

HOUSE BILL 1229

Unofficial Copy  
M3

2002 Regular Session  
2lr2609  
CF 2lr2926

---

By: **Delegates Hubbard, Hurson, and Billings**  
Introduced and read first time: February 8, 2002  
Assigned to: Environmental Matters

---

Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 19, 2002

---

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  
18 to contested case hearings for permits issued by the Department of the  
19 Environment.

20 BY repealing  
21 Article - Environment  
22 Section 1-606  
23 Annotated Code of Maryland  
24 (1996 Replacement Volume and 2001 Supplement)

25 BY repealing and reenacting, with amendments,

1 Article - Environment  
2 Section 1-605  
3 Annotated Code of Maryland  
4 (1996 Replacement Volume and 2001 Supplement)

5 BY adding to  
6 Article - Environment  
7 Section 1-606  
8 Annotated Code of Maryland  
9 (1996 Replacement Volume and 2001 Supplement)

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12 of Maryland be repealed.

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

15 **Article - Environment**

16 1-605.

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

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

21 (2) The final determination is:

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

24 (ii) Based upon an incorrect determination of a relevant and  
25 material fact.

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

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

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

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

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

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

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

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

18 (2) THE DEADLINES IN THIS SUBSECTION MAY BE EXTENDED BY  
19 AGREEMENT OF THE PARTIES AND WITH THE CONCURRENCE OF THE  
20 ADMINISTRATIVE LAW JUDGE.

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

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

27 (H) (1) ONCE A PROPOSED DECISION IS ISSUED BY THE ADMINISTRATIVE  
28 LAW JUDGE IF AN EXCEPTION IS NOT FILED WITH THE DEPARTMENT, THE  
29 PROPOSED DECISION SHALL BECOME FINAL UPON EXPIRATION OF THE TIME PERIOD  
30 FOR FILING AN EXCEPTION.

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

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

1 1-606.

2 (A) UPON MOTION OF ANY PARTY, THE ADMINISTRATIVE LAW JUDGE SHALL  
3 DISMISS ALL OR ANY PART OF A REQUEST FOR A CONTESTED CASE HEARING IF THE  
4 ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE PERSON MAKING THE  
5 REQUEST HAS FAILED TO MAKE THE DEMONSTRATION REQUIRED BY § 1-605 OF THIS  
6 SUBTITLE, INCLUDING THE FAILURE TO MAKE FACTUAL ALLEGATIONS WITH  
7 SUFFICIENT PARTICULARITY TO DEMONSTRATE THAT THE PERSON IS AGGRIEVED  
8 BY THE FINAL DETERMINATION.

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

12 (2) THE DEADLINE IN THIS SUBSECTION MAY BE EXTENDED BY  
13 AGREEMENT OF THE PARTIES AND WITH THE CONCURRENCE OF THE  
14 ADMINISTRATIVE LAW JUDGE.

15 (C) A DECISION UNDER SUBSECTION (A) OF THIS SECTION THAT DISMISSES  
16 FEWER THAN ALL OF THE ISSUES IN AN ACTION, OR THAT ADJUDICATES ISSUES  
17 CONCERNING FEWER THAN ALL OF THE PARTIES TO AN ACTION IS NOT  
18 IMMEDIATELY APPEALABLE UNLESS THE ADMINISTRATIVE LAW JUDGE  
19 DETERMINES THAT THERE IS NO JUST REASON FOR DELAY, AND DIRECTS THE ENTRY  
20 OF A DECISION AS TO ONE OR MORE, BUT FEWER THAN ALL OF THE ISSUES OR  
21 PARTIES.

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

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

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all  
30 requests for contested case hearings under Title 1, Subtitle 6 of the Environment  
31 Article made on or after July 1, 2002.

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

