

# HOUSE BILL 1054

M3, C5

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CF SB 4

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By: **Delegate Niemann**

Introduced and read first time: February 13, 2009

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Permitting Process – Environmental Justice Review**

3 FOR the purpose of providing that certain provisions of this Act do not apply to local  
4 governments seeking a certain permit; requiring a local government seeking a  
5 certain permit for a certain purpose to provide certain notice and hold a certain  
6 hearing, and to consider certain environmental justice issues; requiring the  
7 Department of the Environment, in consultation with the Commission on  
8 Environmental Justice and Sustainable Communities and the Department of  
9 Planning, to develop certain criteria and maps on or before a certain date;  
10 prohibiting the Department of the Environment from issuing or renewing  
11 certain permits until a permit applicant conducts an Environmental Justice  
12 Review except under certain circumstances; requiring the Department of the  
13 Environment to make certain determinations; requiring a permit applicant to  
14 submit certain information to the Department of the Environment under  
15 certain circumstances; establishing penalties for certain violations; repealing a  
16 certain term; altering a certain reporting requirement; defining certain terms;  
17 and generally relating to environmental justice in the State.

18 BY renumbering

19 Article – Environment

20 Section 1–701

21 to be Section 1–706

22 Annotated Code of Maryland

23 (2007 Replacement Volume and 2008 Supplement)

24 BY adding to

25 Article – Environment

26 Section 1–701 through 1–705

27 Annotated Code of Maryland

28 (2007 Replacement Volume and 2008 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
2 Article – Environment  
3 Section 1–706  
4 Annotated Code of Maryland  
5 (2007 Replacement Volume and 2008 Supplement)  
6 (As enacted by Section 1 of this Act)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
8 MARYLAND, That Section(s) 1–701 of Article – Environment of the Annotated Code of  
9 Maryland be renumbered to be Section(s) 1–706.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
11 read as follows:

12 **Article – Environment**

13 **1–701.**

14 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
15 INDICATED.

16 (B) “COMMISSION” MEANS THE COMMISSION ON ENVIRONMENTAL  
17 JUSTICE AND SUSTAINABLE COMMUNITIES.

18 (C) “ENVIRONMENTAL JUSTICE” MEANS THE FAIR TREATMENT AND  
19 MEANINGFUL INVOLVEMENT OF ALL PEOPLE REGARDLESS OF RACE, COLOR, OR  
20 INCOME WITH RESPECT TO THE DEVELOPMENT, IMPLEMENTATION, AND  
21 ENFORCEMENT OF ENVIRONMENTAL LAWS, REGULATIONS, AND POLICIES.

22 (D) “ENVIRONMENTAL JUSTICE REVIEW” MEANS A WRITTEN REPORT  
23 THAT IS SUBMITTED TO THE DEPARTMENT, WHICH INCLUDES:

24 (1) A DESCRIPTION OF THE PROPOSED ACTION;

25 (2) A DESCRIPTION OF THE HISTORIC USES OF THE SITE OR  
26 FACILITY WHERE THE ACTION IS PROPOSED TO OCCUR;

27 (3) A DEMOGRAPHIC PROFILE OF THOSE PERSONS LIVING IN  
28 PROXIMITY TO THE PROPOSED ACTION, INCLUDING THOSE PERSONS USING,  
29 WORKING, OR LIVING ON OR WITHIN A 1–MILE RADIUS OF THE SITE OR FACILITY  
30 ON WHICH THE PROPOSED ACTION WILL OCCUR;

31 (4) A DESCRIPTION OF POTENTIAL ADVERSE ENVIRONMENTAL  
32 IMPACTS TO LAND, AIR, AND WATER RESOURCES WITHIN A 1–MILE RADIUS OF  
33 THE SITE OR FACILITY ON WHICH THE PROPOSED ACTION WILL OCCUR;

1           **(5) A DESCRIPTION OF POTENTIAL ADVERSE HUMAN HEALTH**  
2 **IMPACTS TO THOSE PERSONS USING, WORKING, OR LIVING ON OR WITHIN A**  
3 **1-MILE RADIUS OF THE SITE OR FACILITY ON WHICH THE PROPOSED ACTION**  
4 **WILL OCCUR;**

5           **(6) A DESCRIPTION OF POTENTIAL ECONOMIC IMPACTS TO**  
6 **THOSE PERSONS USING, WORKING, OR LIVING ON OR WITHIN A 1-MILE RADIUS**  
7 **OF THE SITE OR FACILITY ON WHICH THE PROPOSED ACTION WILL OCCUR;**

8           **(7) A DESCRIPTION OF ANY POTENTIAL ADVERSE IMPACTS TO**  
9 **ENVIRONMENTALLY STRESSED COMMUNITIES CAUSED BY THE PROPOSED**  
10 **ACTION; AND**

11           **(8) ANY PUBLIC EDUCATION OR COMMUNITY OUTREACH**  
12 **EFFORTS THAT THE APPLICANT IS PLANNING TO CONDUCT BEFORE, DURING,**  
13 **OR ON COMPLETION OF THE PROPOSED ACTION.**

14           **(E) “ENVIRONMENTALLY STRESSED COMMUNITY” MEANS A MINORITY**  
15 **OR LOW-INCOME COMMUNITY THAT BEARS A DISPROPORTIONATE SHARE OF**  
16 **THE NEGATIVE ENVIRONMENTAL CONSEQUENCES RESULTING FROM**  
17 **INDUSTRIAL, MUNICIPAL, AND COMMERCIAL OPERATIONS OR THE EXECUTION**  
18 **OF FEDERAL, STATE, OR LOCAL PROGRAMS AND POLICIES, AS DETERMINED BY**  
19 **THE DEPARTMENT IN CONSULTATION WITH THE COMMISSION.**

20 **1-702.**

21           **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS**  
22 **SUBTITLE DOES NOT APPLY IF THE APPLICANT SEEKING A PERMIT UNDER §**  
23 **1-704 OF THIS SUBTITLE IS A LOCAL GOVERNMENT.**

24           **(B) A LOCAL GOVERNMENT SEEKING A PERMIT UNDER § 1-704 OF THIS**  
25 **SUBTITLE FOR A PURPOSE OTHER THAN RENEWAL FOR AN EXISTING FACILITY**  
26 **SHALL:**

27           **(1) PROVIDE PUBLIC NOTICE AND HOLD AT LEAST ONE PUBLIC**  
28 **HEARING ON THE PERMIT APPLICATION IN ACCORDANCE WITH THE LOCAL**  
29 **GOVERNMENT’S PUBLIC HEARING AND NOTICE REQUIREMENTS; AND**

30           **(2) CONSIDER ENVIRONMENTAL JUSTICE ISSUES RELATING TO**  
31 **THE PERMIT APPLICATION.**

32 **1-703.**

1           **ON OR BEFORE OCTOBER 1, 2010, THE DEPARTMENT, IN CONSULTATION**  
2 **WITH THE COMMISSION AND THE DEPARTMENT OF PLANNING, SHALL DEVELOP**  
3 **CRITERIA AND MAPS THAT IDENTIFY ENVIRONMENTALLY STRESSED**  
4 **COMMUNITIES IN THE STATE.**

5 **1-704.**

6           **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE**  
7 **DEPARTMENT MAY NOT ISSUE OR RENEW THE FOLLOWING PERMITS UNTIL THE**  
8 **PERMIT APPLICANT CONDUCTS AN ENVIRONMENTAL JUSTICE REVIEW:**

9                   **(1) AN AIR QUALITY CONTROL PERMIT TO CONSTRUCT ISSUED**  
10 **UNDER § 2-404 OF THIS ARTICLE;**

11                   **(2) A PERMIT TO INSTALL, MATERIALLY ALTER, OR MATERIALLY**  
12 **EXTEND LANDFILL SYSTEMS, INCINERATORS FOR PUBLIC USE, OR RUBBLE**  
13 **LANDFILLS ISSUED UNDER § 9-209 OF THIS ARTICLE;**

14                   **(3) A PERMIT TO DISCHARGE POLLUTANTS TO WATERS OF THE**  
15 **STATE ISSUED UNDER § 9-323 OF THIS ARTICLE;**

16                   **(4) A PERMIT TO INSTALL, MATERIALLY ALTER, OR MATERIALLY**  
17 **EXTEND A STRUCTURE USED FOR STORAGE OR DISTRIBUTION OF ANY TYPE OF**  
18 **SEWAGE SLUDGE ISSUED, RENEWED, OR AMENDED UNDER § 9-234.1 OR § 9-238**  
19 **OF THIS ARTICLE;**

20                   **(5) A PERMIT TO OWN, OPERATE, ESTABLISH, OR MAINTAIN A**  
21 **CONTROLLED HAZARDOUS SUBSTANCE FACILITY ISSUED UNDER § 7-232 OF**  
22 **THIS ARTICLE;**

23                   **(6) A PERMIT TO OWN, OPERATE, OR MAINTAIN A HAZARDOUS**  
24 **MATERIAL FACILITY ISSUED UNDER § 7-103 OF THIS ARTICLE; AND**

25                   **(7) A PERMIT TO OWN, OPERATE, ESTABLISH, OR MAINTAIN A**  
26 **LOW-LEVEL NUCLEAR WASTE FACILITY ISSUED UNDER § 7-233 OF THIS**  
27 **ARTICLE.**

28           **(B) THE DEPARTMENT MAY ISSUE OR RENEW A PERMIT LISTED UNDER**  
29 **SUBSECTION (A) OF THIS SECTION TO A PERMIT APPLICANT WHO HAS NOT**  
30 **CONDUCTED AN ENVIRONMENTAL JUSTICE REVIEW, IF THE DEPARTMENT**  
31 **DETERMINES, BASED ON THE MAPS DEVELOPED UNDER § 1-702 OF THIS**  
32 **SUBTITLE, THAT THE PERMIT APPLICANT'S FACILITY OR SITE IS NOT WITHIN A**  
33 **1-MILE RADIUS OF AN ENVIRONMENTALLY STRESSED COMMUNITY.**

1           **(C) THE DEPARTMENT SHALL DETERMINE, BASED ON THE FINDINGS IN**  
2 **THE ENVIRONMENTAL JUSTICE REVIEW, WHETHER THE PROPOSED ACTION**  
3 **WILL DISPROPORTIONATELY AFFECT ENVIRONMENTALLY STRESSED**  
4 **COMMUNITIES.**

5           **(D) IF THE DEPARTMENT DETERMINES THAT A PROPOSED ACTION WILL**  
6 **DISPROPORTIONATELY AFFECT AN ENVIRONMENTALLY STRESSED COMMUNITY,**  
7 **THE APPLICANT SHALL SUBMIT THE FOLLOWING TO THE DEPARTMENT BEFORE**  
8 **COMMENCING THE PROPOSED ACTION:**

9                   **(1) A LIST OF MULTIPLE ALTERNATIVE LOCATIONS ON WHICH**  
10 **THE PROPOSED ACTION COULD OCCUR;**

11                   **(2) A LIST OF MITIGATING ACTIONS THAT THE APPLICANT WILL**  
12 **CONDUCT TO OFFSET THE IMPACTS OF THE PROPOSED ACTION; AND**

13                   **(3) A LIST OF STRATEGIES AND ACTIONS THAT THE APPLICANT**  
14 **WILL CONDUCT TO EDUCATE AND INFORM MEMBERS OF THE**  
15 **ENVIRONMENTALLY STRESSED COMMUNITY OF THE PROPOSED ACTION.**

16           **(E) A PERMIT APPLICANT WHO FAILS TO COMPLY WITH SUBSECTIONS**  
17 **(A) AND (D) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON**  
18 **CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$50,000 FOR EACH**  
19 **VIOLATION OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH.**

20 **1-705.**

21           **THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS**  
22 **SUBTITLE.**

23 **1-706.**

24           **(a) [In this section, “environmental justice” means equal protection from**  
25 **environmental and public health hazards for all people regardless of race, income,**  
26 **culture, and social status.**

27           **(b)] There is a Commission on Environmental Justice and Sustainable**  
28 **Communities.**

29           **[(c)] (B) The Commission consists of the following 15 members:**

30                   **(1) One member of the Senate of Maryland, appointed by the**  
31 **President of the Senate;**

1                   (2)    One member of the House of Delegates, appointed by the Speaker  
2 of the House;

3                   (3)    The Secretary, or the Secretary's designee;

4                   (4)    The Secretary of Health and Mental Hygiene, or the Secretary's  
5 designee;

6                   (5)    The Secretary of Planning, or the Secretary's designee; and

7                   (6)    Ten members appointed by the Governor who represent the  
8 following interests:

9                   (i)    Affected communities concerned with environmental justice;

10                   (ii)   Business organizations;

11                   (iii)  Environmental organizations;

12                   (iv)   Health experts on environmental justice;

13                   (v)    Local government; and

14                   (vi)   The general public with interest or expertise in  
15 environmental justice.

16            [[d]] (C)    (1)    The term of a member appointed by the Governor is 3 years.

17                   (2)    At the end of a term, a member continues to serve until a successor  
18 is appointed and qualifies.

19                   (3)    A member who is appointed after a term has begun serves only for  
20 the rest of the term and until a successor is appointed and qualifies.

21                   (4)    A member may not be appointed to more than two consecutive  
22 terms.

23            [[e]] (D)    The Governor shall designate the chairman of the Commission.

24            [[f]] (E)    The Department shall provide staff for the Commission.

25            [[g]] (F)    (1)    The Commission shall meet at the times and places that the  
26 chairman determines.

27                   (2)    A majority of members of the Commission shall constitute a  
28 quorum for the transaction of business.

1           (3)    A member of the Commission:

2                   (i)    May not receive compensation; but

3                   (ii)   Is entitled to reimbursement for expenses under the  
4 Standard State Travel Regulations, as provided in the State budget.

5           **[(h)] (G)**    The Commission shall:

6                   (1)    Advise State government agencies on environmental justice and  
7 related community issues;

8                   (2)    Review and analyze the impact of current State laws and policies  
9 on the issue of environmental justice and sustainable communities;

10                  (3)    Assess the adequacy of State and local government laws to address  
11 the issue of environmental justice and sustainable communities;

12                  (4)    Coordinate with the Children's Environmental Health and  
13 Protection Advisory Council on recommendations related to environmental justice and  
14 sustainable communities;

15                  (5)    Develop criteria to assess whether communities in the State may  
16 be experiencing environmental justice issues; and

17                  (6)    Recommend options to the Governor for addressing issues,  
18 concerns, or problems related to environmental justice that surface after reviewing  
19 State laws and policies, including prioritizing areas of the State that need immediate  
20 attention.

21           **[(i)] (H)**    On or before October 1 of each year, the Commission shall report  
22 its findings and recommendations to the Governor and, subject to § 2-1246 of the  
23 State Government Article, the General Assembly.

24           SECTION 3. AND BE IT FURTHER ENACTED, That the Commission on  
25 Environmental Justice and Sustainable Communities shall include in its annual  
26 report an update of the implementation of this Act, including any policy or legislative  
27 recommendations for the General Assembly's consideration.

28           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2009.