Part K
Natural Resources, Environment, and Agriculture

Natural Resources

Land Conservation

Program Open Space

Program Open Space (POS), established by the General Assembly in 1969 and administered by the Department of Natural Resources (DNR), provides funds for State and local acquisition and development of public outdoor recreational sites, facilities, and open space. The State share focuses on the acquisition of land for natural resource conservation, including low-impact recreational activities where appropriate. The local jurisdiction's share is used primarily for the acquisition and development of high-impact recreational sites and facilities. POS is currently funded through special funds derived from the State's transfer tax which imposes a 0.5% tax on all real property recorded in the State.

House Bill 783 ***(passed)*** authorizes $70 million in bond funds for DNR's POS land acquisition program and authorizes the transfer of up to $5 million of this amount to the Maryland Department of Agriculture's (MDA) Maryland Agricultural Land Preservation Fund (MALPF). DNR is required to use these POS bond funds for State land acquisition that is supported by current appraisals and presents a unique opportunity due to reduced price, extraordinary location, or environmental value. MDA is required to use these POS bond funds for the purchase of easements that present a unique opportunity due to reduced price, extraordinary location, or agricultural value. Property transfer tax revenue must be used to pay principal and interest on the POS bonds prior to any other distribution. The bill specifies that transfer tax revenues allocated to only State POS land acquisition and MALPF, to the extent any debt service is attributable to MALPF, must be reduced by an amount equal to the debt service for the fiscal year.

It has been DNR's longstanding practice to allow local jurisdictions to use POS funding for projects that facilitate the enjoyment of traditional outdoor recreation activities in an indoor setting, including indoor aquatic centers, community centers, golf course buildings, tennis facilities, and nature centers. During the summer of 2008, the Department of Legislative

Services' Office of Legislative Audits suggested that DNR refrain from using POS to fund indoor recreational facilities that do not support outdoor recreation as a primary function until the Office of the Attorney General endorsed such use. In response, DNR has refrained from seeking Board of Public Works' approval for such projects until the enactment of clarifying legislation.

Senate Bill 163 ***(passed)*** authorizes the use of local POS funds for indoor and outdoor recreation and open space purposes. If an indoor facility is funded with local POS funds, it must incorporate, to the maximum extent practicable, the nonstructural site design practices in the Maryland Stormwater Design Manual. Indoor facilities greater than 7,500 square feet must also meet or exceed a specified green building rating. The bill also alters State reimbursement provisions so that if a local governing body uses local POS funds for an indoor recreational facility located outside a priority funding area, the State must reimburse the local jurisdiction 50% of the total project cost. Further, if a local jurisdiction uses local POS funds for the acquisition of land inside a priority funding area and agrees to limit the amount of impervious surface on the land to no more than 10%, the State must reimburse the local jurisdiction 90% of the total project cost. The bill also requires the Maryland Department of Planning to evaluate, and report on, the degree to which specified State goals are being effectively addressed by the local POS process.

Conservation Easements

A conservation easement is a voluntary agreement that allows landowners to limit the type or amount of development on their property while retaining private ownership of the land. A purchaser has the right to rescind a contract for the sale of real property encumbered by a conservation easement in Maryland if (1) the seller fails to give, on or before entering into the contract of sale, or within 20 days afterward, a copy of all conservation easements encumbering the property; and (2) the contract of sale fails to contain a statement with specified information about the conservation easement and the purchaser's rights and responsibilities. Within 30 calendar days after the property is sold, the purchaser must give notice of the sale, including specified information, to the owner of the conservation easement.

Senate Bill 1027/House Bill 754 ***(both passed)*** require a vendor of real property encumbered by a conservation easement to deliver to the purchaser a specified notice and a copy of all conservation easements encumbering the property on or before entering into a contract for the sale of the property, alter the forms of the notice, and modify a vendor's right to rescind the sale contract based on disclosure of any conservation easements. The bills also expand the definition of a conservation easement to include an easement, covenant, restriction, or condition on real property that is owned by a local government and funded by DNR, the Rural Legacy Program, or a local agricultural preservation program; or required by a permit issued by Maryland Department of the Environment.

Forest Conservation

Forest Conservation Act

Enacted in 1991, the Forest Conservation Act provides a set of minimum standards that developers must follow when designing a new project that affects forest land. Local governments are responsible for making sure these standards are met but may choose to implement even more stringent criteria. If there is no local agency in place to review development plans, DNR does so. In general, the Act calls for a minimum amount of forest cover on development sites based upon the site's zoning. ***Senate Bill 549*** ***(passed)*** seeks to encourage sustainable management of the State's forest resources. Among other things, the bill:

- requires local agricultural preservation advisory boards and forest conservation district boards to meet annually with each other;
- modifies right-to-farm provisions to include silvicultural (forestry) operations;
- renames the Forest Advisory Commission as the Sustainable Forestry Council and specifies its purpose;
- modifies the allowable uses of the Forest or Park Reserve Fund to include offsetting the costs to DNR for developing and implementing a forest health emergency contingency program;
- expands the Woodland Incentives Fund's revenue sources and uses;
- authorizes local forestry boards to impose fees to offset specified costs;
- modifies the issues that may be addressed within the land use element of a local jurisdiction's comprehensive plan to include forestry, and modifies the State Economic Growth, Resource Protection, and Planning Policy to include the promotion of sustainable forestry management;
- encourages the provision of incentives to promote in-state production of renewable energy, with consideration being given to biomass-fueled facilities; and
- requires DNR to develop specified strategies, plans, recommendations, programs, and reports.

No Net Loss of Forests

In a January 2007 report, the Maryland Transition Work Group on Environment and Natural Resources recommended that the State adopt a no net loss of forests goal through legislative and executive actions. Maryland loses 8,600 acres of forested land each year. The work group noted that the maintenance of forests is as vital to restoring the Chesapeake Bay as

any investments in sewage treatment or air quality controls. A No Net Loss of Forest Task Force was established by Chapter 176 of 2008 to (1) develop a specific plan, including programs and other necessary actions, to achieve and maintain a no net loss of forests; and (2) draft legislation for the 2009 session to ensure that there is a process to achieve a no net loss of forest in the State beginning in 2010. The task force completed a final report in January 2009 that set forth a variety of recommendations.

Senate Bill 666 ***(passed)*** requires DNR to cooperate with forestry-related stakeholder groups to determine the meaning of no net loss of forests for any State policy and to develop proposals for creating a State policy on no net loss of forests. By December 1, 2011, DNR is required, in consultation with forestry-related stakeholder groups, to submit a report on policies to achieve no net loss of forests in the State. The bill amends several provisions of the Forest Conservation Act, including (1) increasing the fee-in-lieu contribution rate to State and local Forest Conservation Funds; (2) limiting the exemptions for forest clearing associated with a single lot, a linear project, and a dwelling house to a maximum disturbance of 20,000 (instead of 40,000) square feet of forest; (3) limiting the exemption for construction of dwelling houses to owners and their children; (4) eliminating an exemption for areas that were previously developed and covered by paved surface; and (4) requiring that priority be given to specified trees, shrubs, plants, and areas for retention and protection, unless a variance is granted.

Roadside Tree Management

A person generally must obtain a permit from DNR in order to cut down or trim a roadside tree. Cutting or clearing of public utility rights-of-way or land for licensed electric generating stations is exempt from the Forest Conservation Act, subject to specified conditions including conducting the cutting or clearing so as to minimize the loss of forest. ***Senate Bill 581*** ***(passed)*** authorizes local jurisdictions to adopt laws concerning the planting, care, and protection of roadside trees that (1) are more stringent than State requirements if they do not conflict with current law; and (2) do no apply to specified cutting, clearing, and maintenance of public utility rights-of-way. Local governments with local roadside tree laws are authorized to issue stop work orders against violators of the local laws. DNR may authorize local governments to enforce specified roadside tree laws. Local jurisdictions are prohibited from issuing building permits that will result in specified impacts on roadside trees until a DNR permit is obtained. The bill establishes a penalty for trimming, cutting, removing, or injuring a roadside tree or failing to obtain a permit that may not exceed $2,000 for a first offense and $5,000 for a second or subsequent offense. Finally, the State Highway Administration is required to integrate roadside tree protection requirements into construction and maintenance contracts.

Licensed Tree Experts

A person may not solicit, advertise, or represent himself or herself to the public as a tree expert, or practice as a tree expert without a license issued by DNR. Applicable misdemeanor penalties include a fine of up to $500 for a first offense, and a fine of up to $1,000 or both a fine and imprisonment for up to one year for a second or subsequent offense. ***Senate Bill 217*** ***(passed)*** prohibits a person from advertising tree services, including treatment, care, or removal

of trees, unless the advertisement includes the license number of the licensed tree expert advertising services in a specified form or a statement that all tree services are limited to trees 20 feet tall or less. A violator is subject to existing criminal penalties.

Chesapeake Bay and Atlantic Coastal Bays Critical Areas

Senate Bill 1065*/*House Bill 1569* (both passed)** repeal specified provisions relating to contested case hearings and establish new provisions regarding judicial review of certain permit determinations by the Maryland Department of the Environment with respect to the issuance, denial, renewal, or revision of specified permits and by the Board of Public Works with respect to a license to dredge or fill in State wetlands. The bills also impact proceedings involving variances for a development activity in the Chesapeake and Atlantic Coastal Bays Critical Area buffer. For a further discussion of ***Senate Bill 1065 or ***House Bill 1569***, see the subpart "Environment" within Part K – Natural Resources, Environmental, and Agriculture of this *90 Day Report*.

Somers Cove Marina

Somers Cove Marina was established in 1958 and was deeded to DNR in 1980 by the City of Crisfield. The marina was operated by DNR from 1996 to 2007. Chapter 240 of 2008 established a Somers Cove Marina Commission as a body politic and corporate and an instrumentality of the State. The commission was established to, among other things, (1) maintain the existing Somers Cove Marina Improvement Fund in a bank account separate from State funds; (2) adopt operating and capital budgets and assess slip and other fees and charges at the marina to implement a specified master plan; and (3) set policy and provide general oversight of marina operations.

***House Bill 1373* (passed)** makes several changes to the Somers Cove Marina Commission's personnel status, vehicle use authority, and procurement authority. Specifically, it authorizes (1) commission employees, who are not DNR employees, to use DNR vehicles and equipment; (2) DNR to transfer vehicles, equipment, and other inventory to the commission; and (3) the commission's executive director to use an emergency procurement procedure so long as there is as much competition as possible and a written report justifying the emergency procurement is submitted. Procurement in support of enterprise activities for the purpose of direct resale or remanufacture and subsequent resale is exempted from specified procurement provisions. The bill also designates employees or officials of the commission as State personnel under the Maryland Tort Claims Act.

Hunting and Fishing

Fishing

Oyster Restoration

The Chesapeake Bay's oyster population acts as a natural filter, and at its peak removed 133 million pounds of nitrogen annually. Affected by diseases, habitat loss, and harvest pressures, the oyster stock has declined to less than 1% of its park population, and the remaining oysters remove only about 250,000 pounds of nitrogen from the bay each year. Consequently, oyster restoration is an urgent priority for the Department of Natural Resources (DNR).

Buried Oyster Shell Dredging: DNR is authorized to plant oyster shells to facilitate oyster propagation and restoration. State law requires DNR to apply for an oyster shell dredging permit if the Oyster Advisory Commission (OAC) recommends the application. OAC is required to review the draft environmental impact statement of DNR concerning oyster restoration alternatives, for which publication was delayed until June 2009 before making any recommendations. Because of this delay, ***Senate Bill 175*/*House Bill 103* *(both passed)*** extend the deadline by which DNR must apply for an oyster shell dredging permit from December 1, 2008, to July 1, 2009.

Oyster Shell Purchasing Program: The 2007 interim report of OAC concluded that implementation of a large-scale oyster bar habitat rehabilitation program is necessary for oyster restoration in the bay. This program would be dependent on the availability of large quantities of oyster shell and alternate substrate materials. To make DNR more competitive in the oyster shell market, ***Senate Bill 810*/*House Bill 177* *(both passed)*** repeal the 25 cent per bushel limit on DNR oyster shell purchases and require DNR to consult with OAC and the Tidal Fisheries Advisory Commission on the annual value DNR will pay for fresh oyster shells and for the transportation and placement of fresh oyster shells.

Shellfish Leasing Program: In September 2008, the Maryland Department of Agriculture, in consultation with DNR, the Maryland Department of the Environment (MDE), the Department of Health and Mental Hygiene, the Maryland Aquaculture Coordinating Council, and the University of Maryland, published *Maryland Shellfish Aquaculture Plan: Enhancing the Environment through Private Sector Investment*. This report included nine recommendations about how to develop a sustainable fisheries industry while creating opportunity for prospective shellfish growers to establish aquaculture businesses in Maryland waters. ***Senate Bill 271*/*House Bill 312* *(both passed)*** implement several of the recommendations in the report. Specifically, the bills establish (1) public shellfish fishery areas on which leasing is prohibited; (2) Aquaculture Enterprise Zones for aquaculture leasing and submerged land aquaculture leases, which have no limits on proximity to natural oyster bars, county of location, corporate or out-of-state leaseholding, or acreage; and (3) aquaculture demonstration leases for educational, conservation, or ecological purposes. A leaseholder in an Aquaculture Enterprise Zone is not required to obtain water quality approval from MDE or a tidal wetlands permit.

Fish and Fisheries Laws

Established in 2007, the Task Force on Fishery Management is charged with overseeing a full review of fishery management processes and developing legislative and other recommendations for methods to improve, modernize, and streamline fishery management. In its December 1, 2008 report, the task force made several recommendations which became the subject of legislation passed by the General Assembly in the 2009 session.

Conflicting Law: The task force found that obsolete or contradictory laws and regulations have created management problems for DNR. ***Senate Bill 169 (passed)*** repeals and modifies provisions of State fish and fisheries laws, primarily relating to the allowable manner, places, and times for catching, and size limits applicable to, certain species of fish (including crabs, oysters, and clams), that either are inconsistent with DNR regulations or fishery management plans, unnecessary, or obsolete.

Recreational Fisheries Enforcement: The task force also found that the statutory authority for recreational license suspensions differed for tidal and nontidal licenses, preventing DNR from streamlining and clarifying a process for suspending recreational fishing licenses. As a result, DNR has very rarely suspended recreational licenses. ***Senate Bill 164 (passed)*** makes DNR's authority to revoke or suspend recreational fishing licenses consistent with respect to both tidal and nontidal recreational fishing licenses.

Commercial Fisheries Enforcement: ***House Bill 1355 (passed)*** alters the grounds for suspension or revocation of a tidal fish license or authorization by requiring DNR to adopt regulations, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, governing the suspension or revocation of these licenses and authorizations. The regulations must include enhanced penalties for repeated violations of State fisheries laws and violations of provisions regulating species deemed to be in need of special protection (including striped bass, crabs, oysters, and menhaden).

Recently DNR and others have requested that fines for commercial fishery violations be increased because the fines are so low that they have lost their deterrent effect. ***House Bill 1419 (passed)*** increases the maximum fines applicable to misdemeanor violations of State fish and fisheries laws from $500 to $1,000 for a first violation, and from $1,000 to $2,000 for a second or subsequent violation. The bill also allows for restitution for the resource value, as established by regulation, of any fish injured, killed, or destroyed.

Hunting

Sunday Deer Hunting

There are three seasons to hunt deer in Maryland: deer bow hunting season; deer firearms season; and deer muzzle loader season. With specified exceptions, hunting game birds or mammals on Sundays is prohibited. Among the exceptions, in Dorchester, St. Mary's, Somerset, Washington, Wicomico, and Worcester counties, a person may hunt deer on private

property with a bow and arrow during open season on the last three Sundays in October and the second Sunday in November. In addition, DNR may allow deer hunting on private property on the first Sunday of the bow hunting season in November and the first Sunday of the deer firearms season. This provision, however, does not apply in Baltimore, Carroll, Frederick, Howard, and Prince George's counties and in Baltimore City. ***Senate Bill 609/House Bill 1245 (both passed)*** authorize deer hunting on private property on the above-noted Sundays in Frederick County.

Environment

Air Quality

Greenhouse Gas Emissions Reduction Act of 2009

According to the Intergovernmental Panel on Climate Change, the world's temperatures are climbing and human activities are very likely contributing to this increase. Continued global warming is expected to affect sea levels and weather patterns, resulting in impacts on human health, the environment, and the economy. In 2005, Maryland's greenhouse gas (GHG) footprint totaled approximately 109 million metric tons of carbon dioxide equivalent.

According to the Maryland Commission on Climate Change, in 2005 the largest GHG emission sources in Maryland were electricity consumption and transportation. Other sources include residential, commercial, and industrial fuel use; industrial processes; waste management; agriculture; and the fossil fuel industry. Due to increases in population and consumption, Maryland's GHG emissions are expected to continue to grow over time. Although Maryland has already taken steps to reduce GHG emissions from certain sources, without any new programs, the commission estimates that Maryland can expect to exceed emissions of 130 million metric tons of CO2 equivalent by 2020.

At the federal level, climate change policy consists largely of voluntary programs and partnerships to meet a national goal of reducing the GHG intensity of the American economy by 18% from 2002 to 2012. Although several bills addressing GHG reductions have been introduced in the United States Congress in recent years, to date, no federal legislation has been enacted.

Because the federal government has not yet taken significant action on this issue, several states are moving ahead with their own efforts to reduce GHG emissions. In Maryland, although legislation was introduced during both the 2007 and 2008 sessions to require reductions in GHG emissions, that legislation was not successful. Nevertheless, Maryland has implemented numerous policies and programs in recent years that address energy conservation and efficiency, renewable energy, alternative energy sources, and GHG emissions.

In August 2008 the Maryland Commission on Climate Change issued its Climate Action Plan, which includes a comprehensive assessment of climate change impacts in Maryland and a review and assessment of the costs of inaction. Most notably, the plan recommends the adoption

of goals to reduce GHG emissions from 2006 levels by 10% by 2012; 15% by 2015; 25 to 50% by 2020; and 90% by 2050.

Senate Bill 278*/*House Bill 315* *(both passed) require the State to develop plans, adopt regulations, and implement programs to reduce GHG by 25% from 2006 levels by 2020. The Maryland Department of the Environment (MDE) is required to implement various measures designed to ensure that the GHG reductions produce economic benefits for the State and do not adversely affect specified communities or economic interests. MDE must publish a GHG emissions inventory for the year 2006, a "business as usual" projection of GHG emissions for the year 2020, and a triennial inventory update beginning in 2011. The bills require an academic study of the economic impact of the GHG emissions reductions on the manufacturing sector, with oversight provided by a newly created task force. The bills require several reports on the need for, and progress toward, the 2020 GHG reduction goal and any additional goal later prescribed by law. The goal to reduce GHG emissions 25% below 2006 levels by 2020 terminates on December 31, 2016.

Exhibit K-1 provides a timeline for these activities and other key dates specified in the bill.

Exhibit K-1

Key Dates under the Greenhouse Gas Emissions Reduction Act of 2009

Date	Action
June 1, 2011	Publish 2006 inventory and 2020 business as usual projection
December 31, 2011	MDE deadline to submit proposed reduction plan to Governor and General Assembly, following public workshops
Calendar 2011	MDE to publish 2011 inventory
January 1, 2012	MDE deadline to approve manufacturer GHG reduction plans for voluntary early action credits
December 31, 2012	MDE deadline to adopt final reduction plan
Calendar 2014	MDE to publish 2014 inventory
October 1, 2015	Deadline for submission of independent academic study of economic impact on manufacturing sector
October 1, 2015	MDE deadline for submission of report on progress toward 2020 reduction goal and other recommendations and analyses
December 31, 2016	Termination of the 2020 reduction goal
Calendar 2017	MDE to publish 2017 inventory
October 1, 2020	MDE deadline for submission of report on progress toward 2020 reduction goal, and toward achieving reductions needed by 2050 based on contemporary science
December 31, 2020	State deadline to reduce GHG emissions by 25% below 2006 level, unless otherwise specified
Calendar 2020	MDE to publish 2020 inventory
Calendar 2023	MDE to publish 2023 inventory
October 1, 2025	MDE deadline for submission of report on progress toward any further reduction goals required, if applicable, and toward achieving reductions needed by 2050 based on contemporary science

The final GHG reduction plan may not require emissions reductions for the State's manufacturing sector or otherwise impose additional costs to the sector that are not already required under current law or associated with the Regional Greenhouse Gas Initiative. In developing and implementing the plan, MDE must consider the impact on rural communities of

any transportation-related measures, consider whether the measures would result in an increase in electricity costs to consumers in the State and, consider the impact of the plan on the ability of the State to attract, expand, and retain commercial aviation services and to conserve, protect, and retain agriculture. MDE must ensure that the GHG reductions do not directly cause a loss of existing manufacturing jobs in the State.

Alternative Energy and Energy Efficiency

Alternative energy and energy efficiency are two other policy components of the State's strategy to reduce greenhouse gas emissions. Although the lead agency responsible for the promotion of clean energy is the Maryland Energy Administration (MEA), the Maryland Environmental Service (MES) is seen as having a role in fostering the growth of renewable energy. MES is an independent State agency, created in 1970, to provide technical services to clients for engineering, design, financing, construction, and project management and operation. Currently, the only energy projects that MES is authorized to undertake are those with a waste-to-energy or recycling component. However, ***Senate Bill 14*** ***(passed)*** allows MES to engage in the production, generation or distribution of energy from renewable or other energy sources, to undertake energy conservation measures, and to conduct research and development studies. For a further discussion of ***Senate Bill 14*** , see the subpart "Public Service Companies" within Part H – Business and Economic Issues of this *90 Day Report.*

Under ***House Bill 1442*** ***(Ch. 169)***, the Jane E. Lawton Conservation Loan Program is expanded to facilitate the growth of renewable energy. The Act adds renewable energy to the list of projects eligible for funding under the program and also authorizes additional forms of governmental entities to receive program funds. For a further discussion of this bill, see the subpart "Economic and Community Development" within Part H – Business and Economic Issues of this *90 Day Report.*

Another approach to small-scale clean energy financing is authorized by ***House Bill 1567*** ***(passed)***, which authorizes a county or municipality to enact an ordinance or resolution establishing a Clean Energy Loan Program to provide loans to residential and commercial property owners for the financing of energy efficiency and renewable energy projects. For a more detailed discussion of the bill, see the subpart "County and Municipal Governments" within Part D – Local Government of this *90 Day Report*.

Currently, the purchase of solar energy equipment that is used to heat or cool or provide hot water for a building, or to generate electricity for a building, is exempt from the State sales and use tax. In addition, solar energy property is not generally subject to real property tax. ***Senate Bill 621*** ***(passed)*** extends these existing tax exemptions to solar energy equipment or property used to generate electricity supplied to the electric grid.

House Bill 1171 ***(passed)*** adds residential wind energy equipment used to generate electricity for a residential structure to the exemptions from the State sales and use tax. The bill also exempts residential wind energy equipment used to generate electricity for a residential structure from State and local real property taxes. The bill further clarifies that, for property tax

exemption purposes, solar energy equipment includes equipment that uses solar thermal electric energy.

Environmental Trust Fund

House Bill 1407 ***(Ch. 167)*** extends the termination date for the environmental surcharge imposed on electricity generated in the State from June 30, 2010, to June 30, 2015. Revenue generated from the environmental surcharge is deposited in the Environmental Trust Fund (ETF) within the Department of Natural Resources (DNR) and used primarily to support DNR's Power Plant Research Program (PPRP). ETF supports activities associated with the assessment and management of the cultural, economic, and environmental impacts of electric power generation and transmission facilities. PPRP, which is funded entirely from revenues generated from the environmental surcharge, currently provides this oversight.

Green Building

Chapter 116 of 2007 codified the Maryland Green Building Council, which had been established by executive order but had been dormant for several years. In December 2007, the council issued its first report with a list of recommendations that were subsequently codified in Chapter 124 of 2008, the High Performance Buildings Act. Chapter 124 of 2008 required most new or renovated State buildings and new school buildings to be constructed as high-performance buildings, subject to waiver processes established by the Departments of Budget and Management (DBM) and General Services (DGS) and the Board of Public Works (BPW). Chapter 124 exempts buildings under a certain size, certain types of buildings, and buildings that receive a waiver from various State agencies.

Senate Bill 212/***House Bill 154*** ***(both passed)*** require the Green Building Council to evaluate high performance building technologies, list the types of buildings that the technology should not be applied to, and report to the Governor on recommendations for the most cost-effective technology and how to expand green building in the State.

Senate Bill 625 ***(passed)*** requires the Department of Housing and Community Development (DHCD) to adopt the International Energy Conservation Code (IECC) and to consider changes to the International Building Code (IBC) to enhance energy conservation and efficiency before adopting a subsequent version of the Maryland Building Performance Standard (MBPS). DHCD may adopt energy conservation requirements that are more stringent, but not less stringent, than in the IECC. The bill also requires that local governments implement and enforce the most current MBPS and any modifications within 6 months of adoption by the State. A local jurisdiction may also adopt a local amendment to the MBPS as long as the amendment does not weaken any energy conservation and efficiency provisions in the MBPS.

Senate Bill 163 ***(passed)*** authorizes the use of local Program Open Space (POS) funds for both indoor and outdoor recreation and open space purposes. The bill requires that indoor facilities funded with local POS funds meet or exceed the U.S. Green Building Council's LEED

Green Building silver rating if the facility is 7,500 square feet or more. For additional discussion of this legislation, see the subpart "Natural Resources" under this part of this *90 Day Report*.

Chesapeake Bay Restoration

Septic System Upgrades

Chapter 428 of 2004 established the Bay Restoration Fund, which is administered by the Water Quality Financing Administration within MDE. The main goal of the fund is to reduce nutrient pollution to the Chesapeake Bay by upgrading the wastewater treatment facilities and septic systems with enhanced nutrient removal technology. Of the revenue collected from users of septic systems and sewage holding tanks, 60% must be deposited into a separate account (the "Septics Account") within the fund primarily for making grants and loans to septic system owners to upgrade their systems. Until recently, Septics Account revenues have significantly exceeded expenditures, creating excess funding capacity and a large account balance estimated at over $20 million as of March 2009.

A number of bills were introduced in the 2009 session to authorize funds in the additional uses of funds in the Septics Account. ***Senate Bill 554*** ***(passed)*** prohibits both the installation of a new septic system, as well as the replacement of a failing septic system, within the Chesapeake and Atlantic Coastal Bays Critical Area unless the new or replaced system utilizes the best available technology for nitrogen removal. Financial assistance is provided with funding from the Septics Account as well as a tax deduction for those who do not receive such funding.

Another type of wastewater treatment system of concern for the health of the Bay are individual sewerage systems. Unlike septic systems, which rely on the treatment of sewage through appropriate soils, individual sewerage systems discharge directly to surface water without soil treatment. According to MDE, these systems present a significant oversight and enforcement problem for local governments. ***Senate Bill 721/House Bill 1105*** ***(both passed)*** prohibit the installation of an individual sewerage system for residential use unless an existing septic system fails and cannot be repaired or replaced by any means and the installation is approved by MDE.

Stormwater Management

State law requires each county and municipality to adopt ordinances necessary to implement a stormwater management program. Every three years, MDE reviews local stormwater management programs and provides technical assistance. Chapters 121 and 122 of 2007 required MDE to establish stormwater management regulations on the use of "environmental site design" expected to significantly improve the effectiveness of new and retrofitted stormwater facilities. Chapters 121 and 122 also required MDE to evaluate a stormwater management fee system to enhance stormwater management financing. In May 2008, MDE released its evaluation and noted that stormwater management in Maryland is implemented with little financial support from the State, creating certain local funding needs.

Stormwater User Charge: ***Senate Bill 672/House Bill 1457 (both failed)*** would have required counties and municipalities to establish a stormwater user charge to generate sufficient revenues to fund specified local stormwater management activities. The charge would have been a flat fee for all residential property owners and based on impervious surface areas for commercial property owners.

Impervious Surfaces: Additionally, ***House Bill 34 (failed)*** would have required all counties to determine and report the total area of impervious surfaces to MDE, which, in consultation with the Maryland Department of Planning (MDP), would develop and maintain a State database of impervious surfaces.

Water Quality

Sewage Sludge: Sewage sludge is one of the final products of the treatment of sewage at wastewater treatment plants. Sewage treatment breaks down organic matter and kills disease-causing organisms leading to the creation of the sludge. The U.S. Environmental Protection Agency has long promoted the beneficial use of sewage sludge. Despite this, some academic researchers note that there remain risks of applying treated sewage sludge to agricultural land as fertilizer.

According to MDE, more than 700,000 wet tons of sewage sludge are generated in Maryland each year. MDE reports that in Maryland approximately 50% of sewage sludge is applied to agricultural land (an increase from 31% in 2006); 21% is used for land reclamation such as restoring surface mines; 18% is composted or pelletized and made into a commercial soil supplement; and 11% is disposed of in landfills or incinerated (a decrease from 13% in 2006). Since 2006 the share of sewage sludge being hauled out-of-state has been phased out from 41% to zero.

When MDE receives an application for a permit to utilize sewage sludge, it must mail a copy of the permit to the county and any municipal corporation where the sewage sludge utilization site is to be located and to any county within one mile of the site. ***House Bill 1058 (passed)*** requires a copy of the permit to be mailed to the appropriate county's executive and legislative body, the executive of any municipal corporation where the sewage sludge utilization site is to be located, and to the executive and legislative body of any county within one mile of the site.

Miscellaneous: The American Recovery and Reinvestment Act of 2009 provides a substantial amount of federal funding for water quality and drinking water infrastructure improvements in Maryland. The two primary federal funding sources for water policy in the State are the Clean Water State Loan Fund and the Drinking Water State Loan Fund. To make use of this federal stimulus funding for water quality and drinking water enhancements, ***House Bill 1417 (Ch. 168)*** establishes certain accounts within the Maryland Water Quality Financing Administration at MDE and expands the existing authorized uses of Water Quality Loan Fund and Drinking Water Loan Fund money.

Another MDE fund, the Small Business Pollution Compliance Loan Fund, was repealed by ***House Bill 1416*** ***(passed)***. This fund was created in 1998 to assist small businesses with the costs associated with installation of pollution control and the compliance with air pollution regulatory requirements. However, since its establishment only one loan has been made. Money within the fund will revert to the general fund.

The Maryland Clean Water Fund may realize a slight increase in revenues on an annual basis due to the enhanced penalty established by ***Senate Bill 408*** ***(passed)***. The bill increases from $1,000 to $5,000 the maximum penalty for a violation of any of the water pollution laws in Title 9 of the Environment Article.

A local sanitary commission may currently enforce the collection of unpaid benefit assessments or other charges when an individual's payment is at least 60 days overdue by suing the owner of record or filing a bill in equity to enforce a lien through a decree of sale of property. In Allegany, Dorchester, and Somerset counties, the sanitary commission may also disconnect service. ***House Bill 218*** ***(Ch. 135)*** extends this authorization to Garrett County.

Waste Management

Coal Combustion By-products

According to MDE, between 2 million and 2.5 million tons of coal combustion by-products (CCBs) are generated each year, primarily from nine power plants in Maryland. This amount is anticipated to increase as new and more effective environmental controls are installed at power plants to sequester CCBs from the combustion process.

CCBs are either disposed of or used. According to MDE, beneficial uses of coal ash include mine reclamation, structural fill applications, or as a substitute for cement in the production of concrete. Under certain geologic conditions, certain types of coal ash can produce high concentrations of potentially toxic or carcinogenic constituents that may leach into surface or groundwater. In addition, without proper controls, MDE reports that coal ash released into the air in large quantities can create a public nuisance and/or cause respiratory problems.

On October 1, 2007, MDE filed a consent order in Anne Arundel County Circuit Court to settle the environmental enforcement action taken against BBSS, Inc. and Constellation Power Source Generation, Inc. for CCB contamination of public drinking water wells in the vicinity of BBSS' Gambrills sand and gravel mine. Among other provisions, the consent order required the facility owners and operators to pay a civil penalty of $1 million. On December 30, 2008, a Baltimore Circuit Judge approved a $54 million settlement in the class-action lawsuit brought by Gambrills residents.

To address these issues, MDE developed new CCB disposal regulations that took effect December 1, 2008. Generally these regulations require CCB disposal facilities to meet the same technical standards required for industrial solid waste landfills, and conform to local zoning and land-use requirements and each county's 10-year solid waste management plan. The regulations also address the use and disposal of CCBs in mine reclamation projects by imposing a number of

standards that must be met at the site and by restricting such use and disposal to certain types of CCBs.

Although these new regulations are now in effect, MDE advised that they were yet being fully implemented due to a lack of funds. To this end, ***House Bill 1556*** ***(passed)*** establishes a Coal Combustion By-Products Management Fund comprised of fees collected by MDE on each ton of CCBs generated. The fee must be adjusted annually by MDE to ensure that all revenues collected cover the cost to implement MDE's coal combustion management program, without producing excess revenues.

In addition to developing the CCB disposal regulations, MDE advises that it is also working to adopt regulations to define beneficial uses of CCBs. ***House Bill 1305*** ***(passed)*** requires MDE to submit these beneficial use regulations to the Joint Committee on Administrative, Executive, and Legislative Review, as well as additional regulations to control fugitive air emissions from the transportation of CCBs, by the end of this year.

Recycling

Beginning January 1, 1992, each State agency was required to implement a recycling plan created in part by the Office of Recycling to reduce through recycling the amount of the solid waste stream generated for disposal by the State government by at least 20% or to an amount that is determined practical and economically feasible, but in no case less than 10%. ***House Bill 595*** ***(passed)*** requires the State to include in its required recycling plans a system for recycling aluminum, glass, paper, and plastic. The bill requires the placement of collection bins in State-owned or State-operated office buildings where it is determined to be practical and economically feasible. Each agency must begin implementation of this plan by January 1, 2012.

In 1988, the Maryland Recycling Act required each county to submit a recycling plan. Counties have flexibility to determine the best way to reach the required recycling rates. ***Senate Bill 473***/***House Bill 1290*** ***(both passed)*** add a requirement for a county recycling plan to include a strategy for collecting, processing, marketing, and disposing of recyclable materials from county public schools. The bill also requires counties to revise their recycling plan by October 1, 2010 to address the new requirement.

Mercury Switch Disposal

Each year, approximately 10 to 12 million vehicles are retired from useful life in North America. According to the Clean Car Campaign, mercury-containing switches account for more than 99% of the mercury used in automobiles, with each switch containing nearly one gram of mercury. According to a 2004 analysis by the Clean Car Campaign, in the United States alone, automobiles will be responsible for the environmental release of up to 493,000 pounds of mercury from the estimated 217 million switches installed in vehicles from 1974 through 2003.

In August 2006, a coalition of organizations and industry sectors signed a memorandum of understanding and established the National Vehicle Mercury Switch Recovery Program (NVMSRP) to remove mercury-containing switches from scrap vehicles. The program will

terminate in 2017 when estimates indicate that 90% of the vehicle mercury switches will be retired. Maryland joined NVMSRP in January 2007. MDE has partnered with End of Life Vehicle Solutions Corporation (ELVS), the NVMSRP contractor, and the Maryland Auto and Truck Recyclers Association to encourage vehicle recyclers and dismantlers to participate in the program. Under NVMSRP, a $4 million fund has been established to reward dismantlers and recyclers on a first-come first-served basis for their efforts by paying $1 per mercury light switch or assembly received and $3 per antilock braking system module received. ELVS will provide educational materials and will collect and recycle switches at no cost to recyclers and dismantlers. According to a recent model developed by ELVS, the number of mercury light switches in end-of-life vehicles in Maryland is projected to decrease from 59,000 in 2008 to 28,000 in 2017.

***House Bill 1263* (passed)** requires vehicle manufacturers that sold motor vehicles with mercury switches in the State to develop a mercury minimization plan relating to mercury switch removal from vehicles. Requirements of the plan include information identifying the make, model, and year of vehicles that may contain mercury switches; educational and training materials to assist vehicle recyclers in removing mercury switches; and proposals for safe storage and disposal of mercury switches. Manufacturers must pay at least $4 per mercury light switch removed and $6 for each mercury antilock braking switch assembly removed by a vehicle recycler. The bill also requires vehicle recyclers to remove mercury switches from end-of-life vehicles and to keep certain records. A portion of the money collected from mercury switch removal must be deposited into the State Recycling Trust Fund. Finally, the bill establishes penalties for violations of specified provisions in the bill. The provisions of the bill are scheduled to terminate at the end of 2017.

Environmental Standing

Generally, a party to a civil action must be authorized to participate in the action, either by statute or by having common law "standing." Standing means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy.

Maryland law currently limits standing to those who are "aggrieved" by the agency decision. "Aggrievement" has been defined by court decisions to mean that the plaintiff has a specific interest or property right that has been affected by the disputed action or decision in a way that is different from the effect on the general public. With respect to cases involving challenges to specific types of permits, Maryland courts have defined "aggrievement" to mean the ownership of property either adjacent to, or within sight or sound range of the property that is the subject of the complaint.

The Court of Appeals has held that associations and organizations lack standing to sue where it has no property interest of its own, distinct from that of its individual members. In *Medical Waste Ass'n. v. Maryland Waste Coalition, 327 Md. 596 (1992)*, the Court of Appeals stated that if an individual or organization is seeking to redress a public wrong, the individual or organization has no standing unless the wrong suffered is different in character and kind from that suffered by the general public.

Senate Bill 1065*/*House Bill 1569 ***(both passed)*** expand standing for individuals and associations and organizations in bringing challenges related to a license to dredge and fill on State wetlands, and permits issued under the Environment Article pertaining to ambient air quality control, landfills/incinerators, discharge pollutants, structures used for sewage sludge storage or distribution, controlled hazardous substance facilities, hazardous materials facilities, low-level nuclear waste facilities, water appropriation and use, nontidal wetlands, gas and oil drilling, surface mining, and private wetlands. Federal standing is also provided to persons to participate in certain buffer zone variance actions in the Chesapeake and Atlantic Coastal Bays Critical Area.

The bills provide that the federal tests for standing shall be used to determine whether a party may contest a determination by MDE or Board of Public Works (BPW) when making determinations on the issuance, denial, renewal, or revision of the covered permits and license.

Federal law is broader than State law in its determination of standing. Under federal law, a party has standing if its use and enjoyment of the area is affected by the challenged action/decision or if the party has a particular interest in the property affected. Federal law also makes little distinction between individual and group standing. Under federal case law, in order to have standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

Federal case law requires an association to meet a three-part test in order to have standing. Under the test, an association has standing if (1) one or more members of the association have standing as individuals; (2) the interests that the association seeks to protect in the case are germane to the association's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the member with individual standing in the lawsuit.

A person, including associations and organizations, may request judicial review of a determination if the person meets the threshold standing requirements under federal law and participated in a public participation process through the submission of oral or written comments. In order to streamline the process by which the covered permits and license are challenged, the bills prohibit the covered permits and license from being challenged in a contested case process, and instead provide for judicial review on the administrative record.

Petitions for judicial review must be filed with the circuit court for the county where the application for the permit or license states that the proposed activity will occur. Judicial review is limited to an administrative record and objections raised during the public comment period, with limited exceptions. A petition for judicial review shall be filed and conducted in accordance with the Maryland Rules of Civil Procedure.

The bills specify what materials constitute an administrative record for purposes of judicial review, and require MDE or BPW to make certain materials from the administrative record available when the department issues a draft permit or tentative determination. MDE or BPW are required to extend any public comment period by 60 days upon request.

For a proceeding involving a variance for a development activity in the Chesapeake and Atlantic Coastal Bays Critical Area buffer, a person or association who meets federal standing requirements may participate as a party in a local administrative proceeding involving the variance. A person who meets this requirement may also (1) participate as a party in an administrative proceeding at a board of appeals even if the person was not a party to the original administrative proceeding; and (2) petition for judicial review and participate as a party even if the person was not a party to the action which is the subject of the petition.

Senate Bill 824*/*House Bill 1053* *(both failed) also sought to address the issue of providing broader standing to bring court challenges addressing environmental issues. The bills would have applied to claims pertaining to administrative decisions and provisions under the Environment Article, the Maryland Environmental Policy Act, the Forest Conservation Act, and the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program. "Administrative decision" was defined as any permit, license, renewal, or other form of authorization, or any standard, ordinance, rule, regulation, or order that is issued by a State or local governmental unit or agency, including a county board of appeals. The bills also permitted any person to bring a "citizen suit" civil action against any person or governmental entity alleged to have violated provisions in the Environment Article and certain provisions of the Natural Resources Article.

Environmental Permitting and Enforcement

Notice

A number of bills were introduced to enhance public notice of the environmental permitting process. ***Senate Bill 47*/*House Bill 1078* *(both passed)*** require MDE to post notice of applications for certain permits on the department's web site and also require MDE to provide a method for interested persons to electronically request additional notices related to particular permit applications. The following permits are subject to the bills requirement: ambient air quality control, landfills/incinerators, discharge pollutants, structures used for sewage sludge storage or distribution, controlled hazardous substance facilities, hazardous materials facilities, and low-level nuclear waste facilities.

Statute of Limitations

Chapter 194 of 2008 established a three-year statute of limitations for violations of most environmental violations in order to improve the State's ability to successfully prosecute or sue violators where delayed discovery of violations would prevent a court action from being instituted under current law. The general statute of limitations in the Courts and Judicial Proceedings Article for prosecution of a misdemeanor is one year. ***House Bill 420* *(passed)*** extends the same three-year statute of limitations to suits brought by local governments for civil penalties for environmental violations.

Cost Recovery

The cost of cleanup and restoration of natural resources is one factor that MDE considers when assessing administrative penalties for a violation of certain environmental laws. Under the

current law, however, environmental health monitoring or testing conducted in affected areas is not specifically considered by MDE in determining the level of penalty to be assessed on a person responsible for the environmental violation. ***House Bill 259*** ***(passed)*** requires persons responsible for violations of certain provisions of the Environment Article to reimburse the MDE or a county for costs incurred in conducting certain testing related to the release of a hazardous substance, discharge of oil, or discharge of a pollutant to the waters of the State. A county may recover costs through filing a civil action against a responsible person, or may request MDE recover costs on behalf of the county. A person may not be required to reimburse a county if the person has entered into a consent order with the department. Finally, reimbursement to a county is not allowed if the environmental health monitoring or testing by the county is duplicative of activities conducted by the State, or was not reasonably necessary to protect human health and the environment.

Agriculture

Agricultural Land Preservation

The Maryland Agricultural Land Preservation Foundation (MALPF) within the Maryland Department of Agriculture (MDA) preserves productive agricultural land and woodland by purchasing easements that forever restrict development on the land. Funding for the purchase of easements comes from property transfer tax and agricultural land transfer tax revenues, county matching funds, and federal grant funding. As of January 2009, MALPF had cumulatively purchased or had a pending contract to purchase conservation easements on 2,005 farms covering 274,950 acres.

Corrective Easements

New appraisal requirements may place a significant financial burden on landowners with MALPF easements who seek to settle property boundary disputes, resolve violations, and make other changes to benefit farming. ***House Bill 676*** ***(Ch. 150)*** exempts MALPF from provisions of law requiring independent property appraisals when it enters into corrective easements with landowners to adjust boundary lines, resolve easement violations, or accommodate a plan that will benefit agricultural operations, as determined by MALPF. Also, the Act authorizes MALPF to exchange and release land subject to an easement with other farmland that meets specified requirements.

Condemnation of Easement Land

Easement properties are being increasingly threatened by the exercise of eminent domain. Landowners with MALPF easements have an incentive to encourage governments to purchase easement land for public purposes since landowners are reimbursed for the full current appraised fair market value. Since repayment for condemnation of agricultural easement land is not returned to MALPF, condemnation may result in a decrease in the value of the State's investment in agricultural land preservation.

House Bill 1418 ***(passed)*** makes condemnation of land under a MALPF easement, for economic development, residential development, or parkland purposes, subject to approval by the Board of Public Works (BPW) after review and recommendation by MALPF. Condemnation of easement land for roads, water lines or pipelines, sewer lines or pipelines, power transmission lines or natural gas pipelines, and stormwater or drainage facilities is not subject to BPW approval. The condemning authority, which is expanded to include any governmental authority, must demonstrate that a greater public purpose exists than that served by the MALPF easement and there is no reasonable alternative site.

Access to Records

The Maryland Public Information Act grants the public a broad right of access to records that are in the possession of State and local government agencies. However, allowing public scrutiny of MALPF records can be problematic. Revealing landowners' asking prices provides information that allows competitors of the landowner and of MALPF to act to the detriment of the landowner and the State. Also, revealing relative rankings during the easement acquisition cycle creates expectations, misperceptions, and possible controversy. ***Senate Bill 73*** ***(Ch. 17)*** requires that specified records related to the purchase of agricultural land preservation easements remain confidential until the end of the easement acquisition cycle.

Imposition of Civil Penalties

MALPF is finding more violations on easement properties as the program matures and properties in the program are assumed by new owners. While there have been only a few willful violations, violation-related litigation and the seriousness of the violations have increased. ***Senate Bill 89*** ***(Ch. 24)*** authorizes the Board of Trustees of MALPF, after an opportunity for a hearing and a reasonable amount of time to correct the alleged violation, to impose a civil penalty on an owner of a property that is subject to an easement of up to $2,500 per violation for specified violations, but not more than $50,000 per administrative hearing.

Valuation of Terminated Easements

MALPF has used two different appraisal methods to establish the value of agricultural property. Prior to approximately 1990, an easement's value was the difference between the fair market value of the property with easement restrictions in place and without easement restrictions in place. After 1990, easement values were determined by subtracting the value of

the property for agricultural production from the appraised fair market value. When the current method for determining agricultural value was enacted, similar language was not integrated into law outlining how the repayment value of a terminated easement was to be calculated. ***Senate Bill 90 (Ch. 25)*** requires that the appraisal method used to determine the agricultural value of a MALPF easement being terminated be identical to the appraisal method used when the easement was originally purchased by MALPF.

Residential Uses

Subject to MALPF approval, a landowner may construct housing for tenants fully engaged in the operation of the farm. Construction may not exceed one tenant house per 100 acres, unless MALPF grants an exception based on a showing of compelling need. The land on which a tenant house is constructed may not be subdivided or conveyed to any person. In addition, the tenant house may not be conveyed separately from the original parcel.

Senate Bill 362 (passed) authorizes landowners to convert an existing dwelling house into a tenant house and construct one replacement dwelling house for the landowner's use. However, MALPF must approve the construction of the replacement dwelling house as well as specified characteristics of the dwelling house. Also, landowners interested in constructing tenant housing on easement land must show a compelling need. Finally, the landowner must execute an agreement prohibiting the replacement dwelling house from being separately conveyed from the original parcel and record this agreement among specified land records.

Commercial Uses

MALPF easement properties may not be used for commercial, industrial, or residential purposes unless MALPF determines the purposes are compatible with agriculture and forestry. Commercial agricultural uses allowed by MALPF include the growing of field crops, vegetables, and fruit; dairy and livestock operations, including chickens; and managing land for forest resources. ***Senate Bill 358/House Bill 290 (both failed)*** would have authorized renewable energy generation on MALPF easement land, and ***Senate Bill 291/House Bill 333 (both failed)*** would have authorized natural gas drilling on MALPF easement land.

Fertilizer, Grass, and Organic Farming

Several states have adopted requirements aimed, at least in part, at reducing the impact of phosphorus and nitrogen contained in fertilizer on water quality. In 2006, the Chesapeake Executive Council (consisting of the Governors of Maryland, Pennsylvania, and Virginia; the Mayor of the District of Columbia; the U.S. Environmental Protection Agency Administrator; and the Chair of the Chesapeake Bay Commission), along with Delaware and West Virginia, signed a memorandum of understanding with members of the lawn care product manufacturing industry establishing a commitment to achieve a 50% reduction (from 2006 levels) in the pounds of phosphorus applied in lawn care products in the Chesapeake Bay Watershed by 2009.

Senate Bill 553/House Bill 609 ***(both passed)*** prohibit, beginning on April 1, 2011, a lawn fertilizer with available phosphoric acid content greater than 5% from being labeled for use on established lawns or grass or with spreader settings. They also specify the language concerning fertilizer application that must appear conspicuously on the fertilizer container. Seed starter fertilizer for use on newly established lawns or turf is exempt from the labeling requirements. Retail establishments, beginning on April 1, 2011, are prohibited from selling or distributing for sale fertilizer for established lawns and grass unless it is low-phosphorous fertilizer; however, licensed landscaping contractors and their agents are exempt. By April 1, 2011, lawn care fertilizer manufacturers must reduce the amount of available phosphoric acid resulting from the application of their products in the State by 50% from 2006 levels; and manufacturers who begin to sell or distribute specified fertilizer on or after April 1, 2010, may not exceed an average of 1.5% available phosphoric acid. Finally, specified lawn care fertilizer manufacturers are required to report annually beginning in 2011 on the phosphorous content in fertilizer.

Lawn and Turf Grass

Senate Bill 91 ***(Ch. 26)*** extends the time period, from 9 to 15 months, within which cool season lawn and turf grass seed may be sold, offered or exposed for sale, or transported in the State after it has been tested to determine the percentage of germination required to be included on seed labels. Also, cool season lawn and turf grass seed must be labeled with a "sell by" date that falls within 15 months from the month following the date of the test. The Act makes State law consistent with language in the Recommended Uniform State Seed Law developed by the Association of American Seed Control Officials and federal law and implementing regulations. Also, the Act establishes a "sell by" date to facilitate inspection of seed lots for compliance and give consumers a readily visible quality.

Organic Farming

MDA administers a certification program required under statute, which governs production and handling of organic agricultural commodities in accordance with the requirements of the federal Organic Food Production Act. Among the requirements for organic certification under the U.S. Department of Agriculture's National Organic Program, no prohibited substances may be applied to the land from which harvested crops are intended to be sold, labeled, or represented as "organic" for three years preceding the harvest of the crop. When transitioning to organic, crop yields are usually reduced and farmers usually experience a revenue loss. The farmers, however, cannot represent their products as organic and obtain the price premium paid for organic products until the completion of the transition period.

Senate Bill 516/House Bill 449 ***(both passed)*** establish a Maryland Organic Transition Investment Pilot Program within MDA to provide financial assistance to producers for eligible costs associated with transitioning to organic agricultural production. An Organic Agriculture Development Fund is also established consisting primarily of money received from the federal government or any entity receiving federal funding for purposes consistent with the program.

The Secretary of Agriculture must develop and implement the program, which terminates June 30, 2012.

The Secretary of Agriculture is required to set a reasonable fee, not exceeding $500, to defray the cost of conducting field inspections and laboratory analysis associated with MDA's organic certification program. ***Senate Bill 77 (Ch. 19)*** eliminates the $500 fee cap, to allow fee increases sufficient to cover operating expenses without delays in issuing organic certifications. Also, MDA is no longer required to adopt regulations creating the organic certification program and instead must conform to applicable federal regulations.

Forest Pests

The emerald ash borer is an exotic invasive pest responsible for the death of more than 25 million ash trees in Michigan, Indiana, and Ohio, and it currently threatens Maryland's ash trees. The discovery of this federally regulated pest in 2006 in an area where it was believed to have been eradicated prompted the issuance of a quarantine over all of Prince George's County, according to federal protocols. The quarantine was extended into Charles County when emerald ash borer was detected there in 2008. This quarantine prohibits the movement of any regulated article out of the county, as well as movement of regulated articles from infested to noninfested areas of the county.

House Bill 796 (passed) creates an Emerald Ash Borer Grant Fund to help local governments, businesses, and organizations purchase authorized equipment to remove, dispose of, and replace trees infested by the emerald ash borer that are located within emerald ash borer quarantine areas. The Secretary of Agriculture is authorized to administer the fund and must establish grant application procedures. Grants may not exceed the amount a specified entity has appropriated to finance purchases of equipment to remove, dispose of, and replace infested trees in specified areas. "Authorized equipment" is any equipment necessary for the management of forest land, including equipment for construction and staging of marshaling areas, planting trees, and removal of trees; vehicles capable of transporting harvested trees; wood chippers; materials required to administer approved products to ash trees planted in quarantined areas; and any other equipment determined by the Secretary of Agriculture.

Departmental Boards, Authorities, and Programs

State Board of Veterinary Medical Examiners

The Maryland General Assembly created the State Board of Veterinary Medical Examiners (SBVME) in 1894. SBVME's mission is to protect the public and animal health and welfare through effective licensure of veterinarians, veterinary technicians, and veterinary hospitals under its jurisdiction; effective discipline of veterinarians, veterinary technicians, and operators of veterinary hospitals under its jurisdiction, when warranted; and adoption of reasonable standards for the practice of veterinary medicine in the State of Maryland. SBVME consists of seven members appointed by the Governor; five of whom are licensed and registered veterinarians. The board regulates just over 2,400 veterinarians, just over 500 veterinary

hospitals, and approximately 315 registered veterinary technicians. Veterinarians and veterinary hospitals must be licensed by the board. Veterinarians must also register annually with the board.

Senate Bill 116* (passed)**/House Bill 62* (Ch. 123)** extend the termination date for SBVME by 10 years to July 1, 2021, and require an evaluation of the board by July 1, 2020.

SBVME has the exclusive power to establish and alter the standards of preliminary and professional education and training requirements for applicants for a veterinary license. ***House Bill 1413* (passed)** authorizes SBVME to establish an annual continuing education requirement of at least 12 hours for veterinarians as a condition of license renewal.

Veterinary students cannot gain clinical, hands-on experience in a veterinary hospital setting while attending veterinary medical school since individuals must have a diploma in order to seek licensure to practice veterinary medicine. ***Senate Bill 78* (Ch. 20)** allows a veterinary student who has successfully completed three years of veterinary education at an SBVME-approved institution to practice veterinary medicine under the supervision of a licensed veterinarian. In addition, any veterinary student has the same immunity from civil liability afforded to a licensed veterinarian, but only when working under the supervision of a licensed veterinarian. This immunity applies in circumstances where, for no fee or compensation, veterinary aid, care, or assistance is rendered in an emergency situation and the owner or custodian of the animal is not available to grant permission.

Maryland Horse Industry Board

The Maryland Horse Industry Board (MHIB) has licensed and inspected horse stables in the State for more than 40 years. In addition, MHIB provides information about, supports research on, and promotes the equine industry in Maryland.

***House Bill 955* (passed)** clarifies the various types of equine-related activities that fall under MHIB's regulatory authority and specifies that horse racing and standardbred stables or farms using horses for working or cultivating the soil or herding or cutting livestock activities are not subject to MHIB regulation. The bill also requires that equine activities be treated as agricultural activities for purposes of State law relating to MHIB.

***House Bill 973* (passed)** increases the maximum per ton assessment, from $2 to $6, which MHIB may impose on commercial equine feed sold in Maryland. Funds collected from the equine feed assessment may only be used by MHIB for education, research, and promotional materials and activities intended to benefit the Maryland equine industry. MHIB assesses the fee on mills that manufacture equine feed sold in Maryland, and mills pass that cost on to the consumer who may then request reimbursement for the fee from the department.

State Tobacco Authority

The State Tobacco Authority was created to license and regulate tobacco producers, buyers, and sellers in order to alleviate the disorderly conditions surrounding the marketing of

leaf tobacco in the State. The authority's regulatory responsibilities are focused on tobacco auctions; however, the last auction was held in March 2006. ***Senate Bill 74*** ***(Ch. 18)*** abolishes the State Tobacco Authority and repeals related provisions of State law defining the powers and responsibilities of the authority and regulating the sale of leaf tobacco in Maryland.