

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 508 (Senator Stone)
Education, Health, and Environmental Affairs

Environment - Permit Process - Modifications

This bill makes various changes to increase public participation in the environmental permitting process. First, the bill establishes an Environmental Leadership Group within the Maryland Department of the Environment to consider and act on environmental matters in the State, including those activities that require permit approval from local, State, and federal agencies. Second, the bill requires MDE to provide an opportunity for a contested case hearing to any specified party, not just the applicant, with respect to *all* permits the department issues. Third, the bill modifies current requirements relating to public notices and the location of public informational meetings and public hearings. Finally, the bill requires applicants for an air quality permit to construct to prepare and submit to MDE an environmental impact statement (EIS).

Fiscal Summary

State Effect: Significant increase in general fund expenditures for MDE and the Office of Administrative Hearings to handle the increase in workload anticipated as a result of the bill's changes. No direct effect on revenues.

Local Effect: Potential significant increase in local expenditures to handle the anticipated increase in workload for delegated permits. Potential significant impact on local governments (as permittees) to the extent the bill results in a delay in the issuance of permits or in an increase in costs associated with the permit process.

Small Business Effect: Meaningful.

Analysis

Current Law: For certain types of permits, MDE is required to provide the public an opportunity to review and comment on the department's decision to issue or deny a permit. The following is a brief summary of major elements of the law:

- The initial stage of the required review process provides for a public comment period when written comments are accepted. Next, MDE creates an opportunity for an open informational meeting about the proposed activity or project. No decisions about issuing or denying the permit are made at that point. A notice announcing the meeting is placed in a newspaper and a copy of the permit application is available for review in the local library.
- Later, MDE makes a tentative (preliminary) decision to issue or deny the permit and holds a public hearing. A notice announcing the hearing and the period of time that the hearing record is open for written comment (usually at least a week beyond the actual hearing date) is also placed in a newspaper. Technical information used by MDE in developing its tentative determination and a copy of a draft permit (if the tentative decision is to issue a permit) is available for review in the local library.
- After the hearing, MDE responds to all comments received and makes a final decision on issuing or denying the permit, and a notice to this effect is published in the newspaper.

Not all permits require public participation or notification. Generally, public comment is solicited when required by law for specific permits. These permits involve air, water, and waste management activities that have the potential for significant harm to the environment or public health. The following permits are subject to the public participation requirements specified under Title 1, Subtitle 6 of the Environment Article: • specified air quality control permits to construct; • specified permits to install, materially alter, or materially extend landfill systems and incinerators; • specified water discharge permits; • specified sewage sludge permits; • specified controlled hazardous substance facility permits; • specified hazardous material facility permits; and • specified low-level nuclear waste facility permits.

MDE is *not* required to provide an opportunity for a contested case hearing to any party *other than the applicant* in connection with any permit issued under the Environment Article, except for the permits listed above. A person may request a contested case hearing to appeal a final determination if the person makes factual allegations with sufficient particularity to demonstrate that the person is aggrieved by the final determination and that the final determination is legally inconsistent with applicable provisions of law or based upon an incorrect determination of a relevant and material fact.

MDE's 2006 *Public Participation Guide Citizen Handbook* (which can be found at <http://www.mde.state.md.us/assets/document/MDEPublicParticipationGuide2006.pdf>) provides an overview of MDE's permitting and public participation process. A flow chart that summarizes the process can be found on page 23 of that document.

Applicants for an air quality permit to construct are required to prepare an ambient air quality impact analysis regarding the proposed construction. Current State law does not automatically require those permit applicants to prepare and submit an EIS. However, current regulations relating to water supply, sewerage, solid waste, and air pollution authorize MDE to require a draft EIS if the department determines, after the environmental review, that significant environmental impacts may occur and cannot be adequately mitigated or that specified conditions set forth in federal regulations exist.

Background: MDE advises that it issued 10,455 permits and licenses in 2007. MDE also advises that, going beyond legal requirements, it encourages permit applicants for major projects or activities to communicate with the public outside of the formal public review process required by law. MDE encourages permit applicants to seek out known community groups and local elected officials and meet with them prior to submitting a permit application. This allows citizens a chance to make any concerns known early in the process and provides the applicant an opportunity to begin to address issues before the formal review process begins.

State Expenditures:

Maryland Department of the Environment

General fund expenditures could increase significantly, primarily as a result of the bill's provision that expands the opportunity for contested case hearings to any specified party, not just the applicant. Although a reliable estimate of the number of additional requests for contested case hearings that would occur as a result of the bill cannot be made, MDE provided the following information that is helpful in understanding the potential impact of the bill:

- in 2007, MDE's Solid Waste Program issued approximately 290 permits that could be affected by the bill's changes;
- in 2007, MDE's Air and Radiation Management Administration issued 19 Title V operating permits, 73 State permits to operate, and 776 permits to construct, of which only 38 permits to construct were subject to expanded public participation including the opportunity for a contested case hearing;
- even in a simple case, an appeal takes 3 to 5 workdays of staff time; and

- while many of the permits MDE issues are of no particular interest to the public, others are certain to generate many additional requests for contested case hearings.

For illustrative purposes, if 50% of the permits identified above, or an additional 560 permits annually, were involved in contested case hearings, MDE's costs could increase by an estimated \$626,000 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate, which assumes that an average of four additional days of staff time would be required for each permit, reflects the cost of hiring three assistant Attorneys General, four public health engineers, one geologist, and one office secretary to track appeals and defend permit decisions. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It does not include additional costs that would be borne by MDE with respect to OAH (described below). Future year expenditures, which could range from an estimated \$815,800 in fiscal 2010 to \$923,800 in fiscal 2013, reflect: • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

Even if MDE hires additional staff to handle the anticipated increase in workload, MDE advises that permit turnaround times will likely increase as a result of the bill.

MDE could handle the bill's requirement to establish an Environmental Leadership Group with existing resources.

Office of Administrative Hearings

The bill would also result in a significant increase in workload for OAH to hold additional hearings delegated by MDE. OAH advises that on average, MDE hearings take three days to complete, and for each hour devoted to hearings, an administrative law judge devotes two hours to writing a decision.

Although a reliable estimate of the number of additional hearings that will be delegated to OAH cannot be made at this time, *for illustrative purposes*, if, as described above, 560 additional contested cases are processed due to appeals, and if 10% of those cases are delegated to OAH, costs could increase by an estimated \$175,500 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects the cost of hiring two administrative law judges to handle the additional cases. It includes salaries, fringe benefits, one-time start-up costs (including digital recording equipment), and ongoing operating expenses. Future year expenditures, which could range from an estimated \$221,400 in fiscal 2010 to \$260,200 in fiscal 2013, reflect: • full salaries with 4.4% annual increases and 3% employee turnover; • 2% annual increases in ongoing operating expenses; and • specified replacement equipment in fiscal 2013.

OAH advises that its expenditures are typically funded with reimbursable funds by the agency that delegates the hearings. Accordingly, it is assumed that any increase in expenditures for OAH would ultimately be borne by MDE and would be *in addition to* MDE's other costs described above. For informational purposes, the Governor's proposed fiscal 2009 budget for MDE includes approximately \$192,000 in general funds for OAH.

Local Expenditures: Local governments are subject to various permits issued by MDE. Accordingly, local governments would be adversely impacted by any delay in the issuance of permits that results from the bill. In addition, local governments could incur additional costs to • participate as witnesses in contested case hearings; • prepare environmental impact statements (for air quality permits to construct, if applicable); and • to handle the anticipated permit review workload with respect to the issuance of permits delegated to local governments by MDE. The overall impact to local governments cannot be estimated at this time; however, MDE advises that costs just to prepare an environmental impact statement could be tens of thousands of dollars per project.

Small Business Effect: The number of small businesses that could be affected by the bill is unknown; however, it could be significant. According to 2001 data from the U.S. Census Department's *Survey of U.S. Businesses*, 92.6% of Maryland firms employ fewer than 50 people. Because many businesses are subject to various permits issued by MDE, any delay in the issuance of permits that results from the bill could have a significant impact on affected entities. In addition, any businesses that would be required to prepare an environmental impact statement (for air quality permits to construct) would incur significant costs; MDE advises that such costs could total tens of thousands of dollars. Although many businesses subject to that requirement would likely be large, MDE advises that some of them (for example, a crematory) may be small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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