

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

Revised

Senate Bill 848

(Senator Miller)

Education, Health, and Environmental Affairs

Environmental Matters

Environment - Permits - Contested Case Hearings

This bill repeals provisions of current law relating to contested case hearings on specified permits issued by the Maryland Department of the Environment (MDE) and establishes new streamlined procedures and deadlines for disposition of contested case proceedings.

The bill takes effect July 1, 2002.

Fiscal Summary

State Effect: The bill is not anticipated to significantly affect State operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: This bill establishes new procedures and deadlines for the disposition of contested case hearings on various permits issued by MDE, including: (1) air quality control permits; (2) permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or specified rubble landfills; (3) permits to discharge pollutants to waters of the State; (4) specified sewage sludge permits; (5) permits to own, operate, establish, or maintain a controlled hazardous substance facility; (6) permits to own, operate, establish, or maintain a hazardous material facility; and (7) permits to own, operate, establish, or maintain a low-level nuclear waste facility.

The bill requires MDE to transmit a request for a contested case hearing to the Office of Administrative Hearings (OAH) within five business days after MDE receives the request. MDE would no longer be authorized to unilaterally summarily dismiss the request. It further requires an Administrative Law Judge (ALJ) to rule on all motions to dismiss for lack of standing or failure to sufficiently allege error by MDE no later than 60 days following receipt of the motion, and to conclude the hearing and close the record: (1) no later than six months following receipt of the request for a contested case hearing by OAH; or (2) if a motion to dismiss is filed, no later than eight months following receipt of the request for a contested case hearing by OAH. The bill provides for the extension of the deadlines for concluding the hearing and closing the record under specified conditions. The bill also delegates final decision making authority to OAH on motions to dismiss for lack of standing or failure to sufficiently allege error. Decisions on motions to dismiss are not immediately appealable unless allowed by the ALJ.

The bill requires an ALJ to issue a proposed decision within 90 days following the close of the record but gives the ALJ discretion to extend the deadline by 30 days. If no exceptions to the proposed decision are filed with MDE, the proposed decision will automatically become final upon expiration of the time period for filing exceptions. If exceptions are filed with MDE, MDE must issue the final decision no later than 120 days following issuance of the proposed decision.

The deadlines in the bill must be considered mandatory and not directory. The bill only applies to requests for contested case hearings made on or after July 1, 2002.

Current Law: Specified permits issued by MDE are subject to the right of third parties to request a contested case hearing on MDE's determination to issue or deny those permits. MDE is authorized to summarily dismiss a request for a contested case hearing if the requestor fails to demonstrate that he/she is aggrieved by MDE's determination (i.e., has standing), and that MDE has erred in its application of the law or facts to the permit determination at issue. Requests for contested cases that are not dismissed by MDE are transmitted to OAH which conducts the hearing and issues a proposed decision. Like MDE, the ALJ is also authorized to dismiss a request for a contested case hearing upon a determination that the requestor lacks standing or has failed to state with sufficient particularity the manner in which MDE has erroneously applied the law or facts to the permit decision. Existing law does not impose any deadlines for transmittal of requests to OAH, completion of the hearing, closing of the record, or issuance of final decisions by MDE.

State Fiscal Effect: During the past six years, MDE has handled 134 contested cases. According to MDE, the length of time it takes MDE to issue final decisions varies by

case but can range from a few weeks to over a year. Both MDE and OAH advise that, based on the current number of contested cases handled each year, the bill's changes could be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 1229 (Delegate Hubbard, *et al.*) – Environmental Matters.

Information Source(s): Maryland Department of the Environment, Office of Administrative Hearings, Department of Legislative Services

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