

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 751

(Senator Manno)

Education, Health, and Environmental Affairs

Environmental Matters

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**Environment - Dishwashing Detergent Containing Phosphorus - Penalties**

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This bill enhances existing penalty provisions by establishing a misdemeanor penalty of up to \$1,000 for a first offense and between \$1,000 and \$25,000 for a subsequent offense, for a person who knowingly violates the existing prohibition on the sale or distribution of a household dishwashing detergent containing more than 0.5% phosphorus by weight.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues beginning in FY 2012 due to cases heard in the District Court.

**Local Effect:** Potential minimal increase in local government revenues beginning in FY 2012 due to cases heard in the circuit courts.

**Small Business Effect:** None. Assuming compliance with the laws pertaining to the sale or distribution of household dishwashing detergents, the bill will have no impact on small business. However, the bill may result in a meaningful adverse impact for any small business in violation of existing law for which the bill's enhanced penalties apply.

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**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.

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

The Secretary of the Environment may exempt a substance from this 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.

“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.

**State/Local/Small Business Effect:** Given that no enforcement actions have ever been taken by the Maryland Department of the Environment against sellers, distributors, or manufacturers of household dishwashing detergents containing phosphorus, it is unlikely that the bill will result in any material increase in State or local revenues or any impact on small businesses. However, to the extent that enforcement actions increase in the future for violations pertaining to the sale or distribution of household dishwashing detergents containing phosphorus, a potentially significant amount in penalties could be assessed due to the bill's penalty of up to \$25,000 for a second or subsequent violation.

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### **Additional Information**

**Prior Introductions:** HB 1187 of 2009, a similar bill, received an unfavorable report from the House Environmental Matters Committee. Its cross file, SB 1021, was referred to the Senate Rules Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Juvenile Services, Maryland Environmental Service, Maryland Department of the Environment, U.S. Environmental Protection Agency, Department of Legislative Services

**Fiscal Note History:** First Reader - February 17, 2011  
mc/lgc Revised - Senate Third Reader - March 21, 2011  
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Analysis by: Evan M. Isaacson

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