

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE
Revised

House Bill 984

(Eastern Shore Delegation, *et al.*)

Environmental Matters

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 exempts specified farmers from WQIA under specified conditions, extends the deadline for complying with plans for specified farmers, alters the authority of the Maryland Department of Agriculture (MDA) to inspect farms, and requires MDA to adopt specified streamlining and clarifying regulations and procedures.

The bill takes effect June 1, 2002.

Fiscal Summary

State Effect: Net decrease in general fund expenditures of \$664,250 in FY 2003, which reflects a decrease in expenditures for the existing Nutrient Management Cost Share (NMCS) program of \$745,900 and an increase in expenditures of \$81,650 for a required educational program. Potential decrease in special fund revenues related to penalties under WQIA. Future year estimates are annualized, adjusted for inflation, and reflect ongoing operating expenses, including an increase in the demand for the NMCS program in FY 2004 due to the extended deadlines.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	(664,300)	646,400	7,400	12,400	17,700
Net Effect	\$664,300	(\$646,400)	(\$7,400)	(\$12,400)	(\$17,700)

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.

Analysis

Bill Summary: The bill exempts an agricultural operation with a gross income between \$2,500 and \$10,000 and fewer than eight animal units from the requirements of WQIA if the operator attends an educational program and provides MDA with a signed compliance statement containing an affirmation that the operator is following the University of Maryland nutrient management regulations.

The bill also waives the current WQIA deadlines until December 1, 2003, for a person who, by August 1, 2002: (1) requests the development of a nutrient management plan from a certified consultant or demonstrates a good faith effort to comply with specified deadlines by submitting a “Justification for Delay” form to MDA by that date; and (2) continues to take the necessary steps to have and implement a plan. The Secretary may extend the waiver beyond December 1, 2003 if the Secretary determines that the failure to have a plan was beyond the reasonable control of the person.

The bill also requires MDA to adopt specified streamlining and clarifying regulations and procedures, including a streamlined certification program for farmers to develop their own plans.

Current Law: 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 at least \$2,500 in gross income and livestock operations with at least 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 University of Maryland Cooperative Extension Service (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 Delay” form signed by a certified nutrient management consultant indicating an approximate time the plan will be completed.

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 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 mandatory 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 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 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 Revenues: To the extent the extension of the deadlines results in a delay or decrease in penalties that would otherwise be assessed for noncompliance with WQIA, special fund revenues would be affected accordingly. In addition, some farmers that would be subject to penalties under current law could now be exempt from WQIA as a result of the bill.

State Expenditures: The bill will result in a net decrease in general fund expenditures of an estimated \$664,250 in fiscal 2003. This estimate reflects a decrease in expenditures of \$745,900 related to the existing NMCS program within MDA and an increase in general fund expenditures of \$81,650 for UMCES to conduct the educational program required for specified farmers to become exempt from WQIA under 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 WQIA. However, under this bill, some agricultural operations could become exempt from plan requirements, and WQIA deadlines would be extended for others.

By extending the deadlines for specified farmers, the demand for funds under the existing cost share program anticipated for fiscal 2003 will likely be spread out over the next two fiscal years. Accordingly, general fund expenditures for the cost share program could decrease by approximately \$643,700 in fiscal 2003 and could increase by that amount in fiscal 2004. To the extent the Secretary extends waivers further, cost share finances would be affected accordingly.

By exempting specified agricultural operations from the plan requirements, expenditures for the cost share program could decrease by an estimated \$102,200 annually. This estimate is based on the following assumptions:

- about 1,858 farmers would attend the educational program and become exempt from WQIA as a result of the bill;
- none of these farmers have developed plans to date;
- an estimated 25% of the farmers (465), in the absence of the bill, would hire private consultants to develop their plans (and be eligible for State cost-sharing);
- farms with sales between \$2,500 and \$10,000 and less than eight animal units average 55 acres in size; and
- average per acre costs of plans developed under the cost-share program total \$4 per acre.

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 administer the educational program to the estimated 1,858 farmers that would likely choose this program over submitting a plan. In addition, the faculty extension assistants could provide additional educational support to those farmers who remain subject to WQIA but choose to write their own plans. 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>
Total FY 2003 State Expenditures	\$81,650

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 exemptions and extended deadlines. UMCES advises that its consultants are so overwhelmed under the existing requirements that its backlog for preparing plans is currently one-two years. To the extent that the bill results in a significant decrease in workload, Legislative Services advises that costs for UMCES to implement WQIA, as amended by this bill, could decrease.

Although the bill takes effect June 1, 2002, any impact in fiscal 2002 is assumed to be minimal.

Small Business Effect: Most farms are small businesses. An estimated 1,858 farmers (those that generate between \$2,500 and \$10,000 in gross income and that do not meet the animal unit criteria under current law) could become exempt from WQIA if they attend the required educational program and submit the required compliance statement to MDA. The bill could also affect private certified consultants; approximately 465 farmers may no longer need their services.

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 WQIA did not comply with that deadline. Under this bill, a farmer that remains subject to WQIA and meets specified conditions by August 1, 2002 will have additional time to develop and implement the required plans. The bill also will allow for farmers to develop their own plans.

Additional Information

Prior Introductions: None.

Cross File: SB 303 (Senator Baker) – Education, Health, and Environmental Affairs.

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

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