

## Part K

# Natural Resources, Environment, and Agriculture

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### Natural Resources

#### Nonnative Aquatic Organisms

At the center of media interest during the summer of 2002 was a school of northern snakeheads, popularly known as “frankenfish.” In June, several hundred snakeheads were found to have spawned in a Crofton pond after the original two fish had been dumped there more than two years earlier. The species, which is native to China, is unusually resilient. It can survive below freezing temperatures, sweltering heat, and several days without water. It reproduces quickly, can migrate across land to other bodies of water, and has no natural predators in North America. Adult snakeheads are large and very aggressive, devouring every other fish in range. Because such a threat to the ecosystem could not be maintained, the Department of Natural Resources (DNR), with the advice of the Snakehead Advisory Committee, eradicated all the snakeheads.

This incident served to highlight significant gaps in Maryland law regarding the management of nonnative aquatic species. First, statutory authority does not generally prohibit the release of nonnative fish species, and regulatory authority fell short of what was needed to deal effectively with such a serious threat to the ecosystem. Under current regulations, a person is prohibited from introducing, or possessing in order to introduce, a live fish not indigenous to the nontidal waters of the State. It was this provision that was violated by the original release of the snakeheads in the Crofton pond. Because this offense is classified as a misdemeanor, however, its two-year statute of limitations had expired before the fish were discovered. In addition, nothing in the law at the time would have covered the release of nonnative fish into tidal waters. Even more significantly, the Secretary of Natural Resources is without explicit authority to adopt regulations covering nonnative species, to enter a property where a threat to the ecosystem is believed to exist, or to take steps necessary to abate the threat. The party causing such a systemic threat is not required to pay the costs of abatement, and the rights and liabilities of property owners involved in abatement activities are likewise unclear.

Thus, *Senate Bill 287 (passed)* authorizes the Secretary of Natural Resources to adopt regulations to prohibit the importation, possession, or introduction into State waters of a

nonnative aquatic organism in order to prevent an adverse impact on an aquatic ecosystem or the productivity of State waters. The bill authorizes DNR to enter and inspect properties to determine the existence and extent of a “state of nuisance.” It establishes procedures relating to the abatement of a nuisance organism, including provisions regarding the rights and liabilities of property owners and other persons involved in abatement activities. Finally, the bill establishes criminal penalties for those who violate its provisions.

## **Land Use Planning**

Program Open Space (POS), established in 1969, provides funds for State and local acquisition and development of public outdoor recreation sites, facilities, and open space. To assure that the funds available under POS are focused on meeting the most important needs, the State and each local jurisdiction must prepare land preservation and recreation plans. *Senate Bill 451/House Bill 925 (both passed)* decrease the frequency, from every five years to every six years, with which a local governing body must revise its local land preservation and recreation plan (LPRP) and with which the Maryland Department of Planning, in cooperation with DNR, must revise the State LPRP. A local governing body must submit its revised plan by July 1, 2005, which is one year before the State plan revision is due (July 1, 2006), so that the State plan can be based on the local plans.

Under current law, all jurisdictions that exercise local planning and zoning authority under Article 66B of the Annotated Code of Maryland must also appoint a local planning commission. Except as otherwise provided, a planning commission must now consist of either five or seven members. For smaller municipalities with fewer candidates to draw from when making appointments to the planning commission, it has sometimes proven difficult to meet this minimum requirement of five members. *Senate Bill 416/House Bill 921 (both passed)* grant local jurisdictions the option to appoint as few as three members to their planning commissions.

## **Boating**

### **Accidents**

In 2002, federal legislation was passed that raised the threshold amount for reportable property damage for recreational boating accidents from \$500 to \$2,000 and required that reports be made when a collision occurs involving two or more vessels, regardless of the amount of damage to property. This higher threshold will better account for the rising cost of vessel repairs; it will also reduce the number of accident reports involving minor or cosmetic damage, thereby enabling State investigators to focus on reports of safety-related damage. *Senate Bill 115 (Ch. 12)*, therefore, modifies State requirements for the reporting of a recreational boating accident so as to be consistent with these provisions of federal law.

### **Excise Taxes**

Currently, the Comptroller has authority to seek payment from specified officers and members of corporations, limited liability companies, and partnerships for any delinquent tax assessments owed by a business entity for sales and use tax, State withholding tax, admissions

and amusement tax, and motor fuel tax. Following recent unsuccessful litigation regarding the extent of its parallel authority to collect vessel excise tax owed by a business entity, DNR sought a specific statutory statement of its authority to assess delinquent vessel excise tax owed by a business entity against, and seek payment from, specified officers and members of the business entity. In response, **House Bill 438 (passed)** provides for personal liability for vessel excise tax and interest and penalties of specified individuals of corporations, limited liability companies, and limited liability partnerships under specified conditions. The bill also establishes that an assessment of liability for vessel excise tax is *prima facie* correct.

Generally, vessel excise tax is levied at the rate of 5 percent of the fair market value of a vessel. Currently, a nonresident who purchases a boat in Maryland has two options: either remain in Maryland and pay the tax or leave the State immediately and avoid the tax. **House Bill 1001 (passed)** enables a nonresident of the State who purchases a vessel from a licensed dealer to remain in the State for 90 consecutive days before being required to pay the vessel excise tax. This measure also provides that a business that purchases boats for charter, rental, resale, or lease is exempt from payment of the vessel excise tax.

### **Licensing**

Federal law and the State Boat Act provide various requirements for vessels operating in the State, including registration and numbering requirements, boating safety education requirements, equipment requirements, and operating procedures. Currently there is no requirement that boaters be licensed in the State. **Senate Bill 563/House Bill 442 (both passed)** establish the Task Force to Study the Feasibility of Licensing Boaters in the State. The task force will study, among other topics, security issues involved in issuing a boating license, whether a boating license could be issued in conjunction with a driver's license, the benefits and costs associated with establishing a license, and methods of incorporating boater safety education into a licensing mechanism. The final report of its findings and recommendations of the task force is due by December 1, 2003.

### **Forests and Parks**

#### **Parks**

The Secretary of Natural Resources commissions forest, park, and wildlife rangers as deemed necessary for the enforcement of laws and regulations relating to forests and parks. According to DNR, there are currently 152 forest, park, and wildlife rangers. Rangers are certified law enforcement officers with the State. Because these rangers frequently witness crimes and emergency situations in areas where they work yet have no official jurisdiction, such as on roadways traveled from one State park to another or en route to and from court hearings, **Senate Bill 247/House Bill 566 (both passed)** create a two-year pilot program expanding their jurisdiction in Allegany, Frederick, Garrett, and Washington counties. This expanded jurisdiction includes all roadways traveled by a uniformed ranger in a marked vehicle during work hours when the ranger is traveling from one DNR-managed property to another or to and from court on official business.

Matthew Henson State Park is a 100-acre park located in Montgomery County. It has been leased to the county to operate for a period of 20 years. The Maryland-National Capital Park and Planning Commission (MNCPPC) operates the park for the county. *House Bill 399 (passed)* expands the boundaries of Matthew Henson State Park and, to further the construction of a hiker/biker trail in the park, provides for the transfer of specified parcels of land from the State Highway Administration to MNCPPC. The bill also directs DNR to enter into an agreement with MNCPPC to allow MNCPPC park police officers to exercise police jurisdiction within the park.

### **Forestry**

Under current law, DNR is required to establish and administer an Urban and Community Forestry Program to provide State or federal financial assistance, on a matching basis, to a county or municipal corporation that implements a local urban and community forestry program within its jurisdiction. DNR must also administer a Green Shores Program to promote and cause the planting and maintenance of forested buffers around the Chesapeake Bay and its tributaries. *House Bill 907 (passed)* provides that nonprofit corporations are eligible to receive assistance under these two financial and technical assistance programs. Because DNR already provides assistance to nonprofit corporations under these programs, this measure codifies current practice.

## **Hunting and Fishing**

### **Fisheries**

#### **Oysters**

Oysters play a vital role in filtering pollutants and providing habitat for other marine life. Due in part to recent droughts, which have promoted the growth of oyster diseases, recent oyster harvests have been low. The Department of Natural Resources (DNR) advises that the 2003 oyster season in the Chesapeake Bay is expected to yield less than 50,000 bushels, an all-time low.

**Power Dredging:** The Potomac River Fisheries Commission (PRFC) is authorized to make, adopt, and publish rules and regulations for authorizing and regulating the dredging of oysters with handscrapes in areas of the Potomac River within its geographical jurisdiction. PRFC may collect license fees and an inspection tax. In response to low oyster harvests, PRFC's Oyster Advisory Committee, a citizen/industry advisory panel, asked PRFC to seek authorization to regulate power dredging in addition to dredging with handscrapes. PRFC considered the request and determined that regulated power dredging could be a useful management tool. *Senate Bill 248/House Bill 344 (both passed)* authorize PRFC to allow and regulate power dredging for oysters in the Potomac River and to levy oyster repletion fees. Both Virginia and Maryland must approve PRFC's authority to regulate power dredging for oysters; Virginia approved this procedure in 1982.

DNR is required to prepare a fishery management plan for oysters. As such, DNR has the authority to adopt conservation and management measures for the fishery, including the

establishment of areas where power dredging for oysters is allowed. In response to low oyster harvests, *Senate Bill 698/House Bill 1159 (both failed)* would have required DNR to establish, by regulation, zones in which power dredging for oysters would be allowed. The bill would have specified geographic areas to be included in the zones, and would have authorized DNR to: (1) open or close any power dredge zone for the catching or conservation of oysters; (2) set the oyster dredge bar minimum and maximum size limits; and (3) set the season, days, and times for harvesting oysters by power dredging.

**Exclusive Use:** The owner of any wharf or other structure constructed on or about the water and approved by the U.S. Army Corps of Engineers has exclusive use, for the purpose of growing and harvesting shellfish, of the area below the owner’s wharf or structure. *House Bill 735 (passed)* will give the owner of any wharf or other specified structure in Calvert and St. Mary’s counties the exclusive use of the area within five feet of the wharf or structure to grow and harvest oysters in trays, baskets, or containers that are attached to a private pier or wharf by lines or ropes that are the property of the pier or wharf owner. This provision currently applies to Talbot and Howard counties.

### **Charter Boats**

Maryland operates under a limited entry program for commercial fishing licensees, meaning that charter boat operators from the tidal waters of Virginia who do not already have a Maryland license are unable to provide guide services in the tidal waters of the Chesapeake Bay in Maryland. Virginia does not limit the number of persons authorized to provide guide services in its tidal waters. Accordingly, Maryland charter boat operators are able to provide guide services in Virginia’s tidal waters. *Senate Bill 301/House Bill 649 (both passed)* provide for reciprocity in this regard between Maryland and Virginia. The bill requires DNR to establish a nontransferable Maryland provisional Chesapeake Bay charter boat permit valid only for operating a vessel for charter fishing trips originating from the tidal waters of Virginia. The bills authorize DNR to adopt implementing regulations.

## **Hunting**

### **Licenses and Stamps**

A person hunting migratory game birds must first obtain a Maryland migratory game bird stamp. The requirement of a physical stamp hinders the issuance of e-commerce licenses because hunters who currently purchase a migratory game bird stamp over the Internet still have to wait for a physical stamp to be mailed to them. Also, the current system is an administrative burden on agents that issue sport licenses. *Senate Bill 103 (Ch. 8)* repeals requirements relating to the physical characteristics of the migratory game bird stamp and repeals the requirement that the stamp be affixed to a person’s hunting license. Instead, a person hunting migratory game birds must carry a printed receipt from DNR showing proof of purchase. The Act takes effect August 1, 2003.

Chapter 177 of 2002 significantly modified the hunting license structure within DNR. Previously, complimentary licenses were considered “consolidated licenses.” With a

consolidated license, a licensee was not required to purchase black powder or bow stamps. Chapter 177, in modifying the license structure, abolished the consolidated license, and, therefore, required a holder of a complimentary license to purchase black powder and bow stamps. DNR advises that this was a technical oversight and thus, the Secretary of Natural Resources instructed DNR's Licensing and Registration Service to issue complimentary bow and black powder stamps to persons with a complimentary license. *Senate Bill 421/House Bill 389 (both passed)* require a complimentary hunting license issued by DNR to include all applicable hunting stamps, except for migratory game bird stamps and bonus deer stamps.

### **Deer Management**

DNR establishes the open season to hunt forest and upland game birds and mammals by regulation each year. DNR may adopt regulations to enlarge, extend, restrict, or prohibit hunting wildlife. In general, hunting game birds or mammals on Sundays is prohibited. In response to concerns about the growing deer population, *House Bill 679 (passed)* authorizes DNR to allow for deer hunting on private property on two Sundays (the first Sunday of the bow hunting season in November, and the first Sunday of the deer firearms season). The Sunday hunting provisions do not apply in Anne Arundel, Baltimore, Carroll, Frederick, Harford, Howard, Montgomery, Prince George's, Somerset, Wicomico, and Worcester counties or in Baltimore City. The bill also requires a report in 2004 on the status of the deer population and establishes the intent of the General Assembly that DNR consider using other deer management options. The bill also repeals various provisions of current law to provide for the uniform requirement to obtain written permission to hunt on private property.

### **Waterfowl**

In specified areas, including the Susquehanna Flats, a person may hunt wild waterfowl while standing in water on the natural bottom, from a boat drifting or being sculled, or from a boat that is anchored. In general, the person must be at least 800 yards from shore and at least 250 yards from all offshore stationary blinds or blind sites or another person hunting wild waterfowl offshore. *House Bill 954 (passed)* decreases the minimum distance, from 800 to 400 yards, that a person must be from shore to hunt wild waterfowl in the Susquehanna Flats while standing in water on the natural bottom, from a boat drifting or being sculled, or from a boat that is anchored.

## **Environment**

### **Energy Efficiency**

Traditional methods of energy generation produce air emissions that can have a significant impact on the environment. Pollutants from power plants (such as nitrogen oxides, sulfur dioxides, carbon dioxide, mercury, and particulate matter) contribute to a whole host of environmental problems including smog, acid rain, global warming, and water pollution. Concern regarding these negative environmental effects, combined with fluctuating energy prices and supplies nationwide, has sparked debate over policies that can be implemented to



conserve energy. According to the American Council for an Energy Efficient Economy (ACEEE), policies to improve energy efficiency can reduce air pollution, reduce oil imports, improve the reliability of the U.S. electric grid, and result in energy savings for consumers.

In an effort to encourage energy efficiency, the U.S. Department of Energy has adopted voluntary efficiency standards for certain types of lamps, electric motors, some commercial heating and cooling equipment, and several residential appliances, including refrigerators, room and central air conditioners, water heaters, and washing machines. At the State level, the Maryland Clean Energy Incentive Act of 2000 encouraged the purchase of energy-efficient appliances by exempting from the sales and use tax (1) clothes washers, room air conditioners, and refrigerators that meet or exceed specified guidelines; and (2) specified energy-efficient heating and cooling equipment and fuel cell electric generating equipment. However, there are no State standards governing the energy efficiency of products sold and installed in the State.

*Senate Bill 394/House Bill 747 (both passed)*, which are based on model legislation developed by ACEEE, establish minimum energy efficiency standards for specified new products to be sold in Maryland after March 1, 2005, or installed in Maryland after January 1, 2006. Specifically, the bills require the Maryland Energy Administration (MEA) to adopt regulations by January 1, 2004, establishing minimum energy efficiency standards for nine household and commercial products: (1) torchiere lighting fixtures; (2) unit heaters; (3) certain types of low-voltage dry-type distribution transformers; (4) ceiling fans and ceiling fan light kits; (5) traffic signal modules; (6) illuminated exit signs; (7) commercial refrigeration cabinets (excluding walk-in refrigerators or freezers); (8) large packaged air-conditioning equipment; and (9) commercial clothes washers. The bills specify minimum efficiency standards for those products and provide that no new product, with the exception of commercial clothes washers and ceiling fan light kits, may be sold or offered for sale in the State on or after March 1, 2005, unless the energy efficiency of the new product meets or exceeds those standards. On or after January 1, 2006, no new product may be installed in the State unless the product meets those standards. Efficiency standards for commercial clothes washers and ceiling fan light kits do not become effective until March 1, 2007; washers and kits that do not meet the standards may be installed until January 1, 2008.

The bills do not apply to:

- new products manufactured in the State and sold outside the State;
- new products manufactured outside the State and sold at wholesale inside the State for final retail sale and installation outside the State;
- products installed in mobile manufactured homes at the time of construction; or
- products designed expressly for installation and use in recreational vehicles.

The bills provide for the certification, testing, and inspection of the affected products and establish a civil penalty for repeat violations by manufacturers, distributors, and retailers. MEA

or, if MEA is unable to carry out its responsibility, an agency assigned by the Governor is responsible for the administration of the program.

## Water Management

### Penalties

The Maryland Department of the Environment (MDE) administers several programs relating to water management and water pollution control. In order to encourage compliance with these programs, violators are subject to criminal and civil penalties. In general, such penalties have not been increased since 1987. According to MDE, penalties for similar violations in many states are higher than the existing penalties in Maryland.

In order to enhance the deterrent effect of the existing penalties, *Senate Bill 393/House Bill 715 (both passed)* expand existing criminal and civil penalty provisions related to violations of specified sediment erosion and control, stormwater management, and wetlands and riparian rights provisions. For violations of specified sediment control and stormwater management provisions, the bills also authorize courts to order restoration of areas unlawfully disturbed. The changes made by the bills are presented in **Exhibit K-1**.

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### Exhibit K-1 Criminal and Civil Penalties – Changes Made by SB 393/HB 715

	Existing Criminal Penalties	Criminal Penalties Under SB 393/HB 715	Existing Civil Penalties	Civil Penalties Under SB 393/HB 715
<b>Sediment and erosion control</b>	Up to \$5,000 per violation or one year in jail or both	Up to \$10,000 per violation or one year in jail or both; court may order restoration	Double the cost of restoration	Up to \$10,000 per violation; court may consider restoration costs
<b>Stormwater management</b>	Up to \$5,000 per violation or one year in jail or both	Up to \$10,000 per violation or one year in jail or both; court may order restoration	Up to \$10,000 per violation or an injunction or both	No change
<b>Wetlands/ riparian rights in general, if not specified elsewhere</b>	First offense: up to \$500; next offenses: up to \$1,000 or one year in jail or both	First offense: up to \$10,000; next offenses: up to \$25,000 or one year in jail or both	Attorney General may bring a civil action (no amount specified); circuit court may issue injunction	Up to \$10,000; court may consider specified factors in imposing a penalty; circuit court may issue injunction

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### **Watershed/Drainage Associations**

Public watershed associations and public drainage associations are political entities with the authority to locate, establish, and construct ditches, drains, or canals to control the flow of water.

**House Bill 125 (passed)**, relating to public drainage associations, and **House Bill 278 (passed)**, relating to public watershed associations, codify current practice in authorizing public drainage associations and public watershed associations to impose a fee or tax assessment on land owned by the State, a county, or a municipality that receives a benefit from improvements. **House Bill 125** also authorizes the board of managers of a public drainage association to expand land types in an association to include land classified as commercial, industrial, or residential.

### **Lead Poisoning Prevention**

Lead poisoning impacts the cognitive and physical development of young children. Children are exposed to lead through breathing lead paint dust, eating lead paint chips, or absorbing lead while in utero. Most of the exposures to lead can be eliminated by removing lead paint from the homes of children and pregnant women. Although the number of cases of childhood lead poisoning has decreased over the past few years (from 772 cases in 1998 to 288 cases in 2001), lead paint remains a significant health issue.

Chapter 114 of 1994 established the Lead Paint Poisoning Prevention Program in MDE. The program provides limited liability relief for owners of affected property (generally, rental property built before 1950) and others in exchange for the reduction of lead hazards in these older rental properties and limited compensation of children poisoned by lead.

In an effort to educate and warn consumers about the risks of lead paint poisoning, **House Bill 719 (passed)** requires retailers of paint or paint supplies to display a poster detailing lead poisoning hazards in certain areas of retail stores. MDE must develop the poster and provide it to retailers.

Through MDE's enforcement program, rental property owners that are not compliant with lead paint laws may be prosecuted. **House Bill 722 (passed)** requires a local government agency to report to MDE any known noncompliance of an affected property with the lead risk reduction provisions.

The Lead Paint Poisoning Prevention Program also provides for increased public health intervention by requiring blood tests for children in areas at risk for blood poisoning and by requiring a parent or guardian to provide evidence of such tests when a child enters a public prekindergarten program, kindergarten program, or first grade. **House Bill 819 (passed)** modifies that requirement and requires a program or school to report to the local health department certain information for each child who does not have documentation of a blood test. For a more detailed discussion of this bill, see Part L – Education of this *90 Day Report*.

## Noise Control and Pollution

MDE establishes noise standards, sound level limits, and noise control rules and regulations as necessary to protect the public health, the general welfare, and property.

*Senate Bill 320/House Bill 174 (both passed)* make several changes relating to the noise control and pollution provisions. First, the bills encourage political subdivisions to consider compliance with State and local noise control standards before acting on specified zoning matters. Second, the bills increase the membership of the Environmental Noise Advisory Council and make other changes relating to the council. Third, the bills require MDE, before it proposes any changes in the governing statute or revisions to the environmental noise regulations, to submit the proposed revisions to the council for advice, conduct public hearings, and prepare or solicit technical input. Fourth, the bills expand the membership of the Interagency Noise Control Committee.

*Senate Bill 361/House Bill 215 (both passed)* provide that MDE may not adopt environmental noise standards, sound level limits, or noise control rules and regulations that apply to noise from (1) a fair located in Frederick County or Frederick City and listed in the Maryland Agricultural Fairs and Shows Schedule; or (2) any other event held on the same grounds as a fair located in Frederick County or Frederick City.

## Brownfields Redevelopment and Waste Management

**Brownfields:** Brownfields are abandoned or underutilized industrial or commercial sites, located primarily in urban areas, which are either contaminated or perceived to be contaminated by hazardous substances. Chapters 1 and 2 of 1997 established the Voluntary Cleanup Program (VCP) within MDE to encourage the investigation of eligible Brownfields properties, protect public health and the environment, accelerate the cleanup of eligible properties, and provide predictability and finality to the cleanup process. VCP provides owners or purchasers of a contaminated site liability relief if cleanup goals are met. Eligible applicants may be either responsible persons (as defined under the Controlled Hazardous Substances Law) or prospective owners who have not previously owned the property and did not cause or contribute to contamination at the property. *House Bill 1051 (passed)* exempts certain property owners and operators from the definition of a “responsible person” under the Controlled Hazardous Substances Law and makes several changes to the VCP to encourage participation. The bill also establishes a 17-member Environmental Restoration and Development Task Force.

**Waste Management:** MDE regulates refuse disposal systems such as landfills, incinerators, and other solid waste acceptance facilities through a permitting program. Permit applicants are required to give notice of the application, the informational meeting, and hearings, among other parties, to each member of the General Assembly in whose district the landfill system or incinerator is located. *House Bill 814 (passed)* provides that instead of giving notice to each member of the General Assembly in whose district the landfill system or incinerator is located, an applicant must provide notice to each member of the General Assembly representing

any part of a county in which the landfill system or incinerator is located. The bill also requires the chief executive of any affected county to be notified.

With respect to proposed hazardous waste facilities, *House Bill 1047 (passed)* requires the Hazardous Waste Facilities Siting Board in MDE, at least 90 days prior to issuing a certificate of public necessity for a proposed hazardous waste facility site, to seek the comments of residents who live within one mile of the proposed site.

## **Miscellaneous**

### **Asbestos Violations**

A person who willfully violates specified asbestos removal provisions is liable for a civil penalty not exceeding \$5,000 to be collected in a civil action. Each day a violation continues is a separate violation. If the Attorney General concurs, the Secretary of the Environment may compromise and settle any claim for a civil penalty. A person who previously has been assessed a civil penalty and who willfully violates those provisions is guilty of a misdemeanor and on conviction is subject (1) for a first offense, to a fine not exceeding \$20,000; or (2) for a second or subsequent offense, to a fine not exceeding \$25,000 or imprisonment not exceeding two years or both. *Senate Bill 95 (passed)* repeals the requirement that before criminal sanctions apply for specified asbestos removal violations, a person must previously have been assessed a civil penalty. The bill also provides that to be guilty of a misdemeanor, a person must have knowingly committed a violation.

### **Environmental Justice**

In March 2001, Governor Parris Glendening established the Commission on Environmental Justice and Sustainable Communities by Executive Order. The commission advises State agencies on issues related to environmental justice and sustainable communities. Authorization for the commission expires December 31, 2003. *House Bill 970 (passed)* codifies the commission and provides for its continuation.

## **Agriculture**

### **Agricultural Land Preservation**

The Maryland Agricultural Land Preservation Foundation (MALPF) was created by the Maryland General Assembly in 1977 to preserve productive agricultural land and woodland. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for at least five years. Landowners who agree to place their farms within an agricultural preservation district may sell a development rights easement on that property to MALPF.

### **Recommendations of the Task Force to Study MALPF**

Chapter 634 of 2000 created a task force to study MALPF and Chapter 473 of 2002 reauthorized the task force to study MALPF and make recommendations for improvement. In its January 2003 interim report to the Governor and the General Assembly, the task force recommended a number of legislative proposals. The following bills implement some of those proposals.

***Guidelines for Easement Rankings:*** Noting a number of problems with the current system to rank easements for purchase, the task force determined that the current system does not result in the most productive and beneficially located properties receiving the highest rankings. The task force recommended that MALPF develop guidelines for county ranking systems that offer local flexibility while ensuring that the easements purchased further the goals of the Maryland Agricultural Land Preservation Program. ***Senate Bill 564 (passed)*** and ***House Bill 804 (passed)*** require MALPF, in consultation with the counties, to adopt such guidelines. Codifying the specific recommendations of the task force, the bills require the guidelines to include consideration of: (1) location in a priority funding area of the county; (2) soil and other land characteristics associated with agricultural activity; (3) agricultural production and contribution to the agricultural economy; and (4) any other unique county considerations that support the program's goals. Counties must consider those guidelines in ranking easements for purchase.

***Allowable Economic Activity:*** Consistent with the MALPF purpose of preserving agricultural land and woodland as open space, a landowner whose land is subject to an easement may not use, with limited exceptions, the land for any commercial, industrial, or residential purpose. The task force reported, however, that many farmers who have preserved or would like to preserve their land need supplemental income beyond farming to subsidize their farming operations. Thus, the task force recommended that limited commercial activities be allowed if they do not compromise the State's investment in the land for agricultural purposes. ***Senate Bill 626/House Bill 805 (both passed)*** implement this task force recommendation by authorizing MALPF to allow land subject to an easement to be used for farm and forest related uses (such as hay rides, corn mazes, and horseback riding) and home occupations (such as in home day-care businesses).

***Lot Exclusions:*** A landowner who sells an easement to MALPF is allowed, subject to specified conditions, to exclude as many as ten one-acre lots up to a maximum density of one lot per 20 acres for the purpose of constructing a house for the landowner or the landowner's children. The task force reported that while most requests for lot exclusions are legitimate and consistent with the purposes of the program, questionable requests have come before MALPF in the last few years. For example, some landowners have requested multiple lots and agricultural subdivisions on farms that already have numerous preexisting dwellings. As a result of these concerns, the task force recommended that legislation be adopted to modify the lot exclusion provisions of the program. ***Senate Bill 626/House Bill 805*** allow landowners selling an easement to choose between excluding a maximum of three family lots or, subject to certain conditions, one unrestricted lot. Family lots may not exceed one lot if the size of the easement

property is 20 acres or more but fewer than 70 acres; two lots if it is 70 acres or more but fewer than 120 acres; and three lots if it is 120 acres or more. The landowner may exclude one unrestricted lot only if the resulting density of the property will be less than the density allowed under zoning of the property before MALPF purchased the property. The unrestricted lot right may be transferred to a subsequent purchaser if the property is transferred before the right has been exercised.

### **Natural Gas Rights**

MALPF generally only purchases an easement on a farm if the owner or lessee of any mineral rights subordinates those rights to MALPF. In Western Maryland, some farm owners sold the mineral rights to the land years ago and the current owners of the rights are unwilling to subordinate their rights to MALPF. As a result, these farms are not always able to participate in the program. *House Bill 91 (passed)* prohibits MALPF from requiring an owner of natural gas rights to subordinate those rights to a MALPF easement if MALPF determines that the exercise of natural gas rights will not interfere with an agricultural operation conducted on land in an agricultural district. This bill only applies in Garrett and Allegany counties. Identical bills, House Bill 376 in 2001 and House Bill 567 in 2002, were passed by the General Assembly and were vetoed by the Governor.

### **Construction of a Dwelling House**

Generally, landowners who purchase land already under a MALPF easement are not allowed to construct a dwelling on the land. In the early years of the program, however, some landowners in Carroll County sold easements to the program under the mistaken belief that a subsequent owner would be allowed to construct a dwelling house. *House Bill 131 (passed)* authorizes a landowner in Carroll County whose property meets certain criteria to apply, on or before September 30, 2004, for a release of one acre free of easement restrictions for the construction of a dwelling house by a subsequent landowner. Specifically, a Carroll County landowner can apply for a release if: (1) a dwelling house did not exist on the property at the time the easement was sold; (2) the easement was purchased by MALPF prior to January 1, 1990; (3) the property is at least 50 acres; (4) the property covered by the easement contains all of the land described in the deed of record at the time of the sale of the easement; (5) the landowner who originally sold the easement has not exercised the right to one acre for the construction of a dwelling house; and (6) the landowner pays the State for the one acre being released at the price per acre that the State paid for the easement. An identical bill, House Bill 1000, was passed by the General Assembly in 2002 and vetoed by the Governor.

### **Marketing of Agricultural Products**

Historically, grain export activity in Baltimore has not only moved significant volumes of locally produced grain to foreign markets, but has also helped to maintain high prices for farmers' sales of grain throughout the Mid-Atlantic region. On June 20, 2001, however, the last remaining grain export facility in the Port of Baltimore discontinued export activity following the collapse of a pier at the Locust Point facility. As a result, Maryland grain producers have had

to transport grain elsewhere, increasing costs and decreasing profits. The Maryland Department of Agriculture reports that the closure of the grain terminal at the port has cost State soybean producers alone an estimated \$2-\$5 million annually. *Senate Bill 367/House Bill 547 (both passed)* create a task force to evaluate options and develop strategies for the marketing of grain and other products, including an analysis of the feasibility of reestablishing a grain export facility at the Port of Baltimore and establishing new transport options from alternative locations in Central Maryland. The task force must also implement through the Maryland Port Administration a feasibility study of the short-term and long-term economic viability of a grain shipping facility at the port and evaluate and make recommendations regarding the study, examine potential costs to the State and private industry, examine potential funding sources, and solicit and encourage participation from other interested parties. The task force must report its findings and recommendations to the Governor and the General Assembly by December 31, 2003.

### **Pesticide Registration Fees**

A distributor of pesticides must register with the Secretary of Agriculture each brand or product name of a pesticide before distributing it in the State. Unless the Secretary determines otherwise, each applicant also must pay for two years an annual terminal registration fee for each discontinued pesticide. The current registration and termination fees of \$60 were last increased in 1992. These fees are placed in a special fund to partially defray the administrative costs of the Maryland Pesticide Registration and Labeling Law. This fund may retain a maximum of \$100,000 at the end of each fiscal year. *House Bill 420 (passed)* increases the registration fee and termination fee to \$100 each and reduces the amount the fund may retain at the end of each fiscal year to \$75,000.

### **Nutrient Management**

Over the past several years, concern has intensified regarding the nutrient over-enrichment of the waters of the State, particularly the Chesapeake Bay, and its gravely detrimental impacts on water quality. One legislative response to this issue has been the management of fertilizer and manure involved in poultry and other agricultural operations.

The Water Quality Improvement Act (WQIA) of 1998, as amended by Chapter 485 of 2000, requires certain agricultural operations to have formulated a nutrient management plan by December 31, 2001, and to have implemented an approved plan by December 31, 2002. For a variety of reasons, including a dearth of certified consultants and problems with public awareness, many operations did not meet these deadlines. A number of bills were introduced during the 2002 session to address the WQIA implementation problems, all of which failed.

The General Assembly revisited the WQIA implementation issues during the 2003 session. Two measures were introduced both of which failed. As introduced, *Senate Bill 617 (failed)* would have prohibited, until September 30, 2004, enforcement of the provisions requiring a farmer to grant to the Maryland Department of Agriculture (MDA) a right of entry to the property, as well as enforcement of the penalty provisions applicable to the failure to develop



and implement a nutrient management plan. The bill also would have required MDA to educate farm operators on the importance of nutrient management and seek their voluntary cooperation in meeting nutrient management plan requirements. *House Bill 1058 (failed)*, as introduced, would have suspended all the provisions of the nutrient management law until October 1, 2004, and would have required MDA to conduct similar educational outreach. As amended in the House, the bill would have temporarily suspended enforcement of the penalty provisions and would have established educational, outreach, and reporting requirements for MDA. The bill, as amended, also would have repealed the right of entry requirement; instead, MDA would have been allowed to enter property upon due notice.

