

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

Senate Bill 4 (Senator Harrington)  
Education, Health, and Environmental Affairs

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**Environment - Permitting Process - Environmental Justice Review**

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This bill establishes an environmental justice review process that requires study of certain projects, including consideration of any adverse environmental, human health, or economic impacts on persons living or working near the project, and any disproportionate impact on environmentally stressed communities. Subject to this review process are specified projects requiring the issuance of a permit or permit renewal by the Maryland Department of the Environment (MDE) and projects to construct or expand liquefied natural gas facilities. MDE may not issue or renew one of these permits unless an environmental justice review has been conducted.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$896,200 in FY 2010 for MDE and the Maryland Department of Planning (MDP) to implement the bill. Future year increases reflect annualization, salary increases, and inflation. Additional increase in State expenditures as various State agencies (as permittees) incur costs associated with conducting the environmental justice review required by the bill. Potential minimal increase in general fund expenditures and revenues due to the bill's criminal penalty provision.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	-	-	-	-	-
GF Expenditure	\$896,200	\$1,049,500	\$1,097,600	\$1,148,200	\$1,201,300
GF/SF Exp.	-	-	-	-	\$0
Net Effect	(\$896,200)	(\$1,049,500)	(\$1,097,600)	(\$1,148,200)	(\$1,201,300)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Local government expenditures may increase significantly beginning in FY 2010 due to the cost of conducting environmental justice reviews. Potential minimal increase in expenditures and revenues due to the bill's criminal penalty provision.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** "Environmental justice" is redefined to mean the fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

An "environmentally stressed community" is defined as a minority or low-income community that bears a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, State, or local programs and policies, as determined by MDE in consultation with the existing Commission on Environmental Justice and Sustainable Communities.

An environmental justice review is a report that describes the proposed action and the historic uses of the site at which the proposed action is to occur. The report has to include a demographic profile of persons living or working within a two-mile radius of the site and description of any adverse environmental, human health, or economic impacts to those persons; a description of any impact to environmentally stressed communities; and discussion of public education and community outreach efforts being conducted in conjunction with the project.

Until an applicant conducts and submits an environmental justice review, MDE may not issue:

- an air quality control permit;
- a permit to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills;
- a permit to discharge pollutants to waters of the State;
- a permit to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge;
- a permit to own, operate, establish, or maintain a controlled hazardous substance facility;

- a permit to own, operate, or maintain a hazardous material facility; or
- a permit to own, operate, establish, or maintain a low-level nuclear waste facility.

In addition, before the construction or expansion of a liquefied natural gas facility, the owner of the facility must conduct an environmental justice review.

MDE has to determine, based on the findings in the environmental justice review, whether a proposed action will disproportionately affect environmentally stressed communities. If so, the project applicant must submit to MDE a list of alternative locations, a list of mitigating actions to offset any impacts, and a list of strategies to educate the environmentally stressed community about the proposed project.

By October 1, 2010, MDE, in consultation with the commission and MDP, has to develop maps that identify environmentally stressed communities in the State. The commission has to include an update of the implementation of the bill and policy or legislative recommendations for the General Assembly's consideration in its annual report.

A person who fails to comply with the environmental justice review requirements is guilty of a misdemeanor and is subject to a fine of up to \$50,000 for each violation and/or imprisonment for up to two years.

**Current Law/Background:** The Commission on Environmental Justice and Sustainable Communities advises State agencies on environmental justice and related community issues; reviews and analyzes the impact of current State policy, laws, and regulations on environmental justice and sustainable communities; coordinates with the Children's Environmental Health and Protection Advisory Council on environmental justice and sustainable communities recommendations; develops criteria to assess whether communities may be experiencing environmental justice issues; and recommends options to the Governor for addressing issues, concerns, or problems surfacing through the review process, prioritizing areas of the State which are targets for immediate action.

**State Expenditures:** General fund expenditures increase by at least \$896,193 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date, and increase by over \$1.2 million by fiscal 2014. This estimate reflects only the costs for MDE and MDP. It includes the cost of hiring seven regulatory and compliance engineers, six natural resource planners, and one other planner as well as consulting with contractors with expertise in economics, public health, and environmental justice. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover and 1% annual increases in ongoing operating expenses. More information and the assumptions used in calculating this estimate are stated below:

- MDE receives approximately 3,371 applications annually for the types of environmental permits covered by the bill;
- MDE does not have the expertise necessary to implement the requirements of the bill;
- contractual services are necessary to develop the environmental justice review program and the environmentally stressed community mapping capability in fiscal 2010, with some additional work in future years; and
- additional engineers and planners are needed at MDE and MDP to review environmental justice review reports submitted by permit applicants and to assist in the development and periodic updates of the environmentally stressed communities map.

	<b><u>FY 2010</u></b>	<b><u>FY 2014</u></b>
Salaries and Fringe Benefits at MDE	\$664,188	\$1,040,303
Salaries and Fringe Benefits at MDP	46,985	73,714
Contractual Services	120,000	62,436
Operating Expenses	<u>65,020</u>	<u>24,856</u>
<b>Total</b>	<b>\$896,193</b>	<b>\$1,201,309</b>

General fund, Transportation Trust Fund, and special fund expenditures may increase for other State agencies, as permittees, to comply with the environmental justice review requirements. For example, the Maryland Department of Transportation alone applies for hundreds of environmental permits each year and therefore faces additional costs to comply with the bill. Moreover, State agencies may be adversely impacted by any delay in the issuance of permits that results from the bill. In addition, general fund expenditures increase minimally as a result of the bill's incarceration penalty.

**State Revenues:** General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

**Local Expenditures:** Nearly all counties and many municipal corporations in the State either renew or seek a new environmental permit from MDE each year. For each new permit or permit renewal for a project specified in the bill that a local government seeks, it has to conduct, or contract to have conducted, an environmental justice review. Frederick County advises that its recent environmental permitting processes have ranged in cost from \$20,000 to nearly \$60,000 depending on the project type, and that the requirements of the bill may increase overall permitting costs by another 15%. No other local government has attempted to estimate the additional cost to obtain a permit imposed by the bill, but several other jurisdictions indicate that the costs are anticipated to be significant. Further, expenditures increase minimally as a result of the bill's incarceration penalty.

**Local Revenues:** Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

**Small Business Effect:** The bill imposes a significant cost increase to a small business seeking an environmental permit for a project of the type specified in the bill. The cost increase is anticipated to be comparable to the expenditure increases expected for local government permittees.

**Additional Comments:** MDP advises that much of the demographic data required to develop a map of the State's environmentally stressed communities is provided by federal Census data. The 2010 Census data will be available no later than April 1, 2011. In addition, the American Community Survey's block group data, which is collected every five years, will also be released in early 2011. However, the environmentally stressed community map is required to be completed by October 1, 2010.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Charles, Frederick, Somerset, and Montgomery counties; City of Havre de Grace; Maryland Department of Planning; Maryland Department of the Environment; Department of Legislative Services

**Fiscal Note History:** First Reader - February 2, 2009  
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