

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1088 (Senator M. Washington)  
Education, Energy, and the Environment

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Environment - Public Participation in the Permitting Process - Alterations

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This bill makes various changes to provisions that govern public participation in the permitting process with respect to applications for specified permits issued by the Maryland Department of the Environment (MDE).

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Fiscal Summary

**State Effect:** General fund expenditures for MDE are expected to increase significantly beginning in FY 2025 due to costs associated with publishing permit application notices. *Under one set of assumptions*, MDE's general fund expenditures increase by \$573,000 in FY 2025 and by \$764,000 annually thereafter, as discussed below. State agencies that obtain affected permits from MDE are no longer required to pay for the cost of publishing permit notices; as a result, State expenditures (multiple fund types) decrease accordingly. Revenues are not anticipated to be materially affected.

**Local Effect:** Local governments that obtain affected permits from MDE are no longer required to pay for the cost of publishing permit notices; as a result, local expenditures decrease accordingly. Local revenues are not directly affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary: The bill:

- modifies provisions governing who may request judicial review of a final determination by MDE on the issuance, denial, renewal, or revision of any permit listed in § 1-601(a) of the Environment Article;
- repeals a provision that authorizes MDE to consolidate some or all public informational meetings or public hearings when required to hold more than one such meeting/hearing;
- shifts the responsibility (from the applicant to MDE) for providing an EJ Score for a permit application;
- requires MDE, on receiving an application for a permit listed under § 1-601(a) of the Environment Article, to review the EJ Score for the census tract where the applicant is seeking a permit *for environmental impacts on public health or natural resources before determining whether the application is complete* (rather than just reviewing 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*);
- repeals the requirement for MDE to publish notice, when required to do so under Title 1, Subtitle 6 of the Environment Article, at least once a week for two consecutive weeks in a daily or weekly newspaper of general circulation, as specified, and instead requires MDE to (1) publish notice on its website not later than 10 days after receipt of a completed application; (2) email the notice, on a quarterly basis to specified local entities; and (3) publish notice for two consecutive weeks in a newspaper of general circulation in the census tract where the proposed facility is located;
- requires such notice to (1) be inclusive and culturally connected; (2) ensure accessibility and linguistic responsiveness; and (3) make information easy to find, understand, and use by interested persons;
- repeals an existing requirement that the applicant must bear all costs incurred by MDE in providing the required notices under these provisions;
- repeals an existing provision that authorizes MDE to require the applicant to publish and send the above-described notices;
- modifies provisions governing informational meetings by, among other things, repealing the authority for such a meeting to be cancelled under specified conditions;
- requires MDE to publish notice of informational meetings in all cases;
- requires, rather than authorizes, MDE to require an applicant to attend an informational meeting or public hearing and present information concerning the application;

- repeals the entirety of § 1-604 of the Environment Article, which addresses the preparation of tentative and final determinations of permit decisions by MDE and makes conforming changes to other provisions that address tentative determinations;
- clarifies various provisions relating to the judicial review of permit determinations;
- modifies requirements for MDE and the Board of Public Works (BPW) when a draft permit or license is issued under specified provisions; and
- alters provisions that authorize a permit applicant to apply to MDE for a refund of all or a portion of the application fee under specified conditions.

### **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 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 environmental justice 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 environmental justice 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 environmental justice and related community issues; (2) analyzing the impact of current State and local laws, permits, actions, and policies on the issue of environmental justice and sustainable communities; (3) assessing the adequacy of State and local laws to address the issue of environmental justice and sustainable communities; and (4) recommending options to the Governor and the General Assembly for addressing issues, concerns, or problems related to environmental justice, as specified.

“Environmental justice” means equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status.

### *Tentative and Final Determinations on Permit Applications*

After MDE receives a permit application, MDE must prepare a tentative determination, which must include (1) a proposal to issue or not issue a permit; (2) any proposed permit limitations or conditions; (3) a brief explanation of MDE’s tentative determination; and (4) any proposed schedule of compliance. MDE must publish notice of the tentative determination as specified, and MDE must schedule a public hearing on the tentative determination under specified conditions.

MDE must prepare a final determination on a permit application if (1) written comments adverse to the tentative determination were received by MDE within a specified time period after the publication of the notice of tentative determination; (2) comments adverse to the tentative determination were received at or after the public hearing, as specified; or (3) the final determination is substantively different from the tentative determination and all persons aggrieved by the final determination have not waived, in writing, their right to request a contested case hearing. If MDE is required to prepare a final determination under these provisions, MDE must publish a notice of the final determination. If MDE is not required to prepare a final determination, the tentative determination is a final decision by MDE.

### *Contested Case Hearings and Judicial Review*

For a permit listed under § 1-601(a) of the Environment Article, a contested case hearing may not occur. A final determination by MDE on the issuance, denial, renewal, or revision of any such permit is subject to judicial review at the request of any person that (1) meets the threshold standing requirements under federal law and (2) is the applicant or participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided. Judicial review must be on the administrative record before MDE and limited to objections raised during the public comment period, except as specified.

A person petitioning for judicial review in accordance with § 1-601 of the Environment Article or other specified provisions of the Environment Article (that relate to water appropriation and use permits, permits to construct or repair reservoirs, dams, or waterway obstructions, wetlands permits and licenses, well drilling permits, permits to conduct seismic operations, permits to construct a gas/oil facility, and surface mining permits) must file the petition in accordance with the Maryland Rules, and an action for judicial review must be conducted in accordance with the Maryland Rules. A party to the judicial review action may not challenge a facility's compliance with zoning and land use requirements or conformity with a county water and sewerage plan. However, these provisions must not prevent a party from challenging whether MDE has complied with specified requirements relating to applications for ambient air quality control permits and refuse disposal systems, nor do they prevent a party from contesting the compliance of the facility with zoning and land use or county plan requirements in any proceeding brought in accordance with and under any applicable local laws.

For the above-mentioned permits and licenses, any judicial review of a determination must be limited to a record compiled by MDE or BPW, as specified. When a draft permit or license or tentative determination is issued, MDE or BPW must make the following documents available for inspection and copying no later than the date the permit, license, or tentative determination is issued: (1) all permit or license applications; (2) documents submitted with a permit or license application; (3) all documents relied on in making the tentative determination; and (4) a privilege log, as specified. MDE or BPW also must extend the public comment period by 60 days upon request by a person, as specified; however, a public comment period may not be extended more than once.

### *Permit Applications – Timing of Issuance of Tentative Determinations and Requests for Refunds of Application Fees*

For a permit listed in § 1-601(a) of the Environment Article, the notice of completed application must include an estimated time for issuance of the tentative determination if requested by the applicant.

A permit applicant may apply to MDE for a refund of all or a portion of the application fee if the applicant applies within a specified time period and:

- (1) for permits listed in § 1-601(a) of the Environment Article, MDE fails to issue a tentative determination regarding the application within the estimated time provided in the notice of completed application or (2) for nontidal wetlands permits, MDE fails to grant, deny, or condition a permit within the time periods provided under the relevant provision of current law; and
- the applicant demonstrates that the delay was caused solely by MDE, as specified.

The Secretary (or the Secretary's designee) must review the refund request and determine if a refund of any amount is appropriate. If a refund request is denied, MDE must provide the applicant a written explanation, as specified.

**State Expenditures:** General fund expenditures for MDE are expected to increase significantly beginning in fiscal 2025 due to costs for publishing notices and for translation services, resulting from the bill's changes that (1) repeal provisions that both require a permit applicant to bear the costs of providing notices and allow MDE to require the applicant to publish the notices and (2) require notices to be inclusive and culturally connected, ensure accessibility and linguistic responsiveness, and make information easy to find, understand, and use by interested persons.

*For illustrative purposes only*, under one set of assumptions, general fund expenditures increase by \$573,000 in fiscal 2025, accounting for the bill's October 1, 2024, effective date, and by \$764,000 annually thereafter. This illustrative estimate is based on information provided by MDE and assumes the following: (1) the average cost of publishing newspaper notices is \$600 per notice; (2) the cost to translate a notice is approximately \$164 per notice; and (3) approximately 1,000 notices are published per fiscal year.

On the other hand, State agencies that obtain affected permits from MDE are no longer required to pay for the cost of publishing the permit notices; as a result, State expenditures (multiple fund types) decrease accordingly.

**Local/Small Business Effect:** Local governments and small businesses that obtain affected permits from MDE are no longer required to pay for the cost of publishing the permit notices; as a result, expenditures decrease accordingly.

**Additional Comments:** This analysis assumes that the bill does not result in significant delays in the permitting process. To the extent that it does, all permittees, including State agencies, local governments, and small businesses, are affected.

## **Additional Information**

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

**Designated Cross File:** None.

**Information Source(s):** Maryland Environmental Service; Prince George's County; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; Northeast Maryland Waste Disposal Authority; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Interagency Commission on School Construction; Maryland Department of the Environment; Department of General Services; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2024  
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