

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 163 (Senator Nathan-Pulliam, *et al.*)
 Education, Health, and Environmental Affairs

Agriculture - Neonicotinoid Pesticide - Labeling Requirement (Pollinator Protection Act of 2015)

This bill establishes a labeling requirement for any seed, plant material, nursery stock, annual plant, bedding plant, or other plant that has been treated with a neonicotinoid pesticide and establishes restrictions, effective January 1, 2016, on the sale and use of neonicotinoid pesticides.

Fiscal Summary

State Effect: General fund expenditures increase by \$194,700 in FY 2016 for the Maryland Department of Agriculture (MDA) to hire three inspectors to enforce the bill. Future year estimates reflect annualization and inflation. Revenues are not materially affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	194,700	170,000	171,700	179,800	188,200
Net Effect	(\$194,700)	(\$170,000)	(\$171,700)	(\$179,800)	(\$188,200)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Any seed, plant material, nursery stock, annual plant, bedding plant, or other plant sold in the State that has been treated with a neonicotinoid pesticide must bear a label with the following statement:

“WARNING: Bees are essential to many agricultural crops. This product has been treated with neonicotinoid pesticides, found to be a major contributor to bee deaths and the depletion of the bee population.”

Beginning January 1, 2016, a person may not sell a neonicotinoid pesticide in the State unless the person also sells a restricted-use pesticide.

Beginning January 1, 2016, a person also may not use a neonicotinoid pesticide unless the person is (1) a certified applicator; (2) a farmer who uses the pesticide for agricultural purposes, including crop production, livestock, poultry, and noncrop agricultural fields; or (3) a veterinarian.

Current Law/Background:

Regulation of Pesticides

The Secretary of Agriculture is required to take various actions to regulate pesticide use, including (1) adopting rules and regulations governing the storage, sale, distribution, exchange, use, and disposal, of any pesticide and its container and (2) prescribing, when necessary, the time and conditions under which a pesticide may be sold, distributed, exchanged, or used in different areas of the State. Under MDA regulations, a “restricted-use pesticide” is a pesticide classified as such by Title 5 of the Agriculture Article, the federal government, or the Maryland Secretary of Agriculture. Under Title 5 of the Agriculture Article, cyclodiene termiticides are classified as restricted-use pesticides, though MDA advises that those pesticides are no longer used. MDA indicates that the U.S. Environmental Protection Agency (EPA) list of restricted-use pesticides is effectively the list of restricted-use pesticides for purposes of Maryland’s regulation of restricted-use pesticides. A “certified applicator” is certified by MDA as having demonstrated knowledge of pest control.

A person who sells or distributes restricted-use pesticides (1) must hold a dealer permit issued by MDA; (2) must maintain specified records on the sale or distribution of each restricted-use pesticide; and (3) may not sell or distribute a restricted-use pesticide to any person other than a permitted dealer or a certified applicator or that person’s authorized representative. A person may not use a restricted-use pesticide unless that person is a certified applicator or is a person working under the supervision of a certified applicator.

Neonicotinoid Pesticides

EPA indicated in a 2013 letter to registrants of neonicotinoid products that it had not been demonstrated that declines in pollinator health are caused by pesticides, but there was concern that pesticides in combination with other factors may be associated with the declines. Neonicotinoid pesticides, a class of insecticides which affects the central nervous system of insects, are being reviewed by EPA as part of a pesticide registration review program intended to ensure that registered pesticides continue to not have unreasonable adverse effects. The review of neonicotinoid pesticides appears to be at least in part focused on the effects on pollinators. Based on concern about the potential effects of neonicotinoid pesticides on nontarget arthropods, including pollinators, EPA also recently implemented a requirement that products that contain any of four types of neonicotinoid pesticides, and that are for outdoor application to foliage, be labeled with specific terms that highlight measures necessary to better protect pollinators.

State Expenditures: General fund expenditures increase by \$194,683 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of hiring three inspectors to inspect nurseries and plant retail operations to ensure proper labeling as well as retail operations that sell pesticides to ensure that neonicotinoid pesticides are only sold by persons that also sell restricted-use pesticides. Many facilities that need to be visited to properly enforce the bill are not currently visited by MDA inspectors to enforce the existing State pesticide regulation and plant disease control laws. In addition, inspectors that currently visit nurseries and plant retail operations to enforce the plant disease control laws do not have pesticide expertise necessary to enforce the bill's labeling requirement. The estimate includes salaries, fringe benefits, one-time start-up costs (including outreach mailings), and ongoing operating expenses. The estimate assumes that:

- enforcement of the labeling requirement is limited to inspections that involve observation of labeling of products at nurseries and plant retail operations and communication with owners regarding their pesticide applications and how they determine past use of neonicotinoid pesticides on plant products purchased from others;
- enforcement of the neonicotinoid pesticide sales restriction is limited to inspection of products offered for sale at retail operations and communication with owners of the operations; and
- enforcement of the use restrictions is limited to pursuit of any complaints received.

Positions	3
Salaries and Fringe Benefits	\$113,797
Vehicles	59,899
Other Operating Expenses	<u>20,987</u>
Total FY 2016 State Expenditures	\$194,683

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

If sampling and analysis of plant products not containing the required label is conducted as part of the enforcement of the labeling requirement, the increase in general fund expenditures is much more significant, including personnel costs for an additional chemist and laboratory technician in the State Chemist section of MDA to perform analyses of samples gathered by inspectors, a cost of approximately \$600,000 for an additional mass spectrometry instrument to perform the analyses, and other costs. The State Chemist section, however, indicates that there is not an established protocol for the testing that would need to be done, and it appears uncertain whether the samples can be effectively analyzed to support an enforcement action.

Small Business Effect: Various small businesses are negatively impacted by the bill's requirements, including nurseries, pest control businesses, pesticide retail operations, and veterinarians. Nurseries' costs increase to properly label products or to switch to other pesticides that have to be applied more frequently. Any increase in business that pest control businesses experience due to the neonicotinoid pesticides being limited to application only by certified applicators is expected to be outweighed by the negative impact of noncertified employees of the business not being able to apply the pesticides. Retail operations that sell products containing neonicotinoid pesticides may experience a decrease in sales due to the bill's restrictions on the sale and use of neonicotinoid pesticides. Veterinarians that sell flea and tick products that include neonicotinoid pesticides may similarly have reduced sales revenues.

Additional Information

Prior Introductions: None.

Cross File: HB 605 (Delegate Healey, *et al.*) – Environment and Transportation.

Information Source(s): Maryland Department of Agriculture; Department of Natural Resources; U.S. Environmental Protection Agency; Maryland Nursery, Landscape, and Greenhouse Association; Maryland State Pest Control Association; Department of Legislative Services

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