

# Department of Legislative Services

Maryland General Assembly

2002 Session

## FISCAL NOTE

Senate Bill 303

(Senator Baker)

Education, Health, and Environmental Affairs

### Agriculture - Water Quality Improvement Act - Nutrient Management

This bill relates to the development and implementation of nutrient management plans under the Water Quality Improvement Act (WQIA) of 1998. Specifically, the bill extends the deadline for complying with specified plans, establishes two classes of certified nutrient management consultants and procedures for their certification, repeals the right-of-entry authority of the Maryland Department of Agriculture (MDA) to inspect farms, and requires MDA to adopt specified regulations by December 31, 2002.

### Fiscal Summary

**State Effect:** Net decrease in general fund expenditures of \$776,600 in FY 2003, which reflects a decrease in expenditures for the existing Nutrient Management Cost Share (NMCS) program of \$858,250 and an increase in expenditures of \$81,650 for the certification program. Expenditures related to plan review and enforcement could decrease. Potential increase in special fund revenue related to any certification fees; potential decrease in special fund revenue related to penalties under the WQIA. Future year estimates are annualized, adjusted for inflation, and reflect ongoing operating expenses, including funds for the NMCS program in FY 2004 and FY 2005.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF Revenue	-	-	-	-	-
GF Expenditure	(776,600)	534,100	538,700	114,600	119,900
Net Effect	\$776,600	(\$534,100)	(\$538,700)	(\$114,600)	(\$119,900)

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

**Local Effect:** The bill would not materially affect local operations or finances.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** The bill repeals the existing December 31, 2002 deadline for complying with specified nutrient management plans for farmers that do not have a plan completed by October 1, 2002. For those farmers, the deadline would be extended as follows: (1) for a farmer using chemical fertilizer, the deadline for complying with a plan for nitrogen and phosphorus would be December 31, 2004, or one year after having a plan, whichever is earlier; and (2) for a farmer using sludge or animal manure, the deadline for complying with a plan for nitrogen would be December 31, 2004, or one year after having a plan for nitrogen, whichever is earlier. Although the bill is unclear, it appears that for a farmer using sludge or animal manure that does not have a plan for nitrogen and phosphorus completed by July 1, 2004, the deadline for complying with that plan would be extended from July 1, 2005 to July 1, 2007, or one year after having a plan for nitrogen and phosphorus, whichever is earlier.

The bill establishes a “Class I certified nutrient management consultant” and a “Class 2 certified nutrient management consultant”. A “Class I certified nutrient management consultant” means an individual who is certified by MDA to prepare a nutrient management plan for any farm affected by the WQIA. For these individuals, the application process would be the same as under current law for the certification of a nutrient management consultant.

A “Class 2 certified nutrient management consultant” means a farmer who is certified by MDA to prepare a nutrient management plan for only the farmer’s specific farming operation. The bill establishes a certification process for these individuals. Specifically, the bill requires MDA to adopt regulations for a certification process and requires that the process focus on the individual farmer’s specific type of operation. The process must include one or more training sessions and a written examination, both of which would be developed and conducted by the University of Maryland Cooperative Extension Service (UMCES) in consultation with MDA.

A plan prepared by a certified management consultant shall be deemed approved and shall be accepted by MDA without any review by MDA.

Finally, the bill requires MDA, by December 31, 2002, to adopt regulations that:

- grant all farmers equal access to computer software programs used by certified nutrient management planners;
- authorize certified nutrient management planners to choose from a number of accepted software programs;

- allow a farmer to identify the farmer's property using specified ID numbers;
- require annual plans to be submitted by March 1 of each year, unless a farmer applies for a different date;
- make certain that crop yield-capping does not occur and that farmers can plan to improve their yields as management techniques and technology change;
- require a farmer to maintain and keep specified records; and
- require a farmer to report specified items to MDA.

**Current Law:** The WQIA of 1998, as amended by Chapter 485 of 2000 (HB 527), provides for a variety of measures aimed at improving water quality throughout the State, including the development of nutrient management plans. Agricultural operations with more than \$2,500 in gross income and livestock operations with more than eight animal units (as defined in accordance with federal regulations) using chemical fertilizer must have a phosphorus- and nitrogen-based nutrient management plan by December 31, 2001, and must implement it by December 31, 2002. Agricultural operations using sludge or animal manure must have a nitrogen-based nutrient management plan by December 31, 2001, and must implement it by December 31, 2002. Agricultural operations using sludge or animal manure must have a phosphorus and nitrogen-based nutrient management plan by July 1, 2004, and must implement it by July 1, 2005.

Farmers were able to achieve compliance with the first deadline by submitting a nutrient management plan created by a "certified nutrient management consultant" to MDA by December 31, 2001. Farmers may have their plan developed by a UMCES consultant for free. State cost-sharing under the NMCS program is available to farmers who have their plans developed by private nutrient management consultants. Alternatively, farmers were able to submit to MDA a "Justification for Nutrient Management Plan Delay" form signed by a certified nutrient management consultant indicating an approximate time the plan will be completed.

A "certified nutrient management consultant" means an individual certified by MDA to prepare a nutrient management plan. To apply for certification, an individual must submit an application to MDA and pay a certification fee. Certified nutrient management consultants must hold an annual license from MDA. MDA must certify any individual who meets specified educational requirements, passes an examination approved by MDA, and holds a license or is employed by a person who holds a license. Certifications and licenses are valid for one year and may be renewed.

Submission of a nutrient management plan must include a grant by the property owner or operator to MDA of a right of entry on the property to evaluate compliance with the plan. MDA must enter the property in daylight hours at a reasonable time that allows the owner

or operator to be present and must conduct its evaluation in a manner that minimizes any inconvenience to the farmer.

Farmers not meeting the requirements of the WQIA are subject to various sanctions, including administrative penalties, repayment of cost-sharing funds, and civil penalties. All penalties are paid into the Maryland Agricultural Water Quality Cost Share Program within MDA.

**Background:** During the 1997 interim, members of the General Assembly and the Governor's Blue Ribbon Citizens Pfiesteria Action Commission studied the scientific and public policy issues regarding fish kills in lower Eastern Shore rivers in late 1996 and the summer of 1997. Both the General Assembly and the Governor's commission focused on the role of the toxic dinoflagellate, Pfiesteria. The Governor's commission conducted a series of briefings and public meetings and issued a final report on November 3, 1997.

The report included numerous recommendations regarding the safety of Maryland seafood, agricultural and nonagricultural nutrient management strategies, public health strategies, and future research needs. The commission pursued the causative link between Pfiesteria and agricultural practices in the lower Eastern Shore.

Of particular concern was the role of the chicken industry and the large quantities of chicken litter generated and ultimately applied to local fields as fertilizer. Therefore, throughout the commission's proceedings, a primary concern was the efficacy of the State's existing nutrient management program and the feasibility of recommended changes. In its final report, the commission recommended, among other things, that the State replace its voluntary, nitrogen-based, agricultural nutrient management program with a phosphorus and nitrogen-based program. The commission further recommended that "the State enroll all farmers in nutrient management plans by the year 2000." The nutrient management plans should be fully and demonstrably implemented by 2002, contingent upon the State supplying the appropriate level of education, outreach, technical support, and financial resources necessary to meet these goals."

The WQIA of 1998 addressed the recommendations of the Blue Ribbon Commission, while taking into account the concerns of the agricultural community, particularly mandatory participation in nutrient management plans. That law was amended in 2000 to address concerns raised by the Nutrient Management Advisory Commission in drafting proposed regulations to implement the WQIA.

According to MDA, approximately 9,000 farm operations were required to submit nutrient management plans by the December 31, 2001 deadline. These plans will cover an estimated 1.7 million acres of agricultural land in the State. As of that deadline, MDA

had received 2,152 nutrient management plans for the management of 338,392 acres. Additionally 2,993 “Justification for Nutrient Management Plan Delay” forms were submitted covering 757,535 acres. Accordingly, a total of 5,145 farm operations managing approximately 1.1 million acres are technically in compliance with the WQIA.

**State Revenues:** The bill requires MDA to adopt regulations establishing a certification process by which farmers may become certified to develop their own plans. MDA currently collects a \$50 fee for farmers becoming certified under the existing program. Although the bill does not specifically authorize MDA to assess a certification fee for a Class 2 certified nutrient management consultant, to the extent MDA establishes such a fee through regulation, special fund revenues would increase. To the extent the extension of the deadlines results in a delay or decrease in penalties that would otherwise be assessed for noncompliance with the WQIA, special fund revenues would be affected accordingly.

**State Expenditures:** The bill will result in a net decrease in general fund expenditures of an estimated \$776,600 in fiscal 2003. This estimate reflects a decrease in expenditures of \$858,250 related to the existing NMCS program within MDA and an increase in general fund expenditures of \$81,650 for UMCES to develop and conduct training and examinations under the new certification program established by the bill.

#### *Maryland Department of Agriculture*

The Governor’s proposed fiscal 2003 budget includes approximately \$1,287,400 in general funds for the NMCS program. MDA advises that those funds will be used to provide grants to farmers to help defray the cost of having nutrient management plans prepared by private certified consultants in order to comply with the WQIA. However, under this bill, the WQIA deadlines would be extended. By extending the deadlines, the demand for funds under the existing cost share program anticipated for fiscal 2003 will be spread out over the next three fiscal years. Accordingly, general fund expenditures for the cost share program will decrease by approximately \$858,250 in fiscal 2003 and will increase by approximately \$429,150 in each of fiscal 2004 and fiscal 2005.

Legislative Services advises that because the bill reduces MDA’s authority with respect to reviewing plans and enforcing them, expenditures for such activities would likely decrease. MDA did not provide any information relating to its current expenditures for those activities; accordingly, any such decrease cannot be reliably estimated at this time.

#### *University of Maryland Cooperative Extension Service*

General fund expenditures could increase by an estimated \$81,650 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of hiring two faculty extension assistants to prepare and conduct training sessions and examinations in consultation with MDA. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$72,125
Equipment and Operating Expenses	<u>9,525</u>
<b>Total FY 2003 State Expenditures</b>	<b>\$81,650</b>

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

It is assumed that the approximately 30 UMCES consultants currently involved with preparing plans for farmers would still have a full workload even under the bill's extended deadlines. UMCES advises that its consultants are so overwhelmed under the existing deadlines that its backlog for preparing plans is currently one-two years. To the extent that the bill results in a significant decrease in workload in fiscal 2003, Legislative Services advises that costs for UMCES to implement the WQIA, as amended by this bill, could decrease.

**Small Business Effect:** Most farms are small businesses. According to MDA, about 43% of the approximately 9,000 farmers required to meet the December 31, 2001 deadline for submitting nutrient management plans to MDA under the WQIA did not comply with that deadline. Under this bill, a farmer that does not have a plan completed by specified deadlines will have additional time to develop and implement the required plans. The bill also will allow for farmers to become certified in order to develop their own plans.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 984 (Eastern Shore Delegation, *et al.*) - Environmental Matters, is identified as a cross file although it is not identical.

**Information Source(s):** Maryland Department of Agriculture, University System of Maryland (Cooperative Extension Service), Maryland Department of the Environment, Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2002  
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