

**Department of Legislative Services**  
Maryland General Assembly  
2013 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 1029

(Senator Middleton, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

---

**Maryland Agricultural Certainty Program**

---

This bill establishes a voluntary Maryland Agricultural Certainty Program to accelerate the implementation of agricultural best management practices to meet State agricultural nitrogen, phosphorus, and sediment reduction goals. The Maryland Department of Agriculture (MDA) must develop the program in coordination with the Maryland Department of the Environment (MDE), and the program must be self-sustaining and revenue neutral. MDA must administer the program and may establish reasonable fees by regulation that cover any costs incurred in operating the program. MDA must adopt implementing regulations, with MDE approval, and establish an oversight committee to monitor and oversee the program, help develop implementing regulations, evaluate program performance, and make recommendations. MDA is required to submit an annual report to the Governor and specified committees of the General Assembly on program participation and the oversight committee's recommendations by December 31, 2014, and annually thereafter.

---

**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances; however, workloads may increase for MDA and MDE to establish the program, as discussed below.

**Local Effect:** The bill is not expected to materially affect local finances.

**Small Business Effect:** Meaningful.

---

**Analysis**

**Bill Summary:** An "agricultural source of nitrogen, phosphorus, or sediment" is a source of nitrogen, phosphorus, or sediment that originates from an agricultural

operation's land or animals and does not include sources of nitrogen, phosphorus, or sediment that originate from a residential, municipal, industrial, or commercial activity.

A person that manages an agricultural operation may apply for certification under the program by submitting an application to MDA on a specified form. An agricultural operation may be certified if MDA determines that it (1) has a fully implemented soil conservation and water quality plan and nutrient management plan; (2) meets nitrogen, phosphorus, and sediment load reductions associated with specified water quality requirements; and (3) meets State and federal laws, regulations, and permit conditions relating to agricultural sources of nitrogen, phosphorus, or sediment reduction applicable to the operation.

MDA may certify an agricultural operation after (1) notifying MDE; (2) completion of a specified inspection; (3) securing MDE approval, in specified circumstances; and (4) entering into a certainty agreement with the person managing the operation that outlines the terms and conditions of certainty applicable to the operation, including specified items. Upon request, MDA must make specified records and information it acquires as part of the program application process available to MDE.

A certification is valid for 10 years if the operation remains in compliance with program requirements and there are, generally, no material changes to the operation. At the end of the 10-year certification period, a certified operation must comply with all applicable laws, regulations, rules, and permit conditions that went into effect after it was initially certified. An operation may be recertified for 10 years if it (1) meets program requirements; (2) meets the laws, regulations, rules, and permit conditions applicable to the agricultural operation at the time of recertification; and (3) receives MDE approval, in specified circumstances.

Generally, an agricultural operation that is in compliance and certified under the bill is not subject to:

- State or local laws or regulations enacted or adopted after the date of certification that require the reduction of agricultural sources of nitrogen, phosphorus, or sediment to meet (1) the Chesapeake Bay Total Maximum Daily Load (TMDL), including Watershed Implementation Plan (WIP) requirements; (2) local TMDLs; or (3) other water quality requirements; or
- State or local laws and regulations enacted or adopted after the date of certification related to meeting a reallocation of nitrogen, phosphorus, or sediment load reductions necessary to meet (1) the Chesapeake Bay TMDL, including the WIP requirements; (2) local TMDLs; or (3) other water quality requirements.

The bill does not prevent the application or enforcement of any other laws, regulations, or permits, including (1) orders seeking a corrective action for a violation of water control and abatement provisions of the Environment Article; (2) water resources and wetlands and riparian rights provisions of the Environment Article; (3) specified water, ice, and sanitary facilities provisions of the Environment Article; (4) Chesapeake and Atlantic Coastal Bays Critical Area Protection Program provisions of the Natural Resources Article; (5) the adoption of a growth tier map by a local jurisdiction under growth tiers provisions in the Land Use Article; (6) any State or local law or regulation that regulates the development of land; (7) the federal Clean Water Act; (8) any regulation governing the management of agricultural sources of nitrogen, phosphorus, or sediment initiated by MDA before the enactment of the bill; or (9) any applicable laws or regulations that have been enacted, but are subject to a delayed implementation period.

Local governments are prohibited from enforcing State or local laws, regulations, rules, ordinances, or standards adopted after the date of certification relating to agricultural sources of nitrogen, phosphorus, or sediment for an operation certified under the bill until the end of the certification period.

If the agricultural certainty program is terminated, a certified agricultural operation must (1) remain certified for the remainder of its certification period and (2) be subject to State and local laws or regulations applicable at the time of certification, including specified items such as the terms and conditions of a certainty agreement.

Managers of certified agricultural operations must submit to MDA specified nutrient management plan records, soil conservation and water quality plan records, a specified certification, and any other required information every year. They must also report any change in the agricultural operation that affects certification. MDA must make specified records and information available to MDE.

At least once every 3 years during a 10-year certification period, MDA must require a specified on-site inspection of the operation and MDE must, if applicable, assure compliance with laws, regulations, permits, or other requirements administered by MDE. The inspection must be conducted by a certified verifier determined by MDA. Certified verifiers that conduct on-site inspections must provide a specified report to MDA and a specified notice to the certified agricultural operation. Following the third on-site inspection during a 10-year certification period, the verifier who conducts the most recent inspection must provide specified information to the operation, MDA, and MDE, if applicable. Certified verifiers may not verify an operation if they hold an interest in the operation or previously determined that the operation met specified requirements.

MDA, in coordination with MDE, must establish a program to certify individuals to be program verifiers and maintain and publish a list of certified verifiers. To establish the verifiers program, MDA may (1) charge reasonable fees, including an annual certification

fee, to cover program costs; (2) require continuing education or training for verifiers; (3) designate an entity to train, certify, and recertify verifiers; and (4) recognize specified training programs if certain requirements are met.

Generally, information about certified operations must be maintained by MDA, MDE, and certified verifiers in a manner that protects the identity of individuals, and MDA must make such information available for public review in a manner that provides the greatest public disclosure while protecting the identity of individuals. This provision does not affect the maintenance and disclosure of information obtained by MDE from any other source. Generally, records and information relating to an agricultural operation that are generated or obtained solely for the purpose of obtaining certification may not be disclosed by any State agency, department, or certified verifier before the agricultural operation is certified.

In accordance with the Administrative Procedure Act (APA), on notice and opportunity to be heard, MDA may suspend or permanently revoke the certification of (1) an agricultural operation certified under the bill and (2) a person certified as a verifier. A certification for an agricultural operation or verifier issued under the bill may be suspended or permanently revoked according to procedures established by regulation if the certification holder violates the bill or associated implementing regulations.

The bill expresses intent that Soil Conservation Districts (SCDs) provide program certification and verification services at no cost until existing resources are inadequate to do so.

### **Current Law/Background:**

#### *Agricultural Certainty*

In recent years, Chesapeake Bay states, the U.S. Department of Agriculture (USDA), the U.S. Environmental Protection Agency (EPA), and stakeholders from both the agricultural and environmental community have been discussing implementation of agricultural certainty programs. Agricultural certainty programs seek to provide agricultural operations with certainty that a state will not impose additional environmental protection requirements on the operation for a given period of time. USDA advises that agricultural certainty programs are a valuable tool for accelerating voluntary private land conservation and that the implementation of such programs in the Chesapeake Bay watershed is a USDA priority.

In January 2012, USDA signed an agreement with EPA and the state of Minnesota to develop a new state program for farmers designed to increase the voluntary adoption of conservation practices that protect water quality. Through this partnership, producers

who undertake a substantial level of conservation activities to reduce nutrient run-off and erosion will receive assurance from the state that their farms will meet Minnesota's water quality standards and goals during the life of the agreement. Several additional states have initiated agricultural certainty programs to protect water quality, including Virginia.

MDA received a three-year, \$600,000 federal grant from USDA in 2012 to develop an agricultural certainty program in the State. MDA is using these funds to, among other things, (1) research potential program implementation issues; (2) conduct on-farm assessments for compliance with TMDL requirements; and (3) identify strategies to help agricultural operations achieve environmental protection standards required to participate in an agricultural certainty program. MDA advises that up to 5,000 agricultural operations in the State may be eligible to enroll in the agricultural certainty program proposed in the bill.

### *Chesapeake Bay Total Maximum Daily Load*

In December 2010, EPA established a Chesapeake Bay TMDL, as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The Chesapeake Bay TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. As part of the Chesapeake Bay TMDL, bay jurisdictions must develop WIPs that identify the measures being put in place to reduce pollution and restore the bay.

### *Nutrient Management Plans*

Pursuant to the Water Quality Improvement Act of 1998 (Chapters 324 and 325), agricultural operations with \$2,500 or more in gross annual income and livestock operations with 8,000 pounds or more of live animal weight must have and comply with a nutrient management plan for nitrogen and phosphorus. Different implementation dates applied to operations using chemical fertilizers and operations using sewage sludge or animal manure. Operations using sewage sludge or animal manure have been required to comply with a nutrient management plan for nitrogen and phosphorus since July 1, 2005.

MDA certifies and licenses nutrient management consultants and businesses to prepare nutrient management plans for farm operations and also issues certificates to farm operators to develop their own plans. In consultation with the Nutrient Management Advisory Committee, MDA must prescribe the criteria, form, and content for certified nutrient management plans applicable to licensees and certificate holders and also establish specified continuing education, recordkeeping, and reporting requirements.

### *Soil Conservation Districts*

The State SCDs assist landowners, land users, communities, and units of governments in planning and applying conservation measures necessary to protect, improve, develop, maintain, or preserve the soil, water, and related natural resources within each district. MDA advises that SCD staff have strong relationships with the agricultural community and expertise with nutrient management, the Chesapeake Bay TMDL and WIPs, and other water quality programs and policies. SCDs are expected to meet minimal staffing and funding levels required in statute in fiscal 2014, due in part to additional revenue from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund.

### *Administrative Procedure Act*

APA provides a standard framework of fair and appropriate procedures for agencies that are responsible for both administration and adjudication of their respective laws. Among other things, it establishes procedures to resolve contested agency actions through an impartial administrative hearing. Boards, commissions, and agency heads can conduct contested case hearings or delegate the authority to the Office of Administrative Hearings (OAH) or – with the Chief Administrative Law Judge’s approval – to a person outside OAH.

**State Fiscal Effect:** While workloads may increase for MDA and MDE as a result of the bill, both departments can handle the additional requirements with existing budgeted resources. MDA advises that federal grant funds for agricultural certainty are available in at least fiscal 2013 through 2015 to implement new requirements associated with the bill. Also, because the bill’s oversight committee requirements are consistent with work of an existing agricultural certainty stakeholder group, this requirement simply codifies current practice. Furthermore, because MDA already implements nutrient management-related training and education programs, it is assumed that the agricultural certainty training and education program elements are easily incorporated.

To the extent agricultural operations express interest in the program and must establish best management practices to become eligible, demand for funding from MDA’s resource conservation programs may increase.

This analysis assumes that (1) OAH can handle any additional workload with existing resources and that the bill’s judicial review provisions do not significantly affect the Judiciary and (2) SCDs have adequate resources to provide program certification and verification services to program participants.

While the bill authorizes MDA to charge reasonable fees to cover program costs, MDA does not intend to do so. However, to the extent MDA coordinates verifier continuing

education or training courses, participants may be required to pay fees to cover meeting costs; however, any revenue is expected to be minimal.

**Small Business Effect:** Small agricultural businesses benefit to the extent they participate in the program and are temporarily exempt from new water quality requirements. However, small agricultural businesses are negatively affected to the extent the program shifts the burden for meeting any new water quality standards to operations that do not participate.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Chesapeake Bay Commission, Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of Planning, Maryland Department of the Environment, U.S. Department of Agriculture, Department of Legislative Services

**Fiscal Note History:** First Reader - March 15, 2013  
mc/lgc Revised - Senate Third Reader - March 28, 2013  
Revised - Enrolled Bill/Clarification - April 16, 2013

---

Analysis by: Amanda Mock

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