



Part K

Natural Resources, Environment, and Agriculture

Natural Resources

Forest Conservation

Assessing Forest Coverage

Forests play an important role in protecting the environment due to their ability to capture, filter, and retain water, as well as absorb pollution from the air. Before the enactment of the Forest Conservation Act (FCA) in 1991, the State was experiencing significant and increasing losses in forest acreage. During the 1970s, approximately 5,000 acres of forestland were lost per year. From 1980 to 1985, this rate of loss increased to approximately 10,000 acres per year, and from 1985 to 1990, the rate of loss increased to approximately 14,000 acres per year. Although there has been little change in estimated forestland acres since 2008, Maryland continues to lose forestland to development associated with population growth.

During the 2019 session, the General Assembly considered several bills aimed at assessing the State's forest conservation efforts. *Senate Bill 729/House Bill 735 (both passed)* require the Harry R. Hughes Center for Agro-Ecology (Hughes Center), in consultation with the Department of Natural Resources (DNR), the Maryland Department of the Environment (MDE), the Maryland Department of Planning (MDP), the Maryland Department of Agriculture, and the Chesapeake Bay Program, to conduct a technical study to review changes in forest cover and tree canopy in the State. The technical study must include, to the extent practicable (1) a survey and mapping of existing forest cover and tree canopy and potential afforestation and reforestation locations in the State; (2) an analysis of the health and quality of forests in the State; (3) an analysis of the progress toward the State's commitment to expand urban tree canopy acres and plant riparian forest buffers under the 2014 Chesapeake Bay Agreement; (4) an analysis of observed and projected changes in land cover and the amount of forest cover in the State due to development or other causes, using the Chesapeake Bay Phase 6 Model, Chesapeake Assessment Scenario Tool, and county and municipal forest conservation annual reports and land use plans; (5) an analysis of observed and projected changes in the amount of forest cover in the State based on programs involving tree planting and preservation; (6) a review of forest mitigation banking in the State; and (7) a

programmatic and funding review of federal, State, and local tree and forest planting programs. The Hughes Center must submit a report of its findings to the Governor and the General Assembly by December 1, 2019.

State policy aims to encourage the retention and sustainable management of forest lands by, among other things, achieving “no net loss of forest.” Under current law, “no net loss of forest” means 40% of all land in Maryland is covered by “tree canopy.” As introduced, *Senate Bill 203/House Bill 120 (both failed)* would have changed the definition of “no net loss of forest” for the purposes of Maryland’s no net loss of forest policy to mean 40% of all Maryland is covered by “forest land” (a term currently defined in law). The Senate amended *Senate Bill 203* to instead define “no net loss of forest” to mean 40% of the State is covered by “forest, as determined by data used in the most current Chesapeake Bay Watershed Model,” but the bill failed in the House.

State and Local Forest Conservation Funds

FCA establishes minimum forest conservation requirements for land development. It is administered by DNR’s Forest Service, but is primarily implemented on the local level through local forest conservation programs. Local governments with planning and zoning authority are required to develop local forest conservation programs that meet or are more stringent than the requirements of FCA. A proposed construction activity goes through a process to evaluate existing vegetation on a site and develop a forest conservation plan for the site. A forest conservation plan must, among other things, specify how forest area will be retained and include a plan for afforestation or reforestation. If afforestation or reforestation requirements cannot be reasonably accomplished on-site or off-site, payment may be made into the applicable forest conservation fund to be spent by the State or the local government on reforestation and afforestation, maintenance of existing forest, and achieving urban canopy goals.

Senate Bill 234/House Bill 272 (both passed) make changes relating to the administration of State and local forest conservation funds under FCA. The bills require a person to demonstrate, before a payment is made into the funds, that appropriate credits generated by a forest mitigation bank in the same county or watershed are not available. The bills also require a local authority to provide to DNR and make available to the public (1) a general plan for identifying appropriate and potentially available areas for mitigation projects, and (2) detailed accounting procedures for accurately tracking the money of the local forest conservation fund. A local authority must ensure that the equivalent number of acres for which money is collected and paid into its forest conservation fund is mitigated in accordance with authorized afforestation, reforestation, and conservation techniques. Finally, the bills require DNR and each local authority to disclose in an existing annual report information relating to fees collected by the funds, including the number of acres for which the fees were collected and the number of acres reforested.

Mel Noland Fellowship Program

The Mel Noland Woodlands Incentive Fund was created to help fund a variety of forest-related programs, including cost-share assistance for private forest land owners, annual grants to forest conservancy district boards, the establishment of a forest health emergency contingency program, and financial assistance for the administration of an urban and community

forestry program. *Senate Bill 467/House Bill 488 (both passed)* rename the Mel Noland Woodland Incentives Fund to be the Mel Noland Woodland Incentives and Fellowship Fund, and expand its uses to include funding a fellowship program to support students seeking careers in fields relating to natural resources. For fiscal 2021 and each subsequent fiscal year, the Governor must appropriate \$50,000 to the fund. DNR must use this annual appropriation to pay stipends to the fellows and to offset certain administrative costs related to the fellowship program.

Climate Change

“Coast Smart” practices are construction practices in which preliminary planning, siting, design, construction, operation, maintenance, and repair of a structure avoids or minimizes future impacts associated with coastal flooding and sea level rise, and includes design criteria and siting criteria that are applicable throughout the entire life cycle of a project. In June 2015, the Coast Smart Council within DNR adopted a Coast Smart Construction Program that includes siting and design criteria for use by all State agencies that design and build facilities or prepare programs and budgets for the design and construction of facilities.

Chapters 628 and 629 of 2018 expanded the applicability of Coast Smart siting and design criteria from State capital projects, which are partially or fully funded with State funds, to State and local projects for which at least 50% of the project costs are funded with State funds, subject to a specified exception. The Acts required the establishment of specified plans or criteria relating to (1) sea level rise inundation; (2) saltwater intrusion; (3) the use of State funds for specified hazard mitigation; and (4) nuisance flooding. *House Bill 1427 (passed)* limits the applicability of provisions established under Chapters 628 and 629 of 2018 – governing compliance of specified State and local projects with Coast Smart siting and design criteria – to specified State and local capital projects. The bill delays the implementation date of the Coast Smart siting and design criteria that are modified and made more broadly applicable pursuant to Chapters 628 and 629, from July 1, 2019, to July 1, 2020. The bill also delays the deadline for specified local jurisdictions to develop a plan to address nuisance flooding pursuant to Chapters 628 and 629, from July 1, 2019, to October 1, 2020. Finally, the bill requires MDP, in consultation with DNR and MDE, to develop and publish guidelines on or before October 1, 2019, to assist local jurisdictions in establishing nuisance flooding baselines.

Boating and Waterways

The Waterway Improvement Fund (WIF) finances projects and activities that promote, develop, and maintain Maryland’s waterways for the benefit of the boating public. With certain exceptions, a local government and WIF must jointly finance projects to construct marine facilities beneficial to the boating public. In most circumstances, the contribution of WIF must be limited to not more than 50% of the cost of each project. WIF may, however, finance completely any construction project beneficial to the boating public which costs less than \$100,000 regardless of its location. *Senate Bill 877 (passed)* increases the maximum limit on the cost of a local construction project that WIF may finance completely to \$250,000 or less.

DNR regulations authorize the department to designate a controlled water ski area within the waters of the State, which may contain ski slalom courses that meet the ski slalom requirements set by the American Water Ski Association. There are currently three controlled water ski areas: two on the Severn River (Maynadier Creek and Sunrise Beach) and one on the upper South River. *Senate Bill 93 (passed)* restricts the days and hours of operation for the controlled water ski area located in Maynadier Creek. Among other things, the bill prohibits the use of the ski area on Saturdays and State holidays. The bill terminates May 31, 2023.

Park Services Associates

Pursuant to provisions of the Maryland Vehicle Law, any State agency authorized by law and any political subdivision of the State may adopt ordinances or regulations that, among other things, regulate parking of vehicles and provide for the issuance of a citation by an officer for a violation of an adopted ordinance or regulation. “Officer” means a police officer or a person other than a police officer who is authorized to issue a citation for a violation of an adopted ordinance or regulation. Maryland Park Service rangers are classified as “park services associates” under Department of Budget and Management personnel classifications. *House Bill 393 (passed)* authorizes a park services associate who is not commissioned as a law enforcement officer to issue a citation for a parking violation on specified property located within or adjacent to property owned by the State and managed by DNR.

Water Quality Monitoring

Senate Bill 546 (passed) makes various changes relating to nutrient management plan compliance and enforcement, permit requirements for concentrated animal feeding operations, and water quality monitoring in tributaries located on the lower Eastern Shore. The bill requires DNR, as part of the department’s Chesapeake Bay Mainstem and Tidal Water Quality Monitoring Program, to conduct long-term sample collection in certain tributaries located on the lower Eastern Shore. At a minimum, DNR must regularly collect samples from each of six specified locations. To the extent practicable, water quality monitoring must be done in locations where water quality monitoring was conducted prior to December 1, 2013, in order to allow DNR and the public to assess long-term water quality trends. For a further discussion of *Senate Bill 546*, see the subparts “Environment” and “Agriculture” within this part of this *90 Day Report*.

Hunting and Fishing

Fishing

Oyster Management

2016 and 2017 Legislation: Chapter 703 of 2016 required the Department of Natural Resources (DNR), as part of its fishery management plan for oysters, to conduct a study, in consultation with the University of Maryland Center for Environmental Science (UMCES), on the oyster stock (including a stock assessment and development of biological reference points) and

management strategies to address the maintenance of a sustainable oyster population and fishery. Chapter 27 of 2017 prohibited DNR from reducing or altering the boundaries of oyster sanctuaries until DNR had developed a fisheries management plan for the scientific management of the oyster stock after the completion of reports required under Chapter 703. On December 1, 2018, DNR submitted a report on the study conducted under Chapter 703 and, at the time of the 2019 session, was in the process of completing a revised fishery management plan for oysters.

Oyster Sanctuaries: DNR regulations prohibit a person from harvesting wild oysters from any designated oyster sanctuary. Oyster sanctuaries in the Chesapeake Bay and its tidal tributaries are designated in DNR regulations that incorporate by reference the document *Oyster Sanctuaries of the Chesapeake Bay and Its Tidal Tributaries (September 2010)*. DNR committed to undertake a review of the effectiveness of the locations of the oyster sanctuaries every five years, the first of which was completed in July 2016. In addition, the 2014 Chesapeake Bay Agreement, which establishes goals and outcomes for the entire Chesapeake Bay, includes a goal of restoring large connected native oyster habitat and populations in sanctuaries in the following five bay tributaries in the State: Harris Creek; the Little Choptank River; the Manokin River; the Tred Avon River; and the Upper St. Mary's River.

Codification of Oyster Sanctuaries in Statute: [House Bill 298 \(Ch. 17\)](#) codifies the five designated tributary-scale sanctuaries in statute. With the exception of a person who engages in aquaculture activities within an oyster sanctuary in accordance with a valid lease, [House Bill 298](#) prohibits a person from catching oysters or removing oyster seed from a tributary-scale oyster sanctuary or an oyster sanctuary established by DNR in regulation. The Act also establishes requirements for the development and implementation of restoration plans for the five tributary-scale oyster sanctuaries codified in the Act.

The Governor vetoed [House Bill 298](#), but the General Assembly overrode the veto during the 2019 session.

Consensus Recommendations for Future Oyster Management: Informed by the outcome of the two-year research and consensus building process of the [OysterFutures](#) research program (completed in May 2018), [Senate Bill 830/House Bill 720 \(both passed\)](#) require a similar State-initiated process (with an expanded scope) to be undertaken by a reorganized Oyster Advisory Commission to develop consensus recommendations for enhancing and implementing the fishery management plan for oysters.

The bills reorganize the Oyster Advisory Commission, with specified new membership that includes various representatives of the oyster industry, academia, and conservation and research organizations. The commission, in coordination with DNR and with the assistance of external conflict resolution and facilitation specialists, must (1) develop a package of consensus recommendations through a facilitated consensus solutions process, based on a 75% majority agreement level for each recommendation; (2) recommend management actions or combinations of management actions to achieve the targets identified in the oyster stock assessment with the goal of increasing oyster abundance; and (3) review model results for each management action or combination of management actions to inform its recommendations.

DNR may not reduce or alter boundaries of existing oyster sanctuaries until a fisheries management plan has been developed based on the consensus recommendations. The fishery management plan must (1) end the overfishing of oysters in all areas and regions of the Chesapeake Bay and its tributaries where overfishing has occurred according to biological reference points established by the most recent oyster stock assessment, while maintaining a harvest in the fishery; (2) achieve fishing mortality rates at target levels; (3) increase oyster abundance; (4) increase oyster habitat; and (5) facilitate the long-term sustainable harvest of oysters, including the public fishery.

The bills also require DNR to (1) hold public listening sessions throughout the State to identify possible management actions for use in the public oyster fishery and (2) periodically review and assess the oyster stock and, with stakeholder input, implement management actions that increase oyster habitat, maintain harvest, and grow the oyster stock.

Other Shellfish Management

Aquaculture and Submerged Aquatic Vegetation: Chapters 380 and 381 of 2017 required DNR, in consultation with interested stakeholders, to (1) review the conflicts that arise when implementing its policies of protecting submerged aquatic vegetation and promoting aquaculture in the State; (2) develop solutions to those conflicts that take into account the benefits provided by both submerged aquatic vegetation and aquaculture; and (3) report its findings and recommendations, including any proposed legislation, to the Governor and General Assembly. DNR requested the assistance of the Aquaculture Coordinating Council to fulfill the requirements of Chapters 380 and 381. Through a collaborative stakeholder process, the council issued a February 2018 [report](#) containing recommended solutions, including a recommendation that DNR be given the flexibility to review aquaculture lease and submerged aquatic vegetation interactions on a case-by-case basis. Consistent with this recommendation, ***House Bill 841 (passed)*** authorizes an aquaculture leaseholder, with prior written approval from DNR, to place shellfish, bags, nets, and structures on submerged aquatic vegetation, subject to specified requirements and limitations. The bill terminates June 30, 2024.

Shellfish Nursery Permits: Under a shellfish nursery permit issued by DNR, a person may commercially rear shellfish seed in State water outside of an aquaculture lease area if the shellfish seed is cultivated (1) within 20 feet of a pier or other structure, and (2) in an area of water that does not exceed 200 square feet. ***Senate Bill 939/House Bill 28 (both passed)*** establish that a person does not need to obtain a tidal wetlands license or permit from the Maryland Department of the Environment or a State wetlands license from the Board of Public Works for a pump, a pipe, or any other equipment attached to a pier in accordance with a shellfish nursery permit, if installation of the equipment does not require increasing the length, width, or channelward encroachment of the pier. For further discussion of these bills, see the subpart “Environment” within this part of this *90 Day Report*.

Cownose Ray Fishery Management Plan

Chapters 398 and 399 of 2017 (1) required DNR to prepare a cownose ray fishery management plan by December 31, 2018, and (2) prohibit a person, until July 1, 2019, from

sponsoring, conducting, or participating in a cownose ray fishing contest in State waters. “Cownose ray fishing contest” is any competition, tournament, or derby with the objective of catching or killing cownose rays for (1) prizes or other inducements, or (2) entertainment purposes. As of early 2019, DNR had not completed a cownose ray fishery management plan. *Senate Bill 143/House Bill 213 (both passed)* extend the deadline for DNR to prepare a cownose ray fishery management plan by two years (until December 31, 2020), while correspondingly extending the prohibition against a person sponsoring, conducting, or participating in a cownose ray fishing contest until DNR prepares the fishery management plan.

Fishing Guides

Senate Bill 361/House Bill 349 (both passed) modify the special charter boat license so that, instead of being valid for all individuals on a charter boat operated by a licensed fishing guide in tidal waters of the State, the license is valid for (1) all individuals on a vessel under the guidance of a fishing guide with a limited fishing guide license in tidal waters of the State and (2) all individuals on a single vessel operated by a fishing guide with a freshwater fishing guide license or a commercial tidal fish license in tidal waters of the State.

Finfish Trotlines and Monofilament Gill Nets

Chapter 86 of 2016, which terminates June 30, 2019, authorized DNR to adopt regulations to define and govern the use of finfish trotlines as a type of commercial fishing gear and authorized tidal fish licensees to use more than two hooks or two sets of hooks for each rod or line when using a finfish trotline. The intent of Chapter 86 is to allow commercial watermen to use finfish trotline gear to target invasive blue and flathead catfish. DNR created a free finfish trotline permit in 2017 to better understand the effects of the gear and, as of March 2019, there were 57 permit holders. *Senate Bill 7 (passed)* repeals the June 30, 2019 termination provision of Chapter 86. The bill also (1) under provisions that terminate June 30, 2022, establishes a commercial blue and flathead catfish finfish trotline license that is available to a person regardless of whether the person holds a commercial tidal fish license and (2) authorizes DNR to adopt regulations to authorize the use of a monofilament gill net to catch fish.

Hunting

Sunday Hunting

Hunting game birds or mammals on Sunday is generally prohibited, subject to various exceptions (with many of the exceptions being county-specific). During the 2019 session, additional exceptions were established.

Senate Bill 390 (passed) and *House Bill 242 (passed)* authorize DNR to allow, in St. Mary’s and Cecil counties, respectively, hunting of any game bird or game mammal, except migratory game birds, on a Sunday during the open season for that game bird or game mammal on private property or public land (except State parks in St. Mary’s County) designated for Sunday hunting by DNR.

Senate Bill 888/House Bill 620 (both passed), *Senate Bill 889/House Bill 618 (both passed)*, and *Senate Bill 890/House Bill 619 (both passed)* authorize DNR to allow, in Dorchester County, a person to hunt deer on private property on, respectively, (1) the second and third Sunday of the deer firearms season; (2) a Sunday during the bow hunting season from the first Sunday in October through the second Sunday in January the following year; and (3) a Sunday during the deer muzzle loader season.

House Bill 199 (passed) authorizes DNR to allow, in Wicomico County, a person to hunt deer on private property on the second Sunday in deer firearms season from 30 minutes before sunrise until 10:30 a.m.

Deer Management Permits – Harford County

Maryland landowners or agricultural lessees who are experiencing severe economic loss from deer to commercially grown crops may be eligible to receive a deer management permit. Deer management permits allow the permit holder or an agent of a permit holder to remove deer from the designated property outside of any deer bag limits and the established deer hunting seasons, including on any Sunday throughout the year. *Senate Bill 923/House Bill 401 (both passed)* make current provisions relating to deer management permits that are applicable in Calvert, Charles, and St. Mary’s counties also applicable in Harford County. The provisions (1) allow an individual hunting under a deer management permit to use a shotgun or breech loading center fired rifle approved by DNR to hunt deer throughout the year in the locations and under the conditions set forth in the permit and (2) allow a permit holder who leases State land for crop cultivation to hunt deer on the leased land under the permit.

Archery Hunting Safety Zone – Cecil County and Washington County

Maryland law generally establishes a “safety zone” around occupied buildings or camps (e.g., residences, churches, schools) within which a person, other than the owner or occupant, while hunting, may not shoot or discharge any firearm or other deadly weapon (subject to some variation in the size of the safety zone based on different factors) without the specific advance permission of the owner or occupant. A person also may not shoot at any wild bird or mammal while it is within the safety zone. *House Bill 242 (passed)* and *Senate Bill 140 (passed)* reduce the archery hunting safety zone in Cecil and Washington counties, respectively, from 150 yards to 50 yards. *Senate Bill 140* also requires an archery hunter in Washington County to be in an elevated position that allows the hunter to shoot in a downward trajectory when hunting any wild bird or mammal within 50 to 100 yards of an occupied building or camp.

Environment

Solid Waste Management and Recycling

Expanded Polystyrene Ban

Expanded polystyrene foam is an inexpensive and readily available material often used in food product packaging. However, the material may have a significant impact on the health of humans and marine life because it never fully degrades, and, when littered, bioaccumulates in the environment. Across the country, jurisdictions have introduced legislation to ban or partially ban the use of expanded polystyrene foam, including Montgomery and Prince George’s counties in Maryland; Washington, DC; Portland, Oregon; New York, New York; and Los Angeles County and the City of San Francisco in California. However, there are no statewide bans in the United States.

Beginning July 1, 2020, *Senate Bill 285/House Bill 109 (both passed)* prohibit (1) a person from selling or offering for sale in the State an “expanded polystyrene food service product” and (2) a “food service business,” which includes specified businesses, institutional cafeterias, or schools from selling or providing food or beverages in an expanded polystyrene food service product. The Maryland Department of the Environment (MDE) must conduct specified public education and outreach campaigns and may adopt regulations to implement the bills. MDE may grant to a food service business or school a waiver from the bills’ prohibition for up to one year if MDE determines that compliance would present an undue hardship or a practical difficulty that is not generally applicable to other food service businesses or schools in similar circumstances. A “unit of county government” must enforce the bills’ prohibitions and may impose a monetary penalty for violations under specified conditions.

Solid Waste Management

The solid waste infrastructure in Maryland consists of both permitted and nonpermitted facilities, and solid waste is managed through a combination of recycling, composting, landfilling, energy recovery, and exporting for disposal or recycling. Private and county-owned facilities make up the majority of facilities in the State.

In an effort to promote waste diversion, *House Bill 510 (passed)* prohibits an owner or operator of a refuse disposal system from accepting loads of separately collected yard waste or food waste for final disposal unless the owner or operator provides for the “organics recycling” of the yard or food waste. “Organics recycling” means any process in which organic materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products, and includes anaerobic digestion and composting.

Due to concerns about disposable plastic carryout bags clogging waterways, harming wildlife, and consuming valuable landfill space, many jurisdictions across the country and State have adopted fees, bans, or other programs to discourage the use of disposable bags or to promote bag recycling. In Maryland, State law does not address carryout bags provided by retail

establishments. However, local jurisdictions with general taxing powers (e.g., Baltimore City, Baltimore County, and Montgomery County) have the authority to levy a bag fee. **House Bill 1166 (passed)** authorizes Howard County to impose, by law, a fee on a store for the use of disposable bags, defined as “a plastic bag provided by a store to a customer at the point of sale,” as part of a retail sale of products. The fee may not exceed five cents for each disposable bag used. Additionally, the county may only use fee revenue collected in accordance with the bill for (1) an environmental purpose, including the establishment of a program to provide reusable bags to individuals in the county, or (2) the implementation, administration, and enforcement of the fee.

Recycling

Maryland’s recycling policy is guided by the Maryland Recycling Act, which sets mandatory recycling rates for State government and local jurisdictions, as well as a voluntary statewide recycling goal of 60% by 2020. Each county (including Baltimore City) must prepare a recycling plan that addresses how the jurisdiction will achieve its mandatory recycling rate. **Senate Bill 370 (passed)** requires that each county recycling plan address the collection and recycling of recyclable materials from specified large office buildings by October 1, 2020. Additionally, by October 1, 2021, the owner of a building that has at least 150,000 square feet of office space must provide (1) recycling receptacles for the collection of recyclable materials and (2) for the removal of specified materials deposited into the recycling receptacles so that the materials can be further recycled. Local governments are authorized to conduct inspections to enforce the bill’s requirements.

Climate Change and Renewable Energy

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. Maryland is already experiencing significant loss of land from sea level rise, which has risen about eight inches in the last 100 years. To address the causes and impacts of climate change in the State, legislation enacted in 2009 (Chapters 171 and 172) and 2016 (Chapter 11) require the State to develop plans, adopt regulations, and implement programs to reduce greenhouse gas (GHG) emissions by 40% from 2006 levels by 2030. Several bills were passed by the General Assembly during the 2019 session in furtherance of these emissions reduction requirements and to mitigate the impacts of climate change.

Transportation and Climate Initiative

The Transportation and Climate Initiative (TCI) of the Northeast and Mid-Atlantic States is a regional collaboration that seeks to improve transportation, develop the clean energy economy, and reduce carbon emissions from the transportation sector. There are 13 participating jurisdictions, and Maryland has been an active participant in TCI since its inception in 2010. On December 18, 2018, 9 of the member states (including Maryland, Virginia, and the District of Columbia) announced the intent to design a regional low-carbon transportation policy proposal that would (1) cap and reduce carbon emissions from the combustion of transportation fuels and

(2) invest proceeds from the program into a low-carbon and more resilient transportation infrastructure. Participating states intend to complete the policy development process within one year, at which point each jurisdiction will decide whether to adopt and implement the policy.

Senate Bill 249/House Bill 277 (both passed) authorize the Governor to include the State as a full participant in any regional governmental initiative, agreement, or compact that limits or reduces GHG emissions from the transportation sector. However, the State may only withdraw from such an initiative, agreement, or compact with statutory approval from the General Assembly. By November 1, 2019, and every year thereafter for the next three years, MDE and the Maryland Department of Transportation (MDOT) must submit a report to the General Assembly on the status of any regional governmental initiative, agreement, or compact that limits or reduces GHG emissions from the transportation sector.

Zero-emission Vehicles

In Maryland, over 640,000 public school students receive transportation services. In total, local school systems use over 7,200 school vehicles for student transportation services. In an effort to reduce GHG in the State, ***House Bill 1255 (passed)*** establishes the Zero-Emission Vehicle School Bus Transition Grant Program within MDE, and the Zero-Emission Vehicle School Bus Transition Fund to provide funding for the program. A “zero-emission” vehicle is any vehicle that (1) is determined by the Secretary of Transportation to be of a type that does not produce any tailpipe or evaporative emissions and (2) has not been altered from the manufacturer’s original specifications. The purpose of the program is to provide grants to local boards of education (and entities that contract with local boards to provide transportation services) to (1) purchase school buses that are zero-emission vehicles; (2) install electric vehicle infrastructure for charging school buses that are zero-emission vehicles; (3) engage in planning for a transition to using school buses that are zero-emission vehicles; and (4) fund pilot programs to experiment with a transition to school buses that are zero-emission vehicles. MDE and MDOT must jointly provide technical assistance to local school boards and to private contractors who contract with local school boards, with transitioning to zero-emission school buses.

Clean Energy Jobs

Maryland’s Renewable Portfolio Standard (RPS) was enacted in 2004 to facilitate a gradual transition to renewable sources of energy. There are specified eligible sources as well as carve-outs for solar and offshore wind. Electric companies (utilities) and other electricity suppliers must submit renewable energy credits equal to a percentage specified in statute each year or else pay an alternative compliance payment equivalent to their shortfall.

Senate Bill 516 (passed) increases the RPS from 25% by 2020 to 50% by 2030 and makes other related changes. The bill (1) requires at least 1,200 megawatts of additional offshore wind generating capacity to begin operating not later than 2030 and (2) increases the carve-out for solar energy to 5.5% in 2019, with further annual increases until it reaches 14.5% in 2030. The expired Tier 2 source of RPS, large hydropower, is reestablished for two years through 2020. A total of up to \$15 million is transferred from the Strategic Energy Investment Fund for specified purposes, including workforce development and investment in clean energy industries. An existing study on

RPS being conducted by the Power Plant Research Program is modified to include additional topics and a supplemental study on a 100% RPS goal. For a more detailed discussion of this bill, see the subpart “Public Service Companies” within Part H – Business and Economic Issues of this *90 Day Report*.

Sea Level Rise Inundation and Coastal Flooding

Chapter 415 of 2014 established the original Coast Smart siting and design criteria requirements in statute and created a Coast Smart Council in the Department of Natural Resources (DNR) to (1) study and provide analysis regarding standards and factors relevant to the establishment of Coast Smart siting criteria and design criteria; (2) develop siting and design criteria to establish and implement Coast Smart practices and requirements; (3) develop eligibility criteria, standards, and procedures for applying for and obtaining a waiver from compliance with the Coast Smart requirements; and (4) establish procedures for evaluating Coast Smart waiver applications that include the consideration of proposed capital projects.

“Coast Smart” is defined as a construction practice in which preliminary planning, siting, design, construction, operation, maintenance, and repair of a structure or highway facility avoids or minimizes future impacts associated with coastal flooding and sea level rise inundation, and includes design criteria and siting criteria that are applicable throughout the entire life cycle of a project. *House Bill 1427 (passed)* limits the applicability of provisions governing compliance of specified State and local projects with Coast Smart siting and design criteria to specified State and local capital projects. The bill also delays the implementation date of the Coast Smart siting and design criteria that are modified and made more broadly applicable from July 1, 2019, to July 1, 2020. Additionally, the bill delays the deadline for specified local jurisdictions to develop a plan to address nuisance flooding from July 1, 2019, to October 1, 2020, and requires the Maryland Department of Planning, in consultation with specified agencies, to develop and publish guidelines to assist the local jurisdictions in establishing nuisance flooding baselines.

Water Quality and Land Management

Nutrient Management

The Water Quality Improvement Act of 1998 (Chapters 324 and 325), required agricultural operations with \$2,500 or more in gross annual income and livestock operations with 8,000 pounds or more of live animal weight to have and comply with a nutrient management plan for nitrogen and phosphorus. A nutrient management plan is prepared to “manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable nutrients and to maintain productivity.”

Senate Bill 546 (passed) makes various changes to (1) nutrient management plan compliance, enforcement, and reporting; (2) concentrated animal feeding operation (CAFO) permitting and fees; and (3) water quality monitoring in tributaries located on the lower Eastern Shore. With respect to a summary of a nutrient management plan that must be filed and updated with the Maryland Department of Agriculture (MDA) under existing law, MDA may require an updated summary to take the form of an annual implementation report which includes

specified information. The bill also imposes new penalty provisions for failing to file one of these summaries or annual reports and establishes new compliance and enforcement requirements related to the implementation of the Phosphorus Management Tool or the submission of specified soil tests.

Senate Bill 546 also requires that for any person to begin construction on any part of a new CAFO, the person must hold a CAFO discharge permit issued by MDE prior to construction. If the person initiates construction without the permit, MDE is prohibited from issuing the permit to that individual. Finally, the bill requires DNR to, as part of the department’s Chesapeake Bay Mainstem and Tidal Water Quality Monitoring Program, conduct long-term sample collection in specified tributaries. At a minimum, DNR must regularly collect samples from specified locations. For a further discussion of this bill, see the subparts “Agriculture” and “Natural Resources” within this part of this *90 Day Report*.

Stormwater and Flood Management

There is a flood control and watershed management program within MDE. Among other things, the program is responsible for (1) assisting in the development of guidance to minimize the impacts of flooding and (2) providing State guidelines and technical assistance to local governments to manage flood areas. The program was established in 1976 to promote the development of local flood management plans, fund studies of watersheds, and support capital projects for flood control and watershed management. However, the program has not been funded since 2002 and has not been operational.

Senate Bill 269/House Bill 428 (both passed) authorize MDE, under its existing comprehensive flood management grant program, to award grants to subdivisions that have incurred at least \$1 million in infrastructure damage by a flood event that occurred on or after January 1, 2009. The grants may be for an amount up to 50% of the combined cost of infrastructure repairs, watershed restoration, and emergency work associated with a flood event that may be equal to a certain amount of the total money appropriated to the grant program in specified fiscal years. The bills require the Governor to appropriate at least \$3 million in the State budget in fiscal 2021 and 2022, and at least \$2 million in fiscal 2023.

Water and Sewer Services

According to MDE, between October 1, 2018, and January 31, 2019, there were 342 reports of incidents of sewer overflows or treatment bypasses (an average of 21 per week). The department maintains an electronic database on its website that provides sanitary sewer overflow, bypass, and combined sewer overflow data to the public. *House Bill 417 (passed)* establishes new requirements regarding the content of the public notice procedures developed by MDE, in cooperation with the Maryland Department of Health, local health departments, and local environmental health directors, related to sewer overflows and treatment plant bypasses. The bill also repeals the requirement for the owner or operator of any sanitary sewer system, combined sewer system, or wastewater treatment plant to report sewer overflows or treatment plant bypass events to MDE via telephone.

Septic Systems

MDE's On-site Systems Division provides technical assistance and direction to local health departments and local approving authorities for the implementation of delegated programs for septic systems and individual wells. According to MDE, there are approximately 420,000 septic systems in Maryland.

While failing septic systems are referenced in statute and in regulations with regard to septic system upgrades and funding from the Bay Restoration Fund, the term "failing on-site sewage disposal system" is not defined in statute or regulation. *House Bill 190 (passed)* defines "failing on-site sewage disposal system" as an on-site sewage disposal system (commonly referred to as a septic system) or a cesspool, or a component of a septic system or a cesspool, that is a threat to public health due to the potential for direct contact between sewage and members of the public, significant noncompliance with the standards and conditions of the permit (for a permitted system), or a failure to prevent (1) sewage from reaching the surface of the ground; (2) sewage from backing up into a structure due to slow soil absorption of sewage effluent; (3) sewage from leaking from a sewage tank or collection system; (4) unless specifically authorized by a groundwater protection report approved by MDE before January 1, 2019, groundwater degradation; or (5) surface water degradation. If a local ordinance or law defines the term more stringently, this bill does not preempt that definition, and if there already exists an enforcement referral method between MDE and a local health department, this bill does not preempt that method.

As long-term water shortages increasingly are predicted in areas across the nation, water conservation efforts have become more prominent. One technique to conserve water is graywater recycling, which is an on-site wastewater treatment and recycling system. Graywater systems are designed to safely manage wastewater and reduce water consumption. Chapter 705 of 2018 authorized the use of "graywater" under specified conditions for residential purposes including household gardening, composting, lawn watering, landscape irrigation, or flushing of a conventional toilet or urinal. *House Bill 539 (passed)* authorizes a person to use "reusable diverted water" for beneficial purposes, including gardening, composting, lawn watering, and irrigation. Reusable diverted water can only be used (1) on the site where it originates and (2) in accordance with any applicable State and local laws or regulations, including State and local plumbing codes. "Reusable diverted water" is water that (1) is generated by backwashing an on-site potable water treatment system or using an ice maker; (2) is collected for reuse instead of discharged to a residential on-site sewage disposal system; and (3) contains no constituents that are detrimental to public health or the environment.

Sediment and Erosion Control

MDE's Sediment, Stormwater, and Dam Safety Program is responsible for developing erosion and sediment control and stormwater management regulations. Among other duties, the program is the approval authority for erosion and sediment control and stormwater management plans for construction activity by State and federal agencies. The program also oversees the delegation of enforcement authority for these activities. Twenty-three local jurisdictions have

delegated authority to enforce erosion and sediment control laws under Subtitle 1 of Title 4 of the Environment Article.

A May 2018 audit report conducted by the Office of Legislative Audits (OLA) raised issues relating to enforcement within certain MDE programs. With respect to MDE's Erosion and Sediment Control Program, OLA found that inspections of certain construction sites were not performed as required by State regulations and that MDE lacked a formal plan for inspecting all sites. In response to this audit, *Senate Bill 505/House Bill 703 (both passed)* require each jurisdiction that is delegated authority to enforce sediment and erosion control laws and regulations to submit an annual report to MDE by January 1 of each year. The report from each delegated authority must include the total number of cases alleging violations of (1) sediment and erosion control laws and regulations; (2) building and grading permits; (3) sediment and erosion control laws and regulations in the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area (the Critical Areas); and (4) building and grading permits in the Critical Areas. On request of a delegated authority, MDE must provide technical assistance to the jurisdiction to meet the reporting requirements. MDE must post the information collected under the bills on its website, and, by March 1 of each year, report to the Governor and the General Assembly.

Wetlands Permits and Licenses

The Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways, including shoreline stabilization projects. *House Bill 406 (passed)* limits the application fee charged for a structural shoreline stabilization project located on or adjacent to a State-owned lake to a maximum of \$250. Additionally, MDE, in conjunction with DNR, is required to identify up to three types of structural shoreline stabilization practices that may be implemented on or adjacent to a State-owned lake.

A "nonwater-dependent project" is a temporary or permanent structure that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private wetlands. *Senate Bill 939/House Bill 28 (both passed)* establish that a pump, a pipe, or any other equipment attached to a pier that is associated with a permitted shellfish nursery operation is not a "nonwater-dependent project" for the purpose of wetlands license and permit requirements. The bills specify that, as long as installing such equipment (for the purpose of cultivating shellfish seed in a permitted shellfish nursery) does not require increasing the length, width, or channelward encroachment of the pier, a person does not need to first obtain a tidal wetlands license or permit from the Board of Public Works or MDE, and such activity is a lawful use of private wetlands.

Surface Mining

Dewatering is an activity where groundwater and surface water is removed from a mine to provide workably dry conditions in the mine. If a surface mining permittee (quarry mine operator) is issued a water appropriation permit to dewater a pit located in karst terrain (basically limestone) in Baltimore, Carroll, Frederick, and Washington counties, MDE must establish a zone of dewatering influence around the surface mine as a condition of the permittee's surface mining permit. The purpose of a zone of dewatering influence is to provide relief for a property owner

within the zone who experiences a sinkhole or water supply failure. When a water supply failure occurs, the quarry operator is presumed to be the cause of a water supply loss and must replace that water supply. When a sinkhole occurs, the quarry operator must repair any sinkhole damage within the zone unless the operator can prove that they did not cause the sinkhole.

Senate Bill 54/House Bill 36 (both passed) require a surface mining permittee to permanently replace a failed water supply (that is within a zone of dewatering influence) within 45 days after learning about a specified water supply failure. The bills also codify (1) the requirement that a permit holder, upon discovery of a sudden subsidence of the surface of the land within the zone of dewatering influence, must immediately implement appropriate safety measures to protect public health and safety and (2) regulations that authorize a permittee to seek reimbursement from an affected property owner for the cost of replacing a water supply if it is determined that the permittee's dewatering activity is not the proximate cause of the water supply failure. Finally, the bills clarify that current law requiring MDE to provide an opportunity for a contested case hearing may not be construed to stay the requirement to permanently replace a water supply or implement appropriate safety measures.

Oil Cleanup

The Maryland Oil Disaster Containment, Clean-up and Contingency Fund (Oil Fund) was established in 1986 to provide funding to MDE's oil pollution prevention programs, such as permitting, enforcement, and oil spill response. The Oil Contaminated Site Environmental Cleanup Fund (Reimbursement Fund) was established in 1993 to reimburse underground storage tank owners for costs incurred during site cleanups. *Senate Bill 1031 (passed)* extends the current fee (8 cents per barrel) assessed on oil transferred into the State until July 1, 2021; beginning July 1, 2021, the fee is 5 cents per barrel. Until July 1, 2021, 7.75 cents of the per barrel fee are credited to the Oil Fund and 0.25 cents are credited to the Reimbursement Fund. Owners of heating oil tanks are authorized to continue to apply for assistance from the Reimbursement Fund through June 30, 2021. In fiscal 2020 and 2021 only, funds from the Oil Fund may be used to pay costs associated with the purposes of the Reimbursement Fund. Special fund revenues increase by \$2.2 million in fiscal 2020. Special fund expenditures from the Reimbursement Fund increase by \$182,800 in fiscal 2020. The fiscal 2020 budget reflects continuation of fiscal 2019 fee levels.

Lead

Elevated Blood Lead Level

According to the Centers for Disease Control and Prevention (CDC), there is no safe level of lead exposure. Adverse health effects exist in children at blood lead levels less than 10 µg/dL (micrograms per deciliter). As such, CDC has, since 2012, urged health care providers and authorities to follow up on any young child with a blood lead level as low as 5 µg/dL, which is the CDC's current blood lead reference level.

House Bill 1233 (passed) redefines elevated blood lead level (EBL) as it applies to specified provisions of State law that initiate case management, notification, and lead risk reduction requirements. EBL is redefined to mean (1) a quantity of lead in blood that exceeds the

blood lead reference level as determined by CDC on or after October 1, 2019, or (2) beginning one year after the date that CDC revises the blood lead reference level until one year after a subsequent revision, the revised blood lead reference level determined by CDC.

House Bill 1233 also requires MDE to adopt regulations for conducting environmental investigations to determine lead hazards, and include a summary of the results of any environmental investigation conducted pursuant to the bill in its annual report on statewide childhood blood lead testing. Additionally, beginning July 1, 2020, an owner of affected property must satisfy the modified reduction risk standard within 30 days after receipt of written notice that a person at risk who resides on the property has an EBL greater than or equal to the reference level (instead of 10 µg/dL) and an environmental investigation has concluded that there is a defect at the affected property.

Testing for Lead in Drinking Water Outlets in School Buildings

Chapter 386 of 2017 required MDE, in consultation with the Maryland State Department of Education (MSDE), the Department of General Services, and the Maryland Occupational Safety and Health, to adopt regulations to require periodic testing for the presence of lead in each “drinking water outlet” located in an occupied public or nonpublic school building.

House Bill 1253 (passed) establishes that it is the intent of the General Assembly that schools work proactively to reduce the concentration of lead in drinking water outlets to a level below five parts per billion and that State and federal funds be made available to schools for that purpose. The bill requires MDE, in consultation with MSDE, to establish and administer a grant program to provide grants to local school systems to assist with specified costs related to addressing the presence of lead in school drinking water outlets. Additionally, the bill requires the Interagency Commission on School Construction, in consultation with MDE, to establish and implement procedures for school systems to request funding from the existing Healthy School Facility Fund for specified remedial costs. Although no funding for the grant program is mandated under the bill, general fund expenditures may increase by at least \$1.5 million annually beginning in fiscal 2020 to establish a viable grant program.

Sunset Evaluations

Approximately 70 regulatory entities and activities are subject to periodic evaluation under the Maryland Program Evaluation Act (MPEA), which establishes a process better known as “sunset review” because most of the entities subject to review are also subject to termination. **Senate Bill 640/House Bill 1113 (both passed)** eliminate the evaluations required under MPEA, although the termination dates for the various entities subject to the law are maintained. Instead, those entities currently subject to MPEA may be evaluated in accordance with a work plan developed by the Department of Legislative Services (DLS), while responsibility to introduce reauthorizing legislation is placed on the entities. For more information on these bills, see the subpart “General Assembly” within Part C – State Government of this *90 Day Report*. DLS conducted preliminary evaluations of the State Board of Waterworks and Waste System Operators and the State Board of Well Drillers in 2018.

Senate Bill 585/House Bill 1100 (both passed) implement DLS's primary recommendations stemming from the preliminary sunset evaluation of the State Board of Waterworks and Waste System Operators. Specifically, the bills (1) extend the termination date of the board by 10 years to July 1, 2031, and (2) change the board's authorization to set fees, and instead require the board to set reasonable fees to cover the board's actual direct and indirect regulatory costs.

Senate Bill 671/House Bill 1114 (both passed) implement DLS's primary recommendations stemming from the preliminary sunset evaluation of the State Board of Well Drillers. Specifically, the bills (1) extend the termination date of the board by 10 years to July 1, 2031, and (2) require the board to set license fees for the issuance and renewal of licenses at levels sufficient to cover actual direct and indirect costs of regulating the well drilling industry.

Agriculture

Nutrient Management

Pursuant to the Water Quality Improvement Act of 1998 (Chapters 324 and 325), agricultural operations with \$2,500 or more in gross annual income and livestock operations with 8,000 pounds or more of live animal weight must have and comply with a nutrient management plan for nitrogen and phosphorus. Nutrient management plans address the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other nutrient sources to maintain productivity on agricultural land and prevent excess nutrients from impacting waterways.

Phosphorous Management Tool (PMT) regulations, which took effect June 8, 2015, include a multi-year process for farmers to transition to use of PMT for fields with high soil phosphorus levels. PMT is an updated environmental risk assessment tool that uses the best available science to identify the potential risk of phosphorus loss from farm fields and prevent the additional buildup of phosphorus in soils that are already saturated. The regulations require submittal of soil phosphorus levels to the Maryland Department of Agriculture (MDA), and MDA's Nutrient Management Program 2018 Annual Report indicates that soil test data results have been submitted for 87% of Maryland's 1,277,930 acres of regulated farmland. The program continues to target farms that have not submitted soils data for audits and inspections.

Among other things, *Senate Bill 546 (passed)* makes various changes relating to nutrient management plan compliance, enforcement, and reporting. MDA may require an updated summary of a nutrient management plan, which must be filed and updated with MDA under existing law, to take the form of an annual implementation report. If a person, in operating a farm, uses or produces animal manure, the person's annual implementation report must include specified information regarding the import or export of animal manure. In addition, a person who holds a license or permit issued under nutrient management certification and licensing provisions must comply with all applicable reporting requirements and deadlines established by MDA, including deadlines related to implementation of the PMT and submission of certain soil test phosphorus levels. MDA, in determining where to focus enforcement efforts to determine compliance with

nutrient management requirements, must prioritize farms for which MDA has not received soil test phosphorus levels required by regulations. The bill also modifies and establishes penalties for various violations, including failing to file a nutrient management plan summary or annual implementation report, failing to have a nutrient management plan, failing to comply with a nutrient management plan, and failing to meet specified reporting requirements and deadlines. Finally, beginning in 2020, MDA must include information regarding the statewide production and use of animal manure in its annual report on nutrient management plans. For a further discussion of this bill, see the subparts “Natural Resources” and “Environment” within this part of this *90 Day Report*.

Agricultural Land Preservation

The Maryland Agricultural Land Preservation Foundation (MALPF), which is part of MDA, 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, local matching funds, and federal grant funds. As of the end of fiscal 2018, MALPF has acquired 2,302 agricultural preservation easements covering 312,787 acres statewide.

Elimination of Agricultural Districts

Prior to July 1, 2007, an agricultural landowner was only eligible to sell a development rights easement to MALPF once the land had been placed within an agricultural preservation district. Agricultural preservation districts were formed when qualifying landowners would sign voluntary agreements with MALPF to keep their land in agricultural or woodland use for a specified number of years (3 to 10 years, depending on the county where the land was located). In uncodified language, Chapter 650 of 2007 phased out the district agreement process, specifying that districts could not be a requirement for the easement application process to MALPF and that as of June 30, 2012, all districts in MALPF were terminated, with the exception of any district in which an easement had been transferred to MALPF and any district established by a county and a landowner for the purpose of providing a property tax credit to the landowner. *Senate Bill 58 (passed)* transfers to codified statute the specified uncodified language under Chapter 650 and deletes obsolete references to “agricultural districts” associated with the district agreement process.

MALPF Board of Trustees

MALPF is administered by a 13-member board of trustees which includes the State Treasurer, the Comptroller, the Secretary of Agriculture, and the Secretary of Planning, all of whom serve as *ex officio* members. *Senate Bill 58* authorizes each *ex officio* member of the MALPF board of trustees to appoint a designee to serve in the member’s place on the board.

County Agricultural Land Preservation Programs

Chapter 294 of 2018 increased – from three years to six years – the amount of time counties have to use revenue from the agricultural land transfer tax before it must be remitted to the State.

Chapter 294 also allows – under the program administered by the Maryland Department of Planning (MDP) and MALPF for certification of effective county agricultural land preservation programs – for a recertification of a county program to be effective for five years instead of three years if MDP and MALPF determine that the county program is consistently effective in the achievement of preservation goals. MDP and MALPF must review a recertification when a county revises the boundary or size of a priority preservation area or adopts a comprehensive rezoning policy that increases the allowable nonagricultural land uses, density, or intensity of development within a priority preservation area. MDP and MALPF may revoke a county program recertification on a finding that such an action is inconsistent with certain priority preservation areas requirements. *Senate Bill 57 (passed)* alters specified MALPF-related provisions of law to be consistent with provisions enacted under Chapter 294. The bill also clarifies that a county agricultural preservation advisory board’s duties include approving or disapproving an application by the county for recertification of a county agricultural land preservation program.

Definition of Conservation Property for Tax Assessment Purposes

House Bill 1350 (passed) alters the definition of conservation property for property tax assessment purposes by including certain land subject to a perpetual conservation easement that is sold or donated (1) to MALPF; (2) to a specified land trust; or (3) under another public land conservation or preservation program. The bill applies to tax years 2020 and beyond. For a further discussion of this bill, see the subpart “Property Tax” within Part B – Taxes of this *90 Day Report*.

Recording Notice of Conservation Easements, Covenants, Restrictions, and Conditions

MDA indicates that when a property interest has been conveyed to MALPF, the Maryland Historical Trust (MHT), Maryland Environmental Trust (MET), or Department of Natural Resources (DNR), the transaction is memorialized by an instrument that is recorded in the land records of the county in which the property interest is located. In recent years, however, title searches associated with refinancing or selling of properties have covered more limited timeframes than in the past, which can result in a buyer not being aware of a conservation easement and potentially violating the terms of the easement. *Senate Bill 25 (passed)* allows for a specified notice to be recorded in applicable land records, and indexed in a specified manner, if an easement, covenant, restriction, or condition has been granted, devised, dedicated, reserved, or donated to MALPF, MHT, MET, a land trust that has executed a cooperative agreement with MET, a county, or DNR. For a further discussion of this bill, see the subpart “Real Property” within Part F – Courts and Civil Proceedings of this *90 Day Report*.

Use of Antimicrobial Drugs

The U.S. Food and Drug Administration (FDA) indicates that antimicrobial resistance is a national and worldwide public health challenge. Judicious use of antimicrobial drugs can effectively fight bacterial infections, but use and misuse can also promote the development of antimicrobial-resistant bacteria. In 2017, FDA completed a process to transition medically important antimicrobial drugs (important in human medicine) used in feed or drinking water of

food-producing animals to veterinary oversight and to eliminate use of the drugs for production purposes such as growth promotion.

Pursuant to Chapters 787 and 788 of 2017, State law prohibits the administration of a medically important antimicrobial drug to cattle, swine, or poultry solely for the purpose of promoting weight gain or improving feed efficiency. As of January 1, 2018, a medically important antimicrobial drug may be administered to cattle, swine, or poultry if, in the professional judgment of a licensed veterinarian, the drug is necessary (1) to treat, or control the spread of, a disease or infection; (2) for a surgery or medical procedure; or (3) provided the drug is not administered in a regular pattern, for prophylaxis to address an elevated risk of contraction of a particular disease or infection. *Senate Bill 471/House Bill 652 (both passed)* modify provisions governing the administration of medically important antimicrobial drugs to cattle, swine, or poultry, including by, among other things, (1) expressly prohibiting the drugs from being administered in feed or water unless ordered by a licensed veterinarian through a specified drug prescription or a veterinary feed directive; (2) defining relevant terms, including “treat a disease or infection,” “administered in a regular pattern,” “prophylaxis,” and “elevated risk”; (3) altering the applicability of the provisions; (4) limiting the duration for which the drugs may be administered; (5) altering the penalty for violating the provisions; (6) establishing new reporting requirements for licensed veterinarians regarding the administration of the drugs; and (7) altering existing MDA reporting requirements. MDA must maintain all records and information relating to the administration of medically important antimicrobial drugs submitted to MDA for at least five years and in a manner that protects the identity of an owner, an operator, and a veterinarian.

Agricultural Products

Hemp

The 2018 federal Farm Bill allows a state to be the primary regulatory authority over the production of hemp in the state if the state submits a qualifying plan to the U.S. Secretary of Agriculture under which the state plans to monitor and regulate the production of hemp. Further, the 2018 Farm Bill expands authorized uses and cultivation of hemp and allows the transfer of hemp derived products across state lines for commercial or other purposes. A qualifying state plan to monitor and regulate the production of hemp must include licensing provisions, among other required content, and must be approved by the U.S. Secretary of Agriculture.

Chapters 475 and 476 of 2018 established an Industrial Hemp Pilot Program administered by MDA, consistent with authorizations under the 2014 federal Farm Bill, and excluded industrial hemp from the definition of “marijuana” under criminal law provisions addressing controlled dangerous substances. *House Bill 1123 (passed)* alters the pilot program to be the Hemp Research Pilot Program and establishes a regulatory framework for the commercial production of hemp in the State. Broadly, the bill (1) establishes a Hemp Farming Program in MDA; (2) establishes a Hemp Farming Fund to support the program; (3) requires MDA to establish a plan for monitoring and regulating the production of hemp in the State and submit the plan to the U.S. Secretary of Agriculture; and (4) prohibits the production of hemp outside the scope of the bill. MDA, in coordination with the Natalie M. LaPrade Medical Cannabis Commission, must adopt regulations

to implement the bill and protect hemp growers and medical cannabis growers from the risk of cross-pollination.

Milk Labeling

In January 2017, the Dairy Pride Act was introduced in the U.S. Congress to require FDA to enforce its definition of milk due to the prevalence of plant-based alternatives being labeled as “milk.” In September 2018, FDA requested public comments on how the administration should address the issue of plant-based liquids and milk labeling. *Senate Bill 922 (passed)* prohibits a person from stating on a label of a food product that the product is “milk” unless it meets a specified definition. The Maryland Department of Health (MDH) must establish and implement a plan to enforce this prohibition, including notice of MDH’s intent to implement a ban on all products that do not meet the bill’s requirements, including plant-based products mislabeled as milk. The bill is contingent on the enactment of similar legislation in 11 of 14 listed states.

Agritourism

The construction, alteration, or modification of an agricultural building for which agritourism is an intended subordinate use is exempted from adhering to the Maryland Building Performance Standards in specified counties. In those counties, an existing agricultural building used for agritourism is not considered a change of occupancy that requires a building permit if certain conditions are met. *Senate Bill 99/House Bill 639 (both passed)* exempt an agricultural building in Allegany, Anne Arundel, Baltimore, and Kent counties used for agritourism from adhering to the Maryland Building Performance Standards. The bills also exempt agricultural buildings in the same four counties, as well as in Prince George’s and St. Mary’s counties, from obtaining a change of occupancy permit if (1) the building’s use for agritourism does not require it to be occupied by more than 200 people at any one time and (2) the width of egress for the building meets specified building code standards.

Maryland Commercial Fertilizer Law

Definition of Soil Conditioner

Under the Maryland Commercial Fertilizer Law, “soil conditioner” means any substance or mixture of substances intended for sale, offered for sale, or distributed for (1) manurial, soil enriching, or soil corrective purposes; (2) promoting or stimulating the growth of plants; (3) increasing the productivity of plants; (4) improving the quality of crops; or (5) producing any chemical or physical change in the soil, except a commercial fertilizer, unmanipulated animal and vegetable manures, agricultural liming material, and gypsum. “Soil conditioner” includes materials such as compost, peat, vermiculite, or perlite that are incorporated into the soil. *House Bill 511 (passed)* alters the definition of “soil conditioner” to include digestate produced by anaerobic digestion that is incorporated into the soil.

Departmental Programs and Functions

Maryland Produce Safety Program

House Bill 50 (passed) establishes a Maryland Produce Safety Program in MDA to reduce the risk of adverse impacts on human health from the consumption of contaminated produce. The program must conform with specified federal standards for growing, harvesting, packing, and holding produce for human consumption. When conducting a “covered activity” on “covered produce,” a “covered farm” must comply with the requirements of the program. A farm that has been granted a qualified exemption must comply with more limited requirements under federal regulations. A covered farm, including one that has a qualified exemption, must keep specified records. The Secretary of Agriculture has broad enforcement authority under the program. The bill terminates if the federal standards are repealed or federal funding to implement the bill either is not received or is exhausted.

Regulation of Poultry to Protect Animal Health and Control Avian Influenza

In response to an avian influenza disease outbreak in Maryland, Chapter 390 of 2005 authorized the Secretary of Agriculture to adopt an animal health program that is applicable to any live poultry market, production facility, and poultry dealer and that meets specified federal regulatory requirements regarding avian influenza. A “live poultry market” means any facility where live poultry is gathered to be slaughtered and sold on site. However, with growing interest in small poultry sales and backyard flocks, the current and future poultry disease threat also lies in poultry markets other than the traditional large auction markets, such as swap meets, flea markets, and small retail markets. MDA further indicates that the limited authority under existing law has prevented it from establishing comprehensive regulations – leading to the need for special, emergency orders to control and prevent disease – and has impeded enforcement actions. **Senate Bill 56 (passed)** expands the existing authority of the Secretary to regulate live poultry markets, production facilities, and poultry dealers to protect animal health and control avian influenza by broadening the definition of the markets to which the Secretary’s authority applies and by providing the Secretary with certain flexibility to determine how to apply that authority. In addition, the requirement that an animal health protection program adopted by the Secretary meet specified federal requirements is changed to an authorization for the adopted program to include a program that meets the federal requirements.

Nuisance Insects

Chapters 584 and 585 of 2016 authorized DNR, subject to available funding and in conjunction with MDA and the University of Maryland’s Department of Entomology, to implement a program (initially in Washington County) to control the spread of black flies in the State. **House Bill 1353 (passed)** repeals the black fly control provisions enacted in 2016 and instead authorizes the Secretary of Agriculture to implement a specified program to control or eliminate nuisance insects in the State. “Nuisance insect” is defined under the bill as an insect that is determined by the Secretary to pester or annoy only humans. “Nuisance insect” does not include a pollinator or any insect that is a threat to the health of humans, animals, or plants.

Noxious Weeds

The Maryland Weed Control Program in MDA is responsible for the control and eradication of designated noxious weeds in order to reduce their economic and aesthetic impact on farmers and landowners. In a report required by Chapter 246 of 2018, which focused on the invasive weed Palmer amaranth, MDA indicates that designated noxious weeds (Johnsongrass, shattercane, and thistles) can cause losses in excess of \$25 million annually to Maryland agriculture due to reduced yields, decline of quality of crops and forages, and increased control costs. According to MDA, increased expenses are also incurred for roadside and noncrop property management. *House Bill 808 (passed)* repeals the existing list of plants designated as noxious weeds in statute and instead requires the Secretary of Agriculture to adopt regulations establishing a list of plants that are considered to be noxious weeds. The bill also establishes penalties for violations of the provisions regulating noxious weeds.

Maryland Farms and Families Fund

Chapters 395 and 396 of 2017 established the Maryland Farms and Families Program within MDA and the Maryland Farms and Families Fund to implement the program. The purpose of the program is to double the purchasing power of food-insecure Maryland residents with limited access to fresh fruits and vegetables and to increase revenue for farmers through redemption of federal nutrition benefits at Maryland farmers markets. The purpose of the fund is to provide grants to nonprofit organizations that match purchases made with Farmers Market Nutrition Program, Supplemental Nutrition Assistance Program, and Special Supplemental Food Program for Women, Infants, and Children benefits at participating farmers markets and meet specified qualifications. *Senate Bill 483/House Bill 84 (both passed)* expand the purpose and use of the fund to include providing grants to (1) nonprofit farmers markets to implement the program and (2) local nonprofit organizations to implement the program in partnership with one or more participating local farmers markets. In addition, the bills modify the provision regarding the required funding for the fund. Instead of the existing language that makes \$500,000 in annual funding subject to the limitations of the State budget, the bills require the Governor to include an appropriation of \$100,000 to the fund in the annual budget bill. The appropriation must be in addition to, and may not supplant, any funding appropriated to the Marketing and Promotion Division in MDA.

Commercial Compost

Regulations adopted by the Secretary of Agriculture require a person to pay a registration fee and register each brand or classification of compost with MDA before selling or distributing it in the State. The registration fee is \$15 for each brand or classification in bulk or in a package larger than 10 pounds. The registration fee for each brand or product in a package that is 10 pounds or less is \$30. Additionally, each registrant for each compost must submit (1) a semiannual written statement of the tonnage for each brand and classification of compost distributed in the State and (2) an inspection fee of 25 cents for each ton distributed. *House Bill 954 (passed)* prohibits the Secretary of Agriculture from adopting regulations that impose a per ton inspection fee on commercial compost distributed by a private entity in the State. The bill terminates after three years.