

HOUSE No. 04394

Text of a further amendment, offered by Mr. Fernandes of Milford, to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2403, amended) of the House Bill relative to reducing phosphorus runoff (House, No. 4306).

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to reducing phosphorus runoff .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Section 2 of chapter 128 of the General Laws, as most recently amended by section
2 36 of chapter 194 of the acts of 2011, is hereby amended by adding the following subsection:-
3 (k) Maintain authority to regulate and enforce the registration and application of plant nutrients
4 put on or in soil to improve the quality or quantity of plant growth, including, but not limited to,
5 fertilizer, manure and micronutrients in the commonwealth.
- 6 The department shall promulgate regulations that specify when plant nutrients may be applied
7 and locations in which plant nutrients shall not be applied. Subject to appropriation, the
8 department may also develop regulations regarding the use of plant nutrients designed to
9 mitigate significant risks to human health and the environment. The department may limit the
10 scope of those regulations regionally as appropriate. The department shall work in conjunction

11 with the University of Massachusetts Amherst Extension to ensure any regulations of the
12 department relative to plant nutrients are consistent with the program's published information,
13 educational materials and other public outreach programs relative to nutrient management and
14 fertilizer guidelines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68 (c) Regulations promulgated under this section shall be designed to maximize credits provided to
69 municipalities by the United States Environmental Protection Agency relative to stormwater

70 discharge and similar permits, which the Environmental Protection Agency may require of
71 municipalities.

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

74 SECTION 8. Notwithstanding subsection (k) of section 2 of chapter 128 of the General Laws,
75 any rule, regulation, ordinance or bylaw relative to nutrient management and fertilizer
76 guidelines: (i) of a city or town in existence prior to July 31, 2012, shall remain enforceable by
77 that city or town; or (ii) specific to sewerage sludge of a city or town in existence prior to
78 January 1, 2013, shall remain enforceable by that city or town.

79 SECTION 9. Notwithstanding subsection (k) of section 2 of chapter 128 of the General Laws,
80 any rule, regulation, ordinance or bylaw relative to nutrient management and fertilizer
81 guidelines: (i) adopted under chapter 561 of the acts of 1973, chapter 831 of the acts of 1977 and
82 chapter 716 of the acts of 1989, shall remain enforceable, so long as such rule, regulation,
83 ordinance or bylaw is not less restrictive than regulations adopted by department of agricultural
84 resources under section 1 and shall be done in conjunction with the University of Massachusetts
85 Amherst Extension to ensure any regulations relative to plant nutrients are consistent with the
86 program's published information, educational materials and other public outreach programs
87 relative to nutrient management and fertilizer guidelines; or (ii) adopted in accordance with a
88 regional water resources management plan under chapter 312 of the acts of 2008, shall be
89 enforceable, so long as such rule, regulation, ordinance or bylaw is not less restrictive than
90 regulations adopted by the department of agricultural resources under section 1 and shall be done
91 in conjunction with the University of Massachusetts Amherst Extension to ensure any

92 regulations relative to plant nutrients are consistent with the program's published information,
93 educational materials and other public outreach programs relative to nutrient management and
94 fertilizer guidelines.

95 SECTION 10. Regulations promulgated under Section 1 and Section 9 shall be completed by
96 January 1, 2014.

97 SECTION 11. Sections 2 to 7, inclusive, shall take effect on January 1, 2014.