

**Department of Fiscal Services**  
Maryland General Assembly

**FISCAL NOTE**

House Bill 8 (Delegate Taylor, *et al.*)  
Environmental Matters

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**Environment - Permits - Standing**

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This bill provides standing to appeal permit decisions by the Maryland Department of the Environment (MDE) to entities that would have standing to appeal a final permit decision by the Environmental Protection Agency (EPA). It eliminates the requirements for a contested case hearing in connection with the issuance of a final determination on an environmental permit.

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**Fiscal Summary**

**State Effect:** Indeterminate effect on State expenditures; revenues would not be affected.

**Local Effect:** Potential indeterminate increase in expenditures; revenues would not be affected.

**Small Business Effect:** Potential meaningful impact on small businesses as discussed below.

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**Fiscal Analysis**

**Bill Summary:** The bill repeals the provisions for contested case hearings for the following seven permits:

- air quality control permits to construct;
- permits to install, materially alter, or materially extend landfills or incinerators;
- permits to discharge pollutants into waters of the State;
- permits to install, materially alter, or materially extend sewage sludge storage or distribution structures;
- permits to own, operate, establish, or maintain a controlled hazardous substance facility;
- permits to own, operate, or maintain a hazardous material facility; and

- ° permits to own, operate, or maintain a low-level nuclear waste facility.

The bill broadens standing to appeal environmental permit decisions. An applicant whose request for a permit is denied or issued subject to conditions may appeal. A political subdivision may appeal whenever a resident of the subdivision is aggrieved. A nonprofit organization may appeal whenever a member of the organization is aggrieved, the interests the organization seeks to protect are germane to the organization's purpose, and the appeal filed does not require the participation of an individual member as an indispensable party to the appeal.

A person may appeal if the person submitted comments adverse to the permit decision and presents evidence of a concrete injury traceable to the final determination that can be redressed by an appeal. A person is not required to demonstrate an injury or property right that is different from that of the general public. An injury means an injury to the person's health or property, plant or animal life on a person's property, or any aesthetic, conservational, recreational, or economic interests.

Permit decision appeals must be filed in court. The filing of a notice of appeal does not stay a final determination unless the Secretary of MDE or the reviewing court determines that a stay should be issued. The Secretary will have final decision making authority on the issuance of permits. The bill only applies to final permit decisions made on or after the bill's effective date (October 1, 1997).

**State Effect:** The bill increases the number of persons who would have standing to appeal MDE permit decisions, but eliminates the provision for a contested case hearing. Those parties that wish to contest a permit decision would have to file in circuit court to stay that decision. In addition, the bill conforms Maryland standing provisions with federal law. Certain air and water programs currently delegated to MDE could potentially revert back to EPA should this public participation provision not be addressed.

Due to the elimination of contested case hearings in permit decisions, the Office of Administrative Hearings (OAH) workload would be reduced. OAH handles both permitting and enforcement cases for MDE; enforcement cases would be unaffected by the bill. OAH estimates that the bill could reduce the annual caseload from 18 to 9. Each MDE case is estimated to take 50 hours. This decrease in workload is not sufficient to eliminate the need for any current personnel; these resources would be absorbed by projected increases in caseload in other areas. It should also be noted that this change would not affect cases initiated prior to October 1, 1997; therefore, OAH advises that any such change in workload would occur in fiscal 1999.

Parties considered aggrieved by a permit decision would file an appeal with the circuit court to stay that decision. It is not known how many such cases will be filed each year; this would depend upon the number of persons currently pursuing contested case hearings that would be willing to instead pursue a court action, and how many additional persons given standing under the bill would be likely to pursue such actions. The Administrative Office of the Courts reports that while their workload is likely to increase, it should not be of a level to justify additional personnel. The State pays the salaries and expenses for judges and clerks in the circuit courts, while the local governments pay the remaining administrative costs. The Department of Fiscal Services advises that the number of additional cases that might result from the broadened standing definition under the bill cannot be determined at this time. Should a significant number of appeals be filed, court costs could increase commensurately.

**Local Effect:** Circuit court costs could potentially increase as discussed above. Such expenditures would depend upon the increase in caseload realized, and in which jurisdiction the parties to the appeal reside. Any such increase cannot be estimated at this time. Expenditures could also increase should any local jurisdiction choose to protest permit decisions on behalf of residents.

**Small Business Effect:** Small businesses that apply for environmental permits could receive some permits in a shorter time frame due to the bill's elimination of a contested case hearing. However, for a certain number of permit applications, businesses could be subject to court challenges to permit decisions. Businesses could also benefit to the extent that the bill retains the delegation of environmental programs to MDE, rather than having to apply for such permits through EPA.

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**Information Source(s):** Maryland Department of the Environment, Maryland Chamber of Commerce, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings

**Fiscal Note History:** First Reader - March 4, 1997

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