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FISCAL AND POLICY NOTE
First Reader

Senate Bill 268
(Senator Kagan)
Education, Health, and Environmental Affairs

Pesticide Regulation - Transfer to Department of the Environment

This bill transfers the responsibility for administering existing provisions governing pesticide regulation, plant disease control, and mosquito control, from the Maryland Department of Agriculture (MDA) to the Maryland Department of the Environment (MDE). The bill also transfers related personnel and resources from MDA to MDE.

Fiscal Summary

State Effect: State expenditures (general, special, and federal funds) totaling approximately \$8.1 million in FY 2023, and similar, but likely increasing, amounts in future years, are shifted from MDA to MDE. Approximately \$5.0 million in special fund revenues and \$2.3 million in federal fund revenues in FY 2023, and similar, but likely increasing amounts in future years, are also shifted. State general fund expenditures also increase overall in FY 2023 and future years, due to one-time and ongoing costs to accommodate the transfer of personnel and resources from MDA to MDE, as discussed below.

Local Effect: Local governments may be affected to the extent funding agreements with transferred programs change under MDE and to the extent there is a break in the continuity of operations of the transferred programs.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill transfers provisions of the Agriculture Article of the Annotated Code of Maryland governing pesticide regulation, plant disease control, and mosquito

control (described below under Current Law) to the Environment Article and requires that the following be transferred to MDE on the effective date of the bill:

- the responsibilities of the Secretary of Agriculture and MDA relating to the regulation of pesticides, plant diseases, and mosquitos;
- all appropriations, including State and federal funds, held by MDA for the purpose of regulating pesticides, plant diseases, and mosquitos;
- all of the functions, powers, duties, books and records (including electronic records), real and personal property, equipment, fixtures, assets, liabilities, obligations, credits, rights, and privileges of MDA and assigned for the regulation of pesticides, plant diseases, and mosquitos; and
- all employees of MDA primarily assigned to regulate pesticides, plant diseases, or mosquitos, without diminution of their rights, benefits, employment, or retirement status.

The bill also repeals one of the transferred provisions that (1) states that uniform pesticide requirements between the several states and the federal government are desirable to avoid confusion and increased costs resulting from diverse requirements and (2) authorizes the Secretary of Agriculture to adopt rules and regulations of the appropriate agency of the U.S. government relating to pesticides if they are applicable to and conform with the State's primary standards for pesticide registration and labeling.

The bill also modifies a requirement in the transferred provisions that the Secretary of the Environment adopt rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container. Under the modified requirement, those regulations must be adopted in collaboration with the Secretary of Health and the Secretary of Agriculture and must include regulations establishing restricted uses or prohibitions of pesticides.

Current Law:

Pesticide Regulation (Subtitles 1, 2, and 2A of Title 5 of the Agriculture Article)

Maryland Pesticide Registration and Labeling Law (Subtitle 1)

The State Chemist, within MDA, is responsible for administering the Maryland Pesticide Registration and Labeling Law subject to the supervision of the Secretary of Agriculture. The law requires pesticides to be registered before being distributed in the State and establishes requirements for the packaging and labeling of pesticides. The law prohibits unregistered, adulterated, or misbranded pesticides and authorizes the Secretary to adopt rules and regulations providing for the collection and examination of samples of pesticides.

An annual fee must be paid to the Secretary for each product registered, which is deposited in the State Chemist Fund. The fund is used to administer the Maryland Pesticide Registration and Labeling Law and other laws. The Maryland Pesticide Registration and Labeling Law gives the Secretary various responsibilities and authority to administer and enforce the law. The law includes the provision mentioned above (under Bill Summary), that is repealed by the bill, that states that uniform pesticide requirements are desirable and authorizes the Secretary to adopt specified federal rules and regulations.

Pesticide Applicator's Law (Subtitle 2)

Under the Pesticide Applicator's Law, the Secretary of Agriculture must adopt rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container, and the Secretary is authorized to sample pesticides and inspect pesticide products and containers, pesticide equipment, pest control establishments, and pesticide applications or treatments. The Secretary is required to establish qualifications for licensing and certification for persons applying pesticides to assure their competence and responsibility. Persons engaged in the business of pest control or pest control consulting, persons employed by a public agency engaged in pest control, and persons who use a restricted use pesticide for the purpose of producing an agricultural commodity must obtain an annual certificate from the Secretary. Each place of business engaged in the business of pest control must obtain an annual license from the Secretary and annually register any employees who offer or perform pest control who are not certified applicators. Public agencies that apply pesticides must hold an annual public agency permit. Finally, a person who sells or distributes a restricted use pesticide must hold an annual dealer permit from the Secretary. The Secretary is given various additional responsibilities and authority under the Pesticide Applicator's Law to administer and enforce the law.

Fees are collected for the certificates, licenses, registrations, and permits (with the exception of those for public agencies and their employees) and are placed in the Pesticide Fund, which is used to partially defray the cost of administering the Pesticide Applicator's Law.

Neonicotinoid Pesticides (Subtitle 2A)

With the exception of certain pet care, personal care, and indoor pest control products, neonicotinoid pesticides may not be sold at retail unless the person also sells a restricted use pesticide. A neonicotinoid pesticide may only be sold at retail to a certified applicator or farmer and may only be used by a certified applicator or a farmer (using the pesticide for agricultural purposes), a person working under a certified applicator's or farmer's supervision, or a veterinarian. In addition to enforcing these restrictions, MDA is required to (1) review the State's pesticide laws and regulations – after the U.S. Environmental Protection Agency (EPA) completes its pollinator risk assessment of neonicotinoid

pesticides – and recommend any changes necessary to protect pollinators and (2) incorporate pollinator habitat expansion and enhancement practices into the State’s Managed Pollinator Protection Plan developed in coordination with EPA.

Plant Disease Control (Subtitle 3 of Title 5 of the Agriculture Article)

The Secretary of Agriculture is given various responsibilities and authority to control plant diseases (pests), including (1) inspecting nurseries annually for any nursery stock infested or infected with dangerously injurious plant pests and certifying that the nurseries meet MDA standards; (2) inspecting and licensing plant brokers and dealers; (3) the ability to establish quarantines to control, retard, or eradicate dangerously injurious plant pests; (4) the ability to disseminate pesticides by aircraft if necessary to control any plant infestation, plant infection, or animal or human disease with a known or suspected arthropod vector; and (5) the ability to enter any public or private property in the State to inspect, destroy, treat, or experiment with dangerously injurious plant pests. Fees are collected for the certificates and licenses and are placed in the Plant Protection Fund, which is used to partially defray the cost of administering the plant protection provisions.

Mosquito Control (Subtitle 4 of Title 5 of the Agriculture Article)

The Secretary of Agriculture is authorized, in order to control mosquitos in the State, to (1) make inspections, investigations, studies, and determinations to ascertain the effect of mosquitos and methods for their control or elimination; (2) if funds are available, construct and maintain ditches, dikes, dams, and other facilities, and place or spread insecticides or other substances, to control or eliminate mosquitos; (3) contract with, and receive funds from, any county, municipality, or special taxing district to control or eliminate mosquitos in or adjacent to the county, municipality, or special taxing district; (4) order a person who is causing or allowing mosquitos to breed or develop on any property in a manner that may pose a threat to public health to abate the mosquito habitat; and (5) bring an action for an injunction against any person violating an order.

State Fiscal Effect:

Shifted Expenditures and Revenues

The bill shifts approximately \$8.1 million in State expenditures (\$1.9 million in general fund expenditures, \$3.9 million in special fund expenditures, and \$2.3 million in federal fund expenditures) from MDA to MDE in fiscal 2023, and similar, but likely increasing amounts in future years (increasing due to salary increases, inflation, and/or program needs). In total, 45 regular positions and 50 contractual positions are shifted from MDA to MDE. Approximately \$5.0 million in special fund revenues and approximately \$2.3 million in federal fund revenues in fiscal 2023, and similar, but likely increasing,

amounts in future years, are also shifted. These shifts in expenditures and revenues result from transferring from MDA to MDE (1) MDA's Pesticide Regulation and Mosquito Control programs; (2) a portion of MDA's State Chemist, Plant Protection and Weed Management, and Forest Pest Management programs; and (3) associated special fund fee revenues and federal fund revenues.

The disparity between the amount of special fund revenues shifted (\$5.0 million) and the amount of special fund expenditures shifted (\$3.9 million) is due to the fact that pesticide registration fee revenues under the State Chemist program that are shifted are greater than pesticide-related expenditures in the State Chemist program that are being shifted. Under the bill's provisions that are transferred into the Environment Article, it is unclear whether the pesticide registration fee revenues are retained in a special fund or deposited in the general fund, but it is assumed for the purposes of this fiscal and policy note that they are retained as special funds. To the extent MDE does not spend the excess (\$1.1 million) special funds, they revert to the general fund.

This estimate is based on the fiscal 2023 allowances for those programs in the Governor's proposed fiscal 2023 budget and certain assumptions made about the proportion of expenditures and revenues that are shifted from the programs that are only partially transferred. It is unclear how the bill's October 1, 2022 effective date, the date of the transfer, affects whether the full fiscal 2023 appropriations are transferred to MDE or only some portion of the appropriations. It is assumed for the purposes of this fiscal and policy note that the full appropriations are transferred, and MDE reimburses MDA for expenditures made by MDA in the first part of the fiscal year.

MDA indicates that it is unclear whether affected federal funding can be transitioned to MDE without any delays in, or loss of, funding; however, it is assumed for the purposes of this fiscal and policy note that the affected federal funding can be successfully transitioned to MDE.

New General Fund Expenditures

State general fund expenditures are also expected to increase in fiscal 2023 and future years due to (1) costs of additional personnel MDA hires to handle remaining regulatory work the transferred personnel were also responsible for (six regular positions and three contractual positions); (2) costs of covering a portion of the State Chemist program's remaining expenses with general funds that were covered by the pesticide registration fee revenues transferred to MDE under the bill; (3) costs to replace MDA laboratory equipment and other assets transferred to MDE that are needed for remaining regulatory work; and (4) costs (beyond those that can be covered by the shifted funding) that MDE incurs to transition and accommodate the transferred programs and personnel, such as moving costs and costs of office, laboratory, and storage space for central office personnel and assets,

and any costs to revise materials, labeling, contracts, and federal regulatory and funding authorizations. These costs have not been fully quantified, but MDA is expected to incur additional costs (general fund expenditures) of at least approximately \$3.4 million (including \$0.8 million for personnel and other expenses, \$1.1 million to cover expenses previously covered by pesticide registration fee revenues, and \$1.5 million for laboratory equipment) in fiscal 2023 and at least approximately \$1.8 million annually in future years.

Operational Impact

MDA indicates the bill will affect the continuity of operations of the transferred programs due to (1) the time that the programs will have to devote to the transition; (2) the potential loss of, and need to rehire, employees due to the relocation of the programs' central offices; and (3) the time it may take to transition federal regulatory and funding authorizations from MDA to MDE.

Local Fiscal Effect: Local governments contribute funding to the State for mosquito control and gypsy moth suppression efforts benefiting their jurisdictions and could be affected by those programs being transferred to MDE if the transfer results in any changes in those funding agreements. Local governments that benefit from the transferred programs' services may also be affected, at least operationally, by any break in the continuity of operations of the programs due to the transfer.

Small Business Effect: Small businesses regulated by the transferred programs may be meaningfully affected by any break in the continuity of operations of the programs, to the extent the State's regulatory activities facilitate their business practices. Nurseries, for example, benefit from authorizations provided by MDA's Plant Protection and Weed Management program for international and some interstate shipping of plants.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 387 (Delegate Ruth, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Health; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Caroline and Prince George's counties; Department of Legislative Services

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