

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 229

(Delegate Stein, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Pesticides - Use of Chlorpyrifos - Prohibition

This bill generally prohibits a person from using chlorpyrifos in the State, including insecticides that contain chlorpyrifos and seeds that have been treated with chlorpyrifos, beginning December 31, 2020. However, with specified authorization from the Maryland Department of Agriculture (MDA), a person may use an insecticide that contains chlorpyrifos or seeds that have been treated with chlorpyrifos until December 31, 2021. The bill also prohibits aerial application of chlorpyrifos beginning October 1, 2020. The bill (1) establishes a Pesticide Transition Fund and Pesticide Transition Task Force to support Maryland farmers in the transition away from the use of chlorpyrifos and (2) requires MDA to provide specified education and assistance. **The bill takes effect June 1, 2020; the provisions establishing the Pesticide Transition Fund and the Pesticide Transition Task Force terminate June 30, 2024.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$63,200 in FY 2021, \$62,700 in FY 2022, and \$63,900 in FY 2023, and by an indeterminate amount in FY 2024, to capitalize the Pesticide Transition Fund; special fund revenues to and expenditures from the new fund increase correspondingly. Special fund revenues from pesticide registration fees decrease by up to \$4,700 annually beginning in FY 2022; fee revenues may also decrease in FY 2021, but by a lesser amount. It is assumed that there is no effect in FY 2020, despite the bill's June 1, 2020 effective date.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Application/Use of Chlorpyrifos

Beginning October 1, 2020, the bill prohibits a person from conducting an aerial application of chlorpyrifos.

Beginning December 31, 2020, the bill generally prohibits a person from using in the State (1) an insecticide that contains chlorpyrifos or (2) seeds that have been treated with chlorpyrifos. However, on or after December 31, 2020, on written application, if MDA concludes that no effective alternative exists, the department may authorize a person to use (1) an insecticide that contains chlorpyrifos or (2) seeds that have been treated with chlorpyrifos. An authorization may not extend beyond December 31, 2021.

Pesticide Transition Fund

The bill establishes a Pesticide Transition Fund, administered by MDA. The purpose of the fund is to support Maryland farmers in the transition away from the use of chlorpyrifos. In fiscal 2022 and each fiscal year thereafter, the bill requires the Governor to include in the annual budget bill an appropriation to the fund in an amount sufficient to support MDA's activities implementing the purpose and uses of the fund. The fund may be used only to:

- support the work of the Pesticide Transition Task Force, including research on integrated pest management conducted by the University of Maryland and the University of Maryland Extension to inform the deliberations of the task force; and
- implement the State's plan to transition away from the use of chlorpyrifos, including to provide technical assistance to farmers.

Any interest earnings of the fund are credited to the general fund. Expenditures from the fund may be made only in accordance with the State budget.

Education and Assistance Provided by the Maryland Department of Agriculture

MDA must, with existing budgeted resources, provide to farmers, certified crop advisors, and pesticide applicators education and assistance relating to integrated pest management, including information on safer alternatives to chlorpyrifos.

Pesticide Transition Task Force

The bill establishes a Pesticide Transition Task Force, staffed by MDA. The task force must:

- work with MDA and the University of Maryland Extension to (1) identify alternatives to chlorpyrifos; (2) educate farmers about alternatives to chlorpyrifos; and (3) provide technical assistance to farmers transitioning away from the use of chlorpyrifos;
- monitor and share information from the California Chlorpyrifos Alternatives Workgroup;
- work with neighboring states to encourage them to end the use of chlorpyrifos;
- work with companies currently contracting with farmers in Maryland to grow vegetables to encourage the companies to end the use of chlorpyrifos and maintain contracted acres in the State;
- in conjunction with Corteva and other manufacturers of chlorpyrifos, study and make recommendations regarding the establishment of a manufacturer-funded buy-back program for pesticides containing chlorpyrifos;
- study and make recommendations regarding the establishment of a well monitoring program for drinking water sources located on or near farms; and
- host at least two public meetings per year to solicit public input and engage in strategic planning concerning the goals of the task force and the development of recommendations.

The task force must report its interim findings and recommendations, by December 30, 2021, and its final findings and recommendations, by December 30, 2023, to the Secretary of Agriculture; the Senate Education, Health, and Environmental Affairs Committee; and the House Environment and Transportation Committee.

A member of the task force may not receive compensation as a member of the task force but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law/Background: To be sold, distributed, or used in Maryland, a pesticide must be registered by both MDA and the U.S. Environmental Protection Agency (EPA). Numerous products containing chlorpyrifos are registered by EPA and MDA. EPA indicates that chlorpyrifos is used primarily to control foliage and soil-borne insect pests on a variety of food and feed crops. EPA is required, under federal law, to establish maximum limits (or “tolerances”) for the amount of pesticide residue that can safely remain on food and feed commodities (unless a pesticide is exempted from the tolerance

requirement) and, accordingly, there are chlorpyrifos tolerances established in federal regulations for various food and feed commodities.

In March 2017, EPA denied a petition originally filed in 2007 that requested that the food tolerances for chlorpyrifos be revoked (which would not allow any residue to remain on food or feed commodities) and all chlorpyrifos pesticide product registrations be canceled. The petition argued that continuation of the registrations and tolerances exposed the public to unsafe levels of chlorpyrifos. EPA proposed, in November 2015, to revoke the tolerances for chlorpyrifos because it could not determine that they were safe and sought comment on additional data related to the proposal in November 2016. EPA, however, indicated in its 2017 denial of the 2007 petition that, after reviewing comments submitted in response to the 2015 proposal and 2016 request for additional comments, the agency concluded that further scientific evaluation was needed.

EPA has since issued a final order, in July 2019, denying objections (to the 2017 denial of the 2007 petition) filed by public interest groups and the states of California, Maine, Maryland, Massachusetts, New York, Vermont, and Washington. In ongoing litigation in the 9th Circuit U.S. Court of Appeals (*LULAC v. Wheeler*), public interest groups and a number of states, including Maryland, have asked the court to set aside EPA's decisions to deny the 2007 petition and the subsequent objections, and to compel EPA to revoke the tolerances for chlorpyrifos. Opening briefs on that request were filed by the public interest groups and states in December 2019, and EPA's answering brief was filed in February 2020.

Prohibitions on sales and/or use of chlorpyrifos have been initiated, if not already partially put into effect, in California, Hawaii, and New York.

In Maryland, MDA announced in mid-February 2020 that it would develop regulations to phase out the use of chlorpyrifos and is in the process of adopting those regulations.

State Fiscal Effect:

University of Maryland Extension – Education and Research

General fund expenditures increase by at least \$63,230 in fiscal 2021, which accounts for a 30-day start-up delay. This estimate reflects the cost to capitalize the Pesticide Transition Fund and is based on the estimated expenditures that the fund will need to cover that have been quantified at this time. While the bill requires the Governor to include an appropriation to the fund in the annual budget bill each fiscal year beginning in fiscal 2022 (until the Pesticide Transition Fund provisions terminate at the end of fiscal 2024), funding is assumed to also be needed in fiscal 2021, when the prohibitions on the use of chlorpyrifos take effect and the task force begins its work. The estimated, quantified expenditures that

the fund will need to cover consist of the following costs of the University of Maryland Extension to engage in research and education efforts (education efforts are expected to focus on pesticide dealers, who influence farmers’ decisions, as well as on the farmers themselves):

- one month of salary and fringe benefits of an existing extension specialist to engage in education/technical assistance efforts (extension specialists’ compensation is funded by multiple sources, including funding sources specific to the activities they are engaged in);
- compensation and fringe benefits for a part-time graduate research assistant and a part-time undergraduate student worker;
- production and distribution of materials;
- supplies; and
- travel.

Positions	0*
Salary/Compensation and Fringe Benefits	\$54,230
Operating Expenses	<u>9,000</u>
Total FY 2021 General Fund Expenditures	\$63,230

*The extension specialist is an existing position and graduate research assistants and undergraduate student workers are not accounted for as “positions” in the State budget.

Future year expenditures (at least \$62,664 in fiscal 2022 and \$63,884 in fiscal 2023) reflect ongoing salary/compensation, fringe benefits, and operating expenses.

Special fund revenues to, and expenditures from, the Pesticide Transition Fund increase correspondingly.

Potential Additional Expenditures

General fund expenditures may increase beyond the amounts identified above, over the course of fiscal 2021 through 2024, to further capitalize the Pesticide Transition Fund to cover (1) any administrative costs associated with staffing the Pesticide Transition Task Force that MDA cannot absorb within existing resources and (2) any additional costs resulting from additional research or other efforts to implement the State’s plan to transition away from the use of chlorpyrifos that are identified during the task force’s deliberations. The extent of any additional expenditures, however, cannot be reliably estimated at this time.

Special fund revenues to, and expenditures from, the Pesticide Transition Fund increase correspondingly with any additional general fund expenditures.

Reduction in Pesticide Registration Fee Revenues

Special fund revenues decrease by up to \$4,730 annually beginning in fiscal 2022, reflecting a reduction in pesticide registration fees paid to the State Chemist Section within MDA due to pesticide products containing chlorpyrifos no longer being registered once use of chlorpyrifos is prohibited in the State, with no exceptions, beginning December 31, 2021. Special fund revenues may also decrease by a lesser amount in fiscal 2021 to the extent any pesticide products containing chlorpyrifos are not re-registered for calendar 2021 due to the prohibitions that take effect October 1, 2020 (aerial application), and December 31, 2020. There are currently 43 pesticide products containing chlorpyrifos registered with MDA. The annual registration fee is \$110 per product.

The bill, however, may have limited or no effect on registration fee revenues to the extent that, in the absence of the bill, revenues decrease, regardless, under MDA regulations that phase out the use of chlorpyrifos (mentioned above, under Current Law/Background).

Small Business Effect: The bill's prohibition on the use of chlorpyrifos may have a meaningful impact on at least some small businesses in the State, based on information provided by MDA and industry representatives and a 2015 EPA analysis of the small business impact (nationwide) of the 2015 proposed revocation of EPA food and feed tolerances for chlorpyrifos. The majority of chlorpyrifos pesticide products registered with MDA are used by farmers for agricultural products. Small business farms that use chlorpyrifos, or seeds that have been treated with chlorpyrifos, may experience negative economic impacts that include yield or quality losses, or increased production costs, due to a lack of availability of adequate alternatives, or higher priced alternatives. Again, however, this may happen even in the absence of the bill due to the MDA regulations that phase out the use of chlorpyrifos. In any event, the effect on small businesses may be mitigated somewhat by research and technical assistance under the bill.

Additional Information

Prior Introductions: HB 275 of 2019, a similar bill, passed the House with amendments and was referred to the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, SB 270, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. HB 116 of 2018, a similar bill, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn. Its cross file, SB 500, was

favorably reported with amendments by the Senate Education, Health, and Environmental Affairs Committee but was ultimately recommitted to the committee.

Designated Cross File: SB 300 (Senator Lam, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Agriculture; University System of Maryland; U.S. Environmental Protection Agency; Maryland Farm Bureau; Maryland Grain Producers Association; Delaware-Maryland Agribusiness Association; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2020
rh/lgc Third Reader - March 16, 2020
Revised - Amendment(s) - March 16, 2020
Revised - Updated Information - March 16, 2020
Revised - Updated Information - April 9, 2020

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