

Department of Legislative Services  
Maryland General Assembly  
2001 Session

FISCAL NOTE  
Revised

House Bill 1427 (Delegate Guns)

Environmental Matters

Economic and Environmental Affairs

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**Air Quality Control Permits - Public Participation - Judicial Review**

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This bill expands standing for judicial review of air quality permit decisions. The bill also prohibits the Maryland Department of the Environment (MDE) from requiring an opportunity for a contested case hearing with respect to permits to construct for those sources that are required to obtain a permit to operate under Title V of the federal Clean Air Act. The bill also modifies the public participation process relating to air quality control permits.

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**Fiscal Summary**

**State Effect:** The bill's requirements could be handled with existing budgeted resources. The bill's provision eliminating contested case hearings is not anticipated to materially impact State operations or finances. Failure to enact this bill will result in a decrease in special fund revenues of approximately \$4.2 million annually and a decrease in special fund expenditures.

**Local Effect:** Because the bill is not anticipated to significantly affect the number of cases brought for judicial review, the bill's changes could be handled with the existing budgeted resources of the circuit courts.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** A final decision of MDE on the issuance, renewal, or revision of a permit to operate under Title V of the federal Clean Air Act or a permit to construct

issued to a Title V source, is subject to judicial review at the request of a petitioner who: (1) would have standing to challenge a permit under the equivalent federal standing law; and (2) if an opportunity for public participation was required by law, participated in the public participation process through submission of written or oral comments. Judicial review must be on the administrative record before MDE and limited to objections raised during the public comment period unless the petitioner demonstrates that the grounds for the objection were not reasonably ascertainable during the comment period or arose after the comment period.

**Current Law:** MDE issues an air quality permit to construct a facility and an air quality permit to operate a facility. Permits to construct are subject to contested case proceedings, but permits to operate are not. A person may request a contested case hearing if the person is aggrieved by the final determination. Pursuant to the Administrative Procedure Act, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision. Standing for judicial review of air quality operating permit decisions is governed by the Maryland Environmental Standing Act (MESA). Under MESA, the following persons have standing to bring and maintain specified actions in the courts of equity of this State: (1) the State, or any agency or officer of the State, acting through the Attorney General; (2) any political subdivision of the State or any agency or officer of it acting on its behalf; and (3) subject to some limitations, any other person, regardless of whether the person possesses a special interest different from that possessed generally by the residents of Maryland, or whether substantial personal or property damage to that person is threatened. Non-state residents and organizations that do not have an interest separate and apart from their members do not currently have standing for judicial review of air quality operating permit decisions.

**Background:** Maryland received interim approval of its Clean Air Act Title V operating permit program from the U.S. Environmental Protection Agency (EPA) effective August 2, 1996. In order to receive full EPA approval of its Title V program, Maryland must submit a package of proposals to correct deficiencies identified in the interim approval. In its interim approval notice, the EPA stated that Maryland's standing provisions must be amended to provide standing to all persons who would have standing to seek judicial review under Article III of the U.S. Constitution. According to MDE, standing is the final issue that Maryland must address in order to obtain full approval of its Title V program. Maryland must submit a complete corrective package to the EPA by June 1, 2001. If the EPA has not granted full approval by December 1, 2001, it will implement and enforce a federal permits program for the State. The EPA has yet to enforce a federal permits program for any state.

**State Fiscal Effect:** Failure to enact this bill will result in the implementation and enforcement of a federal permits program for the State. If this occurs, Maryland would no longer be able to collect the fees currently paid for Title V permits. MDE collects approximately \$4.2 million in Title V permit revenues annually. Because EPA would assume permitting activities for the State, special fund expenditures would presumably also decrease. MDE did not provide any information relating to its current expenditures for the permitting program. Accordingly, a precise estimate of the decrease in special fund expenditures cannot be made at this time. Title V permit fees are paid into the Maryland Clean Air Fund.

**Small Business Effect:** Legislative Services notes that failure to enact this bill could result in a change in Title V permit fees under a federal permit program. Because the EPA has yet to assume any Title V program, any change in permit fees is speculative and cannot be estimated at this time.

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### **Additional Information**

**Prior Introductions:** HB 8 of 1997 would have expanded standing to appeal MDE permit decisions and eliminated the requirements for a contested case hearing. The House Environmental Matters Committee held a hearing on the bill, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, U.S. Environmental Protection Agency, Department of Legislative Services

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