

The Maryland Farm Bureau Hotline

Legislative proposals that impact Maryland's farm community



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Government Relations Bulletin #1 – May 6, 2009

During the months between the Maryland General Assembly sessions, we will publish the MFB Hotline/GRB every couple of weeks to keep Farm Bureau members up to speed on local, state and federal government actions. The GRB will be sent by email to all MFB members who are currently on our Hotline email list. We will also post the GRB on the Farm Bureau website at: www.mdfarmbureau.com.

National Update

Clean Water Restoration Act

Senator Barbara Boxer (D-Calif.), Chair of the Senate Environment and Public Works Committee, has delayed the mark-up of Senator Russell Feingold's (D-Wis.) Clean Water Restoration Act (CWRA), S. 787. The mark-up, originally scheduled for May 7, is expected to be postponed for one week. A copy of the bill can be found at the following link, <http://www.thomas.gov/cgi-bin/query/z?c111:S.787>.

The bill before the committee will delete the term "navigable" from the Clean Water Act, effectively rolling back two key Supreme Court decisions supported by Farm Bureau. The result will be regulations that give the Corps and EPA authority to regulate all intrastate isolated wetlands that "could" affect interstate or foreign commerce. This amendment, if adopted, would return federal jurisdiction to both isolated intrastate waters and ephemeral streams. Ephemeral streams are defined in regulation to be streams that have "flowing water only during, and for a short duration after, precipitation events in a typical year."

ACTION REQUEST:

Maryland Farm Bureau members should call or email Senator Barbara Mikulski and Senator Ben Cardin immediately to let them know that you oppose S.787, the Clean Water Restoration Act. This bill will bring more federal regulation to Maryland farms.

Senator Cardin is a member of the Environment and Public Works Committee, which will be voting on the bill as early as May 12th. He also cosponsored the bill. Urge Senator Cardin to remove his name as a cosponsor of the bill and urge him to vote "no" during the Committee consideration. Let him know that you are a family farmer from Maryland and that the S. 787 will harm your business. You can reach Senator Cardin at in Washington at (202) 224-4524, in Baltimore at (410) 962-4436, in Salisbury at (410) 546-4250, in Bowie at (301)860-0414 and in Cumberland at (301) 777-2957. You can send Senator Cardin an email by logging onto his website at www.cardin.senate.gov and selecting the "contact" tab and then the "email form."

Senator Mikulski is not on the Committee, but she is very influential in the Senate and you should urge her to oppose the bill and to contact her colleagues on the EPW Committee to let them know how harmful S. 787 will be to the farm families of Maryland. You can reach Senator Mikulski in Washington at (202) 224-4654, in Baltimore at (410) 962-4510, in Annapolis at (410) 263-1805, in Greenbelt at (301) 345-5517, in Salisbury at (410) 546-7711 and in Hagerstown at (301) 797-2826. You can email Senator Mikulski by logging onto her website at www.mikulski.senate.gov and selecting the “How can I help you?” tab and then the “Send me your opinion” tab.

Summary of Concerns with the Clean Water Restoration Act

1. S.787 does not “restore” the Clean Water Act (CWA) to what it was before a series of Supreme Court decisions. Instead, the bill is written to create a new and broad set of federal authorities over water features and dry land never before held by federal regulators in the CWA’s 37-year history. These new authorities would remove the CWA’s historical link to “navigable waters” and replace it with a broadly defined federal jurisdiction that includes “all intrastate waters.” In 1972 Congress explicitly established federal authority over waters based upon the Commerce Clause. S.787 would grant a sweeping new authority to regulators based upon the fullest extent of Congress’s legislative power. For the first time in 37 years, federal regulators would have authority not only directly over water itself, but over “activities affecting” water bodies. Despite the rhetoric of “restoration,” the plain language of this bill fundamentally changes and expands the federal regulatory framework the CWA in ways never seen in the CWA’s 37 year history. For example:
2. S. 787 broadens the list of waters that would fall under federal jurisdiction. The most obvious change set forth in the bill is the deletion of the term “navigable water” from the CWA. This key term is replaced with the term “waters of the United States,” which is broadly defined to include **all** inter- and intra-state waters.
3. S. 787 also explicitly erases the distinction between federal and state waters. The bill regulates “*all intra-state waters*” to “the fullest extent of . . . the legislative power of Congress under the Constitution.” Unlike the current CWA, the bill would regulate groundwater, ephemeral waters, ditches, municipal storm drains, and other water conveyance facilities currently regulated by the states.
4. S. 787 thus federalizes all waters and water-related decisions by removing the states’ independent authority to plan the development and use of land and water resources and to allocate water within each state’s jurisdiction. The prominent, historical and effective role of state water regulators is unequivocally removed in favor of federal regulators. S.787 only “*preserv[es] for States the ability to manage permitting, grant, and research programs to prevent, reduce, and eliminate pollution . . .*” As a result, S.787 abandons the cooperative federalism policies of sections 101(b) and 101(g) of the current CWA.
5. S. 787 would grant federal regulators a new and expansive authority over “activities affecting these waters” for the first time in the 37-year history of the CWA. By regulating a new, undefined and expansive set of “activities” in addition to the traditional regulation of discharges, S.787 would not only result in an added regulatory burden on farmers and ranchers, but create increased confusion regarding the jurisdictional reach of the CWA. Such a state of affairs would undoubtedly lead to more litigation.
6. The bill’s regulation of “activities” clearly moves the federal regulatory authority beyond water into dry land, such as ditches, extending it to over 55 million acres of prime farmland. S.787 erases long held regulatory exclusions for waste treatment ponds and prior converted cropland.

7. S.787 includes a so-called “savings clause.” The inadequate provision does not exempt any waters or areas from the bill’s broad definition of “waters of the United States.” Instead, the savings clause exempts certain newly regulated *activities* from being considered “discharges.” The regulation of “activities affecting” waters - coupled with existing regulation of discharges into waters - removes any sense of relief from the ineffective “savings clause.”

Local Affairs Update

Wicomico Downzoning Measure Defeated

After over a year of discussions, meetings, public hearings, and work sessions, on Tuesday, May 5th, the Wicomico County Council voted 4-3 against Bill 2009-05 with the deciding vote cast by Council President John Cannon.

The bill’s sponsors touted it as a means to preserve farmland and to maintain the county’s rural heritage. However, it ended up pitting environmental groups against the majority of landowners in the county. The bill would have deleted the county zoning code’s cluster rule, which allows a density of 1 dwelling unit per 3 acres when half the land is kept as open space. With that provision eliminated, the bill would have effectively downzoned the applicable zoning districts to one per 10 or 15 acres with a higher density being allowed on 1-acre lot sizes and the lower density on 2-acre lot sizes.

Last year, as debate on the issue heated up, the Wicomico County Farm Bureau adopted the following position statement, “If the 1 lot per 3 acre cluster is eliminated, landowners shall be compensated for the loss of value of their land.”

Although the measure failed, all stakeholders agree that the debate is likely to continue. County Executive Rick Pollitt issued a statement the same day thanking citizens on both sides of the issue for their input and participation in the process. He went on to announce his intention to appoint a commission whose key charge will be proposing the implementation of a “valid agricultural land preservation program that will relieve our local farmers from some of the stress caused by rampant development...allowing them to maintain ownership of their property while gaining a fair measure of compensation for not pursuing the development option.” Ideally, their report would be available in August to coincide with the adoption of a new comprehensive plan due in October.