

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 246 (Senator Frosh, *et al.*)

Education, Health, and Environmental Affairs

Agriculture - Fertilizer - Phosphorus Content Reduction

This bill prohibits, beginning April 1, 2010, the use, sale, or distribution for use or sale within the State of any fertilizer intended for use on established lawns or grass, unless it is “low phosphorus fertilizer,” containing not more than 5% of phosphorus. The bill also specifies labeling requirements for fertilizer with a phosphorus content greater than 5%. Beginning April 1, 2010, fertilizer manufacturers have to reduce by 50% the amount of phosphorus resulting from the application of their lawn care products in the State. Beginning in 2011, manufacturers have to annually report to the Maryland Department of the Environment the pounds of phosphorus in their lawn care products that are sold at retail locations in the State. MDE is authorized to adopt specified regulations.

Fiscal Summary

State Effect: General fund expenditure increase of \$101,600 in FY 2009 for the Maryland Department of Agriculture to enforce the bill. Future year expenditure estimates reflect annualization, salary increases, and inflation.

| (in dollars) | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|----------------|-------------|------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 101,600 | 99,900 | 104,800 | 110,100 | 115,600 |
| Net Effect | (\$101,600) | (\$99,900) | (\$104,800) | (\$110,100) | (\$115,600) |

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

Local Effect: The bill would not directly affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Each brand name and grade of commercial fertilizer must be registered with MDA before being distributed in the State. Specified labeling, recordkeeping, and reporting requirements also apply to commercial fertilizers and their distribution. MDA enforces State laws applicable to commercial fertilizer and has the authority to sample, inspect, test, and make analyses of any commercial fertilizer distributed in the State to ensure compliance with State law.

Pursuant to Chapter 165 of 2006, a retail outlet distributing commercial fertilizer in bags weighing 50 pounds or more must prominently display information regarding the damage to State waters, including the Chesapeake Bay, that results from the overuse of commercial fertilizer and the advisability of receiving a chemical analysis of the soil to be fertilized before using commercial fertilizer.

Background: In 2006, the Chesapeake Executive Council (consisting of the governors of Maryland, Pennsylvania, and Virginia, the Mayor of the District of Columbia, the U.S. Environmental Protection Agency Administrator, and the Chair of the Chesapeake Bay Commission), along with Delaware and West Virginia, signed a memorandum of understanding with members of the lawn care product manufacturing industry establishing a commitment to achieve a 50% reduction (from 2006 levels) in the pounds of phosphorus applied in lawn care products in the Chesapeake Bay watershed by 2009. Under the MOU, the manufacturers agreed to self-report to the U.S. EPA's Chesapeake Bay Program at the end of each calendar year the pounds of phosphorus sold at the retail level by state.

Florida and Minnesota have adopted requirements aimed, at least in part, at reducing the impact of phosphorus and nitrogen contained in fertilizers on water quality. Effective July 1, 2009, Florida will limit fertilizer products labeled for specified uses to low phosphate or no phosphate fertilizer and will require specified labeling generally pertaining to application rates. Minnesota prohibits the use of phosphorus lawn fertilizer, except in certain instances, including when new turf is being established or when a soil or tissue test shows a need for phosphorus fertilization. A 2007 report by the Minnesota Department of Agriculture estimated that in 2006 the use of lawn fertilizers containing phosphorus had decreased by 48% since the law took effect.

State Fiscal Effect: General fund expenditures could increase by \$101,649 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects the cost of hiring an additional agricultural inspector and an office secretary within MDA for administrative activities, inspections, and enforcement. It includes

salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDA will contact the registrants of approximately 1,125 products to which the bill's labeling and phosphorus content requirements would apply and review new registrations and labeling for those products;
- MDA will enforce the labeling requirements by annually inspecting a portion of the approximately 2,500 retail locations that sell the affected products; and
- MDA will enforce the bill's prohibition relating to the use, sale, or distribution of fertilizer intended for use on established lawns or grass on a complaint basis only.

| | |
|---|------------------|
| Positions | 2 |
| Salaries and Fringe Benefits | \$66,335 |
| Equipment | 26,014 |
| Operating Expenses | <u>9,300</u> |
| Total FY 2009 State Expenditures | \$101,649 |

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

To the extent a more rigorous enforcement program is determined to be needed, MDA would likely require additional resources.

It is assumed for the purposes of this Fiscal and Policy Note that MDE could receive and track the specified reports from manufacturers, and adopt any necessary regulations, with existing budgeted resources. Because MDA currently has enforcement authority with respect to State laws applicable to commercial fertilizer, it is assumed that MDE would not be responsible for enforcement.

Legislative Services notes that persons who have registered fertilizers with the State Chemist Section of MDA already report information on the amounts of each grade of fertilizer, including nutrient content information, distributed in the State. It is assumed that this activity could be coordinated with the reporting to MDE required under the bill.

Small Business Effect: The bill's labeling requirements take effect October 1, 2008, and the requirement that fertilizer intended for use on established lawns or grass only be used,

sold or distributed in the State if it is low phosphorus fertilizer takes effect April 1, 2010. To the extent products that do not meet the bill's labeling requirements would need to be taken out of distribution, or possibly relabeled, beginning October 1, 2008, any small businesses involved with the manufacture, distribution, or sale of affected fertilizer could be negatively impacted.

Legislative Services notes, however, that the impact on businesses could be less to the extent manufacturers are already taking steps to reduce the phosphorus content in fertilizer distributed and sold in the State.

A survey of manufacturers conducted by the Minnesota Department of Agriculture regarding the impact of the state's *no phosphorus* fertilizer requirement (which allowed for two years advance notice) indicated that formulating new phosphorus-free fertilizer products had not been a problem, though challenges were encountered with registering, inventorying, labeling, and marketing new products. The manufacturers indicated that the two-year advance notice helped them with the transition. A related survey of retailers indicated that stores generally did not have a problem in stocking phosphorus-free products, though some indicated problems with finding compliant products in certain brands or for certain applications.

Additional Information

Prior Introductions: None.

Cross File: HB 447 (Delegate Niemann, *et al.*) – Environmental Matters.

Information Source(s): Maryland Department of Agriculture, Maryland Department of the Environment, U.S. EPA's Chesapeake Bay Program, Florida Department of Agriculture and Consumer Services (Division of Agricultural Environmental Services), Minnesota Department of Agriculture (Pesticide and Fertilizer Management Division), Department of Legislative Services

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mll/lgc

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