

Department of Legislative Services  
 Maryland General Assembly  
 2009 Session

FISCAL AND POLICY NOTE

House Bill 136 (Delegate Pena-Melnyk)  
 Environmental Matters

Specialty Fertilizer - Surcharge

This bill establishes an annual surcharge of \$2 per ton of specialty fertilizer distributed in the State. The surcharge revenue is allocated to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. Commercial fertilizer used for research or experimental purposes is exempt from the surcharge.

The bill takes effect July 1, 2009.

Fiscal Summary

**State Effect:** Chesapeake and Atlantic Coastal Bays 2010 Trust Fund special fund revenues increase by \$196,200 in FY 2010 and \$392,400 annually starting in FY 2011. The bill does not require additional expenditures.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SF Revenue	\$196,200	\$392,400	\$392,400	\$392,400	\$392,400
Expenditure	0	0	0	0	0
Net Effect	\$196,200	\$392,400	\$392,400	\$392,400	\$392,400

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

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

**Small Business Effect:** Potential meaningful.

## **Analysis**

**Current Law:** “Specialty fertilizer” is commercial fertilizer distributed primarily for nonfarm use, such as home gardens, flowers, golf courses, municipal parks, and nurseries and may include commercial fertilizers used for research or experimental purposes.

Generally, prior to being distributed in the State, distributors must register each brand name and grade of commercial fertilizer and each product name of soil conditioner with the Maryland Department of Agriculture (MDA) and pay specified annual registration and inspection fees. This fee revenue goes to a special fund that must be used for administering the State commercial fertilizer law.

Each person who registers any commercial fertilizer or soil conditioner in the State is required to report to MDA semi-annually on the amount distributed. MDA is authorized to assess fees when distributors fail to submit this report or pay the required inspection fees. These reports are submitted semi-annually on January 31 for July through December sales, and on July 31 for January through June sales.

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.

**Background:** Currently, there are 115 specialty fertilizer distributors registered in the State.

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 from lawn care products in the Chesapeake Bay watershed by 2009.

Florida and Minnesota have adopted requirements aimed at reducing the impact fertilizers have 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 labels 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.

### *Chesapeake and Atlantic Coastal Bays 2010 Trust Fund*

Chapter 6 of the 2007 special session (House Bill 5) established a Chesapeake Bay 2010 Trust Fund to be used to implement the State's Tributary Strategy. The trust fund is financed with a portion of existing revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals. Chapters 120 and 121 of 2008 specified that the funds be used for nonpoint source pollution control projects; expanded the fund's geographic scope to include the Atlantic Coastal Bays; renamed the fund the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund; and made the BayStat Cabinet responsible for fund administration, in addition to the Department of Natural Resources (DNR). The Governor's proposed fiscal 2010 budget includes \$31.5 million for the trust fund. However, the Budget Reconciliation and Financing Act of 2009 (House Bill 101) proposes reducing this amount by \$6.5 million.

Money in the trust fund must be distributed by the subcabinet agencies through competitive grants to counties, bicounty agencies, municipalities, forest conservation district boards, soil conservation districts, academic institutions, and nonprofit organizations having demonstrated ability to implement nonpoint source pollution control projects; to MDA's Maryland Agricultural Water Quality Cost Share Program; to DNR's Woodland Incentives Fund; and to the Maryland Department of the Environment's Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund.

### **State Fiscal Effect:**

#### *2010 Trust Fund Revenues*

The amount of specialty fertilizer distributed in the State varies from year to year. Based on MDA's semi-annual commercial fertilizer reports, distribution totaled 157,801 tons in fiscal 2006, 228,006 tons in fiscal 2007, and 202,792 tons in fiscal 2008. Therefore, during the last three years an average of 196,200 tons was distributed annually. This average does not include fertilizer sold in packages of 10 pounds or less, as this information is not tracked in the semi-annual reports as it is assumed to be negligible.

Assuming 196,200 tons of specialty fertilizer is distributed annually, special fund revenues in the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund increase by \$392,400 annually. However, only \$196,200 or half the anticipated annual revenue is realized in fiscal 2010 as the semi-annual report for the second half of fiscal 2010 is not anticipated to be available until early fiscal 2011.

To the extent establishing a surcharge reduces the amount of specialty fertilizer distributed, revenues will be less.

#### *MDA Expenditures*

Since fertilizer distributors are already required to register with MDA and report on the amount of fertilizer distributed, MDA can use this existing programmatic framework and handle the bill's requirements with existing budgeted resources.

**Small Business Effect:** The overall impact of the bill on small businesses cannot be reliably estimated at this time. MDA advises most specialty fertilizer distributors are based out of state and approximately 12 of the 115 distributors may be small businesses. To the extent the surcharge cost is passed on to consumers, landscaping businesses may experience increased costs. However, the imposition of a surcharge may become an incentive for businesses to use less fertilizer and incur fewer costs.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture, Department of Natural Resources, Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2009  
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Analysis by: Amanda Mock

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510