

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 963
Rules

(Senators Colburn and Hershey)

**Department of Agriculture - Phosphorus Assessment and Management - Study
and Economic Impact Analysis**

This bill requires the Maryland Department of Agriculture (MDA) to conduct a specified study of efforts to manage and reduce phosphorus pollution from agricultural sources in the State, including an economic impact analysis of the Phosphorus Management Tool developed by MDA to replace the Phosphorus Site Index. MDA must report on the results of the study to the General Assembly by December 1, 2014, and may not implement regulations replacing the Phosphorus Site Index with the Phosphorus Management Tool until 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's requirement that the study include an economic impact analysis is not anticipated to materially affect State finances. The remaining portions of the study can be handled with existing resources.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The required study must include:

- a review of current laws and regulations relating to the use or management of phosphorus on farms;
- a review of voluntary initiatives and programs aimed at reducing or managing phosphorus runoff from farms;
- an update on the implementation of the Maryland Agricultural Certainty Program and an assessment of whether the program has helped to reduce the burden of nutrient management regulations on farmers;
- a comparison of phosphorus reductions achieved by the agricultural sector with reductions achieved by other sectors under the State's Watershed Implementation Plan; and
- an economic impact analysis estimating the costs and economic benefits of the Phosphorus Management Tool to a person who is required to have a nutrient management plan for nitrogen and phosphorus, including, as appropriate, (1) the cost of implementing a nutrient management plan developed or updated based on the Phosphorus Management Tool; (2) agricultural production efficiency; (3) the workforce; and (4) capital investment, taxation, competition, and economic development.

As appropriate, in preparing the study, MDA must 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.

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. 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.

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.

Chapter 339 of 2013 established the Maryland Agricultural Certainty Program, which allows for an agricultural operation to be exempt from new State or local water quality laws or regulations for 10 years if MDA, in coordination with the Maryland Department of the Environment, determines that the operation meets specific criteria, including a

fully implemented nutrient management plan. Regulations implementing the program have not yet been finalized.

Small Business Effect: Implementation of the Phosphorus Management Tool is expected to have an economic impact on farmers. To the extent the bill delays implementation of the tool, that impact is delayed. For example, MDA indicated in 2013 that the regulations that had been proposed at the time to implement the Phosphorus Management Tool would cause certain farms to incur additional costs to manage manure generated on the farm and/or to potentially purchase commercial fertilizer when manure could not be used as a nutrient source.

Additional Information

Prior Introductions: None.

Cross File: HB 284 (Delegate Eckardt, *et al.*) - Environmental Matters.

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

Fiscal Note History: First Reader - March 15, 2014
ncs/lgc

Analysis by: Scott D. Kennedy

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