

**Department of Legislative Services**  
Maryland General Assembly  
2001 Session

**FISCAL NOTE**

House Bill 320 (Delegates Morhaim and Cryor)  
Environmental Matters

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**Water Discharge - Permits - Process**

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This bill requires the Maryland Department of the Environment (MDE), when a timely and complete water discharge permit application has been submitted, to issue a stay of the new or renewed permit if: (1) a contested case is filed under the Administrative Procedure Act or administrative regulations of MDE or a court action is filed; and (2) a party to the case or court action has requested a stay of the issuance of the permit. A stay issued pursuant to the bill is effective until the contested case or court action is resolved by the court of last resort. For permit renewals, if a contested case or court challenge is not resolved within three years of MDE's issuance of a final determination on the permit renewal application, MDE must revoke the permit. If MDE fails to issue a renewal permit within three years of the expiration of the permit, the permit must be revoked. The bill provides that the provisions of the bill shall not be construed to limit MDE's authority to reopen an existing permit if reopening it would make the permit more stringent.

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**Fiscal Summary**

**State Effect:** Potential increase in general/special fund expenditures related to any increase in the number of contested case hearings requested. MDE could handle the bill's requirements with existing budgeted resources.

**Local Effect:** To the extent that a local jurisdiction has a permit delayed or revoked as a result of the bill, the impact on local operations and finances could be significant.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** With respect to permit challenges, MDE issues a tentative determination, provides an opportunity for public comment, and then issues a final determination. If no one requests a contested case hearing on the final determination, the permit becomes final. If a contested case hearing is requested, the permit cannot become final until after the hearing is completed and a final decision is made. At that point, a party who disagrees with the final decision has ten days to ask MDE for a stay of the decision pending appeal or can request a stay from the circuit court once the appeal is filed. In order to obtain a contested case hearing, one must be “aggrieved.” Not everyone who is opposed to a permit can meet the legal standard for aggrievement. In that event, current law offers another remedy, the Maryland Environmental Standing Act (MESA). Under MESA, a person who cannot satisfy traditional standing requirements may challenge a final permit based on very limited grounds. The court in a MESA case will not issue a stay of a permit. Instead, the judge has the authority to provide declaratory relief, including voiding the permit if it does not meet all legal requirements.

**State Expenditures:** MDE advises that the bill is anticipated to result in an increase in the number of contested case hearings requested by the public. To the extent that the bill results in an increase in the total number of contested cases filed, expenditures would increase for the Office of Administrative Hearings to hold hearings and for MDE to review proposed findings and issue final decisions. Expenditures could also increase for MDE to the extent that a person requesting a contested case hearing appeals the final decision.

**Small Business Effect:** Because the bill requires MDE to revoke a permit if a contested case or court challenge is not resolved within three years of the issuance of a final determination on the permit renewal application, a small business could have its permit revoked. To the extent that the bill results in additional contested case hearings requested by the public, the bill could also result in increased expenditures for applicants/permittees related to permit challenges.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, Office of Administrative Hearings, Department of Legislative Services

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analysis by: Lesley Frymier

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510