

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 859 (Senator Pinsky)
Education, Health, and Environmental Affairs

Agriculture - Commercial Feed - Arsenic Prohibition

This bill prohibits a person from using, selling, or distributing within the State any commercial feed intended for use as poultry feed that contains roxarsone or any other additive that contains arsenic.

Fiscal Summary

State Effect: General fund expenditures increase by \$106,700 in FY 2011 for the Maryland Department of Agriculture (MDA) to enforce the bill's prohibition. Future years reflect annualization and inflation. Potential minimal increase in general fund revenues due to existing criminal penalties applicable to violations of the bill's prohibition.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
GF Expenditure	\$106,700	\$116,900	\$122,500	\$128,400	\$134,600
Net Effect	(\$106,700)	(\$116,900)	(\$122,500)	(\$128,400)	(\$134,600)

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

Local Effect: Potential minimal increase in local expenditures due to existing criminal penalties applicable to violations of the bill's prohibition.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Under the Maryland Commercial Feed Law, the Secretary of Agriculture must sample, inspect, test, and make analyses of commercial feed distributed in the State

at any time and place and to the extent considered necessary to ensure compliance with the law. A distributor generally must register each brand name or product name of commercial feed before distributing it in the State, unless it has been registered by another person and the product label has not been altered or changed.

No person may distribute adulterated or misbranded feed, and the Secretary may issue and enforce a written stop-sale order to the owner, custodian, or distributor of any commercial feed found to be in violation of the Maryland Commercial Feed Law or its implementing regulations, or that has been found by federal or State authorities to cause unreasonable adverse effects to humans, animals, or the environment.

Generally, any person who violates any provision of the Agriculture Article is guilty of a misdemeanor, and unless another penalty is specifically provided, is subject to a fine of up to \$500 and/or imprisonment for up to three months. Any person found guilty of a second or subsequent violation is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: MDA indicates that roxarsone is used to control parasites that cause coccidiosis (a common avian disease affecting poultry). U.S. Food and Drug Administration (FDA) regulations defining the approved uses of roxarsone in chicken feed indicate it can also be used for “increased rate of weight gain, improved feed efficiency, and improved pigmentation.” However, concern has been raised about the health and environmental effects of roxarsone and other arsenic-containing additives in poultry feed.

MDA indicates that approximately 12 poultry feed products (out of 48) contain roxarsone. MDA estimates that there are 25 feed mills that distribute poultry feed in Maryland, eight of which are located on the Eastern Shore (two of which are located in Delaware, but distribute product in Maryland). MDA estimates that roxarsone is included in approximately 10% of the total amount of feed distributed. The Delmarva Poultry Industry, Inc. indicates that it is estimated that 70% of the broiler chickens produced in the United States are fed a feed containing roxarsone.

MDA’s State Chemist section regulates the sale and distribution of animal feed products, and FDA regulates the manufacturing and distribution of food additives and drugs given to animals. In addition to animal feed, the State Chemist section also regulates the sale and distribution of pesticides, pet foods, fertilizers, compost, soil conditioners, and agricultural liming materials.

State Expenditures: General fund expenditures increase by \$106,656 in fiscal 2011, which accounts for the bill’s October 1, 2010 effective date. This estimate reflects the cost of hiring an agricultural inspector to conduct inspections of feed mills and a chemist

to conduct lab analyses. The State Chemist section currently has 4 inspectors and 12 chemists to cover its various responsibilities, but MDA indicates that enforcement of the bill cannot be properly accomplished with existing staff. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate assumes:

- the State Chemist section will need to increase the frequency of inspections of feed mills that are currently inspected on a limited basis; and
- enforcement against the *use* of arsenic/roxarsone will be conducted on a complaint basis only.

Positions	2
Salaries and Fringe Benefits	\$80,846
Vehicle Purchase and Operation	19,500
Other One-time Costs/Operating Expenses	<u>6,310</u>
Total FY 2011 State Expenditures	\$106,656

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

The State Chemist section is largely funded with special funds generated from registration and inspection fees and does not receive general funds. It is assumed, however, that general funds will be needed to cover the costs of enforcing the bill's prohibition, as current program needs are greater than available special funds. Further, the Administration's proposed Budget Reconciliation and Financing Act of 2010 (SB 141/HB 151) proposes to transfer \$150,000 from the State Chemist Reserve Account, which holds excess fee revenue at the end of a fiscal year, to the general fund in fiscal 2010, leaving an estimated balance for future program costs of only \$45,000 at the end of fiscal 2010.

State Revenues: General fund revenues increase minimally as a result of the existing monetary penalty provisions applicable to violations of the bill's prohibition from cases heard in the District Court.

Local Expenditures: Expenditures increase minimally as a result of the existing incarceration penalties applicable to violations of the bill's prohibition. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Small Business Effect: Small business poultry producers and feed mills may be adversely affected by the bill's prohibition. MDA indicates that the bill will put Maryland industries at a disadvantage to those in other states and that small business poultry producers and feed mills may be adversely affected due to the potential for loss of production and loss of sale of feed.

The Delmarva Poultry Industry, Inc. indicates that the four meat-chicken companies operating on Maryland's Eastern Shore have contracts with family farms to raise the companies' chickens. The family farm growers are paid based on the amount of meat provided and the extent to which the grower can minimize company input costs (the companies provide the feed, bird health programs, bedding material, propane gas to heat the houses, and technical advice). To the extent the growers' production/feed efficiency decreases due to the prohibition on the use of roxarsone, the income of these family growers could be meaningfully impacted.

Additional Information

Prior Introductions: None.

Cross File: HB 953 (Delegate Hucker, *et al.*) - Environmental Matters.

Information Source(s): Maryland Department of Agriculture; Delmarva Poultry Industry, Inc.; Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2010
ncs/lgc

Analysis by: Scott D. Kennedy

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