

Part K

Natural Resources, Environment, and Agriculture

Natural Resources

Land Conservation

Program Open Space

Program Open Space (POS), established in 1969 and administered by the Department of Natural Resources (DNR), provides funds for State and local conservation acquisitions and development of public outdoor recreational sites, facilities, and open space. The POS State share focuses on the acquisition of land for natural resource conservation with the inclusion of low-impact recreational activities where appropriate. The POS local share is used primarily by local jurisdictions to acquire and develop high-impact recreational sites and facilities. While bond funds were provided most recently, POS is principally 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.

Senate Bill 849/House Bill 1025 (both passed) consolidate State land acquisition and planning functions related to open space, recreation, conservation, and other purposes in the Natural Resources Article, within DNR. Authority to negotiate State POS land acquisitions is transferred from the Department of General Services to DNR. Also, responsibility for preparation of the State's Land Preservation, Parks, and Recreation Plan is transferred from the Maryland Department of Planning to DNR. Finally, transfers of property within the Executive Branch of the State government are made exempt from independent appraisal requirements.

Senate Bill 421 (passed) increases the maximum percentage (from 75% to 100%) of POS funds that a local government may spend on development projects once it has attained its acreage acquisition goals and repeals a five-year limit on the period of time during which the POS funds may be used for such projects. Counties that qualify to use funds for development projects must use 25% of the funds only for land acquisition, repair or renovation of existing recreational facilities or structures, or capital renewal. The bill takes effect June 1, 2011, and terminates May 31, 2014.

Land Draining into a Reservoir

The Maryland Agricultural Land Preservation Foundation (MALPF) established in 1977 and administered by the Maryland Department of Agriculture (MDA), purchases agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. Currently, MALPF easements must meet minimum size and soil productivity criteria and are prioritized by county ranking systems (subject to MALPF approval). DNR utilizes “GreenPrint” and “Green Infrastructure” evaluation tools to target the most desirable lands for conservation under State POS; priority is not specifically given to conserving land that drains into a reservoir. *House Bill 890 (Ch. 146)* requires that consideration be given to conserving land that drains into a reservoir in the State when local governments prioritize applications for MALPF easements and the Secretary of Natural Resources allocates State POS funds.

Forests

Tree Expert License

A person may not engage in the work or business of a tree expert without a tree expert license issued by DNR. The tree expert license application fee is \$30, the annual license renewal fee is \$10, and applicants who fail the examination required for licensure are required to pay an additional fee of \$20 for each subsequent examination. Fees are paid into the State Treasury for DNR’s use. In fiscal 2010, DNR generated approximately \$15,000 in licensing fee revenue and expended approximately \$30,000 on administering the licensing program. *Senate Bill 80 (Ch. 20)* repeals the statutory license, renewal, and exam fees applicable to tree experts and authorizes DNR to set the original and renewal tree expert license fees by regulation. Tree expert license fees set by regulation may not exceed the cost of processing the license application or renewal. The Act also repeals the annual renewal requirement for tree expert licenses and authorizes DNR to establish a license renewal timetable and procedure by regulation. DNR advises that it would like to change license renewal from an annual to a biennial schedule and increase the license renewal fee in order to ease DNR’s administrative workload and help ensure timely processing of renewal requests. The Act terminates September 30, 2016.

Woodland Incentives Fund

The Woodland Incentives Fund (WIF) was created to help fund a variety of forest-related programs. Among other things, WIF revenues must be used to (1) provide cost-share assistance to private forest land owners for tree planting, site preparation, and timber stand improvement; (2) provide annual grants to forest conservancy district boards; (3) establish a forest health emergency contingency program; and (4) provide financial assistance for the administration of an urban and community forestry program. *House Bill 313 (passed)* changes the name of WIF to the Mel Noland Woodland Incentives Fund and clarifies that the fund may receive Chesapeake and Atlantic Coastal Bays 2010 Trust Funds.

Chesapeake and Atlantic Coastal Bays 2010 Trust Fund

Chapter 6 of the 2007 special session established the Chesapeake Bay 2010 Trust Fund and provided financing for the fund by dedicating a portion of existing revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals to the trust fund. The trust fund was expanded and renamed the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund by Chapters 120 and 121 of 2008, which, among other things, required that the trust fund be used for nonpoint source pollution control projects. The BayStat Subcabinet administers the trust fund.

The Budget Reconciliation and Financing Act of 2011 (*House Bill 72 (passed)*) redirects a total of \$59.5 million in revenues from the motor fuel tax and the sales tax on rental cars from the trust fund to the general fund from fiscal 2012 through 2016. In fiscal 2012, \$15.2 million in rental car sales tax revenue and \$5.0 million in motor fuel tax revenue is redirected to the general fund, effectively providing \$23.5 million for the trust fund in fiscal 2012. Based on current revenue projections, the trust fund is estimated to receive \$30.0 million in fiscal 2013, \$35.0 million in fiscal 2014, \$40.0 million in fiscal 2015, and \$45.0 million in fiscal 2016; fiscal 2016 is the final year revenues are redirected to the general fund. For a further discussion of *House Bill 72*, see the subpart “Budget Related Legislation” within Part A – Budget and State Aid of this *90 Day Report*.

Aquaculture Programs

Affected by diseases, habitat loss, and harvest pressures, the Chesapeake Bay’s oyster population has declined to about 1% of historic levels, and the remaining oysters remove only about 250,000 pounds of nitrogen from the bay each year. Consequently, enhancing oyster restoration efforts and developing shellfish aquaculture businesses is a priority for DNR. To encourage the expansion of the aquaculture industry in the State, Chapters 173 and 174 of 2009 required DNR to, among other things, establish Aquaculture Enterprise Zones (AEZs) in the Chesapeake Bay by regulation. AEZs are areas of the bay approved for the leasing of submerged land or the water column for cultivating oysters or other shellfish for commercial purposes. An AEZ and a submerged land lease may not be located in several specified areas, including (1) within 150 feet of an oyster sanctuary or oyster reserve; (2) within 150 feet of a federal navigational channel; or (3) in any creek, cove, bay, or inlet less than 300 feet wide at its mouth at mean low tide.

House Bill 208 (passed) authorizes DNR to resurvey any submerged area of the State to determine the position and extent of any natural oyster bar and amend existing charts or coordinates by regulation to make any natural oyster bar location or submerged land condition accurate. A prohibition on AEZs and submerged land leases being located within 150 feet of an oyster reserve or sanctuary is altered to within 150 feet of an oyster reserve or any “Yates Bar” located within an oyster sanctuary, effectuating an estimated 20% increase in leasable acreage in the bay. A “Yates Bar” is any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to 1912, excluding amendments. AEZs and submerged land leases located within an oyster sanctuary are required to be compatible with

oyster restoration and satisfy specified regulations. While specified rights of a riparian owner or other lawful occupant to use a creek, cove, or inlet for cultivating shellfish are preserved, such individuals are required to obtain a submerged land lease before doing so. In addition, DNR is authorized to issue an aquaculture or submerged land lease to a corporation only if the corporation is organized under State laws and more than 50% of the corporation's stock is owned by Maryland residents. The bill also updates several definitions and makes other technical changes.

Several State agencies have responsibility for programs related to the promotion and regulation of shellfish aquaculture in the State. *Senate Bill 847/House Bill 1053 (both passed)* transfer specified aquaculture, seafood, and related marketing functions from MDA, the Board of Public Works, and the Maryland Department of the Environment (MDE) to DNR and establish DNR as the lead State agency for (1) coordinating and streamlining the process of applying for a State aquaculture permit; (2) promoting, coordinating, and marketing aquaculture and aquaculture products; and (3) enforcing laws, regulations, and rules. The State Aquaculture Coordinator is required to be employed by DNR and the Aquaculture Review Board's membership is altered. DNR is authorized, with specified exceptions, to issue water column leases in State waters that MDE classifies in a specified manner.

Somers Cove Marina Procurement

House Bill 497 (passed) authorizes the executive director of the Somers Cove Marina Commission to procure capital improvement, design, and maintenance projects. For a further discussion of *House Bill 497*, see under the heading "Procurement Processes" in the subpart "Procurement" within Part C – State Government of this *90 Day Report*.

Hunting and Fishing

Fishing

Fisheries Management

The Department of Natural Resources (DNR) is required to prepare fishery management plans for a number of specified species. A fisheries management plan is a document that contains a systematic description of a given fishery and the objectives and conservation and management measures for the fishery. While DNR has authority to regulate fishing gear for specific species under individual fishery management plans, it lacks the authority to address broad gear issues. *House Bill 111 (passed)* authorizes the Secretary of Natural Resources, after consulting with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, to adopt regulations to define and govern the use of recreational fishing gear and specific commercial fishing gear (namely fish pots, bank traps, fyke nets, and hoop nets). DNR must consider relevant biological, ecological, and socioeconomic factors before adopting the regulations.

Fisheries Enforcement

Penalties for Poaching Oysters: Since 1994, the Chesapeake Bay’s oyster population has languished at 1% of historic levels. Oyster bars have decreased 80%, and the number of harvesters has dwindled from 2,000 in the mid-1980s to just over 500 annually since 2002. To help reverse this trend, DNR unveiled a new management and restoration plan for oysters and the State’s oyster industry in December 2009. The plan increased the State’s network of oyster sanctuaries from 9% to 24% of the bay’s remaining quality oyster bars, established oyster aquaculture leasing opportunities, and maintained 76% of the bay’s quality oyster habitat for a public oyster fishery. The plan was adjusted in response to public feedback, and implementing regulations were adopted in September 2010.

DNR has also begun to strengthen its efforts to protect Maryland’s native oyster population from illegal harvesting activities. To further these efforts, ***Senate Bill 159/House Bill 273 (both passed)*** require DNR, under specified circumstances, to revoke a tidal fish license for commercial oyster harvesting for the offenses of (1) taking oysters located more than 200 feet within a closed or prohibited area; (2) taking oysters with gear prohibited in that area; (3) taking oysters by more than one hour outside of a time restriction; (4) taking oysters during closed seasons; and (5) taking oysters from a leased area by a person other than the leaseholder or the leaseholder’s designee. If a tidal fish licensee receives a citation for one of these offenses, DNR is required to hold a hearing, in accordance with the Administrative Procedure Act, within 60 days after issuing the citation. If the presiding officer at the hearing finds that the licensee knowingly committed the offense, DNR is required to revoke the licensee’s tidal fish license for commercial oyster harvesting. Judicial review of decisions is authorized. A person whose tidal fish license is revoked is also prohibited from using or receiving a transfer of another tidal fish license to catch oysters.

Penalties for Poaching Crabs and Striped Bass: In 2011 there were several significant commercial fishing incidents involving the use of illegal gill nets in the Chesapeake Bay to catch striped bass (rockfish). Notably, on January 31, 2011, DNR and Natural Resources Police (NRP) officers confiscated more than 10 tons of illegally caught striped bass from four illegally anchored gill nets near Bloody Point Light, south of Kent Island, in the Chesapeake Bay. This event forced DNR to temporarily shut down the striped bass gill net season. In response, the General Assembly passed a number of bills to increase the penalties for poaching fish.

House Bill 1252 (passed) establishes a new misdemeanor charge for capturing over \$20,000 worth of striped bass, as determined by the proceeds of the unlawful capture, as a result of using unlawful gear, harvesting during closed seasons, harvesting from a closed area, violating established harvest, catch, or size limits, or violating tagging and reporting requirements. On conviction of the misdemeanor charge, in addition to other applicable penalties, a person is also subject to imprisonment not exceeding two years.

A tidal fishing license is the single commercial license issued by DNR with respect to commercial fishing and fisheries in tidal waters. A person must obtain authorizations on the license to engage in different types of fishing or commercial activity. Generally, when a

suspension or revocation is issued, the suspension or revocation is targeted to the specific fishing activity the watermen was engaged in when the violation occurred, and not all authorized fishing activities within the tidal fishing license. ***Senate Bill 635/House Bill 1154 (both passed)*** require DNR to revoke a commercial fishing authorization to catch striped bass or crabs if a specified offense is committed. DNR, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, is required to adopt regulations that establish grounds for revoking an authorization, including egregious or repeat violations in the following categories: (1) using illegal gear; (2) harvesting during closed seasons; (3) harvesting from a closed area; (4) violating established harvest, catch, or size limits; and (5) violating tagging and reporting requirements. If an individual receives a citation under the regulations, DNR must hold a hearing in accordance with the Administrative Procedure Act before revoking the authorization. If the presiding officer finds after the hearing that the individual knowingly committed an offense under the regulations, DNR is required to revoke the individual's authorization to catch striped bass or crabs. Judicial review of decisions is authorized. A person whose authorization to catch striped bass or crabs is revoked may not engage or work in the striped bass or crab fishery, whether or not it requires the use of another license.

Senate Bill 655/House Bill 1225 (both passed) establish a new misdemeanor charge for (1) committing a separate violation related to a suspended or revoked commercial license while the commercial fishing license or authorization is suspended or revoked; and (2) engaging in commercial fishing without holding the appropriate license or authorization. In addition to other applicable penalties, a violator is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year, a fine not exceeding \$25,000, or both, with costs imposed in the discretion of the court. Fines imposed by the District Court for violations must be paid, less the costs of collection, to DNR's Fisheries Research and Development Fund.

Enforcement Procedures: DNR's NRP serves as the public safety agency with statewide authority to enforce all conservation, boating, and criminal laws, as well as to provide primary law enforcement services for State parks, State forests, and other public lands owned by DNR. NRP is also responsible for maritime and rural search and rescue and is designated as the State's lead agency for homeland security on State waters. ***Senate Bill 414/House Bill 396 (both passed)*** authorize NRP officers to issue electronic citations for offenses and require these citations to include acknowledgement of receipt in a specified manner. The bills also modify and streamline hearing procedures if a citation is issued. In addition, the bills alter law enforcement inspection authority related to fisheries. Any police officer may, at reasonable times, including when the licensee or person is engaged in an activity that requires a tidal fish license, inspect commercial fishing vessels, vehicles used to transport fish for commercial purposes, and fish businesses owned or operated by a licensee. Inspections are restricted to inspections of fishing gear and places where fish may be stored. Inspections of businesses may not include a dwelling house. An inspector may seize fishing gear or fish found during an inspection that is used or possessed in connection with a violation. DNR must hold seized property or proceeds pending disposition of court proceedings. On conviction, the property or proceeds from the seizure are forfeited to the State. DNR may use its discretion to dispose of fish that are seized.

Licensing

Senate Bill 188 (passed) authorizes DNR to issue an annual fishing license exemption to a governmental entity or nonprofit organization to take individuals with disabilities who are serving or have served in the armed forces fishing in State waters, subject to certain requirements. The exemption also applies to the primary caregiver of the disabled individual and the attending representative of the entity or organization that is granted the exemption. An entity or organization that is granted an exemption must submit a report providing specified information related to the use of the exemption to DNR by January 1 of the year following the exemption period.

Maryland operates under a limited entry program for commercial tidal fish licensees. DNR may issue an apprenticeship permit to authorize an individual to gain practical commercial fishing experience under the tutelage of a tidal fish licensee. Before DNR may issue a tidal fish license or authorization to an individual with an apprenticeship permit, the individual must have specified practical experience. ***Senate Bill 720 (Ch. 86)*** modifies the practical experience requirements under the commercial tidal fish license apprenticeship program by (1) clarifying that all practical experience must be obtained within 10 years before applying for a tidal fish license or authorization; and (2) authorizing individuals who hold or held a commercial fishing license issued by another state or the federal government, or served as crew to an individual who meets that requirement, to use the experience gained under that out-of-state license to meet practical experience requirements. The Act also clarifies that an individual may not obtain a seafood landing license through the tidal fish license apprenticeship program.

Hunting

Licenses

A person generally may not hunt or attempt to hunt during open season any game birds or mammals in the State without obtaining a hunting license from DNR. ***Senate Bill 763 (passed)*** authorizes a person who is serving in the U.S. armed forces, has a service-connected disability, and possesses valid military identification while hunting, to hunt without a hunter's license, bow and arrow stamp, black powder stamp, or bonus antlered deer stamp on public property.

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 generally prohibited. ***Senate Bill 468/House Bill 625 (both passed)*** authorize deer hunting in Carroll County on private property (1) with a bow and arrow or crossbow on the last three Sundays in October and the second Sunday in November; and (2) at DNR's discretion, during the first Sunday of both the bow hunting season in November and the deer firearms season.

Junior Deer Hunt

House Bill 355 (Ch. 120) requires DNR to establish a junior deer hunt on a consecutive Saturday and Sunday during a deer hunting season via regulation, by July 1 annually. A junior deer hunt may not occur on a Sunday in a county that does not authorize deer hunting on that Sunday. Individuals may participate in the junior deer hunt if they (1) are 16 years of age or younger; (2) possess a valid hunting license or are exempt from license requirements; and (3) are accompanied by a person who meets specified requirements. The Act authorizes junior deer hunt participants to use a firearm to hunt deer on the days of the hunt.

Environment

Chesapeake Bay Restoration

The federal Clean Water Act requires states to designate intended uses, such as swimming or fishing, for their water bodies and to set water quality standards to achieve these uses. Water bodies that do not meet the water quality standards are designated as *impaired* and are assigned a Total Maximum Daily Load (TMDL) or “pollution diet,” which (1) sets the maximum amount of pollution that the water body can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements among the various contributing sources.

Since 2000, the U.S. Environmental Protection Agency (EPA) has been working with Chesapeake Bay watershed states and the District of Columbia to develop a Chesapeake Bay TMDL in order to prepare for a federal court-ordered deadline. This effort to restore the bay was significantly reinvigorated by the signing of Executive Order 13508 by President Barack Obama in May 2009. In May 2010, EPA committed to establishing a final TMDL, which it released on December 29, 2010. Working with EPA, each bay watershed state and the District of Columbia completed a final Phase I watershed implementation plan (WIP). The WIPs, which were released in December 2010 after a public comment period, are intended to provide a roadmap for how each jurisdiction will achieve and maintain its share of the bay TMDL by reducing the inflow of nutrients like nitrogen and phosphorus that pollute the bay.

Nitrogen Removing Septic System Technologies

Maryland’s WIP builds on existing State-directed restoration efforts and identifies options to reduce nitrogen and phosphorus from all major sources, such as wastewater, stormwater runoff, septic systems, agriculture, and air pollution. As part of its WIP, the Maryland Department of the Environment (MDE) has estimated that 3,000 septic system upgrades in Maryland will be completed through calendar 2011 and is planning to upgrade 600 systems annually from 2012 to 2017, with a goal of upgrading a total of 5,700 systems between 2010 and 2017. The upgrades planned for 2012 through 2017 are estimated to provide an annual nitrogen reduction to the Chesapeake Bay of 51,186 pounds as part of Maryland’s commitment to the TMDL. This amounts to less than 1% of the total nitrogen reduction needed to meet the final WIP requirement for 2017. However, the overall planned contribution of septic

system upgrades to achieving the final nitrogen reduction requirement is much greater, at about 15% of the final 2020 target.

Several existing laws promote the use of septic systems with nitrogen removal technologies or restrict the use of septic systems that do not utilize these technologies. For example, the Bay Restoration Fund, established by Chapter 428 of 2004, is financed in part by a fee (generally \$30 annually) assessed on septic systems users, 60% of which is distributed to the Septics Account in MDE to provide grants and loans that are generally used to cover some or all of the cost of repairing, replacing, or upgrading a septic system to one that utilizes best available technology for nitrogen removal.

In addition, Chapter 280 of 2009 prohibits a person from newly installing or replacing a failing septic system on property in the Chesapeake and Atlantic Coastal Bays Critical Area (Critical Area) unless the installed system utilizes the best available nitrogen removal technology. MDE is required to assist homeowners in upgrading a septic system with money authorized for this purpose from the Septics Account if sufficient funds are available. *Senate Bill 160/House Bill 177 (both failed)* would have expanded the current prohibition pertaining to the installation of new septic systems to apply to the entire *watersheds* of the Chesapeake and Atlantic Coastal Bays, instead of the much smaller Critical Area. The bills also would have required MDE to assist homeowners in upgrading septic systems if sufficient funds had been available from the Septics Account.

Uses of the Septics Account: Originally, grants and loans made from funds within the Septics Account were used to cover the cost of repairing, replacing, or upgrading a septic system, or for covering the difference in cost between a new conventional system and one utilizing the best available technology for nitrogen removal. Chapters 225 and 226 of 2008 expanded the uses of the Septics Account to include covering the cost of replacing multiple septic systems in the same community with a new community sewerage system that meets certain nutrient removal standards and satisfies certain conditions. *Senate Bill 539/House Bill 57 (both passed)* expand the uses of the Septics Account again to include providing limited grants or loans for connecting a property served by a septic system to an existing municipal wastewater facility with enhanced nutrient removal technology if several conditions are met.

Selection of Nitrogen Removal Technology: MDE has established a review team to determine which nitrogen removal technologies qualify as best available technologies eligible for Septics Account funding. The review team chose four technologies and then issued to the vendors of those technologies an invitation for bids to provide a simplified procurement process for local governments and residents. MDE then selected the two technologies with the lowest fixed unit prices for each region of the State. While MDE has ensured that homeowners have flexibility to choose among other approved technologies, the incentives to choose a technology pre-selected by the review team may have resulted in the disproportionate use of certain technologies in system upgrades funded by the Septics Account. *Senate Bill 372/House Bill 347 (both passed)* require MDE to alter the criteria by which it evaluates and ranks best available nitrogen removal technologies. The criteria emphasize several factors, such as the annual cost of operation and maintenance, including electricity costs, and the cost per pound of the nitrogen

reduction achieved. MDE must make the evaluation and ranking available on its website, provide that information to local governments and residents, and continue to request updated information from the vendors of such technologies every two years.

Septic Systems and Sprawl: In addition to the problem of releasing nitrogen pollution to the Chesapeake Bay, septic systems are also seen as an environmental concern due to their tendency to facilitate “suburban sprawl” and the development of open spaces that are beyond the current bounds of municipal sewerage systems and other existing infrastructure. Each county has a plan for water, sewer, and solid waste infrastructure that is approved by MDE and consistent with the county comprehensive plan. In addition to these plans, there are a number of laws pertaining to smart growth and regulated land use, which are designed to concentrate development in suitable areas and to protect sensitive areas by establishing funding mechanisms and financial incentives and by requiring local jurisdictions to adopt ordinances and regulations that implement smart growth goals.

Further, the Maryland Agricultural Land Preservation Program assists in achieving State land use goals by purchasing agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. ***Senate Bill 846/House Bill 1107 (both failed)*** would have supported smart growth and agricultural preservation efforts in addition to restricting the use of septic systems by prohibiting the approval of a major residential subdivision that would be served by a septic system or the approval of a minor subdivision that would be served by a septic system that does not use nitrogen removal technology; these bills would have also prohibited the future subdivision of any parcels of land resulting from a minor subdivision of residential land.

Phosphorus in Dishwashing Detergents

As part of Maryland’s ongoing effort to restore the Chesapeake Bay, also embodied in the regional TMDL process, the State’s WIP calls for a reduction in phosphorus loading to the bay of about 585,000 pounds per year, from present levels, by 2020. One significant source of phosphorus effluent in Maryland’s waterways comes from the use and disposal of cleaning agents such as dishwashing detergents, which traditionally contain phosphorus.

Chapters 187 and 188 of 2007 established a prohibition on the sale, distribution, or manufacture of *household* dishwashing detergents containing more than 0.5% phosphorus by weight; Chapter 442 of 2008 delayed the effective date of the prohibition by six months until July 1, 2010, due to industry concerns about the availability of low-phosphorus alternatives. ***Senate Bill 320 (passed)*** and ***House Bill 53 (passed)*** prohibit, beginning July 1, 2013, a person from using, selling, manufacturing, or distributing for use or sale within the State any detergent for use in a *commercial* dishwashing machine that contains more than 0.5% phosphorus by weight. The July 1, 2013 effective date for the phase-down in phosphorus content reflects industry projections as to when a transition to low-phosphorus commercial dishwashing detergent formulations can be economically achieved.

Anyone who violates the prohibition on the sale or distribution of a household dishwashing detergent containing more than 0.5% phosphorus by weight is subject to a fine of up

to \$100 for a violation based on the use of the detergent, or up to \$1,000 for a violation based on the sale, manufacture, or distribution of the detergent; these penalties also apply for violations of the similar prohibitions pertaining to the use, sale, manufacture, or distribution of other cleaning agents with phosphorus. *Senate Bill 751 (passed)* increases these penalties as applied to *household* dishwashing detergents to a maximum of \$1,000 for a first offense and between \$1,000 and \$25,000 for a subsequent offense, for a person who knowingly violates the prohibitions.

Natural Gas Drilling in the Marcellus Shale Formation

The Marcellus Shale formation is a geologic feature in the Appalachian Range which has recently attracted significant attention from the energy industry for its rich natural gas deposits. Geologists have long known about the natural gas resources contained within the formation but had considered the gas to be not economically recoverable until the recent development of new drilling technology reliant on a process called hydraulic fracturing. Production wells have been drilled in Pennsylvania, New York, Ohio, and West Virginia, and several companies have expressed interest in drilling into the formation in Allegany and Garrett counties; the Marcellus Shale formation is also present, to a limited extent, in Washington County. MDE advises that it has received three permit applications for drilling in the Marcellus Shale that are currently active.

In 2010, EPA raised several concerns regarding the impact of hydraulic fracturing on water supplies, water quality, and air quality, among other issues, and is currently examining the practice more closely. And, in December 2010, New York's Governor issued an executive order imposing a moratorium on certain hydraulic fracturing practices until at least July 2011.

The Minerals, Oil and Gas Division of MDE's Mining Program currently regulates gas exploration and production. A person must obtain a permit from MDE before drilling a well for the exploration, production, or underground storage of gas or oil in Maryland. A permit is also required for the disposal of any product of a gas or oil well. An applicant who wants to extract gas from the Marcellus Shale may also be required to apply for a number of other State permits, such as a water appropriation permit or a National Pollutant Discharge Elimination System permit. In addition, Chapter 383 of 2010 established an Oil and Gas Fund to support MDE's administration of a regulatory program that oversees the drilling, development, production, and storage of oil and gas wells in the State. Under Chapter 383, MDE is required to set and collect permit and production fees related to oil and gas well drilling. Fees must be set at a rate necessary to recover costs related to a host of specified regulatory activities.

Senate Bill 634/House Bill 852 (both failed), as introduced, would have prohibited MDE from issuing a permit for the drilling of a well in the Marcellus Shale until the permit applicant had made specified environmental, public health, emergency response, and financial security demonstrations to MDE. *House Bill 852*, as amended in the House, would have required MDE and the Department of Natural Resources (DNR) to jointly convene an advisory commission and undertake a study of the extraction of natural gas from shale formations in the State. Except under specified conditions, MDE would not have been permitted to issue a well drilling permit that involves hydraulic fracturing until the publication of a final report on the required study,

which would have been due by August 1, 2013. However, MDE would have been authorized to issue a well drilling permit prior to the issuance of the report if information became available during the course of the study sufficient to demonstrate that the extraction of natural gas from shale formations in the State could be accomplished without adverse impacts, and after providing notice to the General Assembly. The bill also would have required persons who acquired a gas interest in Allegany or Garrett counties after January 1, 2007, for the purpose of drilling for natural gas, to file information with MDE and pay a fee based on the acreage of the interest acquired. Fee revenue would have been deposited into MDE's Oil and Gas Fund and used to pay for the required study; the bill would have established provisions addressing any differences in fee revenue and the cost of the study in order to ensure that the cost of the study was fully offset.

Senate Bill 422/House Bill 411 (both failed) would have required MDE to submit regulations to the Joint Committee on Administrative, Executive, and Legislative Review by December 31, 2011, regarding natural gas exploration and production in the Marcellus Shale formation. The regulations would have been required to address a water testing plan to ensure drinking water resources are protected, the containment and disposal of fluid used in hydraulic fracturing processes, the identification of all chemicals and materials used in hydraulic fracturing processes, a prohibition on unregulated discharge of drilling materials and fluids, and site reclamation and bonding requirements.

Waste Management/Hazardous Substances

Solid Waste Management

In 1988, the Maryland Recycling Act required each county to submit a recycling plan to reduce its solid waste by 15% or 20%, depending on the size of its population. Counties have flexibility to determine the best way to reach the required recycling rates. Further legislation enacted in 2000 established a voluntary statewide waste diversion goal of 40% by 2005. According to MDE, these requirements and goals have been met each year.

Recycling: House Bill 602 (Ch. 134) requires the Maryland Transit Administration and the Maryland Department of Transportation, in consultation with the Washington Metropolitan Area Transit Authority, to jointly study and make recommendations relating to the establishment of a recycling program at transit stations in Maryland. The recommendations must identify transit stations where recycling would be the most practicable and economically feasible. A report on the recommendations must be submitted to the Presiding Officers of the General Assembly and specified legislative committees by December 1, 2011. *Senate Bill 111/House Bill 179 (both failed)* would have required the property owner or manager of an apartment building or condominium containing 10 or more units to provide for the collection and removal of recyclable materials by October 1, 2015.

Plastic Bags: Several bills were introduced during the 2011 session to discourage the use, or promote the recycling of, disposable carryout bags; however, none of the bills passed. *House Bill 341 (failed)* would have required store operators to establish at-store recycling programs to provide an opportunity for customers to return clean plastic carryout bags to the

stores. Manufacturers of plastic carryout bags would have been required to develop educational materials to encourage reuse, recycling, and reduction. *Senate Bill 602/House Bill 1034 (both failed)* would have required stores to charge and collect a fee of five cents per disposable carryout bag provided to a customer. A portion of the fee could have been retained by the store, and the balance would have been distributed by the Comptroller to the Department of Labor, Licensing, and Regulation, the Department of Human Resources, and the Chesapeake Bay Trust for specified outreach, education, training, and program implementation activities. *Senate Bill 721/House Bill 661 (both failed)* would have authorized Prince George's County to impose a fee on a store for the use of disposable plastic bags as part of a retail sale. As amended in the Senate, the fee also would have applied to the use of disposable paper bags.

Composting: According to EPA, yard trimmings and food residuals together constitute 26% of the U.S. municipal solid waste stream. *House Bill 817 (passed)* requires MDE to maintain information on its website to educate the public about composting and to promote composting in Maryland as a part of MDE's efforts to encourage waste diversion. The bill also requires MDE, in consultation with the Maryland Department of Agriculture (MDA) and the Maryland Environmental Service, to study composting in Maryland and to make recommendations about how to promote composting in Maryland. MDE must report its findings, recommendations, and a summary of the laws and regulations governing composting, to the General Assembly, by January 1, 2013.

Toxic Substance Control

Lead Risk Reduction in Housing: Chapter 114 of 1994, the Reduction of Lead Risk in Housing Law, established the Lead Paint Poisoning Prevention Program within MDE. The program provides limited liability relief for owners of rental property built before 1950 and specified others in exchange for the reduction of lead hazards in these older rental properties. The program also provides for limited compensation to children who are poisoned by lead. By December 31, 1995, the owner of an affected property must have registered that property with MDE. An owner who first acquires affected property after that date must register the property within 30 days of acquisition. All registrations must be renewed, and associated annual fees paid, by December 31 of each year. To relieve the significant administrative burden created by this requirement, *House Bill 1254 (passed)* authorizes MDE to establish by regulation a staggered schedule for registration renewals of affected properties.

Under the program, a risk reduction standard must be satisfied at each change in occupancy, before the next tenant occupies an affected property. To satisfy the standard, the property must pass a test for lead-contaminated dust *or* the owner must perform specified lead hazard reduction treatments and have the property inspected to verify that the standard has been satisfied. A modified risk reduction standard must be complied with if an elevated blood lead level is found in a person at risk who resides on the property or a defect is found in a property in which a person at risk resides. *House Bill 1033 (passed)* amends the risk reduction standard that must be satisfied at each change of occupancy of an affected property by requiring the property to pass a test for lead-contaminated dust and requiring the owner to have the property inspected. The bill repeals the option to satisfy the standard by performing lead hazard reduction

treatments. The bill also makes the modified risk reduction standard more stringent by requiring that a property pass a dust test in addition to the performance of specified lead hazard reduction treatments. In addition, the bill modifies several of the lead hazard reduction treatments, allows an owner to achieve compliance with the modified risk reduction standard by providing for the temporary relocation of tenants to a lead-free dwelling unit or other specified property, alters the verification requirements for satisfaction of the modified risk reduction standard, and alters the penalties applicable to violations of the Reduction of Lead Risk in Housing law. Finally, the legislation requires that MDE conduct a study and adopt regulations related to reporting requirements of dust testing laboratory results.

Decabrominated Diphenyl Ether: Polybrominated diphenyl ethers, or PBDEs, are a subcategory of brominated flame retardants. Although manufacturers of two types of PBDEs agreed to voluntarily discontinue production at the end of 2004 due to environmental and health concerns, one type of PBDE, known as decabrominated diphenyl ether (decaBDE), was still used in a wide range of products as of 2009. EPA has reached agreement with manufacturers and importers to voluntarily phase out decaBDE from most uses by December 31, 2012 (with the exception of transportation and military equipment), and from all uses by December 31, 2013. In addition, Maryland and several other states have enacted legislation restricting or prohibiting the use of decaBDE in certain products. Chapter 320 of 2010 phased out the manufacture, lease, sale, and distribution of specified products containing decaBDE, beginning on December 31, 2010, and ending by December 31, 2013. Maryland's phase-out does not apply to shipping pallets used to transport unpackaged fruits and vegetables, certain vehicles or vehicle parts, or certain replacement service parts or other products manufactured before January 1, 2011. The phase-out also does not prohibit the sale, recycling, or disposal of remaining inventory or products that contain recycled decaBDE or any activity involving a product that contains decaBDE that occurs subsequent to the first sale at retail. To account for the fact that trace amounts of decaBDE may be found in products, ***Senate Bill 221/House Bill 54 (both passed)*** alter the phase-out of decaBDE in specified products by allowing a permissible threshold level of 0.1% decaBDE by mass, applicable to all product categories. The bills also add an exemption from the phase-out for aircraft and aircraft parts.

Cadmium in Children's Jewelry: According to the U.S. Agency for Toxic Substances and Disease Registry, cadmium is a known human carcinogen that can cause cardiovascular, developmental, renal, gastrointestinal, neurological, reproductive, and respiratory harm. Since the passage of the federal Consumer Product Safety Improvement Act of 2008, which restricted the use of lead in children's products, high levels of cadmium have been detected in children's jewelry purchased from U.S. retailers. Most of these items were imported from manufacturers that began adding cadmium to their products as a substitute for lead. Maryland law restricts the use of cadmium in packaging but not in children's jewelry or other consumer products. Cadmium in a package or packaging component may not exceed 0.01% by weight. ***House Bill 145 (passed)*** prohibits a person from manufacturing, selling, offering for sale, or distributing any children's jewelry containing cadmium at more than 0.0075% by weight on or after July 1, 2012. The bill also authorizes MDE to adopt implementing regulations.

Miscellaneous

Hart-Miller-Pleasure Island Citizens Oversight Committee: The site of the Hart-Miller-Pleasure Island State Park was acquired by the State in 1977 with a plan to restore the three-island chain. The restoration plan called for dredged material to be pumped into an impounded area that would be made part of the park. Placement of dredged material was completed in 2010 and final restoration plans have been expedited to finish redevelopment as early as 2016. The Hart-Miller-Pleasure Island Citizens Oversight Committee was originally charged with monitoring the redeposit of spoil and Baltimore County tributary spoil within five miles of the Hart-Miller-Pleasure Island chain and hearing and disposing of complaints from those affected by the redeposit of this spoil. ***Senate Bill 368/House Bill 292 (both passed)*** alter the duties of the oversight committee to include monitoring, providing oversight, and hearing and disposing of complaints regarding the future development, use, and maintenance of the Hart-Miller-Pleasure Island chain and the water quality surrounding the island chain. This change reflects the transition that the islands are undergoing from restoration of the island chain with dredged material to redevelopment of the new land areas into a fully developed park for recreational use.

Acid Mine Drainage Abatement and Treatment Fund: In accordance with the federal Surface Mining Control and Reclamation Act (SMCRA), MDE administers the abandoned mine reclamation program and expends federal funds to reclaim abandoned surface mines, control mine subsidence, perform stream restoration, treat acid mine drainage, and for other water quality purposes. SMCRA was amended in 2006 to increase the limit from 10% to 30% on federal funds that may be deposited in Maryland's Acid Mine Drainage Abatement and Treatment Fund for environmental restoration activities. ***House Bill 210 (Ch. 112)*** repeals an obsolete date in the funding provisions of Maryland's abandoned mine reclamation law to conform to the amended federal law and eliminate the need for future statutory changes resulting from any future revisions to the federal law.

Aquaculture: ***Senate Bill 847/House Bill 1053 (both passed)*** transfer to DNR specified aquaculture, seafood, and marketing functions from MDA, MDE, and the Board of Public Works. For further discussion of ***Senate Bill 847/House Bill 1053***, see the subpart "Natural Resources" within this Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.

Agriculture

Agricultural Land Preservation

The Maryland Agricultural Land Preservation Foundation (MALPF) purchases agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. In addition to funding from the State transfer tax, MALPF is funded with agricultural land transfer taxes, general obligation bonds, local matching funds, and federal funds. As of

January 2011, MALPF had cumulatively purchased or had a pending contract to purchase conservation easements on 2,080 farms covering 283,523 acres.

Chapter 155 of 2005 required MALPF and the Maryland Department of Planning (MDP) to establish a Critical Farms Program to provide interim or emergency financing for the acquisition of agricultural preservation easements on critical farms that would otherwise be sold for nonagricultural uses. Chapter 155 required MALPF and MDP to examine options for easement acquisition on critical farms and identify those that would enable the Critical Farms Program to succeed, as well as report on options available for funding the program. MALPF and MDP submitted a report in 2007 making recommendations for the program and its funding. *House Bill 214 (passed)* implements many of the recommendations in the 2007 report.

Under *House Bill 214*, MALPF is given sole responsibility for establishing the Critical Farms Program and determining, with county approval, if a property qualifies for the program in accordance with specified criteria. Under the bill, the program's objectives to acquire agricultural preservation easements on critical farms are accomplished through either a purchase of an easement option from an owner or purchaser of a critical farm or the purchase of a fee simple interest in property and the sale, lease, exchange, or transfer of the property, with an agricultural land preservation easement in place. The program's objectives are financed by a Critical Farms Fund, which is established under the bill. The bill authorizes the Governor to include in the annual budget an appropriation to the Critical Farms Fund consistent with the Agricultural Stewardship Act of 2006 (Chapter 289). The Act expressed legislative intent that the Governor provides \$20.0 million annually in general funds for MALPF to be used for, among other things, the Critical Farms Program.

Fertilizers

Maryland's recently completed Phase I Watershed Implementation Plan (WIP), the initial plan for meeting Maryland's share of the Chesapeake Bay Total Maximum Daily Load or "pollution diet," includes recommendations related to fertilizer use. *Senate Bill 487/House Bill 573 (both passed)* address a number of the strategies related to lawn fertilizer use in the WIP by expanding the State's regulation of the content, labeling, and application of fertilizers used on turf. "Turf" is defined as land, including residential property and publicly owned land that is planted in grass, except land that is used in the sale and production of sod. In addition to establishing fertilizer content, labeling, and application requirements, the bills also require the Maryland Department of Agriculture (MDA), in consultation with the University of Maryland, to establish a certification program for professional fertilizer applicators, as well as a public education program.

Senate Bill 487/House Bill 573 modify the scope of application of an existing low phosphorous fertilizer requirement and establish fertilizer content and application requirements and restrictions, which take effect October 1, 2013, that further limit the amount of phosphorus, and limit the amount of nitrogen, that can be included in fertilizer labeled or offered for sale for use on turf and applied to turf. The requirements and restrictions include:

- specified limits on the amount of nitrogen that fertilizer labeled or offered for sale for use on turf can contain and a requirement that at least 20% be slow-release nitrogen;
- separate nitrogen limits applicable to “enhanced efficiency fertilizers” labeled or offered for sale for use on turf;
- a restriction against fertilizer labeled or offered for sale for use on turf containing any phosphorus, except for organic and natural organic fertilizer sold to a professional fertilizer applicator or when labeled or intended for specific uses on turf;
- restrictions against application of fertilizer intended for use on turf to an impervious surface;
- a restriction against applying fertilizer containing phosphorus or nitrogen to turf (1) before March 1 or after November 15, with the exception of water-soluble nitrogen applied at a specified rate by a professional fertilizer applicator from November 16 through December 1; (2) any time the ground is frozen; or (3) generally within 15 feet of waters of the State (for certain application methods, the limit may be reduced to 10 feet); and
- a requirement that a professional fertilizer applicator be certified before applying fertilizer to turf, unless the person is under the direct supervision of a certified professional fertilizer applicator.

Senate Bill 487/House Bill 573 also establish that, effective October 1, 2012, except for enforcement of certain fertilizer application restrictions by counties and municipalities, MDA has exclusive authority to establish standards regulating fertilizer and its application to turf and local government entities are prohibited from adopting laws, regulations, rules, ordinances, or standards regulating fertilizer and its application to turf.

Other bills addressing the nitrogen and phosphorus content of fertilizers were introduced in the 2011 session, but were unsuccessful. *Senate Bill 544/House Bill 687 (both failed)*, among other things, would have prohibited, beginning April 1, 2012, a person from offering, selling, or distributing for use or sale in the State fertilizer intended for use on established lawns, grass, or turf unless the mixture contained at least 30% slow release fertilizer. *Senate Bill 546/House Bill 706 (both failed)*, among other things, would have prohibited, beginning April 1, 2012, the sale or distribution of fertilizer with available phosphorous content intended for use on established lawns or grass, with the exception of fertilizers intended for use as seed starter on newly established lawns, grass, or turf, consistent with University of Maryland recommendations.

Transfer of Seafood Marketing and Aquaculture Functions

MDA’s significant functions related to seafood marketing and aquaculture are transferred to the Department of Natural Resources (DNR) under *Senate Bill 847/House Bill 1053*. The

bills also transfer certain aquaculture-related functions from the Maryland Department of the Environment and the Board of Public Works to DNR. For further discussion of *Senate Bill 847/House Bill 1053*, see the subpart “Natural Resources” within this Part K – Natural Resources, Environment, and Agriculture of the *90 Day Report*.

Departmental Boards, Programs, Regulatory Functions, and Fees

State Board of Veterinary Medical Examiners

The State Board of Veterinary Medical Examiners is responsible for protecting 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. As of 2010, there were 2,471 licensed and registered veterinarians, 506 licensed veterinary hospitals, and 29 licensed animal control facilities. Regulations adopted by the board establish various violations and associated civil penalties for veterinarians for initial and subsequent violations.

Senate Bill 146 (passed) authorizes the board to direct a veterinarian, veterinary practitioner, or applicant for a veterinary license to submit to a mental or physical examination under certain circumstances. Additionally, the bill authorizes the board to refuse an application or take specified disciplinary action against a licensee based on an inability to practice veterinary medicine competently due to a physical or mental disability. The bill also clarifies that disciplinary action may be taken when a veterinarian or veterinary practitioner is determined by four members to be professionally incompetent as a veterinary practitioner.

A person may not practice veterinary medicine unless he or she is licensed, registered, and authorized to engage in the practice under State law. It is not considered to be the practice of veterinary medicine if, under the responsible direct supervision of a veterinary practitioner, a registered veterinary technician performs the following procedures: (1) anesthesia induction by specified methods; (2) application of casts and splints; (3) dental extractions; and (4) suturing of existing surgical skin incisions. To provide flexibility in a field that is evolving, *Senate Bill 322 (Ch. 56)* repeals the specific list of procedures and instead allows registered veterinary technicians to perform procedures under the responsible direct supervision of a veterinary practitioner in accordance with regulations adopted by the board.

The term “practice of veterinary medicine” also does not include or apply to a farrier or a person actively engaged in the art or profession of horseshoeing. A common definition of a farrier is a person who shoes horses, but a farrier may also routinely treat minor hoof medical conditions such as infections, bruises, and abscesses. Some horse owners, however, do not shoe their horses, but the horse hooves still require trimming and maintenance. *Senate Bill 32 (Ch. 7)* allows a farrier or a person actively engaged in the art or profession of horseshoeing to trim and maintain horse hooves without being considered to be practicing veterinary medicine.

Farm-to-School Program

The Jane Lawton Farm-to-School Program was established within MDA by Chapters 371 and 372 of 2008 for various purposes generally aimed at promoting and facilitating the sale of farm products grown in the State to Maryland schools. All of the public school systems in the State participate in the program, and in 2010, over 30 different Maryland farms provided fresh Maryland-grown agriculture products to the schools. *House Bill 751 (Ch. 140)* requires each local educational agency participating in the program to report to MDA the types and amounts of farm products purchased from farms in the State by January 1 of each year.

Invasive Plants

According to the U.S. National Arboretum, invasive plants have the ability to thrive and spread aggressively outside their natural range but can vary in their level of invasiveness, with some only colonizing small areas and not doing so aggressively and others dominating large areas in just a few years. Invasive plants can put pressure on native plants and animals, alter habitats, and reduce biodiversity.

House Bill 831 (Ch. 142) establishes an Invasive Plants Advisory Committee within MDA to advise the Secretary of Agriculture in adopting regulations related to invasive plants and to review and report on a science-based risk assessment protocol for invasive plants required to be established under the bill. The Secretary of Agriculture must adopt regulations by October 1, 2012, which, among other things, establish a science-based risk assessment protocol for invasive plants on which to base the establishment of specified tier 1 and tier 2 plant lists. By October 1, 2013, the Secretary must adopt additional regulations to establish tier 1 and tier 2 plant lists and phase in the implementation of the Act's requirements regulating invasive plants.

Waste Kitchen Grease

In recent years, as oil prices soar, there has been a growing problem with the theft of restaurant grease which has become a valuable commodity in producing biofuels. Similar to a law enacted in Virginia in 2010, *Senate Bill 607/House Bill 881 (both passed)* require a person to register annually with MDA before transporting waste kitchen grease, unless the person falls under specified exemptions for the transportation of limited quantities of waste kitchen grease for small-scale production of biofuel. Application and registration fees must be paid and then deposited into a fund for MDA's use to administer the registration program. "Waste kitchen grease" is defined as animal fats or vegetable oils used in cooking or generated by a food establishment that will not be consumed or reused as food. Each registrant must carry a registration certificate containing a unique registration number issued by MDA when transporting waste kitchen grease, conspicuously display the registrant's name on any vehicle used to transport waste kitchen grease, and keep records of the source, destination, date, and volume of waste kitchen grease hauled. The bills also prohibit certain conduct relating to waste kitchen grease and establish penalties for violations of the bills' provisions. The State's Attorney of a county is responsible for enforcement.

Weights and Measures Registration Fees

The Weights and Measures Section within MDA inspects weighing and measuring devices and prepackaged commodities to ensure honest and accurate transactions between consumers and businesses. Weights and measures used for commercial purposes generally must be registered annually, and an applicant for registration must pay a registration fee. The registration fees are specified in statute specific to various types of weights and measures. **House Bill 293 (passed)** increases the maximum fee per business location for registration of scales with a capacity of up to 100 pounds (from \$225 to \$325) and retail motor fuel dispenser meters of under 20 gallons per minute (from \$275 to \$375). The fee per scale for a scale with a capacity of up to 100 pounds is \$20, and the fee per dispenser meter for retail motor fuel dispenser meters of under 20 gallons per minute is \$15. **House Bill 293** also repeals a general fund reversion provision relating to the Weights and Measures Fund (which receives registration fee revenue and is used to defray the expenses associated with the program) and requires that any unspent or unencumbered balance in the fund at the end of the year remain in the fund.

Agricultural Product Sales at Public Festivals or Events

Chapters 246 and 247 of 2010 required the Department of Health and Mental Hygiene to establish a producer mobile farmer's market license and authorized a county to establish a seasonal farmer's market producer sampling license, respectively. Chapter 246 also prohibited a local jurisdiction from requiring a license for the sale of raw agricultural products at a farmer's market or requiring a producer mobile farmer's market licensee to obtain a separate permit or license to sell products authorized for sale under the producer mobile farmer's market license. Chapter 247 authorized a county to establish a seasonal farmer's market producer sampling license to be required for a producer of a farm product to prepare and offer samples of the farm product for human consumption at a farmer's market.

Senate Bill 228 (passed) expands the provisions of Chapters 246 and 247 of 2010 by applying the provisions to the sale or offering of samples of agricultural products at public festivals or events as well as farmer's markets. "Public festival or event" is defined as a planned gathering that is open to the public and is regulated by the State or local jurisdiction in which it takes place.