

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

House Bill 133 (Delegate Stewart, *et al.*)
 Environment and Transportation and Economic Matters Education, Health, and Environmental Affairs

Environment - Sealant Products - Prohibitions (Safer Sealant Act of 2022)

This bill establishes prohibitions, beginning October 1, 2023, related to the sale and use of “high-PAH sealant products” that are applied to driveways and parking areas. Airports, federal facilities, and military facilities are exempt from the bill’s provisions. Existing and new enforcement and penalty provisions apply to the bill and any related regulations or orders. Penalties are paid into the Maryland Clean Water Fund, and MDE is authorized to use the fund to implement the bill. MDE is also authorized to adopt implementing regulations. Finally, the bill establishes provisions related to the authority of local governments to establish related standards or requirements.

Fiscal Summary

State Effect: Special fund expenditures increase by \$45,400 in FY 2023. Future year expenditures reflect annualization and inflation, ongoing costs, additional one-time costs, and termination of the contractual employee in FY 2026. Minimal increase in special fund revenues beginning in FY 2024 due to the bill’s penalty provisions.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	\$0	-	-	-	-
SF Expenditure	\$45,400	\$90,100	\$59,600	\$25,700	\$0
Net Effect	(\$45,400)	-/(-)	-/(-)	-/(-)	-

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

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “High-PAH sealant product” means a sealant product containing more than 1.0% polycyclic aromatic hydrocarbons (PAH) by weight.

Beginning October 1, 2023, a person may not (1) supply, sell, or offer for sale a high-PAH sealant product to a driveway or parking area in the State or (2) apply or solicit the application of a high-PAH sealant product to a driveway or parking area in the State.

The bill does not prohibit a county, municipality, or unit of local government from enacting and enforcing standards or requirements related to sealant products that are more stringent than the bill’s requirements. Further, the bill does not limit a county, municipality, or unit of local government’s power to adopt ordinances, rules, or regulations related to sealant products. However, any such measure cannot be less stringent than the bill’s requirements.

Generally, 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. Additionally, a person who violates the bill’s provisions is subject to a civil penalty of up to \$2,500 for each violation and an administrative penalty of up to \$2,500 for each violation, but not exceeding \$100,000 total. Each day a violation occurs is a separate violation.

Current Law:

Regulations Relating to Sealant Products

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 \$45,422 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring one contractual environmental compliance specialist within MDE to handle enforcement and compliance responsibilities, including developing and adopting regulations, conducting outreach to affected entities, and beginning in fiscal 2024, conducting inspections, mailing warning notices, and preparing enforcement cases. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	FY 2023	FY 2024
New Contractual Position	1.0	
Salary and Fringe Benefits	\$35,046	\$43,272
Vehicle Purchase	0	32,000
Contractual Laboratory Costs	0	10,000
Other Operating Expenses	<u>10,376</u>	<u>4,846</u>
Total MDE Expenditures	\$45,422	\$90,118

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.

Future year estimates reflect a full salary with annual increases and employee turnover, a one-time cost to purchase a vehicle (in fiscal 2024), annual increases in ongoing operating expenses (including laboratory testing and analysis costs beginning in fiscal 2024), and termination of the contractual employee after three years (in fiscal 2026). This estimate assumes that as affected entities become aware of the bill's prohibitions and voluntarily come into compliance, MDE can handle enforcement and implementation with existing staff.

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 maintaining driveways and parking areas. 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.

State Revenues: Special fund revenues to the Maryland Clean Water Fund within MDE increase minimally beginning in fiscal 2024 due to the bill's penalty provisions. Any such increase depends on future violations and related enforcement actions and cannot be predicted.

Local Fiscal Effect: Based on a survey of local governments, the bill is not anticipated to significantly affect local finances. All but one 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. St. Mary's County Public Schools was the only local entity surveyed that indicates it still uses products affected under the bill; the county estimates that its costs increase by approximately \$9,000 annually to switch to compliant sealant products. However, because the bill's prohibitions do not take effect until October 1, 2023, the bill provides time to use existing inventory and to identify and purchase alternatives.

The application of existing and/or new 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 sealant 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 sealant products.

Further, expenditures may increase for any small businesses that use affected sealant 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, 2023, 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 77 of 2021, a similar bill, passed the House and was reported favorable with amendments by the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. 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. Another similar bill was introduced in the 2019 session.

Designated Cross File: SB 372 (Senator Kagan) - Education, Health, and Environmental Affairs.

Information Source(s): Harford, Montgomery, Talbot, and Wicomico counties; cities of College Park and Frostburg; Judiciary (Administrative Office of the Courts); University System of Maryland; St. Mary's College of Maryland; Public School Construction Program; Maryland Department of the Environment; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Anne Arundel County Public Schools; Frederick County Public Schools; St. Mary's County Public Schools; Department of Legislative Services

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