

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 77

(Delegate Stewart)

Environment and Transportation

Education, Health, and Environmental Affairs

Environment - Driveway Sealers - Prohibitions (Safer Sealant Act of 2021)

This bill requires the Maryland Department of the Environment (MDE) to develop labeling standards for a person supplying, selling, offering for sale, or manufacturing a “driveway sealer” for use in the State, as specified. Beginning October 1, 2022, the bill prohibits a person from (1) supplying, selling, offering for sale, or manufacturing a “high-PAH driveway sealer” for use in the State; (2) soliciting the application of a high-PAH driveway sealer to pavement in the State; or (3) supplying, selling, offering for sale, or manufacturing a driveway sealer in the State unless the driveway sealer is labeled in accordance with the bill. Existing enforcement and penalty provisions apply to the bill and any regulations adopted or orders issued pursuant to the bill. Any penalties collected by MDE pursuant to the bill are paid into the Maryland Clean Water Fund; the bill expands the authorized use of the fund to include activities conducted by MDE under the bill. MDE must adopt specified regulations and is authorized to adopt implementing regulations.

Fiscal Summary

State Effect: Special fund expenditures increase by \$84,800 in FY 2022. Future year expenditures reflect annualization, ongoing costs, and termination of the contractual employee in FY 2025. The application of existing penalty provisions is not expected to materially affect State finances.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	84,800	56,200	57,600	25,100	0
Net Effect	(\$84,800)	(\$56,200)	(\$57,600)	(\$25,100)	\$0

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

Local Effect: The bill is not anticipated to significantly affect local finances, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Driveway sealer” means a coating labeled and formulated for application to worn asphalt driveway and parking lot surfaces to (1) fill cracks; (2) seal the surface to provide protection; or (3) restore or preserve appearance. “High-PAH driveway sealer” means a driveway sealer containing more than 0.100% polycyclic aromatic hydrocarbons (PAH) by weight.

As noted above, MDE must adopt labeling standards that include the placement of the composition of the driveway sealer as a percentage of PAH by weight on the label. MDE must also adopt regulations to allow a sealant manufacturer to label a product that contains less than 50 ppm PAH by weight as “low PAH.”

The provisions of §§ 9-334 through 9-344 of the Environment Article apply to the enforcement of violations of the bill, any regulation adopted under the bill, or any order issued under the bill. These existing provisions are discussed below in the Current Law section of this fiscal and policy note.

Current Law:

Regulations Relating to Driveway Sealers

Current regulations relating to water quality, air quality, and hazardous waste address coal tar (which can be used as an asphalt sealer) 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.

Enforcement

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

Sections 9-334 through 9-344 of the Environment Article: The provisions of §§ 9-334 through 9-344 of the Environment Article establish enforcement procedures that govern (1) the ability for MDE to issue complaints, conduct hearings, issue corrective orders, and obtain injunctive relief and (2) judicial review of final decisions. The Attorney General is in charge of prosecuting and defending cases that arise on behalf of the State.

In addition to being subject to an injunctive action, a violator is subject to a civil penalty of up to \$10,000, which is collected in a civil action brought by MDE. MDE is also authorized to impose administrative penalties of up to \$10,000 for each violation, not exceeding \$100,000 total. Each day is a separate violation.

Further, any person who violates any provision of, or fails to perform any duty imposed by Subtitle 9 of the Environment Article (which addresses water pollution control), or any related regulations, orders or permits, is guilty of a misdemeanor and upon conviction, is subject to (1) for a first offense, a fine of up to \$25,000 and/or imprisonment for up to one year and (2) for future convictions, a fine of up to \$50,000 for each day of violation and/or imprisonment for up to two years. Specified criminal penalties also apply to making false statements in required documents.

State Expenditures:

MDE Enforcement Costs

Special fund expenditures from the Maryland Clean Water Fund increase by \$84,826 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one contractual environmental compliance specialist within MDE to handle enforcement and compliance responsibilities, including developing the required labeling standards, developing and adopting regulations, 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, including laboratory testing and analysis costs.

Contractual Position	1.0
Salary and Fringe Benefits	\$34,524
Vehicle Purchase	32,000
Contractual Laboratory Costs	7,500
Other Operating Expenses	<u>10,802</u>
Total FY 2022 MDE Expenditures	\$84,826

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 2025). This estimate assumes that as affected entities become aware of the bill’s requirements and voluntarily come into compliance, MDE can handle enforcement and implementation of the bill’s prohibitions 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 use alternative products and/or already comply with the bill. Thus, the bill's prohibitions are not anticipated to materially affect State expenditures with respect to paving. To the extent that some agencies do use affected products in a manner prohibited by the bill, expenditures may increase to use an alternative replacement product. Based on preliminary research, there are alternative products available, but these products are slightly more expensive.

Local Fiscal Effect: Based on a survey of local governments, the bill is not anticipated to significantly affect local finances. All of the jurisdictions that responded to requests for information regarding the potential fiscal impact of this bill indicate that they either already have similar bans or use products that comply with the bill.

For any local jurisdictions that use affected products, expenditures may increase to purchase alternative products. However, because the bill's prohibitions do not take effect until October 1, 2022, the bill provides time to use existing inventory and to identify and purchase alternatives. As discussed above, based on preliminary research, there are alternative products available, but these products are slightly more expensive.

The application of existing penalty provisions is not anticipated to materially affect local finances or operations.

Small Business Effect: The bill may have a meaningful impact on any small businesses that manufacture affected driveway sealer 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 affected driveway sealer products.

Further, expenditures may increase for any small businesses that use affected driveway sealer 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 prohibitions do not take effect until October 1, 2022, the bill provides time to use existing inventory and to identify and purchase alternatives. Based on preliminary research, there are alternative products available, but these products are slightly more expensive.

Additional Information

Prior Introductions: HB 553 of 2020, a similar bill, received a hearing in the House Environment and Transportation Committee, but no further action was taken. Its cross file, SB 730, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. HB 411 of 2019, another similar bill, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn.

Designated Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; City of Salisbury; towns of Bel Air and Leonardtown; Maryland Department of the Environment; Maryland Department of Transportation; Department of Legislative Services

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