

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1415 (Charles County Delegation)  
 Environment and Transportation

Grading and Sediment Control Plans - Agricultural Land Management Practices  
 - Definition

This bill defines “agricultural land management practices,” as it relates to the applicability of statutory provisions governing erosion and sediment control plans, to mean the methods and procedures used in the cultivation of land to further crop and livestock production and conservation of related soil and water resources, including the clearing and grading of land in preparation for the methods and procedures.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$278,900 in FY 2023; out-years reflect annualization, inflation, and ongoing costs. State revenues are not materially affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	278,900	330,100	339,400	348,400	357,800
Net Effect	(\$278,900)	(\$330,100)	(\$339,400)	(\$348,400)	(\$357,800)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local erosion and sediment control plan fee revenues decrease beginning in FY 2023. Local soil conservation district workloads also decrease beginning in FY 2023, but overall, the bill is not anticipated to materially affect local expenditures.

**Small Business Effect:** Potential meaningful.

## Analysis

**Current Law:** “Agricultural land management practice” is not defined in related provisions of statute, but is defined in the Code of Maryland Regulations (COMAR 26.17.01.01) as those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources. Logging and timber removal operations may not be considered a part of this definition.

### *Grading and Sediment Control Plans and Grading and Building Permits*

Generally, a county or municipality may only issue a grading and building permit to a developer who has submitted a grading and sediment control plan approved by the appropriate approval authority. In addition, before a person begins any land clearing, grubbing, topsoil stripping, soil movement, grading, cutting and filling, transporting, or other disturbing of land for any purpose, the appropriate approval authority must review and approve the proposed earth change and the sediment control plan.

Grading, earth change, and sediment control plan requirements do not apply to (1) *agricultural land management practices*; (2) construction of agricultural structures; or (3) except in Calvert County, to the construction of single-family residences or their accessory buildings that disturb an area of less than one-half acre and occur on lots of two acres or more. Regulations also exempt grading activities that disturb less than 5,000 square feet (ft<sup>2</sup>) of land area and less than 100 cubic yards of earth.

### *Federal Clean Water Act*

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of CWA, is a permit program that addresses water pollution by regulating point sources that discharge pollutants to U.S. waters. In Maryland, the U.S. Environmental Protection Agency delegates authority to issue NPDES permits to the Maryland Department of the Environment (MDE).

### *State Permitting for Wastewater Discharges*

MDE’s Water and Science Administration (WSA) and Land and Materials Administration issue discharge permits to protect Maryland’s water resources by controlling industrial and municipal wastewater discharges. Surface water discharges are regulated through combined State and federal permits under NPDES. Groundwater discharges are regulated through State-issued groundwater discharge permits. “Discharge permit” is defined in statute as a permit issued by MDE for the discharge of any pollutant or combination of

pollutants into the waters of the State. Statute specifies that the issuance of a discharge permit is contingent on the authorization from the permittee to MDE to allow the right of entry to the permit site at any reasonable time to inspect and investigate any violation or potential violation of a permit condition.

A person must generally hold an MDE discharge permit before constructing, installing, modifying, extending, altering, or operating a system, facility, outlet, or establishment if its operation could cause or increase the discharge of pollutants into the waters of the State. This permitting requirement applies to (1) an industrial, commercial, or recreation facility or disposal system; (2) a State-owned treatment facility; or (3) any other outlet or establishment. Further, a person must hold a concentrated animal feeding operation (CAFO) discharge permit before beginning construction on any part of a new CAFO. MDE has broad authority to require a discharge permit for any other activity by rule or regulation.

**State Expenditures:** According to MDE, the bill’s definition of agricultural land management practices broadens the types of activities that are exempt from State-level erosion and sediment control plan requirements. However, MDE advises that federal law still requires an approved erosion and sediment control plan for certain activities that fall under the expanded definition due to NPDES requirements. As part of its delegated NPDES activities, MDE issues a general permit for stormwater discharges associated with construction activity. One of the requirements for this general permit is that an applicant must have an approved erosion and sediment control plan (in compliance with federal standards). Under the bill, any projects that are exempt from State erosion and sediment control plan requirements, but are still subject to NPDES permitting requirements, must be issued an individual permit by MDE, which could significantly increase MDE’s administrative workload.

As a result, general fund expenditures increase by \$278,919 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring four new employees (one administrative specialist, two regulatory and compliance engineers (RCEs), and one RCE supervisor) to (1) establish a new section within WSA to write individual NPDES permits; (2) advertise NPDES tentative determinations and final determinations; (3) hold public hearings and accept and respond to public comments; (4) establish procedures for accepting erosion and sediment control plans; and (5) review erosion and sediment control plans (which, for private projects, are currently reviewed by local approval authorities). It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salaries and Fringe Benefits	\$249,547
Operating Expenses	<u>29,372</u>
<b>Total FY 2023 State Expenditures</b>	<b>\$278,919</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. This estimate assumes a significant number of projects are affected each year. To the extent that only a minimal number of projects actually require individual NPDES permits or any other type of additional review under the bill, MDE administrative costs are less.

**Local Fiscal Effect:** Revenues for local approval authorities (local soil conservation districts) decrease from an expansion in the number of projects that are exempt from erosion and sediment control plan requirements and associated fees. Of course, local workloads also decrease from a reduction in the number of plans that local soil conservation districts must review.

**Small Business Effect:** The bill's impact on small businesses is somewhat unclear. Additional land clearing and grading activities are no longer subject to State erosion and sediment control plan requirements, but they may be subject to a lengthier individual NPDES permitting process. Thus, it is likely that some agricultural enterprises (many of which are small businesses) benefit while others are negatively affected.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Charles, Howard, and Montgomery counties; Maryland Association of Counties; City of Greenbelt; Maryland Municipal League; Department of the Environment; Department of Legislative Services

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