
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

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 23, 2006

CHAPTER _____

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~~ at the
 6 request of certain persons who meet certain federal standing requirements and
 7 participate in a certain public participation process; ~~clarifying that a certain~~
 8 person need not request a contested case hearing before requesting judicial
 9 review establishing that under certain circumstances judicial review is
 10 immediately available and a contested case hearing may not occur; providing for
 11 the scope of judicial review; requiring a certain petition for judicial review to be
 12 filed with a certain circuit court; altering certain temporary stay provisions;
 13 providing for a delayed effective date; making conforming changes; and
 14 generally relating to standing and the judicial review of permits issued by the
 15 Department of the Environment.

16 BY repealing and reenacting, with amendments,

17 Article - Environment

18 Section 5-204, 14-105(b), 15-810(e), 15-813(g), and 16-307(d)

19 Annotated Code of Maryland

20 (1996 Replacement Volume and 2005 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

22 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Environment

2 5-204.

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

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

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

13 (2) Applicants shall serve personally or by certified mail appropriate
14 local officials.

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

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

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

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

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

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

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

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

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

36 (i) Publish the public notice; or

- 1 (ii) Direct the applicant to publish the public notice.
- 2 (6) The applicant shall bear the cost of the newspaper notice.
- 3 (7) The Department shall mail public notices to a general subscription
4 mailing list.
- 5 (8) Comments on an application or requests for a public informational
6 hearing must be forwarded in writing to the Department prior to the close of the
7 public comment period specified in the public notice.
- 8 (9) The Department shall compile an interested persons list containing
9 the names of all contiguous property owners, appropriate local officials, and
10 individuals that comment on, request hearings, or make inquiries about an
11 application during any phase of the Department's review.
- 12 (10) No further notice will be provided except to persons on the interested
13 persons list.
- 14 (c) The Department shall hold a public informational hearing if it receives a
15 timely written request in accordance with the following provisions:
- 16 (1) The request shall be received prior to the close of the public comment
17 period.
- 18 (2) A public informational hearing shall be held within 45 calendar days
19 of the close of the public comment period.
- 20 (3) The Department shall specify the date, time, and location of the
21 public hearing.
- 22 (4) The Department shall mail notice of the date, time, and location of
23 any public informational hearing on an application to those persons on the interested
24 persons list no later than 14 calendar days prior to the hearing.
- 25 (5) The Department may extend the official record of a public
26 informational hearing.
- 27 (d) Following the application review and comment period and within 30
28 calendar days after the close of the public informational hearing record, the
29 Department shall issue, modify, or deny the permit or license unless extenuating
30 circumstances justify an extension of time.
- 31 (e) The Department shall mail notice of a decision to issue, modify, or deny a
32 permit or license to the applicant and to those persons on the interested persons list.
- 33 [(f) When opportunity for a contested case hearing on the Department's
34 decision to issue, modify, or deny a permit or license is provided by law, the
35 Department shall provide all persons on the interested persons list and the applicant

1 an opportunity to make a written request for a contested case hearing within 14
2 calendar days of the mailing date of the notice of decision.

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

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

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

10 (3) The request is timely.]

11 (F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A
12 FINAL DECISION BY THE DEPARTMENT ON THE ISSUANCE, RENEWAL, OR REVISION
13 OF ANY PERMIT ISSUED UNDER TITLE 5, SUBTITLES 5 AND 9 AND TITLES 14, 15, AND
14 16 SUBTITLE 5 OR 9 OR § 14-105, § 15-810, § 15-813, OR § 16-307 OF THIS ARTICLE IS
15 SUBJECT TO JUDICIAL REVIEW BY AT THE REQUEST OF ANY PERSON WHO:

16 (I) MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER
17 FEDERAL CONSTITUTIONAL LAW; AND

18 (II) PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS
19 THROUGH THE SUBMISSION OF WRITTEN OR ORAL COMMENTS, UNLESS AN
20 OPPORTUNITY FOR PUBLIC PARTICIPATION WAS NOT REQUIRED BY STATUTE OR
21 REGULATION.

22 (2) A PERSON ENTITLED TO JUDICIAL REVIEW UNDER PARAGRAPH (1) OF
23 THIS SUBSECTION NEED NOT REQUEST A CONTESTED CASE HEARING BEFORE
24 REQUESTING JUDICIAL REVIEW IF A PERSON IS ENTITLED TO JUDICIAL REVIEW IN
25 ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, JUDICIAL REVIEW SHALL
26 BE IMMEDIATELY AVAILABLE AND A CONTESTED CASE HEARING MAY NOT OCCUR.

27 (3) THIS SUBSECTION DOES NOT APPLY TO A PERMIT APPLICATION FOR
28 A PROPOSED ACTIVITY CONCERNING A PIER, RIP-RAP, OR BULKHEAD.

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

32 (1) THAT THE OBJECTIONS WERE NOT REASONABLY ASCERTAINABLE
33 DURING THE COMMENT PERIOD; OR

34 (2) THAT GROUNDS FOR THE OBJECTIONS AROSE AFTER THE COMMENT
35 PERIOD.

36 (H) UNLESS OTHERWISE REQUIRED BY STATUTE, A PETITION FOR JUDICIAL
37 REVIEW BY A PERSON WHO MEETS THE REQUIREMENTS OF SUBSECTION (F) OF THIS

1 SECTION SHALL BE FILED WITH THE CIRCUIT COURT FOR THE COUNTY ~~IN WHICH~~
2 ~~ANY PARTY RESIDES OR HAS A PRINCIPAL PLACE OF BUSINESS~~ WHERE THE
3 APPLICATION FOR THE PERMIT STATES THAT THE PROPOSED ACTIVITY WILL OCCUR.

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

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

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

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

15 (4) The conditions and criteria for granting a temporary stay as provided
16 in regulations for contested case hearings adopted by the Department have been met.
17 14-105.

18 (b) The Department shall provide public notice, public informational hearings,
19 and [contested case hearings] JUDICIAL REVIEW in accordance with the provisions of
20 § 5-204 of this article.

21 15-810.

22 (e) Public notice, informational hearings, and [contested case hearings]
23 JUDICIAL REVIEW shall be conducted in accordance with the provisions of § 5-204 of
24 this article.

25 15-813.

26 (g) The Department shall provide opportunity for [a contested case hearing]
27 JUDICIAL REVIEW in accordance with the provisions of § 5-204 of this article.

28 16-307.

29 (d) The Secretary shall provide opportunity for [a contested case hearing]
30 JUDICIAL REVIEW in accordance with the provisions of § 5-204(f) through (h) of this
31 article.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, ~~2006~~ 2007.

