

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 460 (Delegates Hubbard and Billings)
Environmental Matters

Department of the Environment - Permits - Standing

This bill amends current provisions relating to contested case proceedings and judicial review of final decisions for various permits issued by the Maryland Department of the Environment (MDE). The bill expands standing for persons to contest cases and seek judicial review. The bill also subjects additional permits to contested case proceedings and judicial review, including water appropriations, waterway construction, wetlands, and various oil and gas related permits. The bill also modifies the appeal process for specified permits.

Fiscal Summary

State Effect: Potential increase in general/special fund expenditures related to any increase in the number of contested case hearings requested. No effect on revenues.

Local Effect: Potential increase in local expenditures.

Small Business Effect: Potential meaningful. The 1998 Survey of U.S. Business by the U.S. Census Department indicated that 92.9% of all firms in Maryland had fewer than 50 employees. Small businesses applying for certain environmental permits could be subject to court challenges with respect to permit decisions. This could result in an increase in expenditures for affected businesses as well as a delay in the final authorization of a project.

Analysis

Bill Summary: For purposes of standing, a person is “aggrieved” as follows: (1) an applicant for a permit is aggrieved if there is a final determination that the permit is

denied or issued with conditions to which the applicant objects; (2) a county or municipal corporation is aggrieved if it presents competent and material evidence that a final determination to issue a permit is for a facility which will be located within the geographic boundaries of the county or municipal corporation and at least one resident of the county or municipal corporation is aggrieved; (3) an organization that is incorporated in the State or that conducts substantial activities in the State is aggrieved if it presents competent and material evidence that a member of the organization satisfies specified requirements and was a member of the organization at the time the first notice of application for a permit was published; (4) a person whose property is adjoining, confronting, or nearby to the property that is the subject of the permitted activity is presumed to be aggrieved, unless it is established that the person does not satisfy specified requirements; (5) a person is aggrieved, regardless of whether the person possesses a special interest different from the interest possessed generally by other residents of the State, if the person presents competent and material evidence that the granting of the permit would be injurious to the person's health or property or plant or animal life on the property or on abutting public property, and the injured interest is within the zone of interests sought to be protected by the provisions of the law under which the permit being challenged is issued.

Current Law: With respect to permit challenges, MDE issues a tentative determination, provides an opportunity for public comment, and then issues a final determination. If no one requests a contested case hearing on the final determination, the permit becomes final. If a contested case hearing is requested, the permit cannot become final until after the hearing is completed and a final decision is made. At that point, a party who disagrees with the final decision has ten days to ask MDE for a stay of the decision pending appeal or can request a stay from the circuit court once the appeal is filed. In order to obtain a contested case hearing, one must be "aggrieved." Not everyone who is opposed to a permit can meet the legal standard for aggrievement. Current law offers another remedy, the Maryland Environmental Standing Act (MESA). Under MESA, a person who cannot satisfy traditional standing requirements could challenge a final permit based on very limited grounds.

State Fiscal Effect: The bill's provisions that expand standing are not anticipated to significantly increase the number of contested cases related to MDE permit decisions. However, by expanding the *types* of permits for which contested case provisions apply, the bill could result in an increase in the number of contested case hearings requested. Accordingly, expenditures could increase for the Office of Administrative Hearings to hold hearings on those cases and for MDE to review proposed findings and issue final decisions. Expenditures could also increase for MDE to the extent that the bill results in additional appeals of final decisions.

Local Fiscal Effect: Local jurisdictions undertaking projects that require permits could experience delays in obtaining final authorization to proceed with these projects. In addition, local expenditures could increase should any local jurisdiction choose to protest permit decisions on behalf of residents. Because the bill expands the types of permits for which contested case proceedings and judicial review apply, the bill could result in an increase in costs for the circuit courts related to the judicial review of final decisions.

Additional Information

Prior Introductions: Similar legislation was introduced during the 2001 session as HB 1188. The bill received an unfavorable report by the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Maryland Department of the Environment; Office of Administrative Hearings; Judiciary (Administrative Office of the Courts); Charles, Montgomery, and Prince George's counties; Department of Legislative Services

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lsc/jr

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