

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 609

(Delegate Holmes, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Chesapeake Bay Phosphorous Reduction Act of 2009

This bill prohibits, beginning on April 1, 2011, a lawn fertilizer with an available phosphoric acid content greater than 5% from being labeled for use on established lawns or grass or with spreader settings. It also specifies the language concerning fertilizer application that must appear conspicuously on the fertilizer container. Seed starter fertilizer for use on newly established lawns or turf is exempt from the labeling requirements. Retail establishments, beginning on April 1, 2011, are prohibited from selling or distributing for sale fertilizer for established lawns and grass unless it is low-phosphorous fertilizer; however, licensed landscaping contractors and their agents are exempt. By April 1, 2011, lawn care fertilizer manufacturers must reduce the amount of available phosphoric acid resulting from the application of their products in the State by 50% from 2006 levels; and manufacturers who begin to sell or distribute specified fertilizer on or after April 1, 2010, may not exceed an average of 1.5% available phosphoric acid. Specified lawn care fertilizer manufacturers are required to report annually beginning in 2011 on the phosphorous content in fertilizer, and the Maryland Department of Agriculture (MDA) may adopt implementing regulations.

Fiscal Summary

State Effect: MDA general fund expenditures increase by \$135,300 in FY 2011 to implement and 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	0	135,300	114,000	119,400	125,000
Net Effect	\$0	(\$135,300)	(\$114,000)	(\$119,400)	(\$125,000)

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

Bill Summary: “Low-phosphorous fertilizer” is fertilizer containing not more than 5% of available phosphoric acid, with an application rate of at most 0.25 pound of available phosphoric acid/1,000 square feet/application and 0.5 pound of available phosphoric acid/1,000 square feet/year.

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.

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, a City of Annapolis law took effect January 1, 2009, prohibiting 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 \$135,275 in fiscal 2011, which assumes additional resources needed for implementation are provided beginning July 1, 2010. 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, printing and mailing costs, a vehicle, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDA contacts the registrants of approximately 1,251 products to which the bill's labeling and phosphorous content requirements apply to educate them about the new requirements and review revised registrations and labels to ensure compliance;
- MDA enforces 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 enforces the bill's labeling requirements on a complaint-basis only.

Positions	2
Salaries and Fringe Benefits	\$100,272
Vehicle	14,138
Equipment	8,215
Operating Expenses	<u>12,650</u>
Total FY 2011 State Expenditures	\$135,275

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 and phosphoric acid requirements take effect April 1, 2011. To the extent products that do not meet the bill's labeling requirements need to be taken out of distribution, or possibly relabeled, beginning April 1, 2011, 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, 2011 effective date does not provide sufficient time to achieve compliance or if the businesses otherwise incur additional costs to comply with the prohibition. MDA estimates that approximately 10% (12 of 115 registrants) are small businesses. Other potentially affected small businesses include hardware store owners and plant nurseries that sell fertilizer to individuals.

MDA further advises that small fertilizer retailers 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 phosphorus 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.

Additional Information

Prior Introductions: None.

Cross File: SB 553 (Senator Lenett, *et al.*) - Education, Health, and Environmental Affairs.

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

Fiscal Note History: First Reader - February 24, 2009
ncs/ljm

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