

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 730 (Senator Lam)
 Education, Health, and Environmental Affairs

Environment - Sale and Application of Coal Tar Pavement Products -
 Prohibition

This bill prohibits a person, beginning October 1, 2021, from selling, offering for sale, or applying to pavement or another similar surface, a “coal tar pavement product.” A person who violates the bill’s prohibition is subject to a civil penalty of up to \$500 for a first offense and up to \$1,000 for a second or subsequent offense.

Fiscal Summary

State Effect: General fund expenditures increase by \$71,900 in FY 2021. Future year expenditures reflect annualization, ongoing costs, and termination of the contractual employee in FY 2024. The bill’s penalty provisions are not expected to materially affect State revenues.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	71,900	46,000	47,200	15,000	0
Net Effect	(\$71,900)	(\$46,000)	(\$47,200)	(\$15,000)	\$0

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

Local Effect: Local government expenditures may increase due to the bill’s prohibition. Local revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Coal tar” means a viscous substance that (1) is obtained from the distillation of bituminous coal and (2) contains levels of polycyclic aromatic hydrocarbons (PAH) greater than 100,000 milligrams per kilogram. “Coal tar” includes refined coal tar, high temperature coal tar, coal tar pitch, and coal tar pitch volatiles. A “coal tar pavement product” is a product that (1) contains coal tar and (2) is intended for use as a sealant on pavement or a similar surface.

Current Law: The Maryland Department of the Environment (MDE) advises that it does not currently regulate the distribution of coal tar/coal tar pavement products or the use of coal tar/coal tar pavement products. The Environment Article is silent with regard to coal tar. However, current regulations relating to water quality, air quality, and hazardous waste address coal tar and PAH, which is a substance contained in coal tar. Specifically, MDE regulations (1) establish a maximum concentration level of PAH for surface waters used as a public water supply; (2) require that a community water supply system identify if coal tar lined pipes and tanks are present in their distribution system and report to the approving authority; (3) require that a coal tar pitch impregnating operation obtain a State air quality permit to operate; and (4) designate certain residues from the recovery, distillation, and storage of coal tar as hazardous waste.

The Secretary of the Environment is required to carry out and enforce the provisions of the Environment Article.

Background: According to a 2016 U.S. Geological Survey (USGS) [fact sheet](#), pavement sealcoat is a commercial product that is applied to many asphalt parking lots, driveways, and playgrounds in North America in an effort to protect and beautify the underlying asphalt. It is rarely used on public roads. Most sealcoat products are either coal tar or asphalt emulsion, although some alternative products are now available. Coal tar is a byproduct of the coking, liquefaction, or gasification of coal and is a complex mixture composed primarily of aromatic hydrocarbons.

According to USGS, coal tar and coal tar pitch have extremely high concentrations of PAHs, as do coal tar-based sealcoat products, which are typically 20% to 35% coal tar or coal tar pitch. Asphalt and asphalt-based sealcoat products have much lower concentrations of PAHs. PAHs are an environmental concern because many cause cancer, mutations, birth defects, or death in fish, wildlife, and invertebrates. Exposure to sunlight greatly intensifies the adverse effects of several PAHs. The U.S. Environmental Protection Agency (EPA) has classified 7 PAHs as probable human carcinogens and 16 PAHs as priority pollutants. Environmental and health effects depend on which PAHs are present and their concentrations.

Studies conducted by USGS, academic institutions, and state and local agencies have identified coal tar-based pavement as a major source of PAH contamination in urban and suburban areas and a potential concern for human health and aquatic life. Specifically, studies have found that, as coal tar-based sealcoat ages, it wears into small particles with high levels of PAHs that can be tracked into homes and incorporated into house dust.

Washington, DC banned the sale and use of coal tar pavement products in July 1, 2009. According to EPA, several other jurisdictions have taken actions to ban the sale and use, or limit the use of, coal tar pavement products, including the City of Austin and the states of Texas, Minnesota, and Washington. EPA advises that alternatives to coal tar sealcoat exist. Several local jurisdictions in Maryland indicate that they either ban coal tar pavement products or do not use coal tar pavement products, including Anne Arundel, Baltimore, Charles, Howard, Kent, Montgomery, and Prince George’s counties and the City of Salisbury.

State Expenditures:

MDE Enforcement Costs

MDE estimates that its expenditures increase by approximately \$87,000 in fiscal 2021 and by more than \$67,000 annually thereafter to hire one full-time environmental compliance specialist to enforce the bill. The Department of Legislative Services (DLS) disagrees that a permanent employee is necessary; based on currently available information, a growing number of entities are already in compliance with the bill’s prohibition. Thus, DLS anticipates that the bill can be implemented with a contractual employee instead.

Accordingly, general fund expenditures increase by \$71,947 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring one contractual environmental compliance specialist within MDE to handle enforcement and compliance responsibilities, including conducting outreach to affected entities, conducting inspections, mailing warning notices, and preparing enforcement cases. It includes a salary, fringe benefits, one-time start-up costs (including the purchase of a vehicle), and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$34,006
Vehicle Purchase	27,000
Other Operating Expenses	<u>10,941</u>
Total FY 2021 State Expenditures	\$71,947

Future year expenditures reflect a full salary with annual increases and employee turnover, ongoing operating expenses, and termination of the contractual employee after three years

(in fiscal 2024). This estimate assumes that as any affected entities become aware of the bill's requirements and voluntarily come into compliance, MDE can handle enforcement and implementation of the bill's prohibition with existing staff.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Other State Agencies

Currently available information suggests that most State agencies do not use coal tar or coal tar pavement products on pavement or similar surfaces. Thus, the bill's prohibition is not anticipated to materially affect State expenditures with respect to paving.

To the extent that some agencies do use these products in a manner prohibited by the bill, expenditures may increase to use an alternative replacement product. MDE advises that the cost difference between coal tar pavement products and alternative products is not considered significant due to the availability of alternative products. The Department of General Services advises that any impact resulting from the bill is minimal. Baltimore City Community College estimates that costs increase by less than \$10,000 annually for alternative products to seal and patch parking lots.

Local Fiscal Effect: Several local jurisdictions indicate that they either already ban the use of coal tar pavement products or do not use such products for paving; thus, the bill's prohibition has no effect on those entities. For example, Kent and Worcester counties and the City of Salisbury advise that their jurisdictions do not use coal tar products. According to MDE, Anne Arundel, Howard, Montgomery, and Prince George's counties have similar bans against coal tar pavement products.

For any local jurisdictions that use coal tar or coal tar pavement products on pavement or similar surfaces, expenditures may increase to purchase alternative products. However, because the bill's prohibition does not take effect until October 1, 2021, the bill provides time to use existing inventory and to identify and purchase alternatives. Further, the cost difference to purchase alternative products is not anticipated to be significant given the availability of alternative products.

Small Business Effect: The bill may have a meaningful impact on any small businesses that manufacture coal tar or coal tar pavement products. The number of affected manufacturers in the State, if any, is unknown.

The bill may also result in a loss of revenues and sales for any small businesses that sell coal tar or coal tar pavement products. MDE notes that some major retail stores, including Home Depot and Ace Hardware, have stopped selling coal tar sealants.

Further, expenditures may increase for any small businesses that use coal tar or coal tar pavement products in a manner prohibited by the bill and must switch to a different product or develop a new business model. Affected businesses could include construction companies, paving companies, and driveway resurfacing companies. However, because the bill's prohibition does not take effect until October 1, 2021, the bill provides time to use existing inventory and to identify and purchase alternatives. Further, the cost difference to purchase alternative products is not anticipated to be significant given the availability of alternative products.

Additional Information

Prior Introductions: HB 411 of 2019 received a hearing in the House Environment and Transportation Committee, but was subsequently withdrawn.

Cross File: HB 553 (Delegate Stewart, *et al.*) - Environment and Transportation.

Information Source(s): Baltimore City; Kent, Montgomery, and Worcester counties; Maryland Association of Counties; City of Salisbury; Maryland Environmental Service; Maryland Municipal League; towns of Bel Air and Leonardtown; Judiciary (Administrative Office of the Courts); Baltimore City Community College; University System of Maryland; Morgan State University; Maryland Department of the Environment; Department of General Services; Maryland Department of Transportation; U.S. Environmental Protection Agency; U.S. Geological Survey ; Department of Legislative Services

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