

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1297 (Delegate Lehman, *et al.*)  
Environment and Transportation

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Individual Surface Water Discharge Permits - Study and Permit Decisions  
(Zombie Permit Elimination Act)

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This bill requires the Maryland Department of the Environment (MDE) to study and make recommendations, by July 1, 2021, regarding MDE's permitting process for individual surface water discharge permits issued under Title 9, Subtitle 3 of the Environment Article (Water Pollution Control), in accordance with the National Pollutant Discharge Elimination System (NPDES). Until MDE submits its findings and recommendations, the bill requires MDE to either deny or approve an application to renew an affected permit within five business days under specified circumstances. **The bill takes effect June 1, 2020.**

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Fiscal Summary

**State Effect:** MDE can conduct the study and submit recommendations with existing budgeted resources. The bill's requirements related to approving or denying certain NPDES permits may affect special fund revenues, as discussed below. Depending on the outcome of the study and recommendations, MDE expenditures may increase to issue permits in a more timely manner in the future.

**Local Effect:** The bill's changes may affect local government permit applications. Local revenues are not directly affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary:

#### *Required Study and Report*

When conducting the required study and making recommendations, MDE must (1) examine methods that will assist the department with making permit decisions within 180 days of receipt of a complete application; (2) examine expectations that can be developed to improve the quality of permit applications; (3) examine performance measures that can be implemented for MDE staff who are involved in the permitting process; (4) review electronic permitting tools that could be developed and methods for improving the use of the electronic permitting tools currently available to MDE; (5) examine methods for encouraging the use of electronic permitting tools; and (6) examine methods for addressing the backlog of administratively extended permits.

By July 1, 2021, MDE must report its findings to the Governor and the General Assembly.

#### *Mandatory Decisions Regarding Permit Renewal Applications*

Until MDE reports its findings and recommendations pursuant to the bill, if MDE does not issue a decision on a permit application for renewal of an individual surface water permit within 180 days of the end of the term of the permit the applicant is renewing, MDE must, within 5 business days, approve or deny the application, as specified.

MDE must *approve* the permit application if (1) MDE considers the application complete and (2) the applicant adequately demonstrates that all applicable regulatory and statutory requirements are met. MDE must *deny* the permit application if (1) after two technical reviews by MDE, the application still contains technical deficiencies or (2) the applicant cannot adequately demonstrate that all applicable regulatory and statutory requirements are met.

An applicant whose permit application is denied forfeits all fees and must resubmit an application in accordance with regulatory and statutory requirements. Any resubmitted application is considered a new application.

**Current Law:** The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. CWA prohibits any person from discharging pollutants through a point source into a water of the United States unless the person has a NPDES permit. The permit contains limits on what can be discharged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or public health. The permit translates general

requirements of CWA into specific provisions tailored to the operations of each person discharging pollutants.

The individual surface water discharge permit is a combined State and federal permit under NPDES. This permit is issued to industrial and municipal facilities that discharge to State surface waters and is designed to meet federal effluent guidelines, when applicable, and ensure that the discharge satisfies State water quality standards. Among those requiring an industrial permit are industrial, commercial, or institutional facilities that discharge wastewater (or stormwater from certain facilities) to surface waters of the State. Among those requiring a municipal permit are cities, counties, federal facilities, schools, commercial water and wastewater treatment plants, and treatment systems for private residences that discharge to surface waters.

MDE has been delegated the authority to issue NPDES permits in Maryland. MDE's permit review is complex and involves a thorough technical review of each proposal. Staff use water quality models and technology assessments and consider often complex pending rule changes at the federal and State levels. There is also a public comment and hearing period.

**State Fiscal Effect:** As noted above, MDE implements the NPDES program and issues permits under authority delegated by the U.S. Environmental Protection Agency under CWA. Requiring MDE to approve or deny a discharge permit within a prescribed timeframe may jeopardize MDE's delegated authority. To the extent that this occurs, a significant amount of permit fee revenue is potentially lost. More realistically, the bill results in foregone annual permit fee revenue if MDE is unable to reissue permits pending review within the bill's five-day timeframe. Current practice is to administratively extend expired permits while the permit is under review for renewal. Permittees pay annual permit fees during this period. The bill may also result in an increase in application fee revenue from permits that must be reapplied for as new permits under the bill; however, MDE estimates any increase in application fee revenue is minimal in comparison to the foregone annual permit fee revenue from permits that otherwise would have been administratively extended.

Depending on the results of the study and subsequent recommendations, MDE expenditures may increase to implement the recommendations. However, a reliable estimate of any such increase cannot be determined at this time. Accordingly, this analysis does not reflect any increase in such costs.

The bill may have a significant impact on any State agency that has an affected permit under review that is denied or canceled instead of administratively extended under the bill. The Department of Legislative Services is not aware of any specific State permits to which this might apply, however. The Maryland Department of Transportation's State Highway

Administration is covered by general discharge permits under NPDES (not individual permits) and is, therefore, not affected by the bill.

**Local/Small Business Effect:** There is a potential significant impact on any local government or small business that has an affected permit denied or cancelled instead of administratively extended under the bill. Permittees are unable to perform activities covered under a discharge permit if the permit is denied or cancelled.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Baltimore City; Montgomery and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Public School Construction Program; Maryland Department of the Environment; Department of General Services; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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