

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 917 (Senator Lenett, *et al.*)
Education, Health, and Environmental Affairs

Agriculture - Fertilizers and Pesticides - Release Reporting

This bill requires the Maryland Department of Agriculture (MDA) to adopt regulations that establish reporting requirements concerning the release (defined as application, use, or spill) of fertilizers and pesticides. Fertilizer and pesticide reports, covering the preceding calendar year, must be submitted annually to MDA beginning March 1, 2011. MDA must serve as the repository for data regarding fertilizer and pesticide release in the State, but may delegate its responsibility to another State agency or private contractor. The bill establishes a Fertilizer and Pesticide Release Fund, administered by MDA, for the collection, management, and analysis of release data and for enforcement of the bill's provisions. The bill specifies requirements applicable to the reporting of release data; other powers and responsibilities of MDA, including the imposition of annual fees and the establishment of an online electronic reporting system; and prohibited actions and related enforcement provisions.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: State (general and special fund) expenditures may increase by \$596,100 in FY 2010, reflecting the costs for MDA to implement and comply with the reporting program. However, special fund expenditures are offset by corresponding special fund revenue increases. Future years reflect ongoing expenditures for MDA to implement and comply with the program and special fund revenues. Any impact on other State agencies, including institutions of higher education, to comply with the reporting requirement as well as potential MDE information technology costs have not been quantified.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SF Revenue	\$200,000	\$200,000	\$400,000	\$400,000	\$400,000
GF Expenditure	\$396,100	\$475,900	\$275,600	\$288,500	\$321,700
SF Expenditure	\$200,000	\$200,000	\$400,000	\$400,000	\$400,000
GF/SF Exp.	-	-	-	-	-
Higher Ed Exp.	-	-	-	-	-
Net Effect	(\$396,100)	(\$475,900)	(\$275,600)	(\$288,500)	(\$321,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government expenditures may increase to comply with the bill's reporting requirements.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Reporting

Annual reports submitted by those releasing fertilizers and pesticides must include information about quantities and types of fertilizer released, the locations where fertilizer or pesticide is released, and other specified information. MDA must specify the format of reports and adopt standard naming conventions and categories for the various chemical names, product names, and product formulations.

A person who withholds information required to be reported due to confidentiality concerns must notify MDA and provide an explanation for the claim.

Inspection

MDA is authorized to inspect any records or reports of fertilizer or pesticide release, and a person must make records available for inspection during normal business hours. MDA must give at least one week advance notice if the department intends to inspect records at the location where the records are maintained.

Management of Data

MDA must coordinate the data management elements of the program with the Maryland Department of the Environment's (MDE) community right-to-know program and may share systems and resources with other departments to optimize the management and sharing of data.

Online Reporting

MDA must establish an online electronic reporting system for fertilizer and pesticide release reports that includes a means to identify the watershed in which the release took place. MDA may adopt regulations that (1) seek to achieve receipt of 90% of reports via the online reporting system by 2012 and (2) require all reports to be submitted electronically after January 1, 2015.

Access to Data

MDA may adopt rules and regulations regarding public access to the release data and must adopt regulations to ensure publicly distributed data will not result in the association of any data with a person and to protect the identity of persons required to report release information. Access to individual reports is limited to government agencies and research organizations that have a regulatory or academic interest in the release of fertilizers and pesticides. These entities, however, must demonstrate adequate security measures to prevent the release of information attributable to a person and sign an agreement to keep the identity of a person who has submitted a report confidential. A person is entitled to review of matters relating to MDA's protection of a person's identity, by an administrative law judge and an appeal to a court of competent jurisdiction, as authorized by State law.

Fertilizer and Pesticide Release Fund

The Fertilizer and Pesticide Release Fund consists of revenue distributed to the fund under the bill (from fees and penalties), money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. The fund must have an annual revenue target of \$400,000 for fiscal 2012, which may be adjusted subsequently in response to changes in the cost-of-living index used by the State.

Reporting Fee/Registration Surcharge

MDA must establish an annual fee imposed on persons required to report release information based on the cost to the department of processing specified annual report information, the quantities of the reported substances, and the toxicity of any pesticide released. The fee must be evaluated and adjusted annually to meet the fund's annual revenue target but may not exceed \$250 annually for persons with one reporting entity and \$2,500 annually for persons with more than one reporting entity. Federal, State, and local government agencies are exempt from paying any fees. MDA is authorized to adopt regulations to create specified exemptions from the fees in specified circumstances.

Beginning March 1, 2012, the annual fee must be paid to the fund no later than March 1 annually. In 2010 and 2011, MDA must place a surcharge on fertilizer and pesticide registration in an amount to generate \$400,000 in total over both years, to support the development of the reporting program.

Enforcement

A person may not knowingly or recklessly report false information. A person is subject to specified penalties for noncompliance with the bill's requirements, including:

- up to a \$100 penalty for an initial notice of noncompliance;
- up to a \$10,000 penalty (per notice) for not submitting required reports or fees after specified second and subsequent notices;
- up to a \$20,000 penalty for knowingly submitting false information in a report;
- up to a \$10,000 penalty for violating specified confidentiality provisions; and
- existing penalties under the Agriculture Article.

The Attorney General is responsible for enforcing the bill's provisions.

Current Law/Background: MDA licenses commercial pest control and not-for-hire firms, issues permits to public agencies for pesticide application, and certifies private applicators (farmers or growers who wish to use restricted use pesticides in the production of agricultural commodities). MDA indicates there are currently 1,433 licensed commercial pest control businesses, 169 licensed not-for-hire businesses, 324 permitted public agencies, and 2,819 certified private applicators.

Based on information from the recently completed 2007 Agricultural Census, the 2,819 certified private applicators are equivalent to 22% of the 12,853 farms in Maryland, the remainder of which (10,034 farms) would all have the potential to release pesticides or fertilizers. According to MDA, these farms may contract with commercial firms to apply fertilizers or pesticides for them or may be applying general use pesticides themselves. There is no license requirement for farmers or growers to apply general use pesticides or fertilizers.

MDA estimates at least 1,050 firms are applying fertilizers, but these firms are not required to be licensed, permitted, or certified.

State Expenditures: State general and special fund expenditures increase by at least \$596,070 in fiscal 2010 (\$200,000 special fund expenditures due to available surcharge revenue – see State Revenues and stated assumptions – and \$396,070 general fund expenditures to cover the balance). The estimate accounts for a 90-day start-up delay.

The estimate reflects the cost of hiring six additional employees in fiscal 2010 within MDA.

Positions	6
Salaries and Fringe Benefits	\$296,870
Database Software/Development	216,400
Office Furniture	16,215
Additional Computer Equipment	22,000
Other Operating Expenses	<u>44,585</u>
Total FY 2010 State Expenditures	\$596,070

The estimate includes salaries, fringe benefits, one-time start-up costs (including a secure database system to accept online data entry), and ongoing operating costs. The estimate assumes that MDA will handle the data management requirements under the bill, contracting with a vendor to develop a secure database system to accept online data entry of fertilizer and pesticide releases. The estimate assumes a cost of \$150,000 for contractual services incurred in fiscal 2010 to develop the database, reflecting 20 weeks of work at \$7,500 per week. Actual costs of a contract may vary, and a portion of the costs may be incurred in fiscal 2011. The estimate does not account for costs of any database upgrades, which may be incurred in future years. The estimate also assumes reporting requirements are not applicable to homeowners.

Future year expenditures reflect (1) full salaries with 4.4% annual increases; (2) 3% employee turnover for regular employees and 6.8% employee turnover for contractual employees; (3) the cost of hiring 4.5 additional employees in fiscal 2011 and associated equipment and expenses; and (4) 1% annual increases in ongoing operating expenses. Thus, over the two-year period, 10.5 additional employees are hired in MDA as follows:

- a database manager – to provide technical advice, coordination, review, evaluation, and oversight of the development and implementation of the online fertilizer and pesticide reporting database system;
- two database specialists – to provide coordination on data entry issues;
- two and one-half data entry operators – to transfer data into the database system (submitted paper reports and county level data entered by MDA’s Noxious Weed Control Program) (hired in fiscal 2011);
- an entomologist – to provide technical expertise on pesticide products, develop training and guidance materials, coordinate and conduct outreach and training programs, and perform quality assurance and quality control of the data entered;

- an agricultural inspector – to assist with outreach and training efforts and conduct compliance and enforcement inspections (hired in fiscal 2011);
- two secretaries – to organize, review, and compile data and provide data quality control with respect to data from MDA’s pest management activities and to invoice and process fee payments (one hired in fiscal 2010; one hired in fiscal 2011); and
- an assistant Attorney General – to provide advice, assistance, and oversight regarding confidentiality agreements and enforcement actions.

To the extent the bill’s provision requiring coordination of the data management elements of this program with MDE’s community right-to-know program is interpreted to require interfacing between the two data management systems, MDE indicates it may incur web services and information technology (IT) storage costs, though any costs cannot be determined at this time.

Further, if future regulations apply the bill’s reporting provisions to State agencies, State expenditures may increase. Any such impact cannot be reliably quantified at this time. *For illustrative purposes only*, the State Highway Administration may incur \$80,000 of costs annually to comply with reporting requirements. There are currently 115 State agencies (including higher education institutions) permitted by MDA to apply pesticides. Presumably these agencies may require additional resources to comply with the reporting requirement.

State Revenues: Special fund revenues increase by \$200,000 in fiscal 2010 and 2011 due to the imposition of a surcharge on pesticide and fertilizer registration. This estimate assumes the \$400,000 required to be generated by the imposition of the surcharge is generated in equivalent amounts of \$200,000 in fiscal 2010 and 2011. Special fund revenues in fiscal 2012 and subsequent years reflect annual fee revenues from individuals required to submit reports. This estimate assumes sufficient fees are collected to meet the \$400,000 annual revenue target for fiscal 2012 forward.

Special fund revenues may also increase due to the bill’s monetary penalty provisions.

Local Fiscal Effect: Local government expenditures may increase to comply with the bill’s reporting requirements. There are currently 161 local government agencies permitted by MDA to use pesticides, but the number applying fertilizers is unknown. Public agencies are exempted from a reporting fee, but MDA indicates local government agencies may need additional resources to organize and format fertilizer and pesticide release data and may incur expenses associated with ongoing data formatting, quality control, and data entry.

Small Business Effect: Small businesses that need to report fertilizer and pesticide release data may be meaningfully impacted. MDA estimates approximately 70% to 75% of entities that need to report fertilizer and pesticide release data are small businesses.

Affected small businesses are subject to an up to \$250 annual fee and presumably may incur costs associated with collecting, maintaining, and submitting fertilizer and pesticide release data. To the extent entities without the current capability to report release data online may eventually be required to do so, or would otherwise decide to do so to meet the reporting requirements, costs presumably may further increase for those businesses. According to the 2007 Agricultural Census, only 61% of Maryland farmers have Internet access.

MDA indicates that estimates it has received from several businesses to comply with reporting requirements ranged from \$3,000 to \$40,000 annually.

Small businesses may also be affected by the surcharge MDA must impose on fertilizer and pesticide registration, whether small business registrants of fertilizers and pesticides or fertilizer and pesticide users, to the extent the cost of the surcharge is passed on to users. Whether the surcharge would meaningfully impact a given small business, however, is uncertain.

Additional Information

Prior Introductions: None.

Cross File: HB 929 is designated as a cross file; however, it is not identical.

Information Source(s): Office of the Attorney General, Maryland Department of Agriculture, Maryland Department of the Environment, Department of Natural Resources, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Maryland Department of Transportation, Montgomery County, Department of Legislative Services

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