

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

House Bill 754

(Delegate Hucker, *et al.*)

Environmental Matters

**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 \$112,500 in FY 2012 for the Maryland Department of Agriculture (MDA) to enforce the bill's prohibition. Future years reflect annualization and inflation. Imposition of existing criminal penalties for violations of the bill's prohibition is not expected to materially affect State finances.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	112,500	125,100	131,400	138,100	145,200
Net Effect	(\$112,500)	(\$125,100)	(\$131,400)	(\$138,100)	(\$145,200)

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

**Local Effect:** Imposition of existing criminal penalties for violations of the bill's prohibition is not expected to materially affect local government finances.

**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.

A person may not adulterate or misbrand a commercial feed, distribute adulterated or misbranded feed, or distribute a commercial feed that is not registered. 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. A person may not remove or dispose of a commercial feed in violation of such a stop-sale order. Finally, a person may not alter or destroy any required label on commercial feed products.

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 9 poultry feed products (out of 55) registered in Maryland contain 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 \$112,465 in fiscal 2012, which accounts for the bill’s October 1, 2011 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 11 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	\$86,655
Vehicle Purchase and Operation	19,500
Other One-time Costs/Operating Expenses	<u>6,310</u>
<b>Total FY 2012 State Expenditures</b>	<b>\$112,465</b>

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 additional special funds are not expected to be available.

**Small Business Effect:** Small business poultry producers may be adversely affected by the bill's prohibition. Delmarva Poultry Industry, Inc. (DPI), a nonprofit trade association representing the broiler chicken industry in Delaware, the Eastern Shore of Maryland, and the Eastern Shore of Virginia, advises that four meat-chicken companies operating on Maryland's Eastern Shore use roxarsone. A fifth company, Perdue Farms, indicates that it does not use roxarsone or arsenic.

According to DPI, the meat-chicken companies contract with family farms to raise the companies' birds. 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). DPI indicates that prohibiting the use of roxarsone in Maryland may put Maryland growers at a competitive disadvantage to growers contracting with the same company in other states with respect to their level of operating (feed) costs and meat production. MDA similarly indicates that poultry producers may be adversely impacted due to loss of production. However, Legislative Services advises that the extent of any impact on growers is not clear.

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### **Additional Information**

**Prior Introductions:** SB 859/HB 953 of 2010 received hearings in the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee, respectively, but no further action was taken on either bill.

**Cross File:** SB 417 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Maryland Department of Agriculture; Delmarva Poultry Industry, Inc.; Perdue Farms; Food and Water Watch; Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2011  
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