

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1086 (Senator M. Washington)
 Education, Energy, and the Environment

Environment - Environmental Justice Districts - Designation and Requirements

This bill authorizes a resident of a local jurisdiction or an overburdened or underserved community in the State to apply to the Maryland Department of the Environment (MDE) to request the designation of an area as an “environmental justice district.” The bill establishes provisions related to such a designation as well as provisions governing applications for specified permits that affect such districts. Among other things, MDE must hold an in-person public hearing for an application for such a permit that may result in or increase pollution in an environmental justice district, and MDE may not approve a permit application if it directly or indirectly increases pollution in an environmental justice district. The bill also requires State agencies to give priority to environmental justice districts when distributing funding to mitigate pollution and other environmental hazards. MDE must adopt regulations to carry out these provisions. Finally, the bill expands the definition of “environmental justice” as it relates to provisions of current law and the bill.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$399,900 in FY 2025. Future years reflect annualization and inflation. Special fund revenues may decrease beginning in FY 2025, as discussed below. Other potential effects are discussed below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$399,900	\$589,200	\$615,600	\$642,600	\$670,800
Net Effect	(-)	(-)	(-)	(-)	(-)

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

Local Effect: Local government finances may be affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Designation of Environmental Justice Districts

A resident of a local jurisdiction or an overburdened and underserved community in the State may submit an application to MDE to request the designation of an area as an environmental justice district. An environmental justice district designated by MDE must be a contiguous geographic area comprising one or more census tracts (1) that is an overburdened community and an underserved community; (2) that has a history of environmental degradation; (3) in which the residents have an average life expectancy at or below the age of 64; (4) in which the residents suffer from high rates of asthma or heart disease; or (5) in close proximity to traffic. However, if an area does not meet any of those criteria, MDE may evaluate the area, in accordance with specified requirements, to determine whether the area may be designated as an environmental justice district.

By December 1, 2024, MDE must publish on its website (1) the process for applying for an environmental justice district designation and (2) the criteria used for the evaluation of such an application. By April 1, 2025, MDE must publish on its website a list of designated environmental justice districts. MDE must update the list every two years based on any relevant data.

In-person Public Hearing Required for Certain Permit Applications in Environmental Justice Districts

Within 60 days after receiving an application for a permit listed under § 1-601(a) of the Environment Article that may result in or increase pollution in an environmental justice district, MDE must hold, at a location in the affected census tract, an in-person public hearing on the application. Before holding such a hearing, MDE must publish notice in accordance with existing notice requirements under § 1-602 of the Environment Article. MDE must allow any interested person to submit information or views, orally or in writing, at the public hearing.

Approval of Permit Applications in Environmental Justice Districts

In addition to any other applicable requirement, MDE must consider the results of the public hearing before making a decision on a permit application, and MDE may not approve a permit application if it directly or indirectly increases pollution in the environmental justice district.

After issuing a permit approval for a project in an environmental justice district, MDE must, to ensure permit and regulatory compliance, prioritize conducting inspections of the facilities subject to the permit and taking enforcement action, if applicable.

State Agencies Required to Prioritize Funding to Environmental Justice Districts

A State agency must give priority to environmental justice districts when distributing funding to mitigate pollution and other environmental hazards, including funding for (1) mitigating the harm caused by pollution and environmental degradation; (2) improving environmental conditions; (3) mitigating air pollution; (4) conducting studies; and (5) commissioning vehicles for monitoring emissions and pollution.

Definition of “Environmental Justice”

The bill expands the existing definition of “environmental justice” under § 1-701 of the Environment Article. Under the bill, the definition also means substantial participation in the development, enforcement, implementation, and permitting of all State and federal environmental laws and regulations.

Current Law:

Scope of Title 1, Subtitle 6 of the Environment Article

Title 1, Subtitle 6 of the Environment Article establishes the general public participation requirements for a number of permits issued by MDE. More specifically, the subtitle establishes the general public notice and hearing requirements for (1) air quality control permits to construct; (2) permits to own, operate, establish, or maintain a controlled hazardous substance facility; (3) permits to own, operate, or maintain a hazardous material facility; (4) permits to own, operate, establish, or maintain a low-level nuclear waste facility; (5) permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills; (6) permits to discharge pollutants to waters of the State; (7) permits to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge issued, renewed, or amended; and (8) potable water reuse permits.

Notice and Hearing Requirements under Title 1, Subtitle 6 of the Environment Article

Pursuant to § 1-603 of the Environment Article, MDE must cause to be published notice of applications for the permits specified above, and MDE must assure that permit applications are available to the public for inspection and copying. On written request made within 10 working days after publication of a notice of application, or in its own discretion, MDE must provide an opportunity for an informational meeting with respect to the

application. The informational meeting may be canceled if all persons who made the requests withdraw those requests prior to the meeting. Unless the notice of application contained a notice of the informational meeting, MDE must publish notice of the informational meeting. MDE may require the applicant to attend an informational meeting or public hearing and present information concerning the application. If the applicant fails to appear, the application may be denied.

Pursuant to § 1-601 of the Environment Article, when MDE is required to hold a public informational meeting or public hearing under Subtitle 6, MDE may hold such a meeting or hearing using teleconference or Internet-based conferencing technology unless (1) a federal statute or regulation requires an in-person meeting/hearing or (2) any person makes a timely request that the meeting/hearing be held in person. If MDE holds an in-person meeting/hearing, MDE must hold the meeting or hearing at a location in the political subdivision and in close proximity to the location where the individual permit applies. MDE is not required to hold an in-person meeting or hearing under specified emergencies.

When more than one public informational meeting or hearing is required, MDE may consolidate some or all of the meetings or hearings for the proposed facility with similar meetings or hearings.

Pursuant to § 1-602 of the Environment Article, when MDE is required to publish notice pursuant to Subtitle 6, the notice must (1) be published at least once a week for two consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the proposed facility is located and (2) include specified items relating to the environmental justice (EJ) Score for the census tract where the applicant is seeking a permit. MDE may (1) require notice of an informational meeting or a public hearing by mail to each person requesting the meeting or hearing or to their authorized representatives and (2) provide additional notice by requiring the notice to be posted at the proposed facility or at public facilities in the geographical area of the proposed facility. The applicant must bear all costs incurred by MDE in providing notice, and MDE may require the applicant to publish and send the required notices.

In addition, when MDE is required to publish notice of a permit application, MDE must (1) electronically post the notice on its website and (2) provide a method for interested parties to electronically request any additional notices related to the permit application. The notice must include specified items, including the EJ Score for the census tract where the applicant is seeking a permit and the EJ Score review conducted by MDE.

Environmental Justice Screening

A person who is applying for a permit listed under § 1-601(a) of the Environment Article must include, as part of the permit application, the “EJ Score” from the “Maryland EJ tool”

for the census tract where the applicant is seeking a permit, unless the permit requires the applicant to use a tool developed by the U.S. Environmental Protection Agency. On receiving such an application, MDE must review the EJ Score for the census tract where the applicant is seeking a permit using the Maryland EJ tool to verify the applicant's information.

“EJ Score” means an overall evaluation of an area's environment and existing EJ indicators, as defined by MDE in regulation, including pollution burden exposure, pollution burden environmental effects, sensitive populations, and socioeconomic factors. “Maryland EJ tool” means a publicly available [State mapping tool](#) that allows users to (1) explore layers of EJ concern; (2) determine an overall EJ Score for census tracts in the State; and (3) view additional context layers relevant to an area.

Commission on Environmental Justice and Sustainable Communities

The Commission on Environmental Justice and Sustainable Communities was established in 2001 by Executive Order and codified in statute in 2003. The commission has several statutory duties, including, among other things, (1) advising State government agencies on EJ and related community issues; (2) analyzing the impact of current State and local laws, permits, actions, and policies on the issue of EJ and sustainable communities; (3) assessing the adequacy of State and local laws to address the issue of EJ and sustainable communities; and (4) recommending options to the Governor and the General Assembly for addressing issues, concerns, or problems related to EJ, as specified.

“Environmental justice” means equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status. “Underserved community” means any census tract in which, according to the most recent U.S. Census Bureau Survey, (1) at least 25% of the residents qualify as low-income; (2) at least 50% of the residents identify as nonwhite; or (3) at least 15% of the residents have limited English proficiency. “Overburdened community” means any census tract for which three or more of several specified health indicators are above the 75th percentile statewide.

State Fiscal Effect:

Maryland Department of the Environment Administrative Costs

General fund expenditures for MDE increase by *at least* \$399,907 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost for MDE to hire:

- two staff to review requests to designate areas as environmental justice districts, beginning October 1, 2024; and

- three hearings coordinators and three administrative staff (one hearings coordinator and one administrative staff in each of the Air and Radiation, Land and Materials, and Water and Science administrations) to manage an increase in hearings held on applications for permits that may result in or increase pollution in an environmental justice district, beginning January 1, 2025 (a delayed start date to reflect a delay in when environmental justice districts are first designated).

This estimate is based on the following information and assumptions:

- the number of staff identified above is assumed to be a reasonable *minimum* additional number of staff needed for MDE to evaluate and approve requests for environmental justice district designations and to handle the expected increase in public hearings on permit applications; this estimate takes into account, to some extent, MDE’s estimate of the need for a greater number of staff – 16 total, at an estimated cost of \$831,019 in fiscal 2025, increasing to \$1.4 million by fiscal 2029; and
- MDE expects that the bill’s requirement that an in-person public hearing be held within 60 days on an application for a permit that may result in or increase pollution in an environmental justice district results in an added hearing for those permits since the existing public hearings for permits are held later than 60 days after the receipt of a permit application, after environmental and engineering studies have been developed and reviewed to evaluate and identify impacts.

The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	8.0
Salaries and Fringe Benefits	\$343,479
Operating Expenses	<u>56,428</u>
Minimum FY 2025 MDE Admin. Costs	\$399,907

Future year expenditures for MDE – which also reflect minimum costs – reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Funding Distribution and Enforcement

As discussed above, the bill requires that (1) State agencies give priority to environmental justice districts when distributing funding to mitigate pollution and other environmental hazards and (2) MDE prioritize inspections and enforcement action relating to permits approved for projects in an environmental justice district. This analysis assumes that these

provisions only result in prioritization/reallocation of resources and do not materially affect State finances.

Potential Denial of Permits

The impact of the bill's prohibition on the approval of a permit application if it directly or indirectly increases pollution in an environmental justice district is unclear. Based on indications from MDE and other State agencies, such as the Maryland Department of Transportation, government operations sometimes require permits issued by MDE and, therefore, the bill may have an effect on the operations of some State agencies in and around environmental justice districts. Whether, and to what extent, State finances are affected as a result cannot be predicted in advance; thus, any such effect has not been accounted for in this analysis.

To the extent the bill results in a decrease in the number of permits issued by MDE, special fund revenues decrease. However, whether permitted activities decrease overall (and to what extent) or are instead only relocated away from environmental justice districts cannot be reliably estimated.

Local Fiscal Effect: Local governments may be affected by State agencies' prioritization/reallocation of funding to mitigate pollution and other environmental hazards toward environmental justice districts. In addition, similar to the effect mentioned above with respect to State government operations, the potential for permit denials under the bill may have an effect on local government operations in and around environmental justice districts. However, whether, and to what extent, local government finances are affected as a result cannot be determined in advance.

Small Business Effect: Small businesses that require permits from MDE may be affected by the potential denial of those permits in and around environmental justice districts.

Additional Information

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

Designated Cross File: None.

Information Source(s): Department of Commerce; Maryland Environmental Service; Baltimore City; Prince George's County; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; Maryland Municipal League; Maryland Department of Agriculture; Maryland Department of the Environment; Department of

Housing and Community Development; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Maryland Energy Administration; Public Service Commission; Department of Legislative Services

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