

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 546 (Senator Young, *et al.*)
Education, Health, and Environmental Affairs

Chesapeake Bay Phosphorus Reduction Act of 2011

This bill prohibits, beginning April 1, 2012, the sale or distribution of any specialty fertilizer (commercial fertilizer distributed primarily for nonfarm use) with available phosphorous content intended for use on established lawns or grass, with the exception of fertilizers intended for use as seed starter on newly established lawns, grass, or turf, consistent with University of Maryland recommendations. Related labeling requirements, applicable beginning April 1, 2012, are established. The bill also modifies similar existing labeling requirements applicable beginning April 1, 2011, to lawn fertilizer with an available phosphoric acid content greater than 5%, specifying in part that the fertilizer not be labeled for use on established lawns, grass, *or turf*. Specified exemptions apply to the labeling requirements. The bill also requires the Maryland Department of Agriculture (MDA) to adopt regulations to require posting of a sign regarding proper use of lawn care products at any location where specialty fertilizer is offered for sale or distributed.

Fiscal Summary

State Effect: The bill's changes are expected to be handled with existing resources. It is assumed that State expenditures for the purchase of fertilizer are not significantly affected.

Local Effect: None. It is assumed that local government expenditures for the purchase of fertilizer are not significantly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill prohibits, beginning April 1, 2012, the sale or distribution for use or sale in the State of any specialty fertilizer with available phosphorous content intended for use on established lawns or grass. Specialty fertilizers intended for use as a seed starter on newly established lawns, grass, or turf, consistent with recommendations of the University of Maryland, are exempt from the prohibition.

Beginning April 1, 2012, specialty fertilizers with available phosphorous may not be labeled for use on established lawns, grass, or turf; may not be labeled with spreader settings; and must be marked with the words “NOT FOR USE ON ESTABLISHED LAWNS, GRASS, OR TURF” in a specified font and manner. The bill also modifies a similar, existing labeling requirement applicable beginning April 1, 2011, to a lawn fertilizer with an available phosphoric acid content greater than 5%, specifying that such fertilizer may not be labeled for use on established lawns, grass, *or turf* and must be marked with the words “NOT FOR USE ON ESTABLISHED LAWNS, GRASS, OR TURF.”

Under the bill, the above labeling requirements, those effective April 1, 2011, and April 1, 2012, do not apply either to seed starter fertilizer for use on newly established lawns or turf or fertilizer used for maintenance on lawns, grass, or turf when a phosphorous deficiency is demonstrated by a soil test. The existing labeling requirements effective April 1, 2011, already do not apply to seed starter fertilizer for use on newly established lawns or turf under current law.

By April 1, 2012, MDA, in cooperation with the University of Maryland, must adopt regulations requiring the posting of a specified sign at any location where specialty fertilizer is offered for sale or distributed. The sign must contain information, based on guidelines adopted by the University of Maryland, regarding the proper use of lawn care products to reduce pollution in the Chesapeake Bay and other waters of the State.

Under the bill, “specialty fertilizer” includes low-phosphorus fertilizer.

Current Law: “Specialty fertilizer” is commercial fertilizer distributed primarily for nonfarm use.

Each brand name and grade of commercial fertilizer must be registered with MDA before being distributed in the State. Specified labeling, recordkeeping, and reporting requirements also apply to commercial fertilizers and their distribution. MDA enforces State laws applicable to commercial fertilizer and has the authority to sample, inspect, test, and make analyses of any commercial fertilizer distributed in the State to ensure compliance with State law.

The Chesapeake Bay Phosphorous Reduction Act of 2009 was established by Chapters 278 and 279 of 2009. Beginning on April 1, 2011, retail establishments are prohibited from selling or distributing for use or sale fertilizer intended for use on established lawns or grass unless it is low-phosphorous fertilizer; however, licensed landscaping contractors and their agents are exempt. The Act defines “low-phosphorous fertilizer” as fertilizer containing not more than 5% of available phosphoric acid, with an application rate of at most 0.25 pound of available phosphoric acid/1,000 square feet/application and 0.5 pound of available phosphoric acid/1,000 square feet/year.

The Act also prohibits, beginning on April 1, 2011, a lawn fertilizer with an available phosphoric acid content greater than 5% from being labeled for use on established lawns or grass or with spreader settings. It also specifies language concerning fertilizer application that must appear conspicuously on the fertilizer container. Seed starter fertilizer for use on newly established lawns or turf is exempt from the labeling requirements.

The Act also requires that, by April 1, 2011, lawn care fertilizer manufacturers reduce the amount of available phosphoric acid resulting from the application of their products in the State by 50% from 2006 levels; and manufacturers who begin to sell or distribute specified fertilizer in the State on or after April 1, 2010, must limit the average amount of available phosphoric acid resulting from the application within the State of the manufacturer’s lawn care products to 1.5%. Fertilizer manufacturers are required to report annually beginning in 2011 on the amount of phosphorus in the manufacturers’ lawn care products sold at retail locations in the State.

Background: Restrictions on nitrogen and/or phosphorus/phosphate levels in fertilizer used or labeled for use on lawns and turf have been proposed and/or adopted in other states, such as Florida, Minnesota, Wisconsin, and New Jersey, and local jurisdictions. In Maryland, a City of Annapolis ordinance took effect January 1, 2009, prohibiting the application of fertilizer labeled as containing any amount of phosphorus (or other compound containing phosphorus, such as phosphate) on lawns, subject to certain exceptions.

In 2006, the Chesapeake Executive Council (consisting of the governors of Maryland, Pennsylvania, and Virginia; the Mayor of the District of Columbia; the U.S. Environmental Protection Agency Administrator; and the Chair of the Chesapeake Bay Commission), along with Delaware and West Virginia, signed a memorandum of understanding with members of the lawn care product manufacturing industry establishing a commitment to achieve a 50% reduction (from 2006 levels) in the pounds of phosphorus applied in lawn care products in the Chesapeake Bay watershed by 2009.

Maryland's recently completed Phase I Watershed Implementation Plan (WIP), the initial plan for meeting Maryland's share of the Chesapeake Bay Total Maximum Daily Load or "pollution diet," includes recommendations related to fertilizer use, including the enactment of legislation to eliminate phosphorus in lawn fertilizers, except fertilizers used for the establishment or renovation of lawns; extend to commercial applicators the requirements for the use of low-phosphorus fertilizers; allow only slow release nitrogen in fertilizers sold for use on lawns and managed turf; prohibit the use of any fertilizer product as a de-icer; and tax lawn fertilizers.

Small Business Effect: Small business manufacturers of fertilizers intended for use on established lawns or grass may be meaningfully impacted by the bill. To the extent manufacturers do not already offer products with no available phosphorous content intended for use on established lawns or grass, they will need to modify fertilizer manufactured for sale in the State. Presumably costs may also be incurred to modify product labels to comply with the bill. Costs associated with meeting the content and/or labeling requirements of the bill, however, are unknown.

A telephone survey of 10 manufacturers conducted by the Minnesota Department of Agriculture (discussed in a 2007 report) regarding the impact of the state's no phosphorus fertilizer requirement (which allowed for two years advance notice) indicated that formulating new phosphorus-free fertilizer products had not been a problem, though challenges associated with introducing new product lines were encountered (including cataloging, inventorying, marketing, and answering retailer questions). Two manufacturers experienced increased costs associated with product registration and creating new packaging and labeling. A couple of manufacturers indicated that the two-year advance notice helped them with the transition. A number of manufacturers also noted expanding markets for phosphorus-free lawn fertilizer in other areas concerned with water quality, including the Chesapeake Bay region.

Any additional costs for retailers to post signs are not anticipated to be significant. Also, the bill's prohibitions are not anticipated to significantly affect retailers that sell specialty fertilizer or small businesses that use such fertilizer.

Additional Information

Prior Introductions: HB 50 of 2010, a similar bill, passed the House, and passed second reading with amendments in the Senate, but no further action was taken. HB 49 of 2009, also a similar bill, received an unfavorable report from the House Environmental Matters Committee. HB 521 of 2008, also a similar bill, received an unfavorable report from the House Environmental Matters Committee.

Cross File: Although HB 706 (Delegate Clagett, *et al.* - Environmental Matters) is designated as a cross file, it is different.

Information Source(s): Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Department of General Services; Baltimore City; towns of Leonardtown and Bel Air; Maryland Turfgrass Council; Minnesota Department of Agriculture; Department of Legislative Services

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