

Department of Legislative Services  
Maryland General Assembly  
2005 Session

**FISCAL AND POLICY NOTE**

House Bill 84 (Delegate Hubbard)  
Environmental Matters

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**Environment - Air Quality - New Source Review**

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This bill prohibits the Maryland Department of the Environment (MDE), when modifying its New Source Review (NSR) regulations, from altering any of the following if they existed in regulation on December 30, 2002: (1) the applicability determination for NSR; (2) the definition of modification, major modification, routine maintenance, repair, or replacement; (3) the calculation methodology, thresholds, or other NSR procedures; and (4) any other requirement or definition of the NSR regulations. The bill provides specified exceptions to that prohibition.

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**Fiscal Summary**

**State Effect:** Potential loss of significant federal transportation funds if the bill results in disapproval of the State Implementation Plan (SIP) by the U.S. Environmental Protection Agency (EPA). Expenditures would not be materially affected; any increase in workload could be handled with existing resources.

**Local Effect:** The bill would not directly affect local operations or finances.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** MDE may alter the NSR regulations if the amendment or revision does not exempt, relax, or reduce any requirement related to: (1) obtaining NSR or other permits to construct, before beginning construction; (2) using best control technology; (3) conducting an air quality impact analysis; (4) conducting recordkeeping, monitoring, and

reporting, under specified conditions; (5) regulating any air pollutant covered by the NSR regulations; and (6) public participation prior to issuance of a permit to construct.

MDE may alter a regulation that exempts or reduces one of those requirements if MDE makes its decision based on substantial evidence that the new regulation: (1) replaces an existing regulation that caused a risk to public health or safety; (2) replaces an existing regulation that is unworkable due to engineering or other technical problems; (3) amends an existing regulation that otherwise will cause substantial hardship to a business, industry, or category of sources, under specified conditions; (4) is a temporary regulation necessary to respond to an emergency, as provided in the bill; or (5) will not impair or impede continued maintenance of all National Ambient Air Quality Standards (NAAQS) or progress toward achieving attainment of those standards. In addition, MDE may only alter a regulation that exempts or reduces one of those requirements if it will not exempt or reduce the obligation of any stationary source that was considered a major source under the NSR regulations existing on December 31, 2002, to obtain a permit or to meet best available control technology requirements.

The bill authorizes MDE to make changes contained within a construction permit issued prior to the bill's effective date under specified conditions.

**Background/Current Law:** MDE's Air and Radiation Management Administration operates the State's air pollution control programs under the framework established by the federal Clean Air Act (CAA). As amended in 1990, CAA requires all areas of the country to achieve NAAQS and to develop implementation plans to achieve those standards; CAA provides penalties for states failing to achieve the standards. Portions of Maryland have been designated as ozone nonattainment areas, meaning that ozone levels in the ambient air occasionally exceed the federal standards. Under CAA, any new major stationary source in polluted areas must obtain NSR approval prior to construction. The primary purpose for obtaining this approval is to ensure that new major sources will not worsen existing ozone levels or impede the State's efforts to achieve compliance with NAAQS.

Responding to concerns that the NSR program was overly complex, EPA amended the program in two stages. The first rule, announced in late 2002, relaxed applicability criteria; the second rule, announced in 2003, modified the definition of "routine maintenance, repair, and replacement" (RMRR) activities at existing sources. EPA contends that these changes will offer facilities greater flexibility to improve and modernize their operations, provide incentives to install state-of-the-art pollution controls, and allow for more accurate calculations of actual emissions. The two national associations that represent the nation's state and local air pollution control agencies (the State and Territorial Air Pollution Program Administrators and the Association of Local

Air Pollution Control Officials), however, have been critical of the changes. Many states, including Maryland, as well as environmental groups, claim that the amendments will extend the life of dirty sources and allow the installation of new power generation without adequate controls or notice to states.

Both of the NSR rules were met with legal challenges from several states, including Maryland. On December 24, 2003, the District of Columbia Court of Appeals stayed the effective date of the 2003 rule modifying the RMRR definition. On June 30, 2004, EPA granted a request to reconsider certain aspects of the equipment replacement rule, opening a public comment period allowing further public input on certain aspects of the NSR program. On August 9, 2004, EPA and the Department of Justice filed the Government's brief in the lawsuits brought to challenge EPA's 2002 rule.

CAA allows states to adopt clean air requirements more stringent than the federal requirements. In 2003 the California legislature approved a bill that would keep the state's NSR standards as they were before the recent changes made by the Bush Administration. This bill was based on the California legislation.

**State Fiscal Effect:** This bill limits MDE's ability to modify its NSR regulations. These regulations, which have been approved by EPA, constitute Maryland's NSR program, a mandatory element of Maryland's SIP. According to MDE, Maryland's NSR program must comply with federal NSR requirements in order to maintain EPA approval for inclusion into SIP. If EPA finds that Maryland does not have the proper NSR regulation in place as part of its SIP, EPA can disapprove Maryland's SIP, setting into motion several federal measures that could result in a loss of significant federal highway funds as well as have a significant impact on Maryland businesses. In addition, EPA could impose a federal implementation plan, which would require that EPA manage Maryland's NSR program under federal rules.

MDE advises that, although the bill appears to focus specifically on safeguarding NSR regulations from the recent federal changes, the bill might limit MDE's ability to make regulatory changes intended to streamline or otherwise improve the program. MDE further advises that, even though the bill authorizes MDE to make changes contained within a construction permit issued prior to the bill's effective date under specified conditions, the bill could prohibit the department from making all necessary changes to requirements and conditions contained within such permits. In addition, although the bill includes exemptions for amendments that do not relax or reduce requirements related to specified air quality protections, MDE advises that it is not clear how such determinations would be made. Accordingly, MDE may face an increased administrative burden as a result of the bill; however, any increase in workload would be handled with existing resources.

**Small Business Effect:** If the bill results in the disapproval of Maryland's SIP, it could have a significant fiscal impact on Maryland businesses. Specifically, new major projects or major expansions to existing projects would need to secure more additional emission offsets than they are currently required to secure. According to MDE, each ton of offsets now costs between \$5,000 and \$10,000. Maryland businesses could also be affected to the extent EPA imposes a federal implementation plan.

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### **Additional Information**

**Prior Introductions:** Similar legislation was introduced as HB 153 of 2004. The bill received an unfavorable report by the House Environmental Matters Committee.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, National Conference of State Legislatures, U.S. Environmental Protection Agency, Department of Legislative Services

**Fiscal Note History:** First Reader - January 27, 2005  
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