

SENATE BILL 617

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M4

2003 Regular Session  
3r2206

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By: **Senators Stoltzfus, Astle, Brinkley, Colburn, Currie, DeGrange, Della,  
Dyson, Giannetti, Greenip, Hafer, Haines, Harris, Hogan, Hooper,  
Hughes, Jacobs, Kasemeyer, Kittleman, Klausmeier, Kramer, Lawlah,  
McFadden, Middleton, Mooney, and Munson**

Introduced and read first time: February 7, 2003

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Nutrient Management Plans - Grant of a Right of Entry and Penalties -**  
3                                   **Suspension of Enforcement**

4 FOR the purpose of providing that certain provisions and regulations relating to  
5 nutrient management plans, the grant of a certain right of entry to the  
6 Department, and certain penalties may not be enforced during a certain time  
7 period; requiring the Department of Agriculture to take certain actions to  
8 educate farmers and seek their cooperation; requiring the Nutrient  
9 Management Advisory Committee to conduct a certain study, make certain  
10 recommendations, and provide a certain report on or before a certain date;  
11 providing for the termination of this Act; and generally relating to nutrient  
12 management plans.

13 BY repealing and reenacting, without amendments,  
14 Article - Agriculture  
15 Section 8-801.1(b)(2) and 8-803.1  
16 Annotated Code of Maryland  
17 (1999 Replacement Volume and 2002 Supplement)

18 BY adding to  
19 Article - Agriculture  
20 Section 8-801.2  
21 Annotated Code of Maryland  
22 (1999 Replacement Volume and 2002 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

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**Article - Agriculture**

2 8-801.1.

3 (b) (2) Submission of the plan shall include a grant by the property owner or  
4 operator to the Department of a right of entry on the property to evaluate compliance  
5 with the plan as long as the Department:

6 (i) Enters the property in daylight hours at a reasonable time that  
7 allows the property owner or operator the opportunity to be present; and

8 (ii) Conducts its evaluation in a manner that minimizes any  
9 inconvenience to the farmer.

10 8-801.2.

11 THE FOLLOWING MAY NOT BE ENFORCED FROM JUNE 1, 2003 THROUGH  
12 SEPTEMBER 30, 2004:

13 (1) THE PROVISIONS OF § 8-801.1(B)(2) OF THIS SUBTITLE;

14 (2) THE PENALTY PROVISIONS OF § 8-803.1 OF THIS SUBTITLE; AND

15 (3) ANY REGULATIONS ADOPTED UNDER THE AUTHORITY OF:

16 (I) § 8-801(B)(2) OF THIS SUBTITLE RELATING TO THE GRANT OF A  
17 RIGHT OF ENTRY TO THE DEPARTMENT; OR

18 (II) THE PENALTY PROVISIONS OF § 8-803.1 OF THIS SUBTITLE.

19 8-803.1.

20 (a) In this section, "gross income" means the actual income that is received in  
21 a calendar year that results directly from the farm or agricultural use of the land.

22 (b) This section does not apply to:

23 (1) An agricultural operation with less than \$2,500 in gross income; or

24 (2) A livestock operation with less than eight animal units defined as  
25 1,000 pounds of live animal weight per animal unit.

26 (c) The Governor shall provide sufficient funding in each fiscal year's budget  
27 to:

28 (1) Assist in the development of nutrient management plans;

29 (2) Meet the technical assistance and evaluation requirements of this  
30 section;

1 (3) Meet the State's requirements for the implementation of the Manure  
2 Transportation Project under § 8-704.2 of this title; and

3 (4) Provide State assistance under the Maryland Agricultural Water  
4 Quality Cost Share Program in the Department.

5 (d) (1) State cost sharing may be made available to farmers to help offset the  
6 costs of having a nutrient management plan prepared by a certified nutrient  
7 management consultant who is not employed by the federal, State, or a local  
8 government.

9 (2) The Secretary of Agriculture shall adopt regulations authorizing the  
10 disbursement of State cost sharing funds under this subsection.

11 (e) (1) By December 31, 2001, a person who, in operating a farm, uses  
12 chemical fertilizer, shall have a nutrient management plan for nitrogen and  
13 phosphorus that meets the requirements of this subtitle.

14 (2) (i) By December 31, 2001, a person who, in operating a farm, uses  
15 sludge or animal manure, shall have a nutrient management plan for nitrogen.

16 (ii) By July 1, 2004, a person who, in operating a farm, uses sludge  
17 or animal manure, shall have a nutrient management plan for nitrogen and  
18 phosphorus.

19 (f) (1) By December 31, 2002, a person who, in operating a farm, uses  
20 chemical fertilizer, shall comply with a nutrient management plan for nitrogen and  
21 phosphorus that meets the requirements of this subtitle.

22 (2) (i) By December 31, 2002, a person who, in operating a farm, uses  
23 sludge or animal manure, shall comply with a nutrient management plan for nitrogen  
24 that meets the requirements of this subtitle.

25 (ii) By July 1, 2005, a person who, in operating a farm, uses sludge  
26 or animal manure, shall comply with a nutrient management plan for nitrogen and  
27 phosphorus that meets the requirements of this subtitle.

28 (g) A person may meet the requirements of subsection (e) of this section by  
29 requesting, at least 60 days before the applicable date set forth in subsection (e) of  
30 this section, the development of a nutrient management plan by a certified nutrient  
31 management consultant.

32 (h) (1) If a person violates the provisions of subsection (e) of this section, the  
33 Department shall notify the person that the person is in violation of the requirement  
34 to have a nutrient management plan.

35 (2) After a reasonable period of time, if the person fails to have a  
36 nutrient management plan, the person is subject to an administrative penalty not to  
37 exceed \$250.

1 (i) (1) A person who violates any provision of subsection (f) of this section or  
2 of any rule, regulation, or order adopted or issued under this section is subject to:

3 (i) For a first violation, a warning; and

4 (ii) For a second or subsequent violation, after an opportunity for a  
5 hearing which may be waived in writing by the person accused of a violation, an  
6 administrative penalty that may be imposed by the Department of Agriculture.

7 (2) The penalty imposed on a person under paragraph (1)(ii) of this  
8 subsection shall be:

9 (i) Up to \$100 for each violation, but not exceeding \$2,000 per  
10 farmer or operator per year; and

11 (ii) Assessed with consideration given to:

12 1. The willfulness of the violation, the extent to which the  
13 existence of the violation was known to but uncorrected by the violator, and the extent  
14 to which the violator exercised reasonable care;

15 2. Any actual harm to the environment or to human health;

16 3. The available technology and economic reasonableness of  
17 controlling, reducing, or eliminating the violation; and

18 4. The extent to which the current violation is part of a  
19 recurrent pattern of the same or similar type of violation committed by the violator.

20 (3) (i) Except as provided in subparagraph (ii) of this paragraph, each  
21 day a violation occurs is a separate violation under this subsection.

22 (ii) Daily penalties do not continue to accrue as long as the farmer  
23 takes reasonable steps to correct the violation.

24 (4) Any penalty imposed under this subsection is payable to the  
25 Maryland Agricultural Water Quality Cost Share Program within the Department.

26 (j) If a person violates any provision of this section, the Department may:

27 (1) Require repayment of cost share funds under Subtitle 7 of this title  
28 for the project that is in violation; or

29 (2) Deny or restrict future cost share payments under Subtitle 7 of this  
30 title.

31 (k) The Department shall determine compliance with the provisions of this  
32 section.

33 SECTION 2. AND BE IT FURTHER ENACTED, That:

1 (a) From June 1, 2003, through September 30, 2004, the Department of  
2 Agriculture shall educate farm operators on the importance of nutrient management  
3 and seek their voluntary cooperation in having and implementing nutrient  
4 management plans that meet the guidelines of Title 8, Subtitle 8 of the Agriculture  
5 Article.

6 (b) From June 1, 2003, through September 30, 2004, the Nutrient  
7 Management Advisory Committee shall study, make recommendations, and report to  
8 the Governor and, subject to § 2-1246 of the State Government Article, the General  
9 Assembly on or before September 30, 2004, on ways to educate farm operators on the  
10 importance of nutrient management and increase their level of voluntary  
11 participation in meeting the guidelines of Title 8, Subtitle 8 of the Agriculture Article.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 June 1, 2003. It shall remain effective for a period of 1 year and 4 months and, at the  
14 end of September 30, 2004, with no further action required by the General Assembly,  
15 this Act shall be abrogated and of no further force and effect.