

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 904

(Delegate Stewart, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Agriculture - Nutrient Management - Monitoring and Enforcement

This bill makes various changes relating to (1) nutrient management plan compliance, enforcement, and reporting; (2) concentrated animal feeding operation (CAFO) permitting and fees; and (3) water quality monitoring in tributaries located on the lower Eastern Shore.

Fiscal Summary

State Effect: Special fund expenditures increase by \$50,600 and general fund expenditures increase by \$40,000 in FY 2020. Future year expenditures reflect ongoing costs. General and special fund revenues increase, as discussed below.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	-	-	-	-	-
SF Revenue	-	-	-	-	-
GF Expenditure	\$40,000	\$25,000	\$25,000	\$25,000	\$25,000
SF Expenditure	\$50,600	\$61,100	\$63,100	\$65,200	\$67,500
Net Effect	- /(-)	- /(-)	- /(-)	- /(-)	- /(-)

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Nutrient Management Compliance, Enforcement, and Reporting

Plan Summaries, Annual Implementation Reports, and Department Reporting

The bill establishes that, with respect to a summary of a nutrient management plan that must be filed and updated with the Maryland Department of Agriculture (MDA) under existing law, the department may require an updated summary to take the form of an annual implementation report.

The bill requires that if a person, in operating a farm, uses or produces animal manure, the person's annual implementation report must include (1) the amount of animal manure imported to or exported from the person's farm; (2) for any animal manure that was imported, the name and location of the sending farm; and (3) for any animal manure that was exported, the name and location of the farm, alternative use facility, or manure broker that received the manure. If a person receives animal manure through a manure broker, the broker must provide the person with the name and location of the sending farm.

If a person fails to file a summary or annual implementation report as required by MDA, the department must notify the person that:

- the person is in violation of the requirement to file a summary or annual implementation report; and
- the person is subject to (1) after 30 days from issuance of the notice, an administrative penalty of not less than \$100 and not more than \$250; (2) after 90 days from issuance of the notice, an administrative penalty of not less than \$250 and not more than \$1,000; and (3) after 90 days from issuance of the notice, an administrative penalty of not more than \$1,000.

A penalty for failing to file a summary or annual implementation report must be assessed with consideration given to (1) the willfulness of the violation and (2) the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

Beginning in 2020, an existing report that MDA must provide to the Governor and General Assembly by December 31 of each year on the farm acreage covered by nutrient management plans and the implementation and evaluation of those plans must include information on the production and use of animal manure by farm operations covered by nutrient management plans during the previous year, including (1) the amount of animal

manure exported by farm operations to alternative use facilities or other farm operations in the State; (2) the amount of animal manure exported out of the State by farm operations; and (3) the amount of animal manure land applied by farm operations in the State and the source of that manure. The information must be reported (1) by geographic area, including by county or local watershed, and (2) in a manner that protects the identity of individual farm operations.

Other Compliance and Enforcement

The bill requires a person who holds a license or certificate issued under nutrient management certification and licensing provisions to comply with all applicable reporting requirements and deadlines established by MDA, including deadlines related to (1) implementation of the Phosphorous Management Tool (PMT) developed by the University of Maryland and (2) submission of soil test phosphorus levels related to nutrient management plans developed in accordance with State nutrient management law. In addition to any penalty of denial, suspension, or revocation of a certificate or license, a person who violates that requirement is subject to an administrative penalty of up to \$250.

The bill also modifies the administrative penalty for failing to have a nutrient management plan, making the penalty at least \$100 and up to \$250, instead of simply up to \$250. The administrative penalty for a second or subsequent failure to comply with a nutrient management plan or specified rule, regulation, or order is modified to be up to \$500, instead of up to \$100. If the violation involved the knowing application of phosphorus to a site where, because of the site's soil characteristics, MDA regulations prohibit the application of phosphorus, the penalty must be at least \$250.

The maximum cumulative amount of penalties for failure to comply with a nutrient management plan or specified rule, regulation, or order – per farmer or operator, per year – is increased from \$2,000 to \$5,000.

The bill requires MDA, in determining where to focus enforcement efforts to determine compliance with nutrient management requirements, to prioritize farms for which the department has not received soil test phosphorus levels, as required by MDA regulations.

CAFO Permitting and Fees

The bill requires a person to hold a CAFO General Discharge (GD) permit issued by MDE before beginning construction on any part of a new CAFO. MDE may not issue a CAFO GD permit to a person that violates that requirement.

MDE must charge a one-time permit application fee of at least \$500 on receipt of a notice of intent to seek coverage under a CAFO GD permit for (1) a proposed new CAFO that

will have a house capacity of 350,000 square feet or more or (2) modification of an existing CAFO to expand the house capacity to 350,000 square feet or more. MDE must charge an annual fee of at least \$500 for the continued coverage under a CAFO GD permit of a CAFO with a house capacity of 350,000 square feet or more.

MDE may not waive the fee for a CAFO GD permit.

MDE must (1) study and make recommendations regarding the feasibility of requiring the installation and use of on-site water quality monitoring equipment at certain CAFO sites as a condition for issuance of a CAFO GD permit and (2) by December 1, 2021, report its findings and recommendations to the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee.

Water Quality Monitoring

The bill requires the Department of Natural Resources (DNR) to, as part of the department's Chesapeake Bay Mainstem and Tidal Water Quality Monitoring Program, conduct long-term sample collection in tributaries located on the lower Eastern Shore. At a minimum, DNR must regularly collect samples from each of nine specified locations. To the extent practicable, this water quality monitoring must be done in locations where water quality monitoring was conducted prior to December 1, 2013, in order to allow DNR and the public to assess long-term water quality trends.

Current Law/Background:

Nutrient Management Plans

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.

If a person fails to have a nutrient management plan, after a reasonable period of time after being notified by MDA of the failure, the person is subject to an administrative penalty of up to \$250. If a person fails to comply with a nutrient management plan or related rule,

regulation, or order, they are given a warning for a first violation. For a second or subsequent violation, after an opportunity for a hearing, an administrative penalty of up to \$100 for each violation may be imposed but not exceeding \$2,000 per farmer or operator per year. Specified considerations must be taken into account in assessing the administrative penalty for a failure to comply with a nutrient management plan or related rule, regulation, or order.

MDA's [*Nutrient Management Program 2018 Annual Report*](#) indicates that:

“Maintaining compliance requires farmers to keep their plans updated, submit Annual Implementation Reports summarizing nutrient applications for the previous year, and follow their nutrient management plans when fertilizing crops and managing livestock manure. The department’s team of nine nutrient management specialists analyzes Annual Implementation Reports and conducts site visits to verify that farmers are following their plans.”

The 2018 form for the annual implementation report requires information on the amount of manure/poultry litter imported to or exported from a farm and the amount of manure/poultry litter imported from or exported to another state (identifying the state). The form does not require the sending farm or the receiving farm, facility, or broker to be provided.

Phosphorous Management Tool

PMT regulations took effect June 8, 2015, and include a multi-year process for farmers to transition to use of PMT for fields with high soil phosphorus levels. PMT is an updated environmental risk assessment tool that uses the best available science to identify the potential risk of phosphorus loss from farm fields and prevent the additional buildup of phosphorus in soils that are already saturated. The regulations require submittal of soil phosphorus levels to MDA, and MDA's *Nutrient Management Program 2018 Annual Report* indicates that soil test data results have been submitted for 87% of Maryland's 1,277,930 acres of regulated farmland. The program continues to target farms that have not submitted soils data for audits and inspections.

CAFOs

CAFOs are regulated by MDE under department regulations and a GD Permit, which are designed to control nutrients from Maryland's largest agricultural animal operations. The GD Permit serves as both a State and federal permit.

An “animal feeding operation” (AFO) is defined as a feedlot or facility where (1) nonaquatic animals are confined, fed, and maintained for at least 45 days in any

12-month period and (2) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

AFOs are categorized as small, medium, or large based on threshold amounts of animals (varying based on animal type) and/or housing capacity and the size category of an AFO is a factor in determining whether an AFO is considered a CAFO.

In general, a CAFO is a medium or large AFO that discharges or proposes to discharge pollutants including, but not limited to, manure, poultry litter, or process wastewater to surface waters of the State (including contact of confined animals with surface water). Small AFOs that discharge pollutants can also be designated a CAFO by MDE based on a site inspection. MDE regulations require a CAFO to obtain permit coverage under a general discharge permit issued by the department unless the department notifies the discharger that a separate discharge permit is required.

The current GD Permit, which expires November 30, 2019, lists permit fees for CAFOs of \$60 for a small CAFO, \$300 for a medium CAFO, and \$800 for a large CAFO. MDE indicates, however, that it has suspended collection of the permit fees to (1) encourage compliance and (2) gain a better sense of the resource needs to operate the program before collecting fees. Fees are under consideration for the new GD Permit that will become effective December 1, 2019.

Chesapeake Bay Water Quality Monitoring Program

The long-term Chesapeake Bay Water Quality Monitoring Program, overseen by DNR's Tidewater Ecosystem Assessment Division, assesses water quality by measuring levels of nutrients as well as closely related habitat conditions such as dissolved oxygen and water clarity. The program collects data numerous times a year at various stations in Maryland's Chesapeake Bay mainstem and in the tidal tributaries.

State Expenditures:

Maryland Department of the Environment Special Fund Expenditures

Special fund (Maryland Clean Water Fund) expenditures increase by \$50,622 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring a natural resources planner and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

MDE expects to need an additional natural resources planner to provide an adequate turnaround time for applicants for coverage under the GD Permit, given that, under the bill, coverage under the permit will be a prerequisite to beginning construction. MDE indicates

that it currently takes 24 months on average for a proposed CAFO to obtain other permits and approvals and for MDE to approve coverage under the GD Permit. Four natural resource planners currently handle AFO requests for permit coverage.

Position	1
Salary and Fringe Benefits	\$44,828
Operating Expenses	<u>5,794</u>
Total FY 2020 Special Fund Expenditures	\$50,622

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

The Maryland Clean Water Fund receives various fee and penalty revenues and is used for, among other things, the identification, monitoring, and regulation of the proper discharge of effluent into the waters of the State, including program development.

Department of Natural Resources General Fund Expenditures

General fund expenditures increase by \$40,000 in fiscal 2020 and by \$25,000 annually thereafter to conduct long-term water quality sample collection in tributaries located on the lower Eastern Shore, as required by the bill. This estimate accounts for the costs of conducting long-term sample collection at the minimum nine sites specified in the bill and includes costs of equipment, maintenance, and water testing.

Study/Reporting Requirements

The additional reporting required of MDA (regarding information on the production and use of animal manure by farm operations covered by nutrient management plans) and the study and report required of MDE (regarding the feasibility of requiring the installation and use of on-site water quality monitoring equipment at certain CAFO sites) can be handled with existing resources.

State Revenues:

General Fund Revenues

General fund revenues increase due to the modified and added penalties under the bill relating to nutrient management plans. All money collected under the State nutrient management law is deposited in the general fund. The extent of the increase in general fund revenues cannot be reliably estimated. However, for contextual purposes, MDA’s Nutrient Management Program 2018 Annual Report indicates that the department issued \$48,500 in

finances against 194 operators in 2018 for late or missing annual implementation reports and \$51,750 in fines, against 63 operators, resulting from on-farm audits and inspections.

Special Fund Revenues

Special fund (Maryland Clean Water Fund) revenues may increase due to the bill's required one-time permit application fee for a proposed new specified larger CAFO and annual fee for an existing specified larger CAFO, as well as the bill's prohibition against MDE waiving the permit fee for any CAFO. Special fund revenues may increase by more than \$3,000 in fiscal 2020 and by similar, but increasing, amounts in future years.

MDE indicates that approximately six existing CAFOs meet the bill's criteria for the annual fee of at least \$500 and estimates that an average of one new CAFO may be subject to the \$500 one-time permit application fee each fiscal year after fiscal 2020. Assuming that six CAFOs pay the annual fee in fiscal 2020, \$3,000 is generated in revenue, and if an average of one new CAFO is added each year, revenues reach \$5,000 by fiscal 2024.

The bill's prohibition against MDE waiving the permit fee for any CAFO may further increase revenues beyond the amounts generated from the \$500 annual fee and \$500 one-time permit application fee if MDE does not otherwise collect permit fees in the absence of the bill. MDE indicates that fees are under consideration for the next GD Permit, which will become effective December 1, 2019. If MDE were to collect permit fees in the absence of the bill, the net revenue increase is less than \$3,000 in fiscal 2020 and similarly less in future years.

Small Business Effect: Small business CAFOs are affected by the provisions of the bill which (1) require a CAFO GD permit to be held before beginning construction on any part of a new CAFO and (2) establish one-time permit application and annual fees for specified larger CAFOs and prohibit waiving of permit fees by MDE for any CAFO. The fee provisions increase costs for CAFOs and the requirement of permit approval prior to construction may delay construction and operation of new CAFOs.

Additional Information

Prior Introductions: None.

Cross File: SB 546 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; University System of Maryland;

Maryland Grain Producers Association; Maryland Pork Producers Association; Delmarva Poultry Industry, Inc.; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2019
sb/lgc Third Reader - March 26, 2019
Revised - Amendment(s) - March 26, 2019

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