

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1221 (Delegate Gilchrist, *et al.*)
Environment and Transportation

Agriculture - Nutrient Management Plans - Protection of Personal Information

This bill modifies the manner in which the Maryland Department of Agriculture (MDA) must maintain copies of nutrient management plan summaries filed with the department, with respect to the protection of information identifying the individual for whom the nutrient management plan was prepared.

Fiscal Summary

State Effect: General fund expenditures may increase by approximately \$20,000 in FY 2019, and possibly also in future years. Revenues are not affected.

Local Effect: The bill does not directly affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires MDA to maintain a copy of each nutrient management plan summary filed with the department in a manner that protects the “personal information,” rather than the identity, of the individual for whom the nutrient management plan was prepared. “Personal information” is defined, in accordance with the term’s definition under Maryland’s Public Information Act (PIA), as information that identifies an individual, including an individual’s name, address, driver’s license number or any other identification number, medical or disability information, photograph or computer-generated image, Social Security number, and telephone number. “Personal information” does not include an individual’s driver’s status, driving offenses, five-digit zip code, or information on vehicular accidents.

Current Law: MDA must maintain, for three years, a copy of each nutrient management plan summary filed with the department, in a manner that protects the identity of the individual for whom the nutrient management plan was prepared. MDA regulations require the department to keep, and to protect the confidentiality of, all nutrient management plan information submitted, so as to protect the identity of the person for whom the plan was developed.

Under PIA, inspection or copying of a public record (any documentary material that is made by a unit or an instrumentality of the State, or of a political subdivision, or received by the unit or instrumentality in connection with the transaction of public business) may be denied only to the extent provided under PIA. PIA contains various grounds for denial of inspection of a public record, including if the inspection would be contrary to a State statute.

Background:

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. 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.

A summary of each nutrient management plan must be filed and updated with MDA at a time and in a form that MDA requires by regulation.

Office of the Attorney General Report

A December 2017 [report](#) of the Office of the Attorney General on the implementation of PIA recommends that § 8-801.1 of the Agriculture Article (which this bill amends) be amended to specify the types of identifying information that must be redacted when agencies disclose nutrient management plans under PIA. The report discusses past litigation over the provision requiring that the individual's identity be protected and recommends clarifying it to avoid future difficulty in administering the provision.

State Expenditures: General fund expenditures may increase by approximately \$20,000 in fiscal 2019 for MDA to hire a part-time contractual employee if the bill requires greater disclosure of nutrient management plan information than is currently disclosed by MDA. If the bill requires greater disclosure, MDA expects the number of requests for information to increase; the part-time contractual employee would assist with processing requests. Depending on the ongoing level of requests, the need for a part-time contractual employee may continue into future fiscal years.

The Department of Legislative Services advises, however, that it is unclear to what extent the bill allows for greater disclosure of nutrient management plan information. The bill still requires MDA to maintain copies of nutrient management plan summaries in a manner that protects the "personal information" of the individual for whom the nutrient management plan was prepared, which is defined broadly as "information that identifies an individual" (with the exception of the individual's driver's status, driving offenses, five-digit zip code, or information on vehicular accidents).

Small Business Effect: To the extent the bill requires greater public disclosure of nutrient management plan information, small business farms may be meaningfully impacted by greater public availability of information on their farming operation and business.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture; Office of the Attorney General; Department of Legislative Services

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nb/lgc

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