

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 752 (Senator Benson, *et al.*)
Education, Health, and Environmental Affairs

Environment - Permitting Process - Environmental Justice Review

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). MDE may not issue or renew one of these permits unless an environmental justice review has been conducted.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General fund expenditures increase by \$650,200 in FY 2013 for MDE to implement the bill. Future year increases reflect salary increases and inflation. Additional increase in State expenditures (all funds) as various State agencies (as permittees) incur potentially substantial costs associated with conducting the environmental justice review required by the bill. Potential minimal increase in general fund expenditures and revenues associated with the bill’s criminal penalty provision.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	650,200	423,300	442,600	462,900	484,300
GF/SF/FF Exp.	-	-	-	-	-
NonBud Exp.	-	-	-	-	-
Net Effect	(\$650,200)	(\$423,300)	(\$442,600)	(\$462,900)	(\$484,300)

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

Local Effect: Local government expenditures may increase significantly beginning in FY 2013 due to the cost of conducting environmental justice reviews. Potential minimal increase in expenditures and revenues associated with the bill’s criminal penalty provision. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

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 (CEJSC).

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 potential adverse and cumulative impacts 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, establish, or maintain a hazardous material facility; or
- a permit to own, operate, establish, or maintain a low-level nuclear waste facility.

MDE has to determine, based on the findings in the environmental justice review, whether a proposed action, or the cumulative effect of that action, will disproportionately

affect an environmentally stressed community. 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, 2013, MDE, in consultation with CEJSC and the Department of Health and Mental Hygiene (DHMH), has to develop maps that identify environmentally stressed communities in the State. CEJSC 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: “Environmental justice” means equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status. CEJSC, which was established by executive order in 2001 and codified in 2003, is tasked with examining issues of environmental justice and sustainable communities for all Marylanders. To this end, CEJSC advises State agencies on environmental justice and related community issues; reviews and analyzes the environmental justice implications of current State policy, laws, and regulations; assesses the adequacy of State and local laws to address the issue of environmental justice and sustainable communities; coordinates with the Children’s Environmental Health and Protection Advisory Council on recommendations to further environmental justice and sustainable communities; develops criteria to assess whether communities may be experiencing environmental justice issues; and recommends options to the Governor for addressing issues, concerns, or problems related to environmental justice.

Chapter 211 of 2010 expanded the membership of CEJSC from 15 to 20 members to include representatives from the departments of Housing and Community Development, Transportation, and Business and Economic Development, and two additional members appointed by the Governor. Chapter 211 also specifies that at least 2 of the 12 members appointed by the Governor must represent affected communities concerned with environmental justice.

MDE and DHMH jointly implement the Maryland Environmental Public Health Tracking program. According to DHMH, the program is part of a national network of 17 states and one city funded by the U.S. Centers for Disease Control and Prevention (CDC) to develop a state and national tracking network of environment and health data for the public, policymakers, researchers, and agencies. The program produces maps through the use of geographic information systems that allow online users to produce overlays

showing combinations of health outcomes, environmental factors, demography, and social and economic status.

MDE advises that it has collaborated with CEJSC since 2009 to study environmental justice issues in the permit review process. MDE formed an internal workgroup that, among other things, initiated a pilot program involving public participation in the permit process for Prince George's County. The pilot is ongoing and outcomes have not yet been determined.

State Expenditures: General fund expenditures for MDE increase by about \$650,190 in fiscal 2013, which reflects the bill's July 1, 2012 effective date. This estimate includes the cost of hiring one regulatory and compliance engineer, three natural resource planners, and one administrator, as well as the cost to contract with consultants 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 3,400 applications annually for the types of environmental permits covered by the bill;
- MDE has studied the issue of environmental justice permit reviews and has determined that it 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 expand on current environment and public health mapping capability in fiscal 2013, with ongoing work in future years; and
- additional engineers and planners are needed at MDE 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.

	<u>FY 2013</u>
Positions	5
MDE Salaries and Fringe Benefits	\$339,293
Contractual Services	275,500
Operating Expenses	<u>36,397</u>
Total FY 2013 MDE Expenditures	\$650,190

DHMH can help develop maps using existing budgeted resources, since it is already involved in that activity through the Maryland Environmental Public Health Tracking Program.

General fund, Transportation Trust Fund, other special fund, and nonbudgeted expenditures may increase substantially for other State agencies and entities, 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, which may exceed \$1 million annually. The Maryland Environmental Service (MES), a nonbudgeted, independent State agency, advises that the environmental justice review process will result in an increase in expenditures of roughly \$400,000 annually to hire an additional engineer and for outside contractual assistance; a portion of these costs will be passed on to non-State clients (including local governments), while the remaining costs will be passed on to the various State agencies MES serves, such as the Department of Public Safety and Correctional Services and the Department of Natural Resources (DNR). Finally, State agencies may be adversely impacted by any delay in the issuance of permits that results from the bill.

The above estimate does not account for additional expenditures that could be incurred by DNR to assist in conducting permit reviews under the bill. For example, DNR advises that it is a part of the current interagency permit review process and projects that it will need an additional natural resources planner to handle the additional workloads. Legislative Services assumes, however, that the additional permit review workload under the bill will be implemented solely by MDE. In addition, the above estimate does not account for a minimal increase in general fund expenditures 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 or delays in obtaining a permit imposed by the bill, but they may 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 Information

Prior Introductions: A similar bill, SB 4 of 2009, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken on the bill. Its cross file, HB 1054, received a hearing in the House Environmental Matters Committee, but no further action was taken on the bill.

Cross File: None.

Information Source(s): Baltimore, Charles, and Frederick counties; cities of Frederick and Havre de Grace; Maryland Department of the Environment; Maryland Department of Agriculture; Board of Public Works; Department of Natural Resources; Maryland Department of Planning; Department of Health and Mental Hygiene; Maryland Environmental Service; Maryland Department of Transportation; Department of Legislative Services

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