

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 275

(Delegate Stein, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Pesticides - Use of Chlorpyrifos - Prohibition

This bill prohibits a person from using chlorpyrifos in the State, including insecticides that contain chlorpyrifos or seeds that have been treated with chlorpyrifos, beginning December 31, 2020. However, if the Maryland Department of Agriculture (MDA) determines that no alternative to the use of chlorpyrifos exists, the department may grant a waiver, on request, to allow a person to use chlorpyrifos, including insecticides that contain chlorpyrifos or seeds that have been treated with chlorpyrifos, on or before December 31, 2022. MDA must, with existing budgeted resources, provide to farmers, certified crop advisors, and pesticide applicators education and assistance relating to integrated pest management, including information on safer alternatives to chlorpyrifos.

Fiscal Summary

State Effect: Special fund revenues decrease by up to \$5,400 annually beginning in FY 2021 and 2022 and by \$5,400 annually thereafter. Expenditures are not materially affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	\$0	(-)	(-)	(\$5,400)	(\$5,400)
Expenditure	0	0	0	0	0
Net Effect	\$0	(-)	(-)	(\$5,400)	(\$5,400)

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

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: Meaningful.

Analysis

Current Law/Background: To be sold, distributed, or used in Maryland, a pesticide must be registered by both MDA and the U.S. Environmental Protection Agency (EPA). Numerous products containing chlorpyrifos are registered by EPA and MDA. EPA indicates that chlorpyrifos is used in a variety of settings, including on food and feed crops. EPA is required, under federal law, to establish maximum limits (or “tolerances”) for the amount of pesticide residue that can safely remain on food and feed commodities (unless a pesticide is exempted from the tolerance requirement) and, accordingly, there are chlorpyrifos tolerances established in federal regulations for various food and feed commodities.

In April 2017, EPA denied a petition originally filed in 2007 that requested that the food tolerances for chlorpyrifos be revoked (which would not allow any residue to remain on food or feed commodities) and all chlorpyrifos pesticide product registrations be canceled. The petition argued that continuation of the registrations and tolerances exposed the public to unsafe levels of chlorpyrifos. EPA proposed, in November 2015, to revoke the tolerances for chlorpyrifos because it could not determine that they were safe and sought comment on additional data related to the proposal in November 2016. EPA, however, indicated in its 2017 denial of the 2007 petition that, after reviewing comments submitted in response to the 2015 proposal and 2016 request for additional comments, the agency concluded that further scientific evaluation is needed. The agency indicates that it plans to continue to evaluate the potential risks posed by chlorpyrifos as part of a statutorily mandated review process for EPA pesticide registrations which, for chlorpyrifos, must be completed by October 1, 2022.

In August 2018, the U.S. Court of Appeals for the Ninth Circuit vacated EPA’s 2017 order that denied the petition to revoke food tolerances for chlorpyrifos and the court remanded the case to EPA with directions to revoke all tolerances and cancel all registrations for chlorpyrifos within 60 days. (Along with other state Attorneys General, the Maryland Attorney General is an intervenor in the case – *LULAC v. Wheeler* – arguing against EPA.) EPA subsequently asked the court to rehear the case, which it has agreed to do, with oral argument scheduled for late March 2019.

State Revenues: Special fund revenues decrease by up to \$5,400 annually in fiscal 2021 and 2022 and by \$5,400 annually thereafter, reflecting a reduction in pesticide registration fees paid to the State Chemist Section within MDA due to pesticide products containing chlorpyrifos no longer being registered. There are currently 49 pesticide products containing chlorpyrifos registered with MDA. The annual registration fee is \$110 per product. In fiscal 2021 and 2022, presumably some registration fee revenue may continue to be received for products containing chlorpyrifos due to the availability of a waiver

during calendar 2021 and 2022, but from fiscal 2023 forward, no registration fees from pesticide products containing chlorpyrifos should be received.

Small Business Effect: The bill's prohibition on the use of chlorpyrifos is expected to have a meaningful impact on at least some small businesses in the State, based on information provided by MDA and industry representatives and a 2015 EPA analysis of the small business impact (nationwide) of the 2015 proposed revocation of EPA food and feed tolerances for chlorpyrifos. The majority of labeled uses on chlorpyrifos pesticide products registered with MDA are agricultural uses. Small business farms that use chlorpyrifos, or seeds that have been treated with chlorpyrifos, may experience negative economic impacts that include yield or quality losses, or increased production costs, due to a lack of availability of adequate alternatives, or higher priced alternatives.

Additional Information

Prior Introductions: HB 116 of 2018, a similar bill, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn. Its cross file, SB 500, also a similar bill, was favorably reported with amendments by the Senate Education, Health, and Environmental Affairs Committee but was ultimately recommitted to the committee.

Cross File: SB 270 (Senator Nathan-Pulliam, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Agriculture; University System of Maryland; U.S. Environmental Protection Agency; Maryland Farm Bureau; Maryland Grain Producers Association; Delaware-Maryland Agribusiness Association; Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2019
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