

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 193 (Delegate Conway, *et al.*)
Environmental Matters

Nutrient Management - Phosphorus Risk Assessment Tool or Index - Economic
Impact Analysis

This bill requires the Maryland Department of Agriculture (MDA) to prepare a full economic impact analysis prior to any change to a specified phosphorus risk assessment tool or index. If a specified Phosphorus Management Tool is adopted by regulation prior to the bill's effective date, implementation of the tool must be suspended until (1) a full economic impact analysis is prepared and reported on to the General Assembly by December 1, 2014, and (2) after the 2015 regular General Assembly session.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: Because MDA plans to pursue an economic impact analysis related to the Phosphorus Management Tool even in the absence of this bill, the bill is not anticipated to materially affect State finances. State expenditures may increase in future years to complete additional economic impact analyses of any future changes.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires MDA to prepare a full economic impact analysis prior to making any change to a phosphorus risk assessment tool or index that is (1) used to identify areas where excess phosphorus is present or a high potential for phosphorus loss exists; (2) included in the Maryland Nutrient Management Manual; and (3) incorporated

by reference in regulations adopted by MDA. When MDA submits a regulation proposing a change to the tool or index to the Joint Committee on Administrative, Executive, and Legislative Review, a copy of the economic impact analysis must be included.

The economic impact analysis must estimate the cost or economic benefit of the proposed change to a person who is required to have a nutrient management plan for nitrogen and phosphorus. As appropriate, the analysis must include estimates directly relating to the effects of the change on (1) the cost of implementing a nutrient management plan developed or updated based on the risk assessment tool or index; (2) agricultural production efficiency; (3) the workforce; and (4) capital investment, taxation, competition, and economic development. MDA must also, as appropriate, consult with other units of State government, units of local government, members of the agricultural community, and representatives of the commercial lawn care, biosolids, and agricultural fertilizer industries.

If MDA regulations adopting the Phosphorus Management Tool developed by the department to replace the Phosphorus Site Index are finalized before the bill takes effect, MDA must suspend implementation of the tool until (1) MDA prepares a full economic impact analysis and reports to the General Assembly on the outcomes of the analysis by December 1, 2014, and (2) after the adjournment of the 2015 regular General Assembly session.

Current Law: 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. A nutrient management plan is prepared to “manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable nutrients and to maintain productivity.”

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 is required, by regulation, to prescribe the criteria, form, and content for certified nutrient management plans applicable to licensees and certificate holders and also to establish specified continuing education, recordkeeping, and reporting requirements.

Under MDA regulations, a person who manages or owns an agricultural operation, with certain exceptions, must revise and update the operation’s nutrient management plan at least once every three years from the date the current plan was prepared. In addition,

specified changes in an agricultural operation may require the operator to modify or update a plan when the information in the plan is inadequate, incomplete, or fails to address a change.

The Maryland Nutrient Management Manual is incorporated by reference in MDA's regulations as containing performance and technical standards for the nutrient management regulations. A certified nutrient management consultant's or certified farm operator's recommendations must be consistent with the standards and criteria in the manual. Where soil analysis shows phosphorus content above a certain level, a phosphorus site index tool described in the manual, or other phosphorus risk assessment method acceptable to MDA, must be used to determine the potential for phosphorus to move off of the site and ultimately the extent of measures that must be taken to manage phosphorus on the site.

Background: MDA has proposed regulations over the last year to replace the Phosphorus Site Index tool referred to in MDA's regulations and included in the Maryland Nutrient Management Manual with a Phosphorus Management Tool that reflects updated science. Due to concerns raised during the public comment period, MDA withdrew the regulations in November 2013, indicating that the department planned to submit a new proposal in 2014.

Modifying the Phosphorus Site Index tool is a part of the State's Phase II Watershed Implementation Plan that details how and when the State will achieve the Chesapeake Bay Total Maximum Daily Load (TMDL) goals established by the U.S. Environmental Protection Agency. The TMDL sets the maximum amount of pollution the bay can receive and identifies specific pollution reduction requirements. The TMDL requires all reduction measures to be in place by 2025, with at least 60% of the actions established by 2017.

State Fiscal Effect: MDA has received interest from multiple sources to complete studies on the economic impact of the Phosphorus Management Tool and plans to pursue an economic impact analysis even in the absence of this bill. Therefore, implementing the bill is not anticipated to materially affect State finances. State expenditures may increase in future years to prepare additional economic impact analyses of any future changes. Based on two proposals to conduct an economic impact analysis regarding the Phosphorus Management Tool, the costs of such an analysis could be at least \$24,500.

Additional Information

Prior Introductions: None.

Cross File: SB 27 (Senator Mathias) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Harford, Montgomery, and Talbot counties; Town of Berlin; Department of Legislative Services

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