

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 617 (Senator Stoltzfus, *et al.*)
Education, Health, and Environmental Affairs

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

This bill temporarily prohibits enforcement of specified provisions of the Water Quality Improvement Act (WQIA) of 1998. Specifically, the bill prohibits enforcement of: (1) provisions granting the Maryland Department of Agriculture (MDA) right of entry to inspect farms; (2) specified penalty provisions; and (3) any regulations adopted under those provisions. The bill requires MDA to educate farm operators on the importance of nutrient management and seek their voluntary cooperation in meeting nutrient management plan requirements. The Nutrient Management Advisory Committee must study, make recommendations, and report to the Governor and the General Assembly by September 30, 2004 on ways to educate farmers and increase their level of voluntary participation.

The bill takes effect June 1, 2003 and sunsets September 30, 2004.

Fiscal Summary

State Effect: The bill's requirements could be handled with existing budgeted resources. Special fund revenues could decrease to the extent the bill results in a decrease in penalties collected. However, it is unclear to what extent MDA would assess penalties in the absence of this bill; to date, MDA has not assessed any penalties for noncompliance.

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

Small Business Effect: Potential meaningful. To the extent the bill prevents MDA from assessing penalties that it would otherwise assess, farmers will benefit.

Analysis

Current Law: WQIA of 1998, as amended by Chapter 485 of 2000, 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 consultant for free. State cost sharing under the Nutrient Management Cost Share 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: For a variety of reasons, including a dearth of certified consultants and problems with public awareness, many agricultural operations did not meet the December 31, 2001 deadline for submitting a plan or the December 31, 2002 deadline for implementing a plan. MDA estimates that nutrient management plans are required for 9,000 farms covering approximately 1.5 million acres. As of December 31, 2002, MDA had received 3,994 nutrient management plans for the management of 701,245 acres. Additionally, 2,710 Justification for Delay forms were submitted covering 582,422 acres. Accordingly, only 44% of farm operations subject to WQIA are technically in

compliance with the law. To date, MDA has not assessed any penalties for noncompliance.

Several bills were introduced during the 2002 session in an attempt to address the WQIA implementation problems; however, none of them passed. The bills contained provisions that would have, among other things, exempted certain farmers from the plan requirements, extended the deadlines for farmers to develop plans, provided farmers with the opportunity to be taught to prepare their own plans, and/or provided a grace period from penalties.

Additional Information

Prior Introductions: SB 303 of 2002, among other things, would have repealed MDA's right-of-entry authority. The bill received an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee. HB 984 of 2002, among other things, would have modified the right-of-entry authority and, as amended by the House, would have provided a grace period for penalties under specified conditions. The bill passed the House with amendments and passed the Senate with amendments on second reading. No further action was taken.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Department of Legislative Services

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Analysis by: Lesley Frymier

Direct Inquiries to:
(410) 946-5510
(301) 970-5510