

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 396

(Delegate Elmore, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Agricultural Operations - Nuisance Actions - Requirements

This bill requires an individual who wishes to bring a nuisance action against an agricultural operation in any court to first: (1) file a complaint with a local agency authorized to hear such complaints, if one exists; and (2) obtain a decision or recommendation on the complaint from the local agency. If there is no local agency authorized to hear a nuisance complaint against an agricultural operation, the individual may not bring the nuisance action to court until: (1) the individual refers the complaint to the State Agricultural Mediation Program in the Maryland Department of Agriculture; and (2) the department certifies that mediation has been concluded.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to an increased caseload for the State Agricultural Mediation Program.

Local Effect: Local jurisdictions with Agricultural Reconciliation Committees already have ordinances requiring the types of disputes affected by this bill to go through the committee initially and to circuit court on appeal. However, a potential minimal decrease in circuit court expenditures could occur to the extent that this bill results in a decrease in circuit court filings by putting citizens and members of the legal community on notice that these committees exist and that these types of disputes can only go to circuit court on appeal.

Small Business Effect: None.

Analysis

Current Law: According to State law, agricultural operations that meet specified conditions cannot be deemed public or private nuisances and are shielded from private actions pertaining to the use or enjoyment of other public or private property.

In order to qualify for these protections an agricultural operation must: • have been underway for a period of one year or more; • be in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements relating to any nuisance claim; and • not be conducted in a negligent manner. Agricultural operations that are operating without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus as otherwise required by law are not eligible for these protections.

Agricultural operations and operators that meet these conditions are not excused from complying with applicable law and permits and are not relieved from liability for conducting an agricultural operation in a negligent manner. Federal, State, and local governments are not precluded from enforcing applicable laws against agricultural operations or operators, even if they meet the above-mentioned conditions.

Background: In response to development in areas once considered rural, many counties have adopted ordinances, often referred to as “Right to Farm” regulations, to address potential conflicts that may arise between agricultural operations and their nonagricultural neighbors. Several counties have enacted right to farm ordinances, and many have created Agricultural Reconciliation Committees. These committees mediate and arbitrate disputes regarding agricultural operations, specifically interference with the use or enjoyment of property from agricultural operations. Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Kent, Queen Anne’s, St. Mary’s, Somerset, Talbot, Washington, and Wicomico counties all have an Agricultural Reconciliation Committee (ARC). While findings of these committees are binding on the parties as a matter of law, their enforcement will be suspended if a party appeals the order to a circuit court within 30 days of the date of the committee’s judgment.

However, in many of these jurisdictions, citizens and members of the legal community are unaware of the existence of ARCs. Thus, a number of cases that should be referred to an ARC are being filed in circuit court.

State Expenditures: The bill could result in a minimal increase in general fund expenditures due to an increase in caseload for the State Agricultural Mediation Program. The department advises that it expects any increase to be very small. Seventy percent of the costs associated with the mediation program are paid from grant funds from the U.S.

Department of Agriculture (USDA) and 30% are paid from general funds. MDA advises that in fiscal 2006 it received approximately \$80,000 in USDA grants for the mediation program. The department also advises that a large portion of the program's costs are fixed costs (staff salaries, outreach, training, etc.). Variable costs include costs for outside mediators. The program has staff members who are mediators, and uses outside mediators depending on the location of the case. Outside mediators are paid per hour, and each case usually takes two hours.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Wicomico County; Allegany County; Montgomery County; Prince George's County; Talbot County; Judiciary (Administrative Office of the Courts); Department of Agriculture; Baltimore City; *Right to Farm Laws in Maryland: A Brief Overview*, Michael J. Chomel, June 15, 2005; Maryland Farm Bureau; Department of Legislative Services

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