

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

Senate Bill 182

(The President, *et al.*)

(By Request – Administration)

Education, Health, and Environmental Affairs

Environmental Matters

Water Quality Improvement Act - Nutrient Management

This Administration bill makes several changes to the Water Quality Improvement Act (WQIA) of 1998. Specifically, the bill repeals the current right-of-entry authority of the Maryland Department of Agriculture (MDA) and establishes provisions governing farm site visits; eases paperwork requirements for farmers; reduces the administrative burden on MDA relating to certifying and licensing nutrient management consultants; establishes a certification process specific to farmers; and increases flexibility for MDA regarding standards for plan development and the use of private nutrient management consultants to develop plans.

Fiscal Summary

State Effect: General fund revenues would increase by \$24,300 in FY 2005. Future year estimates reflect the change in the renewal term. While the bill could result in cost savings to MDA, a reliable estimate of any decrease in general fund expenditures cannot be made at this time.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	\$24,300	\$8,500	(\$23,300)	\$23,800	\$8,500
GF Expenditure	(-)	(-)	(-)	(-)	(-)
Net Effect	\$24,300	\$8,500	(\$23,300)	\$23,800	\$8,500

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: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. The Department of Legislative Service's assessment is discussed below.

Analysis

Bill Summary: First, the bill repeals MDA's current right-of-entry authority and authorizes MDA to review the plans and records relating to the plan at a location agreed to by MDA and the farm operator. The bill establishes requirements and conditions regarding site visits and provides for the application of existing penalties if a farm operator fails to cooperate. Second, the bill requires farmers to submit summaries, rather than entire plans, to MDA. Third, the bill reduces the administrative burden on MDA relating to certifying and licensing nutrient management consultants by changing the renewal term from one year to three years; it increases the renewal fee accordingly (from \$50 to \$150). The bill establishes a certification program specific to farmers; farmers who are certified to write their own plans will pay a one-time fee of \$20. Fourth, the bill increases flexibility for MDA as follows: (1) regarding plan development standards, by authorizing MDA to approve scientifically validated data or technical standards other than those of the University of Maryland; and (2) regarding the use of private nutrient management consultants, by authorizing MDA to develop a process to contract such consultants using cost-share funds.

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 mandatory development and implementation of nutrient management plans by farmers. Agricultural operations using chemical fertilizer were required to implement nitrogen- and phosphorous-based plans by December 31, 2002. Farmers using sludge or animal manure were required to implement nitrogen-based plans by December 31, 2002, and must implement nitrogen- and phosphorous-based plans by July 1, 2005. Farmers were able to have plans developed for free by a University of Maryland Cooperative Extension Service (UMCES) consultant, or they could share costs with the State to have a certified nutrient management consultant develop a plan. Farmers who were unable to obtain the services of a consultant were able to submit a Justification for Delay form signed by a consultant indicating an approximate plan completion date.

Each nutrient management plan must be developed considering specified factors such as soil nutrient levels, the amount of nutrients necessary to achieve expected crop yields, soil erodibility and nutrient retention capacity, existing best management practices, and the best reasonable scientific methods accepted by MDA and UMCES. Each plan must be filed with MDA when it is developed and each time it is updated. Submission of a

plan must include a grant by the property owner or operator to MDA of a right of entry on the property to evaluate compliance. 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.

A person must be certified or licensed by MDA to prepare a plan. To apply for certification, an individual must submit a \$50 certification fee. MDA must certify any individual who meets specified educational requirements, passes an examination, and holds a license or is employed by a person who holds a license. A person engaged in the business of providing a plan must hold a license; the license fee is \$50 for an individual and \$100 for a corporation. Certifications and licenses are valid for one year and may be renewed for a fee of \$50.

Background: For a variety of reasons, including a dearth of certified consultants and problems with public awareness, many operations did not meet the 2002 deadline for plan implementation. A number of bills were introduced during the 2002 and 2003 sessions to address WQIA implementation problems, all of which failed. 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, and temporarily suspended enforcement of the penalty provisions applicable to the WQIA plan provisions. **Exhibit 1** shows compliance levels as of December 31, 2003. MDA estimates that plans are required for almost 9,000 farms covering just under 1.6 million acres. As of December 31, 2003, MDA had received 5,211 plans for the management of 1,076,252 acres, as well as 1,492 Justification for Delay forms covering 259,647 acres.

Exhibit 1
Nutrient Management Program Compliance
(As of December 31, 2003)

	<u>Final Plans</u>	<u>Delay Forms</u>	<u>Compliant/ In Progress</u>	<u>Non- Compliant</u>	<u>Total</u>
Farms	5,211 (58%)	1,492 (17%)	6,703 (75%)	2,282 (25%)	8,985
Acres	1,076,252 (69%)	259,647 (16%)	1,335,899 (85%)	242,457 (15%)	1,578,356

Source: Maryland Department of Agriculture

To date, MDA has not assessed any penalties for noncompliance.

In July and August 2003, MDA hosted two broad efforts to garner information for improving the State's implementation of WQIA. In July, MDA hosted a one-day briefing

on recent nutrient management research findings. MDA's one-day nutrient summit in August involved more than 300 stakeholders brainstorming ways to make WQIA easier to implement and more effective at protecting the environment. Common themes that emerged from the summit included recommendations to:

- address the current statutory language regarding right-of-entry to farms;
- simplify the program's paperwork and reporting requirements;
- use more incentives – financial and recognition – for plan implementation; and
- streamline MDA's efforts to ensure the quality of nutrient management plans generated by private consultants.

This bill, which is intended to encourage compliance with WQIA, is a result of the ideas that emerged from the summit.

State Revenues: General fund revenues will increase by an estimated \$24,250 in fiscal 2005 due to the bill's changes to the fee provisions associated with WQIA plan development.

Currently, there are 982 certified and 275 licensed nutrient management consultants. MDA advises, however, that several of those licensed and certified are public-sector individuals for whom no fee is charged, and some have not responded to renewal notices. Under current law, MDA anticipates receiving renewal fees associated with 400 certifications and 125 licenses in fiscal 2005. By changing the renewal term for certifications and licenses (from one year to three years) and by increasing the associated fee correspondingly (from \$50 annually to \$150 for three years), general fund revenues will increase by \$22,500 in fiscal 2005. This estimate assumes that, under the bill, MDA will receive fees from 200 certification renewals (reflecting a delay to accommodate the transition to the new term) and 125 license renewals in fiscal 2005. Out-year estimates reflect the change in the renewal term and assume MDA will issue 25 new certifications and 10 new licenses annually.

Currently, farmers wishing to develop their own plans are certified under the same program used to certify consultants; MDA advises that only a handful of farmers (about five per year) have become certified as a result. By establishing a program specific to farmers and by reducing the one-time fee (from \$50 to \$20), it is anticipated that more farmers will become certified to write their own plans. Accordingly, general fund revenues will increase by an estimated \$1,750 in fiscal 2005. This estimate assumes that,

in fiscal 2005, an additional 95 farmers will apply for certification as a result of the bill's changes; out-year estimates assume that 75 farmers will apply for certification annually.

Although compliance is expected to increase under the bill, to date, MDA has not assessed any penalties for noncompliance. Accordingly, penalty revenues will likely not be affected by the bill.

State Expenditures: In general, the bill's changes are anticipated to result in some cost savings; however, a reliable estimate of the bill's impact on general fund expenditures cannot be made at this time. First, compliance with WQIA is expected to increase as a result of the bill. Although increased compliance could reduce enforcement costs, MDA has no data on historical enforcement costs; accordingly, any savings cannot be quantified. Second, the bill's provision replacing the current annual certification and licensing renewal process with a three-year process is expected to result in administrative cost savings to MDA; however, any savings is not anticipated to be significant. Third, providing MDA with increased flexibility regarding the use of private consultants to develop plans using State cost-share funds is expected to reduce the cost per acre to the State as well as to farmers. Total cost-share funds available would remain unchanged, however.

Small Business Effect: According to the University of Maryland, there are 12,400 farms in the State; the farming sector and its related industries accounted for about \$5 billion (3%) of the gross State product in 1999 and employed 62,700 people. Twenty-five percent (2,282) of the estimated 8,985 farms subject to WQIA plan requirements are currently not in compliance with the law. This bill is expected to increase farmer compliance. First, the most contentious issue surrounding WQIA has been the right-of-entry provisions, which this bill repeals. Second, farmers would only have to submit summaries, rather than entire plans, to MDA. Third, farmers would be able to pay a reduced one-time fee of \$20 to be certified to develop their own plans. Fourth, farmers will likely benefit from reduced per-acre costs for plan development.

Private nutrient management consultants will benefit from the changes to the certification and licensing renewal process; instead of having to renew their certifications and licenses annually, they would do so every three years. In addition, the bill's changes regarding the use of State cost-share funds may provide additional opportunities for private consultants to expand their businesses.

Additional Comments: The Governor's proposed fiscal 2005 budget includes \$1.6 million in general funds and \$588,000 in federal funds for MDA's Nutrient Management Program (including nutrient management activities in place prior to WQIA) as well as \$500,000 in general funds for the Nutrient Management Cost Share Program.

Additional Information

Prior Introductions: Several bills were introduced during the 2002 and 2003 sessions in an effort to address WQIA implementation problems. SB 303 of 2002 received an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee. HB 984 of 2002 passed the House with amendments and passed the Senate with amendments on second reading, but no further action was taken. HB 778 of 2002 and HB 124 of 2002 received unfavorable reports by the House Environmental Matters Committee. SB 617 of 2003 was recommitted to the Senate Education, Health, and Environmental Affairs Committee. HB 1058 of 2003 passed the House with amendments and was reported favorably with amendments by the Senate Education Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: HB 291 (The Speaker and the Minority Leader, *et al.*) (By Request – Administration) – Environmental Matters.

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

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