

HOUSE BILL 1229

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M3

2002 Regular Session
(2r2609)

ENROLLED BILL

-- *Environmental Matters/Education, Health, and Environmental Affairs* --

Introduced by **Delegates Hubbard, Hurson, and Billings**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Environment - Permits - Contested Case Hearings**

3 FOR the purpose of requiring the Department of the Environment to transmit a
4 request for a contested case hearing to the Office of Administrative Hearings
5 within a certain time period; requiring certain contested case hearings to be
6 concluded and closed within a certain time period; requiring the administrative
7 law judge to issue certain decisions within a certain time period; authorizing the
8 extension of certain deadlines under certain circumstances; providing for the
9 finality of certain decisions; providing that certain deadlines are mandatory and
10 not directory; requiring the administrative law judge to dismiss certain requests
11 for a contested case hearing under certain circumstances; requiring the
12 administrative law judge to rule on certain motions within a certain time period;
13 providing that certain decisions made by an administrative law judge under
14 certain circumstances are not appealable; providing that certain decisions made
15 by an administrative law judge under certain circumstances are final decisions
16 and appealable; repealing certain provisions of law relating to the certain
17 contested cases; providing for the application of this Act; and generally relating

1 to contested case hearings for permits issued by the Department of the
2 Environment.

3 BY repealing
4 Article - Environment
5 Section 1-606
6 Annotated Code of Maryland
7 (1996 Replacement Volume and 2001 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article - Environment
10 Section 1-605
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 2001 Supplement)

13 BY adding to
14 Article - Environment
15 Section 1-606
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 2001 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That Section(s) 1-606 of Article - Environment of the Annotated Code
20 of Maryland be repealed.

21 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
22 read as follows:

23 **Article - Environment**

24 1-605.

25 (a) A person may request a contested case hearing to appeal a final
26 determination if the person makes factual allegations with sufficient particularity to
27 demonstrate that:

28 (1) The person is aggrieved by the final determination; and

29 (2) The final determination is:

30 (i) Legally inconsistent with any provisions of law applicable to the
31 final determination being challenged; or

32 (ii) Based upon an incorrect determination of a relevant and
33 material fact.

1 (b) (1) A party requesting a contested case hearing shall submit a written
2 request for adjudication within 15 days after publication of a notice of final
3 determination.

4 (2) THE DEPARTMENT SHALL TRANSMIT A REQUEST FOR A CONTESTED
5 CASE HEARING TO THE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 5 BUSINESS
6 DAYS AFTER THE DEPARTMENT RECEIVES THE REQUEST.

7 (c) The request for adjudication shall set forth the basis for the request with
8 sufficient particularity to assure that the issues to be raised are within the scope of
9 subsection (a) of this section and that the person is aggrieved by the final
10 determination.

11 (d) A party may not, in a contested case hearing, challenge a facility's
12 compliance with zoning and land use requirements or conformity with a county plan
13 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall
14 prevent a party from challenging whether the Department has complied with §§
15 2-404(b)(1)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle
16 prevent a party from contesting the compliance of the facility with zoning and land
17 use or county plan requirements in any proceeding brought in accordance with and
18 under any applicable local laws.

19 (e) A contested case hearing shall be conducted in accordance with Subtitle 2
20 of Title 10 of the State Government Article.

21 (F) (1) THE CONTESTED CASE HEARING SHALL BE CONCLUDED, AND THE
22 RECORD SHALL BE CLOSED:

23 (I) WITHIN 6 MONTHS FOLLOWING RECEIPT OF THE REQUEST FOR
24 A CONTESTED CASE HEARING BY THE OFFICE OF ADMINISTRATIVE HEARINGS; OR

25 (II) IF A MOTION IS FILED UNDER § 1-606(A) OF THIS SUBTITLE,
26 WITHIN 8 MONTHS FOLLOWING RECEIPT OF THE REQUEST FOR A CONTESTED CASE
27 HEARING BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

28 (2) THE DEADLINES IN THIS SUBSECTION MAY BE EXTENDED BY
29 AGREEMENT OF THE PARTIES AND WITH THE CONCURRENCE OF THE
30 ADMINISTRATIVE LAW JUDGE.

31 (G) (1) THE ADMINISTRATIVE LAW JUDGE SHALL ISSUE THE PROPOSED
32 DECISION WITHIN 90 DAYS FOLLOWING THE CLOSE OF THE RECORD IN THE
33 CONTESTED CASE HEARING.

34 (2) THE DEADLINE IN THIS SUBSECTION MAY BE EXTENDED, AT THE
35 DISCRETION OF THE ADMINISTRATIVE LAW JUDGE, FOR AN ADDITIONAL PERIOD
36 NOT TO EXCEED 30 DAYS.

37 (H) (1) ONCE A PROPOSED DECISION IS ISSUED BY THE ADMINISTRATIVE
38 LAW JUDGE IF AN EXCEPTION IS NOT FILED WITH THE DEPARTMENT, THE

1 PROPOSED DECISION SHALL BECOME FINAL UPON EXPIRATION OF THE TIME PERIOD
2 FOR FILING AN EXCEPTION.

3 (2) ONCE A PROPOSED DECISION IS ISSUED BY THE ADMINISTRATIVE
4 LAW JUDGE IF AN EXCEPTION IS FILED WITH THE DEPARTMENT, THE FINAL
5 DECISION SHALL BE RENDERED WITHIN 120 DAYS FOLLOWING ISSUANCE OF THE
6 PROPOSED DECISION.

7 (I) THE DEADLINES IN THIS SECTION SHALL BE CONSIDERED MANDATORY
8 AND NOT DIRECTORY.

9 1-606.

10 (A) UPON MOTION OF ANY PARTY, THE ADMINISTRATIVE LAW JUDGE SHALL
11 DISMISS ALL OR ANY PART OF A REQUEST FOR A CONTESTED CASE HEARING IF THE
12 ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE PERSON MAKING THE
13 REQUEST HAS FAILED TO MAKE THE DEMONSTRATION REQUIRED BY § 1-605 OF THIS
14 SUBTITLE, INCLUDING THE FAILURE TO MAKE FACTUAL ALLEGATIONS WITH
15 SUFFICIENT PARTICULARITY TO DEMONSTRATE THAT THE PERSON IS AGGRIEVED
16 BY THE FINAL DETERMINATION.

17 (B) (1) THE ADMINISTRATIVE LAW JUDGE SHALL RULE ON ANY MOTION
18 FILED UNDER SUBSECTION (A) OF THIS SECTION WITHIN 60 DAYS FOLLOWING
19 RECEIPT OF THE MOTION.

20 (2) THE DEADLINE IN THIS SUBSECTION MAY BE EXTENDED BY
21 AGREEMENT OF THE PARTIES AND WITH THE CONCURRENCE OF THE
22 ADMINISTRATIVE LAW JUDGE.

23 (C) A DECISION UNDER SUBSECTION (A) OF THIS SECTION THAT DISMISSES
24 FEWER THAN ALL OF THE ISSUES IN AN ACTION, OR THAT ADJUDICATES ISSUES
25 CONCERNING FEWER THAN ALL OF THE PARTIES TO AN ACTION IS NOT
26 IMMEDIATELY APPEALABLE UNLESS THE ADMINISTRATIVE LAW JUDGE
27 DETERMINES THAT THERE IS NO JUST REASON FOR DELAY, AND DIRECTS THE ENTRY
28 OF A DECISION AS TO ONE OR MORE, BUT FEWER THAN ALL OF THE ISSUES OR
29 PARTIES.

30 (D) EXCEPT AS PROVIDED UNDER SUBSECTION (C) OF THIS SECTION, A
31 DECISION BY THE ADMINISTRATIVE LAW JUDGE ON A MOTION IN ACCORDANCE
32 WITH SUBSECTION (A) OF THIS SECTION IS A FINAL AGENCY DECISION AND SHALL
33 BE APPEALABLE IN THE SAME MANNER AS A FINAL DECISION BY THE DEPARTMENT
34 AFTER A CONTESTED CASE HEARING.

35 (E) THE DEADLINES IN THIS SECTION SHALL BE CONSIDERED MANDATORY
36 AND NOT DIRECTORY.

37 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall ~~apply to be~~
38 construed to apply prospectively and shall be applied to and interpreted to affect all
39 requests for contested case hearings under Title 1, Subtitle 6 of the Environment
40 Article made on or after July 1, 2002.

1 SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect ~~October~~ July 1, 2002.