

HOUSE No. 2403

The Commonwealth of Massachusetts

Senate, July 30, 2012.

BILL #: H04306

BILL STATUS: Favorable with Amendment

DISSENTERS:

None

ACCOMPANIED BILLS:

None

For the committee,

STEPHEN M. BREWER

SENATE No. 2403

The committee on Senate committee on Ways and Means to whom was referred the House Bill relative to reducing phosphorus runoff (House, No. 4306) report recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2403.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

1 SECTION 1. Section 2 of chapter 128 of the General Laws, as most recently amended by
2 section 36 of chapter 194 of the acts of 2011, is hereby amended by adding the following
3 subsection:-

4 (k) Maintain exclusive authority to regulate and enforce the registration and application
5 of plant nutrients put on or in soil to improve the quality or quantity of plant growth, including,
6 but not limited to, fertilizer, manure and micronutrients in the commonwealth.

7 The department shall promulgate regulations that specify when plant nutrients may be
8 applied and locations in which plant nutrients shall not be applied. Subject to appropriation, the
9 department may also develop regulations regarding the use of plant nutrients designed to
10 mitigate significant risks to human health and the environment. The department may limit the
11 scope of those regulations regionally as appropriate. The department shall work in conjunction
12 with the University of Massachusetts Amherst Extension to ensure any regulations of the
13 department relative to plant nutrients are consistent with the program's published information,
14 educational materials and other public outreach programs relative to nutrient management and
15 fertilizer guidelines.

16 The department may establish fines for violations of regulations promulgated under this
17 subsection which shall not exceed \$250 for a first offense, \$500 for a second offense and \$1000
18 for a third or subsequent offense.

19 A person aggrieved by the assessment of a fine under this subsection may appeal that fine
20 by filing a notice of appeal with the division of administrative law appeals within 10 days of the
21 receipt of the notice of the fine. An appellant shall be granted a hearing before the division of
22 administrative law appeals under chapter 30A. The hearing officer may affirm or, if the
23 aggrieved person demonstrates by a preponderance of evidence that the fine was erroneously
24 issued, vacate or modify the fine. A person aggrieved by a decision of the hearing officer may
25 file an appeal in the superior court under said chapter 30A.

26 SECTION 2. Section 64 of said chapter 128, as appearing in the 2010 Official Edition, is
27 hereby amended by inserting after the definition of “Distributor” the following definition:-

28 “Fertilizer”, commercially produced fertilizers used as soil and plant amendments;
29 provided, that “fertilizer” shall not include organic compost or natural organic fertilizer.

30 SECTION 3. Said section 64 of said chapter 128, as so appearing, is hereby further
31 amended by inserting after the definition of “Labeling” the following definition:-

32 “Lawn” or “non-agricultural turf”, any non-crop land area that is covered by any grass
33 species, excluding flower or vegetable gardens, pasture, hay land, trees, shrubs, turf grown on
34 turf farms or any form of agricultural production or use.

35 SECTION 4. Said section 64 of said chapter 128, as so appearing, is hereby further
36 amended by inserting after the definition of “Mixed fertilizer” the following definition:-

37 “Natural organic fertilizer”, materials derived from either plant or animal products
38 containing 1 or more elements, other than carbon, hydrogen and oxygen, which are essential for
39 plant growth. These materials may be subject to biological degradation processes under normal
40 conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic or anaerobic
41 or aerobic bacterial action or any combination of those conditions. These materials shall not be
42 mixed with synthetic materials or changed in any physical or chemical manner from the
43 material’s initial state except by manipulations such as drying, cooking, chopping, grinding,
44 shredding, hydrolysis or pelleting.

45 SECTION 5. Said section 64 of said chapter 128, as so appearing, is hereby further
46 amended by inserting after the definition of “Official sample” the following definition:-

47 “Organic compost”, the biologically stable humus-like material derived from composting
48 or the aerobic, thermophilic decomposition of organic matter.

49 SECTION 6. Said section 64 of said chapter 128, as so appearing, is hereby further
50 amended by inserting after the definition of “Phosphoric acid” the following definition:-

51 “Phosphorus containing fertilizer”, fertilizer labeled for use on lawn or non-agricultural
52 turf in which the available phosphate content is greater than 0.67 per cent by weight, excluding
53 organic compost and natural organic fertilizer.

54 SECTION 7. Said chapter 128 is hereby further amended by inserting after section 65
55 the following section:-

56 Section 65A. (a) No person shall purchase and apply or authorize any person, by way of
57 service contract or other arrangement, to apply in the commonwealth any phosphorus containing
58 fertilizer on lawn or non-agricultural turf, except when:

59 (1) a soil test indicates that additional phosphorus is needed for growth of that
60 lawn or non-agricultural turf; or

61 (2) the phosphorus fertilizer is confirmed to be used for establishing a new lawn
62 or new non-agricultural turf area.

63 (b) The department shall promulgate regulations to implement subsection (a) and may,
64 consistent with subsection (a) and in consultation with the department of environmental
65 protection, develop additional regulations designed to limit non-point source pollution from plant
66 nutrients including, but not limited to, phosphorous and nitrogen. Such regulations may require
67 retailers of phosphorus containing fertilizer to display such fertilizers separately and post signs
68 specifying when and where phosphorus containing fertilizer may be applied.

69 (c) Regulations promulgated under this section shall be designed to maximize credits
70 provided to municipalities by the United States Environmental Protection Agency relative to
71 stormwater discharge and similar permits, which the Environmental Protection Agency may
72 require of municipalities.

73 (d) Violations of any regulations promulgated under this section shall be subject to the
74 penalties set forth in subsection (k) of section 2.

75 SECTION 8. Notwithstanding subsection (k) of section 2 of chapter 128 of the General
76 Laws, any rule, regulation, ordinance or bylaw relative to nutrient management and fertilizer

77 guidelines of a city or town in existence prior to January 1, 2013 shall remain enforceable by that
78 city or town.

79 SECTION 9. Notwithstanding subsection (k) of section 2 of chapter 128 of the General
80 Laws, any rule, regulation, ordinance or bylaw relative to nutrient management and fertilizer
81 guidelines specific to sewerage sludge of a city or town in existence prior to July 1, 2013 shall
82 remain enforceable by that city or town.

83 SECTION 10. Sections 2 to 7, inclusive, shall take effect on January 1, 2014.