

**Department of Legislative Services**  
2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 785 (Senator Montgomery, *et al.*)  
Education, Health, and Environmental Affairs

**Agriculture - Pesticides - Use, Release, Sale, and Purchase Reporting**

This bill requires the Maryland Department of Agriculture (MDA) to adopt regulations that establish reporting requirements concerning the use and release of pesticides and the purchase and sale of restricted use pesticides. Pesticide use and release reports, covering the preceding calendar year, must be submitted annually to MDA beginning March 1, 2013. Restricted use pesticide sale and purchase reports must be submitted at least monthly. MDA must serve as the repository for the data. The bill establishes a Pesticide Use and Release Fund to be used primarily for the collection, management, and analysis of the pesticide data and for enforcement of the bill's provisions. The bill specifies requirements applicable to the reporting of use and release data; other powers and responsibilities of MDA, including the imposition of a surcharge on pesticide registration fees and the establishment of an online electronic reporting system; and prohibited actions and related enforcement provisions. MDA is also required to establish, and take specified actions in relation to, a tracking system for suspicious pesticide purchases.

The bill takes effect July 1, 2011.

**Fiscal Summary**

**State Effect:** Special fund revenues and expenditures increase by \$659,520 in FY 2012, reflecting the costs for MDA to implement and comply with the bill's requirements and revenue generated by a surcharge on pesticide registration fees to cover program costs. 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 has not been quantified, but may be minimal in many cases.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
SF Revenue	\$659,500	\$773,500	\$667,500	\$689,800	\$724,900
SF Expenditure	\$659,500	\$773,500	\$667,500	\$689,800	\$724,900
GF/SF Exp.	-	-	-	-	-
Higher Ed Exp.	-	-	-	-	-
Net Effect	\$0	\$0	\$0	\$0	\$0

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 requirements.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary:

#### *Reporting*

Annual reports submitted by those using or releasing pesticides must include information about quantities and types of pesticide used or released, the locations where pesticide is used or released, and other specified information. Required contents of restricted use pesticide sale and purchase reports are not specified.

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 that 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 pesticide use, release, sale, and purchase by a person and, on request by MDA, 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 may delegate the management of its data repository functions to another State agency or private contractor 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 pesticide reports that includes a means to identify the watershed in which a use or release takes place. MDA may adopt regulations that (1) seek to achieve receipt of 90% of reports via the online reporting system by 2013; and (2) require all reports to be submitted electronically after January 1, 2016.

### *Access to Data*

MDA may adopt regulations regarding public access to the use, release, sale, and purchase 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 pesticide information. Access to individual reports is limited to government agencies and research organizations that have a regulatory or academic interest in the use, release, sale, or purchase of 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 a review of matters relating to MDA's protection of a person's identity by an administrative law judge and to an appeal to a court of competent jurisdiction, as authorized by State law.

### *Pesticide Use and Release Fund/Registration Surcharge*

The Pesticide Use and Release Fund consists of revenue distributed to the fund under the bill (from a surcharge 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 that must be set and adjusted annually by MDA in response to documented program needs or changes in the cost-of-living index used by the State. The revenue target must be set at a level sufficient to cover all costs of the program. If the fund has sufficient money to cover all costs of the pesticide reporting program established by the bill for the upcoming fiscal year, excess money may be used for administering the Office of the State Chemist.

MDA must place a surcharge on pesticide registration fees in an amount sufficient to meet the annual revenue target of the Pesticide Use and Release Fund. The surcharge is deposited into the fund and is for the purpose of supporting the development and operation of, and compliance with, the reporting program.

### *Enforcement*

A person may not knowingly or recklessly report false information in response to a reporting requirement under the bill. 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

- specified existing criminal penalties under the Agriculture Article for knowing or reckless violations.

A person who fails to pay a specified final penalty within 30 days of the penalty becoming final is subject to a lien recorded against any real property owned by the person.

MDA and other agencies assigned to support the department are responsible for enforcing the bill's provisions.

### *Tracking System for Suspicious Pesticide Purchases*

The bill requires MDA to establish a tracking system to facilitate the reporting, recording, and investigating of suspicious pesticide purchases. The system must include a toll-free telephone line to allow anonymous reports and a database to record reports. Once a report has been entered into the database, MDA must review the report and forward any report determined to contain credible evidence of potentially dangerous or illegal activity to the appropriate federal or State law enforcement agency. MDA must adopt implementing regulations pertaining to the tracking system by October 1, 2012.

**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 regulations currently require licensees, permittees, and certified private applicators to keep specified records regarding pesticide applications that must be made available upon request to the department. The information required to be kept is somewhat similar to that required to be reported under the bill. Current recordkeeping requirements, however, do not require identification of the watershed in which the pesticide was released, which is required under the bill. The bill also requires compilation and reporting of information, including monthly or seasonal use patterns, whereas current records are only required to be kept and made available upon request.

A person who sells or distributes a restricted use pesticide must hold a dealer permit from MDA and a dealer may not sell or distribute a restricted use pesticide to any person other than a permitted dealer or a certified applicator or the applicator's authorized representative. Restricted use pesticides are those classified as such by the U.S. Environmental Protection Agency and that pose greater potential harm than other pesticides. MDA regulations require certain records to be maintained by dealers on the sale or distribution of each restricted use pesticide. The records must be held for two years and be available, on request, to MDA. The records must contain (1) the name of the pesticide or pesticides sold or distributed, including formulation; (2) the quantity

sold or distributed; (3) the date of sale or distribution; (4) the name and address of the purchaser or receiver; and (5) the name and address of the certified applicator, if different from the purchaser or receiver.

MDA indicates that currently there are 1,476 licensed commercial pest control businesses, 173 licensed not-for-hire businesses, 322 permitted public agencies, and 3,049 certified private applicators. Based on information from the 2007 Agricultural Census, the 3,049 certified private applicators are equivalent to 24% of the 12,853 farms in Maryland, the remainder of which (9,804 farms) would all have the potential to use or release pesticides. According to MDA, these farms may contract with commercial firms to apply 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.

There are currently 137 dealers permitted to sell restricted use pesticides.

**State Expenditures:**

*Maryland Department of Agriculture*

Special fund expenditures increase by \$659,520 in fiscal 2012. The estimate accounts for a 90-day start-up delay and reflects the cost of hiring seven additional employees in fiscal 2012 within MDA to implement the new program. 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.

Positions	7
Salaries and Fringe Benefits	\$327,414
Database Software/Development	203,900
Computer Equipment	32,800
Office Furniture	16,646
Vehicles	30,000
Other Operating Expenses/One-time Costs	<u>48,760</u>
<b>Total FY 2012 State Expenditures</b>	<b>\$659,520</b>

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 pesticide reports. The estimate assumes a cost of \$275,000 for contractual services incurred over the course of fiscal 2012 and 2013 to develop the database,

reflecting 34 weeks of work at \$8,000 per week. Actual costs of a contract may vary. 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 and 3% employee turnover; (2) the cost of hiring three additional employees in fiscal 2013; and (3) 1% annual increases in ongoing operating expenses. Thus, over the two-year period, 10 additional employees are hired in MDA as follows:

- a database manager and a database specialist – to provide technical advice, coordination, review, evaluation, and oversight of the development and implementation of the online pesticide reporting database system and its components;
- two 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 2013);
- 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 received and entered;
- two agricultural inspectors – to assist with outreach and training efforts and conduct compliance and enforcement inspections;
- two secretaries – to organize, review, and compile data and perform data quality control (one hired in fiscal 2012; one hired in fiscal 2013); and
- an assistant Attorney General – to provide advice, assistance, and oversight regarding confidentiality agreements and enforcement actions.

The bill’s requirements relating to the establishment of a tracking system for suspicious pesticide purchases are expected to be complied with at minimal expense. While the requirements are not a part of the pesticide reporting program that the Pesticide Use and Release Fund is established to support, any investigations to determine whether reports contain credible evidence of potentially dangerous or illegal activity likely would be handled by the inspectors hired under the pesticide reporting program, and any costs associated with maintaining a toll-free telephone line and establishing a database to maintain the reports should be absorbable within existing resources.

### *Other State Agencies*

If MDA regulations apply the bill's reporting provisions to State agencies, State expenditures may increase for some agencies to comply. It is unclear under the bill whether surcharge revenue will be used for compliance costs of other State agencies. For the purposes of this fiscal and policy note, it is assumed that expenditures of those agencies could increase without reimbursement from surcharge funding.

MDA indicates that State agencies and local governments may need additional resources to initially organize, track, format, and review pesticide use and release data and then provide ongoing data formatting, quality control, and data entry. There are currently 113 public agency permits issued to State agencies (including higher education institutions) to apply pesticides. Some agencies have more than one permit for different operations.

Based on responses from a small number of agencies, however, it appears the reporting requirements may be able to be complied with at minimal or no expense in many cases.

**State Revenues:** Special fund revenues increase by approximately \$659,520 in fiscal 2012, assuming surcharge revenues will be equivalent to estimated special fund expenditures based on the bill's requirement that the surcharge be set at an amount sufficient to meet an annual revenue target that will cover all costs of the program. Future years reflect continuing special fund revenue increases equivalent to estimated special fund expenditure increases. Special fund revenues may further increase due to the bill's monetary penalty provisions, but any increase cannot be reliably estimated at this time.

According to MDA, in 2010 there were 13,531 registered pesticide products. If roughly the same number of products are registered in fiscal 2012 and the same surcharge is applied to all products, in order to generate the revenue necessary to fund estimated fiscal 2012 costs of the program, the surcharge will need to be roughly \$49 per registered product. The current annual pesticide registration fee, which the surcharge would be added to, is \$100.

Imposing the surcharge on the pesticide registration fees to cover program costs, in effect increasing fees, will make it difficult to increase registration fees in the future to keep pace with increasing costs currently supported by the fees. Pesticide registration fees are set in statute and are used to cover costs of the State Chemist and Pesticide Regulation sections within MDA. The bill does allow for excess money in the Pesticide Use and Release Fund to cover costs of the State Chemist, but because those costs will not be accounted for in setting the annual revenue target for the fund, the amount of any excess money available presumably will be limited.

**Local Fiscal Effect:** Local government expenditures may increase to comply with the bill's reporting requirements. There are currently 160 public agency permits issued to local government agencies to use pesticides. As mentioned above, MDA indicates government agencies may need additional resources to organize, track, format, and review pesticide use and release data and then provide ongoing data formatting, quality control, and data entry.

**Small Business Effect:** Small businesses that need to report pesticide use and release data may be meaningfully impacted. MDA estimates approximately 90% to 95% of entities that will need to report pesticide use and release data are small businesses.

Affected small businesses may incur costs associated with initially organizing pesticide use and release data and ongoing costs of data formatting, quality control, and data entry. To the extent entities without the current capability to report the 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. Based on indications from two pest control businesses, increased costs will vary based on the size of the business (and volume of pesticide applications) and could be upwards of \$10,000 annually to compile and report the use and release data.

Reporting data on sales and purchases of restricted use pesticides is expected to be less burdensome for affected small businesses and may only be required of the dealer.

Small businesses may also be affected by the surcharge MDA must impose on pesticide registration, whether small business registrants of pesticides or 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.

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### **Additional Information**

**Prior Introductions:** SB 359 of 2010, a similar bill applicable to both pesticides and fertilizers, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 930, was withdrawn. Similar bills applicable to both pesticides and fertilizers were introduced in 2009.

**Cross File:** HB 660 (Delegate Frush, *et al.*) - Environmental Matters.

**Information Source(s):** Maryland Department of Agriculture, Maryland Department of the Environment, Department of Natural Resources, Maryland Department of Transportation, Baltimore City, Howard and Montgomery counties, City of Bowie, Maryland State Pest Control Association, Department of Legislative Services



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