

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

Senate Bill 888 (Senator Montgomery, *et al.*)
 Education, Health, and Environmental Affairs

Pesticides - Dealer Permits and Applications for Certified Applicators -
 Background Checks

This bill requires that applications for specified certificates/permits relating to pesticide application and the sale or distribution of restricted use pesticides be accompanied by a certified police and federal agency background check. The bill establishes certain requirements for the background check and authorizes the Maryland Department of Agriculture (MDA) to charge a reasonable fee if the department conducts, or contracts for a third party to conduct, the background check.

Fiscal Summary

State Effect: General/special fund expenditures increase by at least \$7,700 in FY 2013 for MDA to hire temporary staff during certain parts of the year to assist with certificate and permit application and renewal processing. Future years reflect ongoing personnel costs. Expenditures by State agencies for background checks for employees that engage in pest control are expected to be minimal and absorbable. Special fund revenues and expenditures may correspondingly increase due to MDA fee revenue and administrative expenditures associated with the verification that applicants are not listed on a specified terrorist screening database.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	-	-	-	-	-
SF Expenditure	-	-	-	-	-
GF/SF Exp.	\$7,700	\$10,300	\$10,400	\$10,500	\$10,600
Net Effect	(\$7,700)	(\$10,300)	(\$10,400)	(\$10,500)	(\$10,600)

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

Local Effect: Local government expenditures to pay the cost of background checks for any employees that engage in pest control are expected to be minimal and absorbable with existing resources.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that applications for the following certificates/permits relating to pesticide applications and the sale or distribution of restricted use pesticides be accompanied by a certified police and federal agency background check:

- pest control consultant certificate;
- pest control applicator certificate;
- public agency applicator certificate;
- private applicator certificate; and
- dealer permit (needed to sell or distribute a restricted use pesticide).

The background check must verify that the applicant is not listed on the Federal Bureau of Investigation's (FBI) Terrorist Screening Database and does not have a documented criminal history that would increase the potential for purchasing, possessing, transferring, or selling pesticides that could be used in a criminal manner to other persons. MDA may charge a reasonable fee for the background check if the department conducts the background check or contracts for a third party to conduct the background check.

Current Law:

Pesticide Consultants/Applicators

Each pest control consultant, pest control applicator, or public agency applicator must obtain an annual certificate indicating competence in one or more established categories from the Secretary of Agriculture. Private applicators also must obtain a certificate, but the certificate is valid for three years before it must be renewed. Applicants must pass an examination, and MDA regulations require pest control consultants, pest control applicators, and public agency applicators to have certain experience and/or education.

Pest control consultants and pest control applicators must pay a \$75 certificate fee plus \$25 for each category in excess of one in which they are certified. A private applicator must pay a \$7 certificate fee. Public agency applicators are not required to pay a fee.

A "pest control consultant" is a person who engages in the business of offering or supplying technical advice or supervision; inspecting for or identifying pests; or recommending the use of a specific pesticide for the purpose of controlling a pest in or on water, air, land, plants, structures, or animals.

A “pest control applicator” is a person engaged in the business of pest control.

A “public agency applicator” is a person employed by a unit of federal, State, or local government, or any training institution, which is engaged in pest control.

A “private applicator” is a person who uses a restricted use pesticide for the purpose of producing any agricultural commodity on property owned or rented by the applicator or applicator’s employer.

Restricted Use Pesticide Dealers

A person who sells or distributes a restricted use pesticide must hold a dealer permit from the Secretary of Agriculture. The dealer permit must be renewed annually. The permit fee, paid annually, is \$25. A “restricted use pesticide” is a pesticide classified as such under State law, by the federal government, or by the Secretary of Agriculture. A dealer may not sell or distribute a restricted use pesticide to any person other than a permitted dealer or a certified applicator or the certified applicator’s authorized representative.

Background: MDA indicates that there are 3,481 pest control applicators, 1,102 public agency applicators, 3,354 private applicators, and a relatively small number of pest control consultants (around 40) currently certified by the department. A total of 141 dealer permits have been issued this year. MDA indicates that there are approximately 660 new applicants for both pest control and public agency applicator certificates combined, approximately 200 new applicants for private applicator certificates, and approximately 4 new dealer permit applications, each year. Presumably there are a very small number, if any, new applicants for pest control consultant certificates each year.

According to information gathered by MDA through a survey of pesticide regulatory agencies across the country and follow-up inquiries, it appears that there may only be one state that currently requires background checks of regulated pesticide applicators and/or dealers. MDA was only able to identify a requirement in North Carolina for background investigations for structural pesticide applicators.

State Fiscal Effect:

Maryland Department of Agriculture

General/special fund expenditures increase by at least \$7,650 in fiscal 2013, which accounts for the bill’s October 1, 2012 effective date. This estimate reflects the cost of hiring temporary staff to assist existing staff with the workload of processing certificate and permit applications and renewals during busier times of the year in order to absorb

the increase in the overall workload that reviewing and processing background checks submitted with initial applications is anticipated to create. MDA's Pesticide Regulation Section has limited administrative support staff due to staff reductions and has suffered backlogs in processing of certificates, permits, and other documents. The estimate is based on (1) a rough assumption that temporary staff would be hired for an aggregate of four months each year; and (2) the cost of current temporary staff being utilized by MDA's Pesticide Regulation Section.

The bill appears to only require background checks to be submitted by a new applicant for a certificate or permit and not when renewing an existing certificate or permit. If the bill, however, is more broadly interpreted to require both new applications and renewals to be accompanied by a background check, general/special fund expenditures increase by at least \$35,000 in fiscal 2013 to instead hire an office secretary. Future years would reflect similar ongoing personnel costs. MDA has indicated that, if background checks are submitted with both initial applications and renewals, at least two additional office secretaries would be necessary to implement the bill, but Legislative Services advises that it is not clear that more than one additional staff person would be necessary under those circumstances.

This analysis assumes that MDA's personnel costs under the bill are not covered under the fee authority provided in the bill for the cost of conducting background checks and would instead need to be covered with general funds and/or existing special funds to the extent available. MDA's Pesticide Regulation Section is currently funded with special funds and federal funds. The federal funds are grant money required to be used for specific purposes and could not be used for processing certificate and permit applications and renewals.

This analysis also assumes that MDA generally would not provide background checks itself, as authorized by the bill, but instead would simply require that applicants include the background checks, that they have independently obtained, with their applications. Based on information provided by the Department of Public Safety and Correctional Services (DPSCS), it appears that the department's Criminal Justice Information System Central Repository (CJIS-CR) would need to be used to obtain State and national background checks, whether applicants obtain the background checks themselves or whether MDA, or a third party contracted by MDA, provides fingerprinting services and transmits information to and from CJIS-CR. Fees charged by CJIS-CR cover the cost of providing the background check service; thus, performing background checks for pesticide certificate and permit applicants would be revenue/cost neutral for DPSCS.

Requiring applicants to submit independently obtained background checks with their applications would avoid any additional personnel, equipment, contractual services, or other costs of providing background check services that MDA would have to incur if it

were to provide these services. It should be noted, however, that DPSCS advises that the FBI, which conducts the national background checks, requires certain language to be included in state legislation requiring a national background check, to which the bill currently does not conform.

While it is assumed that MDA would not conduct the State and national background checks itself, it appears that the department would need to verify, as part of the process of reviewing and processing a certificate or permit application, that, based on the background checks, the applicants do not have a documented criminal history that would “increase the potential for purchasing, possessing, transferring, or selling pesticides that could be used in a criminal manner,” as specified in the bill. DPSCS indicates that the background checks themselves would not establish that verification. MDA indicates that it would likely need to adopt regulations establishing the types and severity of crimes that would disqualify an applicant from receiving a certificate or permit.

One unresolved issue is how the verification required under the bill that the applicant is not listed on the FBI’s Terrorist Screening Database would be accomplished. DPSCS advises that the national background checks performed by the FBI, through CJIS-CR, do not check the individual against the Terrorist Screening Database. That portion of the background check may need to be independently performed by MDA, although it is not clear whether the department would be able to obtain access necessary to perform that verification. If MDA is able to perform the verification, any additional MDA resources needed for that portion of the background check presumably could be covered by a reasonable fee, as authorized under the bill, and special fund revenues and expenditures would correspondingly increase for that activity. Any such increase in special fund revenues and expenditures cannot be reliably estimated.

State Agencies as Employers of Affected Individuals

MDA and other State agencies that employ public agency applicators may incur costs to pay for background checks associated with public agency applicator certificates obtained or held by employees. When the bill takes effect, the fee for a State and national background check through CJIS is expected to be \$54.50, consisting of an \$18 CJIS fee, \$16.50 FBI fee, and \$20 fingerprinting fee. Assuming the bill only requires background checks of new applicants, any costs for other State agencies are expected to be minimal and absorbable within existing budgeted resources.

If the bill is interpreted to require background checks to be submitted both with initial applications and renewals, costs for other State agencies are still generally relatively minimal per agency, potentially totaling in the range of \$27,000 statewide. This is based on a rough assumption that 500 of the 1,102 certified public agency applicators are employed by State agencies. The actual number is not readily available, but MDA

indicates that the vast majority of public agency applicators are employed by the State and local governments, and this estimate assumes that roughly half of those are employed by the State.

Local Fiscal Effect: Local governments that employ public agency applicators may incur costs to pay for background checks associated with public agency applicator certificates obtained or held by employees. Assuming the bill only requires background checks of new applicants, however, any cost increases for local governments are expected to be minimal and absorbable with existing resources.

If the bill is interpreted to require background checks to be submitted both with initial applications and renewals, costs for local governments are still generally relatively minimal per local government, potentially totaling in the range of \$27,000 statewide, assuming that roughly 500 certified public agency applicators are employed by local governments.

Small Business Effect: Small businesses engaged in pest control could incur increased costs to pay for background checks associated with applicator certificates obtained or held by employees. MDA indicates that approximately 90% or more of licensed commercial pest control businesses are small businesses. Each licensed business location must employ at least one certified applicator, certified in the categories for which the business is offering and providing pest control services. Assuming the bill only requires background checks of new applicants, the bill does not significantly impact small businesses. If the bill is interpreted to require background checks to be submitted both with initial applications and renewals, the impact is more significant.

Small business private providers authorized by CJIS-CR to perform fingerprinting services and demographic data collection for transmission to CJIS-CR for background checks (pursuant to COMAR 12.15.05) could benefit from an increase in the demand for their services.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture; Department of Public Safety and Correctional Services; Department of Natural Resources; Maryland Department of Transportation; University System of Maryland; Department of General Services; Garrett County; towns of Bel Air and Leonardtown; City of Salisbury; Maryland State Pest Control Association; Department of Legislative Services

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