

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

Re-referred to: Education, Health, and Environmental Affairs, March 4, 2002

Committee Report: Favorable with amendments

Senate 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12 of Maryland be repealed.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 be
30 construed to apply prospectively and shall be applied to and interpreted to affect all
31 requests for contested case hearings under Title 1, Subtitle 6 of the Environment
32 Article made on or after July 1, 2002.

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

