

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 369

(Delegate Stein, *et al.*)

Environmental Matters

Coal Tar Pavement Products - Prohibition

This bill prohibits a person from applying a “coal tar pavement product” to any driveway, parking lot, or other surface.

Fiscal Summary

State Effect: Federal fund revenues may decrease significantly beginning in FY 2013 for the Maryland Aviation Administration (MAA) to the extent that the bill’s prohibition conflicts with Federal Aviation Administration (FAA) standards. General fund expenditures increase by about \$75,200 in FY 2013 for the Maryland Department of the Environment (MDE) to enforce the bill. Future year general fund expenditures reflect annualization and inflation. General fund revenues increase minimally, assuming enforcement results in fines being imposed. State expenditures (all funds) may increase to the extent that any agency that currently applies coal tar sealants to its property procures a more expensive alternative under the bill. It is assumed that violations of the bill can be prosecuted with existing resources by the Office of the Attorney General (OAG).

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	-	-	-	-	-
FF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$75,200	\$64,800	\$69,000	\$72,200	\$75,600
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$75,200)	(\$64,800)	(\$69,000)	(\$72,200)	(\$75,600)

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

Local Effect: Local government expenditures increase for any jurisdiction that currently applies coal tar sealants and procures a more expensive alternative under the bill. Local airports could lose federal funds to the extent that the bill’s prohibition conflicts with FAA standards.

Small Business Effect: Meaningful adverse impact on small businesses that derive a significant share of revenues from the sale, production, or application of coal tar sealants, except to the extent that such businesses can utilize alternative substances without a significant additional burden. Potential meaningful beneficial impact to small businesses engaged in the sale, production, or application of coal tar sealant alternatives.

Analysis

Bill Summary: A “coal tar pavement product” is a material that contains coal tar and is for use as a sealant on an asphalt or concrete surface. “Coal tar” is a substance formed from the distillation of coal that contains polycyclic aromatic hydrocarbons.

A person that violates this prohibition is subject to an existing misdemeanor penalty of up to \$500, or imprisonment for up to three months, or both; a second or subsequent violation is punishable by a fine of up to \$1,000, imprisonment for up to one year, or both. Under current law, the prosecution of violations of the Water Management Title of the Environment Article is the responsibility of OAG.

Current Law/Background: Coal tars are by-products created by the carbonization process used to create natural gas or coke from coal. Coal tars have been incorporated into several consumer products and industrial applications, including pavement sealants to prevent corrosion and deterioration of the roadways and other surfaces.

In certain forms, such as is typical in pavement sealants, coal tars have been classified by the U.S. Department of Health and Human Services as carcinogens and also contain toxic compounds known as polycyclic aromatic hydrocarbons (PAHs). According to the U.S. Environmental Protection Agency (EPA), coal tar leads to PAH “hot spots” in streams adjacent to surfaces treated with sealant products through transmission by stormwater.

The District of Columbia banned the sale or use of coal tar sealants beginning July 1, 2009, and Washington State enacted a statewide ban on the sale and application of coal tar sealants in May 2011. Additionally, a number of municipalities in several states have various restrictions or moratoria pertaining to the use of coal tar products. According to EPA, alternatives to coal tar sealants include asphalt-based sealants (which may contain trace levels of PAHs), or the use of permeable asphalt (which does not require sealing and allows stormwater infiltration), gravel, or concrete instead of traditional asphalt.

State Revenues: Federal fund revenues may decrease significantly beginning in fiscal 2013 for MAA. MAA receives ongoing federal Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) revenues from FAA. The Governor's proposed fiscal 2013 budget assumes about \$47.6 million in PFC funds and about \$23.6 million in AIP funds, the majority of which will be used to continue a multi-year \$315 million repaving project at the Baltimore/Washington Thurgood Marshall International (BWI) airport. MAA advises that the only approved sealers for use on bituminous concrete pavements contained in FAA specifications are coal tar based. MAA will need to obtain a modification to standard to use a coal tar sealant alternative, which FAA is generally reluctant to approve. If a modification to standard is not approved and MAA is required to use an alternative to coal tar sealants, then a portion of the \$71.2 million in federal funds assumed in the MAA fiscal 2013 budget may be jeopardized, and in particular, a large share of the \$23.6 million to be used for the BWI repaving project. Similarly, federal funds may be jeopardized in any future year in which an FAA modification to standard is not granted.

The application of existing penalty provisions to this bill increase general fund revenues minimally.

State Expenditures: MDE's general fund expenditures increase by \$75,213 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring one additional environmental compliance specialist to handle enforcement of the bill on a complaint basis. The estimate includes a salary, fringe benefits, one-time start-up costs, including the purchase of a vehicle for conducting inspections, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$45,968
Automobile	22,806
Other Start-up Costs	4,485
Operating Expenses	<u>1,954</u>
Total FY 2013 MDE Expenditures	\$75,213

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

MAA expenditures may increase to the extent that the coal tar pavement sealer alternative that is chosen is more expensive. The Maryland Department of Transportation and the Department of General Services both advise that they no longer

use coal tar sealers on the roads, parking lots, driveways, and roofs on the infrastructure and properties they own or operate. To the extent that another State agency currently applies coal tar sealants to its property and procures a more expensive alternative under the bill, expenditures may increase. It is assumed that violations of the bill can be prosecuted with existing OAG resources.

Local Fiscal Effect: Local government expenditures increase for any jurisdiction that currently applies coal tar sealants and procures a more expensive alternative under the bill. It is unknown how many local governments are affected. For example, Calvert and Howard counties and the cities of Frederick and Havre de Grace indicate that the bill has no fiscal impact. In addition, Prince George's County and the Montgomery County Department of Transportation both indicate that the bill is not expected to have a fiscal impact. However, the Maryland-National Capital Park and Planning Commission (M-NCPPC), a bi-county agency that serves Montgomery and Prince George's counties, advises that the bill may result in additional expenditures to the extent that the coal tar sealant alternative adopted is more expensive. M-NCPPC further advises that if the alternative is significantly more expensive it may opt to not use sealant instead, which is considered a viable and potentially preferable option to the use of pavement sealants for certain applications.

Several airports throughout the State are owned and operated by local governments. Thus, not only could affected local governments incur increased costs to procure alternatives, but also, any county or municipal airport subject to FAA standards relating to the use of tarmac sealants could lose federal funds to the extent those alternatives are not consistent with FAA specifications.

The application of existing penalty provisions to this bill likely does not have a material impact on local expenditures.

Small Business Effect: The Department of Legislative Services is not aware of any Maryland small business engaged in the production of coal tar sealants. However, many small businesses in Maryland may sell or apply coal tar sealants. Small businesses that sell coal tar sealants may lose revenue to the extent they do not replace such products with alternative sealants, or they may lose profits to the extent that sales or profit margins are lower from alternative sealants. Small businesses that apply coal tar sealants may incur a meaningful additional cost to procure alternative sealants, or they may experience a meaningful disruption in their business models to the extent that people choose not to use a sealant at all as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Calvert, Howard, Montgomery, and Prince George's counties; the cities of Frederick and Havre de Grace; Maryland-National Capital Park and Planning Commission; Department of General Services; Maryland Department of Transportation; Maryland Department of the Environment; U.S. Department of Health and Human Services; U.S. Environmental Protection Agency; Department of Legislative Services

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