

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 837
Judiciary

(Delegate McDermott, *et al.*)

Family Farm - Prevailing Party - Attorney's Fees and Expenses

This bill authorizes a court to award reasonable attorney's fees and expenses to a family farm that prevails in a civil suit against the family farm alleging that the family farm caused water pollution in any waters of the State as a result of an agricultural operation of the family farm. The bill does not apply to a suit against a family farm (1) brought by a federal, State, or local government to enforce any health, environmental, or any other applicable law or (2) for damages for personal injury or wrongful death.

The bill applies prospectively to lawsuits filed on or after the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: The bill is procedural/technical and does not affect State finances.

Local Effect: The bill is procedural/technical and does not affect local finances.

Small Business Effect: Potential meaningful impact on family farms subject to applicable lawsuits that are able to recover attorney's fees as a result of the bill.

Analysis

Current Law: In general, a party to a lawsuit is responsible for his/her legal fees, regardless of the outcome of the case. However, there are over 80 statutory exceptions to this general rule in State law, including wage and hour cases, worker's compensation cases, and consumer protection cases. The conditions under which an individual is

eligible for an award of attorney's fees and the extent of these awards vary among these cases.

Background: In 2010, the University of Maryland, Baltimore (UMB) Environmental Law Clinic, the Assateague Coastkeeper, and the Waterkeeper Alliance filed suit in the U.S. District Court under the federal Clean Water Act against Perdue Farms and Alan and Kristen Hudson, who raise 80,000 chickens at a time for Perdue on their 293-acre farm located in Wicomico County, alleging that they were polluting the Pocomoke River. In its filing, the clinic argued there was evidence the farm was the source of high bacteria counts found in a drainage ditch that drains into the Pocomoke River. As a result of the suit, the Maryland Department of the Environment investigated the Hudson Farm, fined it \$4,000, and closed its inquiry.

The law clinic's *pro bono* work on the case was criticized when the Hudsons' lawyer said the legal costs incurred defending the suit could bankrupt the farm. Critics also claimed that the Assateague Coastkeeper and the Waterkeeper Alliance had the funds to hire their own legal counsel, although supporters argued that the critics were mistaken. In response, the General Assembly debated during the 2010 session withholding funds from the law clinic and the *Joint Chairmen's Report* requested that UMB report on each legal case in the past two years in which the Environmental Law Clinic participated in a court action and provide a complete delineation of nonprivileged expenses associated with each case. In 2011, the Governor wrote a letter to the dean of the law school criticizing the case.

On December 20, 2012, the judge ruled in favor of Perdue Farms and the Hudsons, noting that the alliance had failed to produce sufficient evidence that the Hudsons' two chicken houses were the source of the pollution found in the drainage ditches and that it was more likely that the pollution came from the herd of cows kept on the Hudsons' farm. Lawyers for Perdue and the Hudsons are seeking more than \$3 million in legal fees and expenses in accordance with the federal Clean Water Act. An attorney for the Hudsons filed papers in federal court in February 2013 supporting his claim of \$500,000 in attorney's fees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), *The Baltimore Sun*, Department of Legislative Services

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mm/kdm

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