

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 186

(Chair, Environmental Matters Committee)(By Request -
Departmental - Environment)

Environmental Matters

Education, Health, and Environmental Affairs

Department of the Environment - Permit Proceedings - Judicial Review

This emergency departmental bill authorizes a decision of the circuit court to be appealed to the Court of Special Appeals in a case involving a petition for judicial review of specified environmental permits.

The bill applies retroactively and to all appeals of final decisions on permits issued under Title 1, Subtitle 6 of the Environment Article.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: The Maryland Department of the Environment (MDE) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not affect amendments to the bill.)

Analysis

Current Law/Background: Chapters 650 and 651 of 2009 expanded standing for individuals, associations, and organizations in bringing challenges related to a license to dredge and fill on State wetlands and permits issued under the Environment Article pertaining to ambient air quality control, landfills/incinerators, discharge pollutants, structures used for sewage sludge storage or distribution, controlled hazardous substance

facilities, hazardous materials facilities, low-level nuclear waste facilities, water appropriation and use, nontidal wetlands, gas and oil drilling, surface mining, and private wetlands. Thus, Chapters 650 and 651 replaced contested case hearing procedures with provisions regarding judicial review of permit determinations.

According to MDE, the repeal of the provisions regarding contested cases also resulted in the inadvertent deletion of a reference to the right to appeal to the Court of Special Appeals for a party who is aggrieved by a final judgment of a circuit court after a contested case hearing under the Administrative Procedure Act. As recently noted by the Court of Appeals in *Rogers v. Eastport Yachting Ctr., LLC*, 408 Md. 722 (2009), “it is an often stated principle of Maryland law that appellate jurisdiction, except as constitutionally authorized, is determined entirely by statute, and that, therefore, a right of appeal must be legislatively granted.” MDE advises that the bill restores the previously granted right to appeal to the Court of Special Appeals, which is consistent with the expectations of parties involved in legal proceedings associated with permit decisions, and which will help to ensure consistent interpretations among the various circuit courts. MDE further advises that, while no litigant has yet raised this issue in the context of an MDE permit decision, the argument has recently been raised in a pending action regarding the right to appeal in a similar context.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2012
mm/lgc Revised - Enrolled Bill - April 18, 2012

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of the Environment – Permit Proceedings – Judicial Review

BILL NUMBER: HB 186

PREPARED BY: Maryland Department of the Environment

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Parties that may be involved in legal proceedings, including small businesses, likely already expect that the case may be appealed to the Court of Special Appeals.