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By: **Senators Frosh, Britt, Brochin, Conway, Green, Grosfeld, Pinsky, and Ruben**

Introduced and read first time: February 3, 2006

Assigned to: Education, Health, and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Judicial Review of Permits - Standing**

3 FOR the purpose of repealing certain contested case hearing provisions related to  
4 permitting decisions by the Department of the Environment; authorizing  
5 judicial review of certain permitting decisions by the Department for certain  
6 persons who meet certain federal standing requirements; providing for the scope  
7 of judicial review; requiring a certain petition for judicial review to be filed with  
8 a certain circuit court; altering certain temporary stay provisions; and generally  
9 relating to standing and the judicial review of permits issued by the Department  
10 of the Environment.

11 BY repealing and reenacting, with amendments,  
12 Article - Environment  
13 Section 5-204  
14 Annotated Code of Maryland  
15 (1996 Replacement Volume and 2005 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Environment**

19 5-204.

20 (a) (1) It is the intent of the General Assembly to establish consolidated  
21 procedures and notice and hearing requirements for Title 5, Subtitles 5 and 9 and  
22 Titles 14, 15, and 16 of this article in order to ensure efficient review and consistent  
23 decision making.

24 (2) Notwithstanding any provision of the State Government Article,  
25 public notice on pending applications provided in accordance with the provisions of  
26 this section shall be the only notice required by law.

1 (b) (1) Applicants shall ascertain the names and addresses of all current  
2 owners of property contiguous to the parcel upon which the proposed activity will  
3 occur and personally or by certified mail serve notice upon each owner.

4 (2) Applicants shall serve personally or by certified mail appropriate  
5 local officials.

6 (3) Applicants shall provide the Department with certification that  
7 notice has been served on all contiguous property owners and appropriate local  
8 officials.

9 (4) Upon substantial completion of an application the Department shall  
10 draft a public notice that includes:

11 (i) The name and address of the applicant;

12 (ii) A description of the location and nature of the activity for which  
13 application has been made;

14 (iii) The name, address, and telephone number of the office within  
15 the Department from which information about the application may be obtained;

16 (iv) A statement that any further notices about actions on the  
17 application will be provided only by mail to those persons on a mailing list of  
18 interested persons;

19 (v) A description of how persons may submit information or  
20 comments about the application, request a public informational hearing, or request to  
21 be included on the mailing list of interested persons; and

22 (vi) A deadline for the close of the public comment period by which  
23 information, comments, or requests must be received by the Department.

24 (5) The Department shall prepare a public notice to be published for at  
25 least 1 business day in a newspaper of general circulation in the area where the  
26 proposed activity would occur. At its discretion, the Department shall:

27 (i) Publish the public notice; or

28 (ii) Direct the applicant to publish the public notice.

29 (6) The applicant shall bear the cost of the newspaper notice.

30 (7) The Department shall mail public notices to a general subscription  
31 mailing list.

32 (8) Comments on an application or requests for a public informational  
33 hearing must be forwarded in writing to the Department prior to the close of the  
34 public comment period specified in the public notice.

1 (9) The Department shall compile an interested persons list containing  
2 the names of all contiguous property owners, appropriate local officials, and  
3 individuals that comment on, request hearings, or make inquiries about an  
4 application during any phase of the Department's review.

5 (10) No further notice will be provided except to persons on the interested  
6 persons list.

7 (c) The Department shall hold a public informational hearing if it receives a  
8 timely written request in accordance with the following provisions:

9 (1) The request shall be received prior to the close of the public comment  
10 period.

11 (2) A public informational hearing shall be held within 45 calendar days  
12 of the close of the public comment period.

13 (3) The Department shall specify the date, time, and location of the  
14 public hearing.

15 (4) The Department shall mail notice of the date, time, and location of  
16 any public informational hearing on an application to those persons on the interested  
17 persons list no later than 14 calendar days prior to the hearing.

18 (5) The Department may extend the official record of a public  
19 informational hearing.

20 (d) Following the application review and comment period and within 30  
21 calendar days after the close of the public informational hearing record, the  
22 Department shall issue, modify, or deny the permit or license unless extenuating  
23 circumstances justify an extension of time.

24 (e) The Department shall mail notice of a decision to issue, modify, or deny a  
25 permit or license to the applicant and to those persons on the interested persons list.

26 [(f) When opportunity for a contested case hearing on the Department's  
27 decision to issue, modify, or deny a permit or license is provided by law, the  
28 Department shall provide all persons on the interested persons list and the applicant  
29 an opportunity to make a written request for a contested case hearing within 14  
30 calendar days of the mailing date of the notice of decision.

31 (g) Upon written request the Department shall grant a contested case hearing  
32 if it determines that:

33 (1) The requester has a specific right, duty, privilege, or interest which is  
34 or may be adversely affected by the permit determination or license decision and  
35 which is different from that held by the general public;

36 (2) The requester raises adjudicable issues which are within the scope of  
37 the permit authority; and

1 (3) The request is timely.]

2 (F) A FINAL DECISION BY THE DEPARTMENT ON THE ISSUANCE, RENEWAL,  
3 OR REVISION OF ANY PERMIT ISSUED UNDER TITLE 5, SUBTITLES 5 AND 9 AND  
4 TITLES 14, 15, AND 16 OF THIS ARTICLE IS SUBJECT TO JUDICIAL REVIEW BY ANY  
5 PERSON WHO:

6 (1) MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER  
7 FEDERAL CONSTITUTIONAL LAW; AND

8 (2) PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS THROUGH THE  
9 SUBMISSION OF WRITTEN OR ORAL COMMENTS, UNLESS AN OPPORTUNITY FOR  
10 PUBLIC PARTICIPATION WAS NOT REQUIRED BY STATUTE OR REGULATION.

11 (G) JUDICIAL REVIEW SHALL BE ON THE ADMINISTRATIVE RECORD BEFORE  
12 THE DEPARTMENT AND LIMITED TO OBJECTIONS RAISED DURING THE PUBLIC  
13 COMMENT PERIOD, UNLESS THE PETITIONER DEMONSTRATES:

14 (1) THAT THE OBJECTIONS WERE NOT REASONABLY ASCERTAINABLE  
15 DURING THE COMMENT PERIOD; OR

16 (2) THAT GROUNDS FOR THE OBJECTIONS AROSE AFTER THE COMMENT  
17 PERIOD.

18 (H) UNLESS OTHERWISE REQUIRED BY STATUTE, A PETITION FOR JUDICIAL  
19 REVIEW BY A PERSON WHO MEETS THE REQUIREMENTS OF SUBSECTION (F) OF THIS  
20 SECTION SHALL BE FILED WITH THE CIRCUIT COURT FOR THE COUNTY IN WHICH  
21 ANY PARTY RESIDES OR HAS A PRINCIPAL PLACE OF BUSINESS.

22 [(h)] (I) Upon motion by a party [to a contested case hearing] PETITIONING  
23 FOR JUDICIAL REVIEW, the Department may grant a temporary stay of the issuance  
24 of the permit pending a final decision [in the contested case], provided that:

25 (1) The parties to the proceeding have been notified and given an  
26 opportunity to be heard on a request for the temporary stay;

27 (2) The party requesting the temporary stay shows that there is a  
28 substantial likelihood of prevailing on the merits of issues to be presented [during the  
29 contested case proceeding] IN THEIR PETITION FOR JUDICIAL REVIEW;

30 (3) The temporary stay will not adversely affect the public health or  
31 safety or cause significant, imminent environmental harm to land, air, or water  
32 resources; and

33 (4) The conditions and criteria for granting a temporary stay as provided  
34 in regulations for contested case hearings adopted by the Department have been met.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
36 October 1, 2006.