

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1058

(Delegate Conway, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Nutrient Management Plans - Temporary Suspension of Enforcement of Penalty Provisions - Education Efforts and Report Required

This bill amends the Water Quality Improvement Act (WQIA) of 1998. It temporarily suspends the enforcement of penalty provisions applicable to the nutrient management plan provisions of WQIA. The bill repeals the requirement that a farm owner or operator, as part of a nutrient management plan, grant the Maryland Department of Agriculture (MDA) a right of entry to evaluate compliance. Instead, the bill provides that MDA may only enter property upon due notice. The bill also establishes educational, outreach, and reporting requirements for MDA.

The bill takes effect June 1, 2003. Provisions regarding the suspension of enforcement of penalties and educational and reporting requirements sunset April 30, 2004.

Fiscal Summary

State Effect: The bill's requirements could be handled with existing resources. Special fund penalty revenues could decrease or increase in FY 2004. 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. However, to the extent MDA assesses penalties under the bill that it would not otherwise assess, farmers will be negatively impacted. Farmers will likely benefit from the educational and outreach activities required by the bill.

Analysis

Bill Summary: The bill suspends the penalty provisions from June 1, 2003 through March 31, 2004 for farm owners or operators who: (1) have implemented a plan; (2) have submitted a plan for approval; or (3) submit a justification for delay form by September 30, 2003 and make a good faith effort to develop and submit a plan. As of October 1, 2003, MDA must enforce the penalty provisions against a farm owner or operator who has not filed a justification for delay form. As of April 1, 2004, MDA must enforce the penalty provisions against a farm owner or operator who has not submitted and is not implementing a plan. MDA must conduct an educational forum during the summer of 2003 and focus significant staff effort on personal outreach to farm owners and operators. By December 31, 2003, in conjunction with the Nutrient Management Advisory Committee, MDA must report to the General Assembly on the implementation of the bill.

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 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 nutrient management plan 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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