

SENATE BILL 848

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2002 Regular Session
2lr2926
CF HB 1229

By: **Senator Miller**

Introduced and read first time: February 18, 2002

Assigned to: Rules

A BILL ENTITLED

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; and generally relating to contested case hearings for permits
18 issued by the Department of the Environment.

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

24 BY repealing and reenacting, with amendments,
25 Article - Environment
26 Section 1-605
27 Annotated Code of Maryland
28 (1996 Replacement Volume and 2001 Supplement)

29 BY adding to
30 Article - Environment
31 Section 1-606

1 Annotated Code of Maryland
2 (1996 Replacement Volume and 2001 Supplement)

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5 of Maryland be repealed.

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

8 **Article - Environment**

9 1-605.

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

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

14 (2) The final determination is:

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

17 (ii) Based upon an incorrect determination of a relevant and
18 material fact.

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

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

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

29 (d) A party may not, in a contested case hearing, challenge a facility's
30 compliance with zoning and land use requirements or conformity with a county plan
31 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall
32 prevent a party from challenging whether the Department has complied with §§
33 2-404(b)(1)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle
34 prevent a party from contesting the compliance of the facility with zoning and land
35 use or county plan requirements in any proceeding brought in accordance with and
36 under any applicable local laws.

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

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

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

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

10 (2) THE DEADLINES IN THIS SUBSECTION MAY BE EXTENDED BY
11 AGREEMENT OF THE PARTIES AND WITH THE CONCURRENCE OF THE
12 ADMINISTRATIVE LAW JUDGE.

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

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

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

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

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

29 1-606.

30 (A) UPON MOTION OF ANY PARTY, THE ADMINISTRATIVE LAW JUDGE SHALL
31 DISMISS ALL OR ANY PART OF A REQUEST FOR A CONTESTED CASE HEARING IF THE
32 ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE PERSON MAKING THE
33 REQUEST HAS FAILED TO MAKE THE DEMONSTRATION REQUIRED BY § 1-605 OF THIS
34 SUBTITLE, INCLUDING THE FAILURE TO MAKE FACTUAL ALLEGATIONS WITH
35 SUFFICIENT PARTICULARITY TO DEMONSTRATE THAT THE PERSON IS AGGRIEVED
36 BY THE FINAL DETERMINATION.

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

4 (2) THE DEADLINE IN THIS SUBSECTION MAY BE EXTENDED BY
5 AGREEMENT OF THE PARTIES AND WITH THE CONCURRENCE OF THE
6 ADMINISTRATIVE LAW JUDGE.

7 (C) A DECISION UNDER SUBSECTION (A) OF THIS SECTION THAT DISMISSES
8 FEWER THAN ALL OF THE ISSUES IN AN ACTION, OR THAT ADJUDICATES ISSUES
9 CONCERNING FEWER THAN ALL OF THE PARTIES TO AN ACTION IS NOT
10 IMMEDIATELY APPEALABLE UNLESS THE ADMINISTRATIVE LAW JUDGE
11 DETERMINES THAT THERE IS NO JUST REASON FOR DELAY, AND DIRECTS THE ENTRY
12 OF A DECISION AS TO ONE OR MORE, BUT FEWER THAN ALL OF THE ISSUES OR
13 PARTIES.

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

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2002.