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FISCAL AND POLICY NOTE
Revised

Senate Bill 320

(Senator Montgomery, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

Environment - Phosphorus - Commercial Dishwashing Detergent

This bill prohibits, beginning July 1, 2013, a person from using, selling, manufacturing, or distributing for use or sale within the State any detergent for use in a commercial dishwashing machine that contains more than 0.5% phosphorus by weight.

Fiscal Summary

State Effect: Maryland Department of the Environment expenditures are not affected as the bill can be implemented with existing staff and resources. The Maryland Environmental Service (MES), a self-supporting State agency, is expected to realize a savings in its operating costs as a result of the reduction in phosphorus influent at MES-owned and -operated wastewater treatment plants. However, expenditures at several State agencies that use commercial dishwashing machines may increase minimally due to the bill's prohibition. Potential minimal increase in general fund revenues due to the application of existing penalties for violations of the bill.

Local Effect: By reducing the level of phosphorus in wastewater influent, the bill will likely cause owners of wastewater treatment plants, most of which are local governments, to adjust their operations. This may reduce operating costs, including the cost of compliance with wastewater discharge permit requirements. However, expenditures may increase minimally for local governments that operate detention centers, schools, and other facilities using commercial dishwashers. Revenues are not directly affected.

Small Business Effect: Minimal.

Analysis

Current Law: The Environment Article generally prohibits a person from using, selling, manufacturing, or distributing any "cleaning agent" that contains phosphorus except for

an amount not exceeding 0.5% phosphorus that is incidental to manufacturing. However, a person may use, sell, manufacture, or distribute a detergent used in a *commercial* dishwashing machine that contains up to 8.7% phosphorus by weight. In addition, the Secretary of the Environment may exempt a substance from the prohibition, due to a significant hardship on the user or a lack of adequate substitutes; under such an exemption, a person may use, sell, manufacture, or distribute a cleaning agent that contains up to 8.7 % phosphorus by weight.

A person may not use, sell, manufacture, or distribute a *household* dishwashing detergent that contains more than 0.5% phosphorus by weight.

“Cleaning agent” means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound, or other substance that is intended to be used for cleaning purposes.

Any person who violates these provisions is guilty of a misdemeanor and is subject to a fine of up to \$100 for a violation based on the use of a cleaning agent, or \$1,000 for a violation based on the sale, manufacture, or distribution of a cleaning agent.

Background: Chapters 187 and 188 of 2007 established the prohibition on the sale, distribution, or manufacture of household dishwashing detergents containing more than 0.5% phosphorus by weight, effective January 1, 2010. However, in response to industry concerns about the availability of low-phosphorus alternatives, Chapter 442 of 2008 delayed the effective date of the prohibition until July 1, 2010.

Phosphorus is one of three primary pollutants that are the focus of a new regional effort to restore the Chesapeake Bay, known as the Chesapeake Bay Total Maximum Daily Load (TMDL). The federal Clean Water Act requires states to designate intended uses for their water bodies, such as swimming and fishing, and to set water quality standards to achieve these uses. Water bodies that do not meet the water quality standards are designated as *impaired* and are assigned a TMDL (also commonly referred to as a “pollution diet”), which (1) sets the maximum amount of pollution that the water body can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements among the various contributing sources.

The U.S. Environmental Protection Agency (EPA) has been working with watershed states and the District of Columbia to develop a Chesapeake Bay TMDL since 2000 in order to prepare for a federal court-ordered deadline established by several consent decrees. The effort was also significantly reinvigorated by the signing of Executive Order 13508 by President Obama in May 2009. In May 2010, EPA committed to establishing a final bay TMDL, which it released on December 29, 2010.

Working with EPA, each watershed state and the District of Columbia completed a final Phase I watershed implementation plan (WIP). The WIPs, which were released in December 2010 after a public comment period, are intended to provide a roadmap for how each jurisdiction will achieve and maintain its share of the bay TMDL responsibilities. Maryland's WIP calls for a reduction in phosphorus loading to the bay of about 585,000 pounds per year, from present levels, by 2020.

In an April 2010 memorandum, the American Cleaning Institute (formerly known as the Soap and Detergent Association) estimated that an economical conversion to no-phosphorus formulations of commercial dishwashing detergents could be achieved by January 1, 2013. It has cautioned that attempting an earlier transition could result in additional costs for food service establishments, detergent companies, and chemical and other businesses in the supply chain. These additional costs may be caused by the need to retrofit commercial dishwashing machines and the purchase of new dinnerware damaged by harsh or inappropriate detergent chemistries. Additionally, without sufficient time for sourcing of chemicals and for scaling of production processes, the cost of new, no-phosphorus detergents may be significantly higher than currently used detergents. More recently, the State of New York enacted a law establishing a 0.5% limit, by weight, of phosphorus in commercial dishwashing detergents effective July 1, 2013, and the institute now indicates that a uniform date consistent with the New York law will be beneficial for the industry.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, HB 53 (Delegate Hubbard – Environmental Matters) is identical.

Information Source(s): Baltimore, Cecil, Garrett, and St. Mary's counties; Maryland Department of the Environment; Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Maryland Association of Boards of Education; University System of Maryland; Maryland Environmental Service; U.S. Environmental Protection Agency; American Cleaning Institute; Department of Legislative Services

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