

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 359 (Senator Lenett, *et al.*)
Education, Health, and Environmental Affairs

Agriculture - Fertilizers and Pesticides - Release Reporting

This bill requires the Maryland Department of Agriculture (MDA) to adopt regulations that establish reporting requirements concerning the release (defined as application, use, or spill) of fertilizers and pesticides. Fertilizer and pesticide reports, covering the preceding calendar year, must be submitted annually to MDA beginning March 1, 2012. MDA must serve as the repository for data regarding fertilizer and pesticide release in the State, but may delegate its responsibility to another State agency or private contractor. The bill also establishes a Fertilizer and Pesticide Release Fund, in MDA to be used for the collection, management, and analysis of release data and for enforcement of the bill's provisions. The bill specifies requirements applicable to the reporting of release data; other powers and responsibilities of MDA, including the imposition of a surcharge on fertilizer and pesticide registration fees and the establishment of an online electronic reporting system; and prohibited actions and related enforcement provisions.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: Special fund revenues and expenditures increase by \$622,300 in FY 2011, reflecting the costs for MDA to implement and comply with the bill's requirements and revenue generated by a surcharge on fertilizer and pesticide registration fees to cover program costs. Future years reflect ongoing expenditures for MDA to implement and comply with the program and special fund revenues. Any impact on other State agencies, including institutions of higher education, to comply with the reporting requirement has not been quantified, but may be minimal in many cases.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
SF Revenue	\$622,300	\$725,300	\$654,200	\$669,500	\$701,500
SF Expenditure	\$622,300	\$725,300	\$654,200	\$669,500	\$701,500
GF/SF Exp.	-	-	-	-	-
Higher Ed Exp.	-	-	-	-	-
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: Local government expenditures may increase to comply with the bill's requirements.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Reporting

Annual reports submitted by those releasing fertilizers and pesticides must include information about quantities and types of fertilizer released, the locations where fertilizer or pesticide is released, and other specified information. MDA must specify the format of reports and adopt standard naming conventions and categories for the various chemical names, product names, and product formulations.

A person who withholds information required to be reported due to confidentiality concerns must notify MDA and provide an explanation for the claim.

Inspection

MDA is authorized to inspect any records or reports of fertilizer or pesticide release, and a person must make records available for inspection during normal business hours. MDA must give at least one week advance notice if the department intends to inspect records at the location where the records are maintained.

Management of Data

MDA may share systems and resources with other departments to optimize the management and sharing of data.

Online Reporting

MDA must establish an online electronic reporting system for fertilizer and pesticide release reports that includes a means to identify the watershed in which the release took place. MDA may adopt regulations that (1) seek to achieve receipt of 90% of reports via the online reporting system by 2013 and (2) require all reports to be submitted electronically after January 1, 2016.

Access to Data

MDA may adopt rules and regulations regarding public access to the release data and must adopt regulations to ensure publicly distributed data will not result in the association of any data with a person and to protect the identity of persons required to report release information. Access to individual reports is limited to government agencies and research organizations that have a regulatory or academic interest in the release of fertilizers and pesticides. These entities, however, must demonstrate adequate security measures to prevent the release of information attributable to a person and sign an agreement to keep the identity of a person who has submitted a report confidential. A person is entitled to review of matters relating to MDA's protection of a person's identity, by an administrative law judge and an appeal to a court of competent jurisdiction, as authorized by State law.

Fertilizer and Pesticide Release Fund/Registration Surcharge

The Fertilizer and Pesticide Release Fund consists of revenue distributed to the fund under the bill (from a surcharge and penalties), money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. The fund must have an annual revenue target that must be set and adjusted annually by MDA in response to documented program needs or changes in the cost-of-living index used by the State. The revenue target must be set at a level sufficient to cover all costs of the program.

MDA must place a surcharge on fertilizer and pesticide registration fees in an amount sufficient to meet the annual revenue target of the Fertilizer and Pesticide Release Fund. The bill indicates that the surcharge is for the purpose of supporting the development and operation of, and compliance with, the reporting program.

Enforcement

A person may not knowingly or recklessly report false information in response to a reporting requirement under the bill. A person is subject to specified penalties for noncompliance with the bill's requirements, including:

- up to a \$100 penalty for an initial notice of noncompliance;
- up to a \$10,000 penalty (per notice) for not submitting required reports or fees after specified second and subsequent notices;
- up to a \$20,000 penalty for knowingly submitting false information in a report;
- up to a \$10,000 penalty for violating specified confidentiality provisions; and
- specified existing criminal penalties under the Agriculture Article for knowing or reckless violations.

A person who fails to pay a specified final penalty within 30 days of the penalty becoming final is subject to a lien recorded against any real property owned by the person.

The Attorney General is responsible for enforcing the bill's provisions.

Current Law/Background: MDA licenses commercial pest control and not-for-hire firms, issues permits to public agencies for pesticide application, and certifies private applicators (farmers or growers who wish to use restricted use pesticides in the production of agricultural commodities). MDA regulations currently require licensees, permittees, and certified private applicators to keep specified records regarding pesticide applications that must be made available upon request to the department. The information required to be kept is somewhat similar to that required to be reported under the bill for pesticide releases. Current recordkeeping requirements, however, do not require identification of the watershed in which the pesticide was released, which is required under the bill. The bill also requires compilation and reporting of information, including monthly or seasonal use patterns, whereas current records are only required to be kept and made available upon request.

MDA nutrient management regulations similarly require records of fertilizer applications to be kept with respect to certain nutrient applications on specified nonagricultural land and by persons applying nutrients to agricultural lands for hire, but do not require recordkeeping of all of the information that is required to be reported under the bill.

MDA indicates that, in fiscal 2009, there were 1,371 licensed commercial pest control businesses, 160 licensed not-for-hire businesses, 310 permitted public agencies, and 3,284 certified private applicators. Based on information from the 2007 Agricultural Census, the 3,284 certified private applicators are equivalent to 26% of the 12,853 farms in Maryland, the remainder of which (9,569 farms) would all have the potential to release pesticides or fertilizers. According to MDA, these farms may contract with commercial firms to apply fertilizers or pesticides for them or may be applying general use pesticides

themselves. There is no license requirement for farmers or growers to apply general use pesticides.

MDA estimates that as many as 17,000 individuals/entities may be subject to the bill's reporting requirements.

State Expenditures:

Maryland Department of Agriculture

Special fund expenditures increase by \$622,337 in fiscal 2011. The estimate accounts for a 90-day start-up delay and reflects the cost of hiring seven additional employees in fiscal 2011 within MDA to implement the new program. The estimate includes salaries, fringe benefits, one-time start-up costs (including a secure database system to accept online data entry), and ongoing operating costs.

Positions	7
Salaries and Fringe Benefits	\$321,830
Database Software/Development	166,400
Computer Equipment	35,000
Office Furniture	16,646
Vehicles	28,276
Other Operating Expenses/One-Time Costs	<u>54,185</u>
Total FY 2011 State Expenditures	\$622,337

The estimate assumes that MDA will handle the data management requirements under the bill, contracting with a vendor to develop a secure database system to accept online data entry of fertilizer and pesticide releases. The estimate assumes a cost of \$200,000 for contractual services incurred over the course of fiscal 2011 and 2012 to develop the database, reflecting 25 weeks of work at \$8,000 per week. Actual costs of a contract may vary. The estimate does not account for costs of any database upgrades, which may be incurred in future years. The estimate also assumes reporting requirements are not applicable to homeowners.

Future year expenditures reflect (1) full salaries with 4.4% annual increases and 3% employee turnover; (2) the cost of hiring three additional employees in fiscal 2012; and (3) 1% annual increases in ongoing operating expenses. Thus, over the two-year period, 10 additional employees are hired in MDA as follows:

- a database manager and a database specialist – to provide technical advice, coordination, review, evaluation, and oversight of the development, implementation, and maintenance of the online fertilizer and pesticide reporting database system and its components;
- two data entry operators – to transfer data into the database system (submitted paper reports and county level data entered by MDA’s Noxious Weed Control Program) (hired in fiscal 2012);
- an entomologist – to provide technical expertise on pesticide products, develop training and guidance materials, coordinate and conduct outreach and training programs, and perform quality assurance and quality control of the data received and entered;
- two agricultural inspectors – to assist with outreach and training efforts and conduct compliance and enforcement inspections;
- two secretaries – to organize, compile, track, and provide quality control of submitted data reports as well as requests for data reports (one hired in fiscal 2011; one hired in fiscal 2012); and
- an assistant Attorney General – to provide advice, assistance, and oversight regarding confidentiality agreements and enforcement actions.

Other State Agencies

If MDA regulations apply the bill’s reporting provisions to State agencies, State expenditures may increase for some agencies to comply. It is unclear under the bill whether surcharge revenue will be used for compliance costs of other State agencies. For the purposes of this fiscal and policy note, it is assumed that expenditures of those agencies could increase without reimbursement from surcharge funding. Based on responses from a small number of agencies, it appears costs may be minimal in many cases.

MDA indicates that State agencies and local governments may need additional resources to initially organize, track, format, and review fertilizer and pesticide release data and then provide ongoing data formatting, quality control, and data entry. There are currently 110 public agency permits issued to State agencies (including higher education institutions) to apply pesticides. Some agencies have more than one permit for different operations.

The University System of Maryland indicates an additional staff person may be needed at a minimum to comply with the bill’s requirements regarding releases at the College of Agriculture and Natural Resources at the University of Maryland, College Park. Other

agencies/institutions, such as the Maryland Transportation Authority, Maryland Transit Administration, State Highway Administration, Department of General Services, Morgan State University, and Department of Natural Resources have either indicated the bill will have a minimal fiscal impact or no fiscal impact.

It is assumed for the purposes of this fiscal and policy note that enforcement costs can be covered by the special fund established by the bill, as discussed below. Legislative Services notes, however, that the bill's provisions specifying the uses of the Fertilizer and Pesticide Release Fund, refer to enforcement of only the provisions that establish and define the fund and not the entire bill. However, the Attorney General must enforce the bill's requirements; to the extent such enforcement costs cannot be covered by the special fund, general fund expenditures may increase.

State Revenues: Special fund revenues increase by approximately \$622,337 in fiscal 2011, assuming surcharge revenues will be equivalent to estimated special fund expenditures based on the bill's requirement that the surcharge be set at an amount sufficient to meet an annual revenue target that will cover all costs of the program. Future years reflect continuing special fund revenue increases equivalent to estimated special fund expenditure increases.

According to MDA, in 2009 there were 13,194 registered pesticide and pesticide/fertilizer combination products and 3,732 registered fertilizer products. If roughly the same number of products are registered in fiscal 2011 and the same surcharge is applied to all products, in order to generate the revenue necessary to fund estimated fiscal 2011 costs of the program, the surcharge will need to be roughly \$37 per registered product.

MDA advises that annually increasing the surcharge on the fees to cover program costs, in effect increasing fees, will make it difficult to increase fees in the future to keep pace with increasing costs that are funded by the fees. Fertilizer and pesticide registration fees are set in statute and are used to cover costs of the State Chemist and Pesticide Regulation sections within MDA. The current annual pesticide registration fee is \$100 and the annual commercial fertilizer registration fee is \$15 or \$30, depending on the packaging of the product.

Special fund revenues may further increase due to the bill's monetary penalty provisions, but any increase cannot be reliably estimated at this time.

Local Fiscal Effect: Local government expenditures may increase to comply with the bill's reporting requirements. There are currently 155 public agency permits issued to local government agencies to use pesticides, but the number applying fertilizers is unknown. As mentioned above, MDA indicates government agencies may need

additional resources to organize, track, format, and review fertilizer and pesticide release data and then provide ongoing data formatting, quality control, and data entry.

Small Business Effect: Small businesses that need to report fertilizer and pesticide release data may be meaningfully impacted. MDA estimates approximately 95% of entities that will need to report fertilizer and pesticide release data are small businesses.

Affected small businesses may incur costs associated with collecting, maintaining, and submitting fertilizer and pesticide release data. To the extent entities without the current capability to report release data online may eventually be required to do so, or would otherwise decide to do so to meet the reporting requirements, costs presumably may further increase for those businesses. According to the 2007 Agricultural Census, only 61% of Maryland farmers have Internet access. *For illustrative purposes*, one pest control business contacted conservatively estimated its cost of compliance in the first year at \$15,000 for wages of a part-time clerical staff person to compile and report release data.

Small businesses may also be affected by the surcharge MDA must impose on fertilizer and pesticide registration, whether small business registrants of fertilizers and pesticides or fertilizer and pesticide users, to the extent the cost of the surcharge is passed on to users. Whether the surcharge would meaningfully impact a given small business, however, is uncertain.

Additional Information

Prior Introductions: HB 929 of 2009, a similar bill, received an unfavorable report from the House Environmental Matters Committee. Its cross file, SB 917, received a hearing in the Senate Education, Health, and Environmental Matter Committee, but no further action was taken.

Cross File: Although designated as a cross file, HB 930 is not identical.

Information Source(s): Maryland Department of Agriculture; Department of Natural Resources; University System of Maryland; Maryland Department of Transportation; Office of Administrative Hearings; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of the Environment; Department of General Services; Morgan State University; Town of Bladensburg; Harford County; Maryland State Pest Control Association; Maryland Turfgrass Council; Department of Legislative Services

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