

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 50

(Delegate G Clagett)

Environmental Matters

Education, Health, and Environmental Affairs

Agriculture - Lawn Fertilizer - Low Phosphorous Fertilizer

This bill reduces the maximum available phosphoric acid content of “low phosphorous fertilizer” (from 5% to 0.5%). Under the Chesapeake Bay Phosphorous Reduction Act of 2009, low phosphorous fertilizer will be the only type of fertilizer intended for use on established lawns or grass that may be sold or distributed for use or sale at a retail establishment in the State beginning April 1, 2011, subject to certain exceptions. The bill also makes a corresponding change to related labeling requirements; delays the effective date of the existing labeling requirements from April 1, 2011 to April 1, 2012; and delays the applicability of the labeling requirements to lawn fertilizer with organic phosphorous materials until April 1, 2014.

Fiscal Summary

State Effect: General fund expenditures increase by \$4,600 in FY 2011 only to notify fertilizer registrants and retailers of the bill’s modifications. Revenues are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	4,600	0	0	0	0
Net Effect	(\$4,600)	\$0	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Chapters 278/279 of 2009 established the Chesapeake Bay Phosphorous Reduction Act of 2009. Beginning on April 1, 2011, retail establishments are prohibited from selling or distributing for use or sale fertilizer intended for use on established lawns

or grass unless it is low phosphorous fertilizer; however, licensed landscaping contractors and their agents are exempt. The Act defines “low phosphorous fertilizer” as 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.

The Act also 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 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.

The Act also requires that, by April 1, 2011, lawn care fertilizer manufacturers 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 in the State on or after April 1, 2010, must limit the average amount of available phosphoric acid resulting from the application within the State of the manufacturer’s lawn care products to 1.5%. Fertilizer manufacturers are required to report annually beginning in 2011 on the amount of phosphorus in the manufacturers’ lawn care products sold at retail locations in the State.

Background: Restrictions on phosphorus/phosphate levels in fertilizer used or labeled for use on lawns and turf have been proposed and/or adopted in other states and local jurisdictions. Florida and Minnesota, for example, have adopted requirements aimed at reducing the impact of phosphorus/phosphate contained in fertilizers on water quality. Florida’s rule limits fertilizer products labeled for specified uses to low phosphate or no phosphate fertilizer and requires specified labeling generally pertaining to application rates and practices. 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. Minnesota’s prohibition first took effect in 2004 in certain counties and was expanded to the whole state in 2005. A 2007 report by the Minnesota Department of Agriculture estimated that the amount of fertilizer contained in lawn fertilizers used decreased 48% between 2003 and 2006. Wisconsin also recently adopted restrictions (that will take effect in April 2010) against the application of fertilizer labeled as containing phosphorus or available phosphate to turf, with certain exceptions.

In Maryland, a City of Annapolis ordinance 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.

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.

Information provided by the Maryland Department of Agriculture (MDA) indicates that organic-based fertilizers are characteristically less soluble and organically bound phosphorus has much less risk of runoff than inorganic phosphorus. In addition, test methods for organic-based fertilizers that will allow them to be more easily regulated are still being developed.

State Expenditures: General fund expenditures increase by \$4,600 in fiscal 2011 only. This estimate reflects the cost of printing, postage, and travel to notify registrants and retailers of the affected fertilizer products.

The fiscal and policy notes for SB 553 (Chapter 278) and HB 609 (Chapter 279) of 2009 indicated that MDA general fund expenditures would increase by \$135,300 in fiscal 2011 to implement the bills. The estimate reflected the hiring of two staff and one-time and ongoing operating expenses associated with administrative activities and inspections/enforcement.

With the exception of the cost of notifying registrants and retailers of the modifications to phosphorus content and labeling requirements, this bill is not expected to change the implementation costs identified in the fiscal and policy notes for SB 553 and HB 609 of 2009. Legislative Services notes, however, that the Governor's proposed fiscal 2011 budget does not include funding for MDA for the costs identified in the fiscal and policy notes for SB 553 and HB 609. As a result, MDA indicates that it currently plans to implement Chapters 278/279 of 2009 with existing staff (at the expense of other activities) and to enforce the Act on a complaint basis only.

Small Business Effect: MDA 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. MDA also indicates that fertilizer manufacturers need a two-year lead time in making changes to labels and phasing out products in the channels of trade, and as a result, this bill will have an impact on registrants that have already begun to implement Chapters 278/279 of 2009. There are approximately 115 registrants of affected fertilizer products, and MDA estimates about 10% of these are small businesses.

Legislative Services notes that the impact on small businesses may be less to the extent manufacturers are already taking steps to reduce the available phosphoric acid content in HB 50 / Page 3

their fertilizers to 0.5% or less. MDA indicates that, out of the approximately 3,800 registered fertilizers, 1,028 fertilizers have a phosphorus content of 0.5% or less.

A telephone survey of 10 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.

An October 2006 survey of retailers conducted by the Minnesota Department of Agriculture 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.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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