

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1147

(Delegate Guyton, et al.)

Environment and Transportation

Education, Energy, and the Environment

Environment - Playground Surfacing Materials - Prohibitions

This bill prohibits, beginning October 1, 2024, a person from installing, supplying, selling, soliciting, or offering for sale in the State playground surfacing materials that contain (1) more than 90 parts per million of lead or (2) a component product, material, or substance to which "PFAS chemicals" were previously intentionally added in the formation of that component where the continued presence of the PFAS chemicals was desired in the component to provide a specific characteristic. The bill establishes provisions relating to (1) certificates of compliance by manufacturers; (2) enforcement; and (3) the ability of local governments to adopt ordinances, rules, or regulations related to playground surfacing materials that contain PFAS chemicals or lead. The Maryland Department of the Environment (MDE) may adopt regulations to carry out the bill. The bill must be construed to apply only prospectively, as specified.

Fiscal Summary

State Effect: General fund expenditures increase by \$118,900 in FY 2025; out-years reflect annualization and ongoing costs. Revenues are not materially affected.

Table with 6 columns: (in dollars), FY 2025, FY 2026, FY 2027, FY 2028, FY 2029. Rows include Revenues, GF Expenditure, and Net Effect.

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

Local Effect: Local government expenditures may increase, as discussed below. Revenues are not materially 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 per- and polyfluoroalkyl substances. “Playground surfacing materials” means products, materials, or substances used or installed on the ground surface of a playground in the State that come into direct contact with a person.

A manufacturer that manufactures, sells, offers for sale, or distributes for use in the State playground surfacing materials must establish a certificate of compliance to attest that the materials are in compliance with the bill’s provisions. On request by MDE and within 30 days of such a request, a manufacturer must provide such a certificate to MDE.

The bill specifies that the provisions of §§ 9-334 through 9-341 and §§ 9-343 through 9-344 of the Environment Article apply to enforce violations of the bill or any regulation or order issued under the bill. In addition, a person who violates the bill is subject to a civil penalty of up to \$2,500 for each violation or an administrative penalty of up to \$2,500 for each violation, not exceeding \$100,000 total.

The bill does not limit the power of a county, municipality, or unit of local government to adopt ordinances, rules, or regulations related to playground surfacing materials that contain PFAS chemicals or lead. A county, municipality, or local government may not adopt any ordinance, rule, or regulation related to playground surfacing materials that contain PFAS chemicals or lead that is less stringent than the bill’s requirements. The bill does not affect the authority of a county, municipality, or unit of local government to enact and enforce standards or requirements that are more stringent than the bill’s requirements.

The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract awarded for the installation, supply, sale, solicitation, or offer for sale of playground surfacing materials the bill’s effective date.

**Current Law:** Current law does not specifically address the content of playground surfacing materials.

### *Existing Restrictions on Lead and PFAS Chemicals in Products*

Title 6, Subtitle 16 of the Environment Article governs PFAS chemicals and addresses the use, manufacture, sale, distribution, and disposal of Class B fire-fighting foam that contains intentionally added PFAS chemicals in the State as well as the manufacture, sale, and distribution for sale or use in the State a rug or carpet to which PFAS chemicals have been intentionally added. Manufacturers of rugs or carpets for sale or use in the State must

establish a certificate of compliance to attest that the rug or carpet is in compliance and must provide the certificate to MDE on request.

Title 9, Subtitle 19 of the Environment Article governs toxics in packaging and generally prohibits a manufacturer or distributor from selling or offering for sale (or for promotional purposes) any package or packaging component or any product in a package or packaging component to which lead, cadmium, mercury, or hexavalent chromium was intentionally added during manufacture or distribution. In addition, a manufacturer or distributor may not manufacture or knowingly sell, offer for sale, or distribute for sale or use in the State a food package or food packaging component designed and intended for direct food contact to which PFAS chemicals were intentionally added.

Under the Health-General Article, effective January 1, 2025, a person may not knowingly manufacture, sell, deliver, hold, or offer for sale in the State a cosmetic product that contains specified PFAS chemicals (and their salts) if intentionally added.

#### *Relevant Enforcement Provisions*

The provisions of §§ 9-334 through 9-341 of the Environment Article, which are established under provisions relating to Title 9, Subtitle 3 of the Environment Article (Water Pollution Control), establish enforcement procedures that govern (1) the ability of MDE to issue complaints, conduct hearings, issue corrective orders, and obtain injunctive relief and (2) judicial review of final decisions.

Under § 9-343 of the Environment Article, a person who violates any provision of or fails to perform any duty imposed by Title 9, Subtitle 3 of the Environment Article, or who violates any provision or fails to perform any duty imposed by a rule, regulation, order, or permit adopted or issued under that subtitle, is guilty of a misdemeanor and on conviction is subject to a maximum fine of \$25,000 and/or imprisonment for up to one year for a first offense and a maximum fine of \$50,000 and/or imprisonment for up to two years for a subsequent offense. The person may also be enjoined from continuing the violation. Each day on which a violation occurs is a separate violation.

In addition, a person is guilty of misdemeanor and on conviction is subject to a maximum fine of \$50,000 and/or imprisonment for up to two years if the person (1) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the subtitle or (2) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the subtitle or any rule, regulation, order, or permit adopted or issued under the subtitle.

Pursuant to § 9-344 of the Environment Article, the Attorney General is in charge of prosecuting and defending cases that arise on behalf of the State.

**State/Local Fiscal Effect:**

*Maryland Department of the Environment Administrative Costs*

General fund expenditures increase by \$118,858 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the costs for (1) MDE to hire one environmental compliance specialist to enforce the bill’s prohibition, including requesting, reviewing, and verifying manufacturer certificates of compliance, sampling and testing products being offered for sale in the State, and meeting with manufacturer and distributor representatives; (2) a vehicle for the environmental compliance specialist; and (3) contractual laboratory services to test playground surfacing materials. The estimate includes a salary, fringe benefits, one-time start-up costs (including the purchase of a vehicle), and ongoing operating costs (including laboratory services).

|                                       |                  |
|---------------------------------------|------------------|
| Position                              | 1.0              |
| Salary and Fringe Benefits            | \$56,952         |
| Vehicle Purchase                      | 32,000           |
| Laboratory Services                   | 20,000           |
| Other Operating Expenses              | <u>9,906</u>     |
| <b>Total FY 2025 MDE Expenditures</b> | <b>\$118,858</b> |

Future years reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Once the bill’s prohibition has been in effect for a period of time and manufacturers and purchasers are aware of the prohibition, it is assumed that the environmental compliance specialist is able to transition from a full-time position to a part-time (50%) position. Accordingly, beginning in fiscal 2027, the estimates reflect that transition.

*Impacts to State Agencies and Local Governments as Purchasers/Users*

The bill’s prohibition may result in increased costs for State agencies (primarily the Department of Natural Resources (DNR)) and local governments (including school systems) that construct or renovate playgrounds on or after October 1, 2024, to the extent the installation and/or maintenance costs of playground surfacing materials that comply with the bill’s prohibition are higher than the costs of surfacing materials installed in the absence of the bill. The extent of any impact cannot be reliably estimated but may be relatively minimal. Of the State agencies, local governments, and school systems that responded to requests for information regarding the fiscal impact of this bill, several (including DNR, due to the type of surfacing materials currently used by the department)

do not expect a significant impact on them as purchasers/users of playground surfacing materials.

### *Penalties*

The application of existing penalty provisions, and the civil/administrative penalties established by the bill, are not anticipated to materially affect State or local government finances.

**Small Business Effect:** Small businesses involved in the construction or renovation of playgrounds in the State, or the manufacture of playground surfacing materials, may be meaningfully affected by the bill's prohibition to the extent they do not already use/produce compliant surfacing materials. Any small business manufacturers that manufacture, sell, or distribute playground surfacing materials in the State may also incur costs to establish and provide certificates of compliance.

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## **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Carroll, Harford, and Queen Anne's counties; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; Maryland Municipal League; Town of Bel Air; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Department of the Environment; Department of General Services; Department of Juvenile Services; Department of Natural Resources; Baltimore City Public Schools; Montgomery County Public Schools; Department of Legislative Services

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