

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 570 (Delegate Stein)
 Health and Government Operations

Pesticides – Mosquito Control Products and PFAS Chemicals

This bill generally prohibits the State, a local government, or a certified applicator (or a person working under the supervision of a certified applicator) from using a mosquito control product that contains “PFAS chemicals.” In addition, beginning December 31, 2022, the State, a local government, or a certified applicator (or a person working under the supervision of a certified applicator) may not use a mosquito control product unless the Maryland Department of Agriculture (MDA) has certified that the product does not contain PFAS chemicals, as specified. The bill also requires a pesticide distributor, when registering a pesticide used to control mosquitos, to submit an affidavit stating whether the pesticide (1) has ever been stored, distributed, or packaged in a specified container or (2) contains certain PFAS chemicals.

Fiscal Summary

State Effect: General/special fund expenditures for MDA increase by \$2.1 million in FY 2023. Future years reflect annualization, inflation, and ongoing costs. Potential increase in State expenditures (multiple fund types) for other State agencies (not reflected below). Revenues are not anticipated to be materially affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF/SF Exp.	2,071,600	473,600	483,400	490,200	504,700
Net Effect	(\$2,071,600)	(\$473,600)	(\$483,400)	(\$490,200)	(\$504,700)

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

Local Effect: Potential increase in local government expenditures, as discussed below. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “PFAS chemicals” means a class of fluorinated organic chemicals that contain at least one fully fluorinated carbon atom, including perfluoroalkyl and polyfluoroalkyl substances.

Registering Pesticides Used to Control Mosquitos (Affidavit Requirement)

When a distributor registers a brand or product name of a pesticide before distributing it in the State, the Secretary of Agriculture must require the submission of an affidavit stating whether a pesticide used to control mosquitos (1) has ever been stored, distributed, or packaged in a fluorinated high-density polyethylene container and (2) contains, as determined by laboratory testing in the formulation of the pesticide, a perfluoroalkyl or polyfluoroalkyl substance, including as an active or inert ingredient.

Use Restrictions on Mosquito Control Products (PFAS Chemicals)

The bill prohibits the State, a local government, or a certified applicator (or a person working under the supervision of a certified applicator) from using a mosquito control product that contains PFAS chemicals, including a product that contains PFAS chemicals as (1) an inactive or inert ingredient or (2) a result of contamination from a container or manufacturing.

Beginning December 31, 2022, the State, a local government, or a certified applicator (or a person working under the supervision of a certified applicator) may not use a mosquito control product unless MDA has certified that the product does not contain PFAS chemicals. MDA may only certify a mosquito control product as not containing PFAS chemicals if the distributor submits to MDA the results of an analysis (1) that was performed by a laboratory approved by the U.S. Environmental Protection Agency (EPA) and (2) that indicates specified information regarding the product’s chemical composition. The certification requirement does not apply if (1) the mosquito control product is being used to address an arbovirus public health emergency declared by the Maryland Department of Health (MDH); (2) MDH has no reason to believe that the mosquito control product contains PFAS chemicals; and (3) there are no other mosquito control products available that have been certified by MDA as not containing PFAS chemicals and are as effective as, or more effective than, the mosquito control product.

Current Law:

Pesticides (Generally)

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.

Generally, to be sold, distributed, or used in Maryland, a pesticide must be registered by both MDA and EPA.

The Maryland Department of the Environment (MDE) also regulates the use of pesticides as they may be discharged to waters of the State or disposed of on land as a waste. While MDE does not regulate PFAS chemicals as a hazardous substance, to the extent that PFAS chemicals are considered pollutants or contaminants, MDE could bring an action against a person found to be discharging PFAS chemicals into waters of the State.

Mosquito Control

The Secretary of Agriculture is authorized to make inspections, investigations, studies, and determinations as deemed advisable in order to ascertain the effect of mosquitos and methods for their control or elimination in any part of the State. If funds are available, the Secretary may construct and maintain ditches, dikes, dams, and other facilities and may place or spread insecticides or other substances determined desirable or necessary to control or eliminate mosquitos in any part of the State.

PFAS Chemicals

On October 18, 2021, EPA announced its comprehensive national strategy to confront PFAS pollution, called the “Strategic Roadmap.” Among other things, the roadmap contains (1) timelines to set enforceable drinking water limits under the federal Safe Drinking Water Act; (2) a hazardous substance designation under the federal Comprehensive Environmental Response, Compensation, and Liability Act; (3) timelines for action on effluent guideline limitations under the federal Clean Water Act for nine industrial categories; (4) a review of actions taken under the federal Toxic Substances Control Act (which regulates the introduction of new or already existing chemicals); and (5) continued efforts to build the technical foundation needed on PFAS air emissions to inform future actions under the federal Clean Air Act.

State Expenditures: MDA advises that it does not have the resources necessary (in either the Pesticide Regulation Section or the Office of the State Chemist) to fulfill the bill’s requirements to effectively monitor and regulate PFAS chemicals and conduct additional inspections (including staff, laboratory space, equipment, and field supplies). Accordingly, general/special fund expenditures for MDA increase by \$2.1 million in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring one agricultural inspector, three chemists (to analyze samples to determine if regulated products are PFAS-free), and one administrative specialist (to review submitted labels, confidential statements of formula, affidavits, *etc.*). This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate also includes \$650,000 for the State Chemist to purchase a high-end instrument capable of detecting PFAS chemicals, \$76,240 in associated laboratory supply costs, and \$1.0 million in one-time costs to renovate needed laboratory space.

Positions	5.0
Salaries and Fringe Benefits	\$291,250
Laboratory Renovation	1,000,000
Laboratory Equipment/Supplies	726,240
Other Operating Expenses	<u>54,144</u>
Total FY 2023 MDA Expenditures	\$2,071,634

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

While several State agencies advise that they do not use mosquito control products that contain PFAS, to the extent any State agencies do use such products, costs may increase to the extent the bill’s restrictions lead to the use of more expensive mosquito control products. Costs may also increase to dispose of products that have already been procured but whose continued use is prohibited under the bill.

Local Expenditures: The local jurisdictions that responded to requests for information with respect to the fiscal effect of this legislation either do not anticipate a fiscal impact resulting from the bill or are unable to estimate any impact on their mosquito control programs. However, local expenditures may increase to the extent that local governments use mosquito control products that contain PFAS and the bill’s restrictions lead to the use of more expensive mosquito control products. Costs may also increase to dispose of products that have already been procured but whose continued use is prohibited under the bill.

Small Business Effect: Small businesses that manufacture, sell, or distribute PFAS-containing mosquito control products may see a decrease in profits due to the bill’s prohibition against applying these products in Maryland. Similarly, small business certified

applicators that use PFAS-containing mosquito control products in their operations need to use a different product. Distributors incur costs to produce and submit the affidavits and analyses that are required to have a product registered and certified by MDA. In addition, pesticides that have already been procured, but whose continued use is prohibited under the bill, need to be disposed of, potentially increasing disposal costs.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Charles, Frederick, Montgomery, and Somerset counties; City of Havre de Grace; Maryland Municipal League; Baltimore City Community College; University System of Maryland; Morgan State University; Public School Construction Program; Maryland Department of Agriculture; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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