

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

House Bill 124 (Delegates Hubbard and Billings)  
Environmental Matters

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**Nutrient Management Plans - Transfer to the Department of the Environment  
and Extension of Deadlines**

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This emergency bill transfers nutrient management regulation from the Maryland Department of Agriculture (MDA) to the Maryland Department of the Environment (MDE). The bill provides for the transfer of related funds from MDA to MDE and for the temporary waiver of specified deadlines for farmers submitting nutrient management plans in accordance with the Water Quality Improvement Act (WQIA) of 1998. The bill also repeals specified provisions of current law relating to the Manure Transportation Pilot Project which is scheduled to sunset on June 30, 2002.

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**Fiscal Summary**

**State Effect:** An estimated 17 positions, \$4,476,378 in expenditures, and \$626,220 in reimbursable funds, would be transferred from MDA to MDE in FY 2003. It is assumed that any costs associated with the transfer would be minimal and absorbable within existing budgeted resources. Potential decrease in general fund expenditures for the State's Nutrient Management Cost Share (NMCS) program in FY 2003 related to waivers granted.

**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 authorizes MDE to temporarily waive specified deadlines for submitting nutrient management plans if a person is able to demonstrate: (1) a good faith effort to formulate a nutrient management plan with the assistance of MDA by December 31, 2001; and (2) that the person's delay in formulation of a plan was substantially caused by the unavailability of a certified nutrient management consultant or by a material delay of MDA. If a person receives a waiver, MDE must extend the person's plan deadlines as follows: (1) within three months of the issuance of the waiver, the person must contract with a certified nutrient management consultant; and (2) within nine months of the date of the contract, the consultant shall formulate a plan that meets the requirements of the nutrient management law. Within two years of the formulation of the plan, the person must comply with the plan. The bill makes conforming changes to provisions of current law relating to compliance with the deadlines under WQIA.

The bill provides that existing notifications, warnings, administrative penalties, repayments, denials, or restrictions applicable to violators of the nutrient management law do not apply to a person who has received a waiver or has applied for a waiver and whose application is pending.

All functions, powers, duties, equipment, records, assets, and liabilities related to the formulation of, and compliance with, nutrient management plans and all personnel assigned to those functions, powers, and duties in MDA are transferred to MDE. The transfer must be complete by December 31, 2002. Every person employed by MDA in a nutrient management function in a position authorized by the State budget must be transferred to MDE by December 31, 2002, without any change or loss of rights, benefits, or employment and retirement status.

During the transition, MDE must liberally construe provisions of the bill relating to the submission of nutrient management plans in favor of farmers who demonstrated good faith efforts to comply with the requirements of the law during the time that nutrient management plans were administered by MDA.

The bill provides for the transfer of funds from MDA to MDE by December 31, 2002. Specifically, the following funds would be transferred:

- all funds associated with the formulation of, or compliance with, nutrient management plans that have been paid into the Maryland Agricultural Water Quality Cost Share Program within MDA;
- all funds received by the State under the Conservation Reserve Enhancement Program (CREP) of the U.S. Department of Agriculture; and

- all other State and federal funds received or to be received by MDA that are related to the formulation of, or compliance with, nutrient management plans.

**Current Law:** MDA regulates nutrient management in the State. Chapters 324 and 325 of 1998 (SB 178/HB 599), as amended by Chapter 485 of 2000 (HB 527), provide for a variety of measures aimed at improving water quality throughout the State, including the development of nutrient management plans and the establishment of a four-year manure transportation pilot project.

### *Nutrient Management Plans*

Agricultural operations with at least \$2,500 in gross income and livestock operations with at least eight animal units 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 University of Maryland Cooperative Extension Service 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.

Farmers not meeting the requirements of WQIA are subject to various sanctions, including administrative penalties, repayment of cost-sharing funds, and civil penalties.

### *Manure Transportation Pilot Project*

The 1998 legislation established a four-year Poultry Litter Transportation Pilot Project to transport excess poultry litter from farms in all areas of the State that experience phosphorus over-enrichment. The project operates in conjunction with a matching service that was established to promote and facilitate the transfer of poultry litter from those who have excess litter to those who can use more poultry litter. The 2000 legislation expanded this project to all types of livestock manure. Under current law, the pilot project is scheduled to sunset on June 30, 2002.

**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."

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 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 WQIA.

**State Fiscal Effect:** Other than a potential impact to the timing of expenditures related to the existing NMCS program and a potential decrease in special fund revenues from penalties under WQIA due to the bill's waiver provisions, because the bill simply

transfers all funds, staff, and duties related to nutrient management regulation from MDA to MDE, the bill should have no net fiscal impact on the State. It is assumed that any costs associated with the transfer would be minimal and absorbable within existing budgeted resources.

#### *Transfer of Responsibilities from MDA to MDE*

MDA advises that 17 positions within MDA are dedicated to the provisions of law that would be transferred to MDE under this bill. In fiscal 2003, MDA will receive an estimated \$626,220 in reimbursable funds from the Department of Natural Resources to operate the program. The Governor's proposed fiscal 2003 budget includes a total of \$4,476,378 for the nutrient management program. This amount includes \$794,945 for salaries and fringe benefits for the 17 affected positions (\$710,245 in general funds and \$84,700 in reimbursable funds), and \$3,681,433 in related operating expenditures (including \$3,106,269 in general funds and \$575,164 in reimbursable funds). MDA advises that it does not receive any federal funds under CREP; MDA did not provide any information relating to any other federal funds that would be transferred under the bill.

All funds and personnel related to the nutrient management program under MDA would be transferred to MDE under the bill. It is assumed that expenditures incurred by MDE to manage the program (other than any impact related to the timing of cost share expenditures as described below) would be equal to expenditures incurred by MDA under current law.

#### *Impact of Providing Waivers from WQIA Deadlines*

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 WQIA. However, under this bill, WQIA deadlines could be waived by MDE and extended. By extending the deadlines, the demand for funds under the existing cost share program anticipated for fiscal 2003 could be spread out over the next several fiscal years. Accordingly, general fund expenditures for the cost share program could decrease in fiscal 2003 and increase in the out-years. Because any such impact will depend largely on the number of waivers granted by MDE and the timing of such waivers, any impact on the cost share program cannot be reliably estimated at this time.

To the extent the extension of deadlines results in a decrease in penalties that would otherwise be assessed for noncompliance with WQIA, special fund revenues would decrease accordingly.

Although the bill is an emergency measure, for purposes of this estimate it is assumed that the transfer of the nutrient management program from MDA to MDE would not be completed until fiscal 2003. Accordingly, fiscal 2002 finances would not be affected.

**Small Business Effect:** Most farms are small businesses. According to MDA, approximately 43% of the approximately 9,000 farmers required to meet the December 31, 2001 deadline for submitting nutrient management plans to MDA under WQIA did not comply with that deadline. Under this bill, farmers could receive a temporary waiver of that deadline and specified upcoming deadlines, providing them with additional time to develop and implement their nutrient management plans.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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