

Department of Legislative Services  
 Maryland General Assembly  
 2009 Session

FISCAL AND POLICY NOTE

House Bill 49 (Delegate G. Clagett)  
 Environmental Matters

**Agriculture - Specialty Fertilizers - "No Phosphate Fertilizer"**

This bill prohibits, beginning April 1, 2010, the use, sale, manufacture, or distribution for use or sale within the State of any specialty fertilizer intended for use on specified “urban turf,” unless it is a “no phosphate fertilizer” containing phosphate levels equal to or less than 0.5%. The bill also specifies language regarding fertilizer application that must appear conspicuously on containers of specialty fertilizer intended for use on urban turf. “Urban turf” means nonagricultural land planted in closely mowed, managed grasses except golf courses, parks, and athletic fields.

**Fiscal Summary**

**State Effect:** General fund expenditure increase of \$105,138 in FY 2010 for the Maryland Department of Agriculture (MDA) to enforce the bill. Future year estimates reflect annualization, salary increases, and inflation. Revenues are not affected.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	105,100	108,400	113,500	118,800	124,500
Net Effect	(\$105,100)	(\$108,400)	(\$113,500)	(\$118,800)	(\$124,500)

*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.

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.

**Background:** 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 circumstances, 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.

Within the State, Annapolis recently enacted a law that is now in effect (as of January 1, 2009) that prohibits the application of fertilizer labeled as containing any amount of phosphorus (or other compound containing phosphorus, such as phosphate) on lawns. Some exceptions apply, including application of fertilizer to newly established turf or lawn areas during their first growing season and turf or lawn areas where soil tests within the past three years confirm deficient phosphorus levels. Signs referencing the law and the effects of phosphorus on the Chesapeake Bay and its tributaries must be displayed where fertilizers are sold. Effective January 1, 2010, fertilizer containing phosphorus may not be displayed for sale but may be sold upon request.

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.

**State Fiscal Effect:** General fund expenditures increase by \$105,138 in fiscal 2010, which accounts for the bill’s October 1, 2009 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 phosphorous content requirements apply, as well as retailers of those products, and review new registrations and labeling;
- MDA will enforce the labeling requirements by annually inspecting a portion of the approximately 2,500 retail locations that sell the affected products; and
- aside from retail location inspections, MDA will enforce the bill’s prohibition relating to the use, sale, or distribution of specialty fertilizer intended for use on urban turf on a complaint basis only.

Positions	2
Salaries and Fringe Benefits	\$71,559
Equipment	23,553
Operating Expenses	<u>10,026</u>
<b>Total FY 2010 State Expenditures</b>	<b>\$105,138</b>

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover and 1% annual increases in ongoing operating expenses.

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

**Small Business Effect:** The bill’s labeling requirements take effect October 1, 2009, and the requirement that specialty fertilizer intended for use on urban turf only be used, sold, or distributed in the State if it is no phosphate fertilizer takes effect April 1, 2010. To the extent products that do not meet the bill’s labeling requirements need to be taken out of distribution, or possibly relabeled, beginning October 1, 2009, any small businesses involved with the manufacture, distribution, or sale of affected fertilizer may be negatively impacted. These businesses may also be impacted to the extent the April 1, 2010 effective date for the use, sale, and distribution prohibition does not provide sufficient time to adjust to the bill’s changes or if the businesses otherwise incur additional costs to comply with the prohibition.

MDA further advises that small fertilizer retailers, such as hardware stores and nurseries, may experience a loss in revenue if manufacturers decide to suspend the sale of their products in Maryland in lieu of reformulating and relabeling them, or if products containing phosphate are purchased out of state.

Legislative Services notes that the impact on businesses may be less to the extent manufacturers are already taking steps to reduce the phosphorous content in the 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 associated with introducing new product lines were encountered, including cataloging, inventorying, marketing, and answering retailer questions. Two manufacturers experienced increased costs associated with product registration and creating new packaging and labeling. A couple of manufacturers indicated that the two-year advance notice helped them with the transition. A number of manufacturers also noted expanding markets for phosphorus-free lawn fertilizer in other areas concerned with water quality, including the Chesapeake Bay region.

Manufacturer responses regarding customer satisfaction with phosphorus-free lawn fertilizer products indicated that some consumers may be concerned about the lack of phosphorus in fertilizer products while others are unaware of the composition of fertilizers. Some manufacturers expressed concern that the use of phosphorus-free fertilizer would cause deficiencies in soil phosphorus and possibly lead to a decline in lawn health without increased education and use of soil testing.

A related survey of retailers indicated that stores generally did not have a problem in stocking phosphorus-free product, though some indicated problems with finding compliant products in certain brands or for certain applications.

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### **Additional Information**

**Prior Introductions:** HB 521 of 2008, a substantially similar bill, received an unfavorable report from the House Environmental Matters Committee.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture, 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

**Fiscal Note History:** First Reader - February 3, 2009  
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