected to increase the need for manure transport and alternative uses as phosphorous application rates on farms with high soil phosphorous levels are limited by the implementation of the tool.

State Expenditures: General fund expenditures increase by $254,724 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring two nutrient management specialists and an administrator within MDA to implement and enforce the bill's requirements. While existing nutrient management staff perform on-farm audits and inspections on a portion of overall farms each year, additional staff are expected to be needed to focus on contract grower contract operations and manure transport from those sites, and to provide outreach and assistance, to ensure compliance

with the bill. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3
Salaries and Fringe Benefits	$194,542
Vehicles	34,000
Operating Expenses	26,182
Total FY 2017 State Expenditures	**$254,724**

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

For the purposes of this fiscal and policy note, it is assumed that the bill's prohibition on the use of public funds for the transportation of manure under the bill shifts funds under the Manure Transport Program that otherwise would be used for poultry litter to nonpoultry manure, and does not affect the overall level of State funding allocated to the program. MDA indicates there is sufficient demand for the funding for transportation of nonpoultry manure.

The Office of the Attorney General can implement the bill with existing resources.

State Revenues: General fund revenues may increase under the bill's monetary penalty provisions for those cases heard in the District Court. The extent of any increase cannot be reliably estimated.

Local Revenues: Revenues may increase under the bill's monetary penalty provisions for those cases heard in the circuit courts. The extent of any increase cannot be reliably estimated.

Small Business Effect: Contract growers and small businesses involved in manure transport or that receive poultry litter from contract growers, in at least certain cases, are expected to be meaningfully impacted by (1) the shifting of control over, and responsibility for, poultry litter generated at contract operations and (2) the bill's requirements applicable to integrators, contract growers, and manure brokers and transporters. Whether small businesses are positively or negatively impacted by the bill depends in part on the individual circumstances of each business (*e.g.*, whether excess poultry litter is a net cost to a contract grower to manage or is a net source of revenue or used as fertilizer for nonadjacent land).

Additional Information

Prior Introductions: None.

Cross File: HB 599 (Delegate Lam, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of Agriculture; Maryland Department of the Environment; Department of Health and Mental Hygiene; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Delmarva Poultry Industry, Inc.; Department of Legislative Services

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Analysis by: Scott D. Kennedy

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