

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 347

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Environment)

Education, Health, and Environmental Affairs

Environment - Public Hearing and Notification Modernization Act

This departmental bill modifies public participation and notice requirements for a number of licensing, permitting, and regulatory promulgation sections of the Environment Article. Generally, the bill authorizes (1) public hearings and meetings to be held using teleconference or Internet-based conferencing technology (unless an in-person meeting is specifically required by federal law or is requested by a person) and (2) public notices to be published electronically on the Maryland Department of the Environment's (MDE) website. The bill applies to authorizations issued for controlling air emissions and water pollution discharges, drilling of oil and gas wells, noncoal surface mining, constructing and operating solid waste facilities, sewage sludge utilization, and activities that would disturb Maryland wetlands and waterways.

Fiscal Summary

State Effect: Minimal decrease in general/special fund expenditures beginning in FY 2022 from decreased costs for public hearings and meetings and public notices. Revenues are not materially affected.

Local Effect: Minimal decrease in local expenditures beginning in FY 2022. Local revenues are not affected.

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs that affected small businesses likely realize minimal cost savings under the bill.

Analysis

Bill Summary/Current Law:

Public Participation in the Permitting and Licensing Process, Generally – Broad Description of Affected Permits and Licenses and New Public Hearing, Meeting, and Notice Requirements

Affected Permits and Licenses – Under current law and under the bill, §§ 1-601 and 1-602 of the Environment Article establish the general public participation and notice requirements for a number of permits that are issued by MDE. More specifically, these sections establish the general public notice and hearing requirements for (1) air quality control permits to construct (§ 2-404 of the Environment Article); (2) permits to own, operate, establish, or maintain a controlled hazardous substance facility (§ 7-232 of the Environment Article); (3) permits to own, operate, or maintain a hazardous material facility (§ 7-103 of the Environment Article); (4) permits to own, operate, establish, or maintain a low-level nuclear waste facility (§ 7-233 of the Environment Article); (5) permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills (§ 9-209 of the Environment Article); (6) permits to discharge pollutants to waters of the State (§ 9-323 of the Environment Article); and (7) permits to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge issued, renewed, or amended (§ 9-234.1 or § 9-238 the Environment Article).

Section 5-204 of the Environment Article contains consolidated procedures and notice and hearing requirements for Subtitle 5 (County Water and Sewerage Plans) and Subtitle 9 (Water and Sewer Authorities) of Title 9 of the Environment Article (Water, Ice, and Sanitary Facilities) and for Title 14 (Gas and Oil), Title 15 (Mines and Mining), and Title 16 (Wetlands and Riparian Rights) of the Environment Article. Section 16-307 of the Environment Article outlines the public hearing requirements for permits related to certain activities that affect any Maryland wetland or waterway.

New Public Hearing and Public Informational Meeting Standards – Under current law, pursuant to the sections of statute listed above, MDE must generally hold any public informational meetings and hearings held in relation to the issuance of one of the affected permits or licenses nearby where the permit or license applies (however, there is no current law geographic location requirement for public hearings held pursuant to § 5-204 or § 16-307 of the Environment Article). Under the bill, these public informational meetings and hearings may be held using teleconference or Internet-based conferencing technology unless (1) federal law requires the meeting or hearing to be held in person or (2) any person requests that the meeting or hearing be held in person. However, even upon request from any person, MDE is *not* required to hold an in-person public informational meeting or hearing if an executive authority issues a declaration of emergency that affects the meeting

or hearing. Generally, under the bill, public hearings or informational meetings can still be held in person but are not required. Under the bill, an applicant must generally bear the cost of a public informational meeting or hearing held using teleconference or Internet-based technology.

New Public Notice Requirements – Generally, under current law, to satisfy public notice requirements related to the issuance of one of the above permits or licenses, MDE must publish a public notice at least once a week for two consecutive weeks in a local newspaper, as specified. Under the bill, MDE may also satisfy public notice requirements by posting the requisite public notice on MDE’s website in lieu of publishing the notice in a newspaper (except for a notice related to a controlled hazardous substance facility permit).

Conforming Changes and Certain Provisions That Remain in Place – The bill makes conforming changes throughout the affected statutes. The bill also generally repeals any requirements for MDE to mail out hard copies of public notices to interested parties, which allows any direct notifications to be sent electronically. This includes the repeal of a current law requirement under § 2-404, which requires MDE to provide written notice to specified governing bodies and elected officials upon receipt of an application for certain ambient air quality control permits. However, the bill does not repeal the current law requirements that (1) an applicant for a permit to install, materially alter, or materially extend a landfill system provide written notice to specified interested parties and government officials under § 9-204.2 of the Environment Article or (2) MDE mail a copy of a permit application to apply sewage sludge on certain lands to specified local officials under § 9-234 of the Environment Article.

Pursuant to current law, under §§ 1-602 and 5-204 of the Environment Article, an applicant must bear the costs of publishing a public notice in the newspaper. Under the bill, if an applicant chooses to publish a public notice in a newspaper, the applicant is still responsible for those costs.

Adoption of Air Quality Rules and Regulations (§ 2-303 of the Environment Article)

Under current law and under the bill, MDE must announce and hold a public hearing before adopting any rule or regulation pursuant to Title 2 of the Environment Article, which governs ambient air quality control. The bill authorizes the requisite public hearing to be held using teleconference or Internet-based conferencing technology. Additionally, under the bill, MDE is *not* required to hold an in-person public hearing if an emergency declaration is issued by the federal or State government or the local government with jurisdiction over the hearing location. The bill also repeals an obsolete provision related to publishing public notice in a newspaper with general circulation in the area concerned. Instead, public notice must be published on MDE’s website, which is consistent with current law. Finally, the bill repeals an obsolete requirement that MDE publish in a local

newspaper an annual notice informing the public of the types of public notices that are required by Title 2 of the Environment and contact information for MDE from which the public can request copies of available public notifications.

Background: According to MDE, the bill's changes to public notice and public hearings and informational meetings are necessary in response to changes in federal public notice rules and public health and safety concerns related to the COVID-19 pandemic. Based on past experience with holding virtual public hearings, MDE anticipates that conducting hearings and meetings using teleconference or Internet-based conferencing technology will provide increased opportunities for the public to engage in the licensing and permitting process and will likely save time and money for both MDE and applicants. MDE notes that it has a current webinar subscription and uses the conferencing technology to conduct remote meetings and hearings for several regulatory programs; MDE also advises that it is expanding the use of this technology. Finally, MDE notes that it has been using the option for the department's Air and Radiation Administration to publish notices of public hearings for air quality regulations since October 1, 2014; the website is now the main place that the public goes to access and receive notification of such public hearings.

State Expenditures: General/special fund expenditures decrease minimally from the opportunity for MDE to hold additional public hearings and public informational meetings electronically and from the expansion of MDE's ability to post requisite public notices on its website. MDE has already invested in teleconference and Internet-based conferencing technology, so the primary impact of the expanded use of teleconference technology is a decrease in expenditures. MDE can develop any necessary public hearing/meeting guidance policies with existing budgeted resources and staff. Holding public hearings and meetings electronically means there are no employee travel costs and no costs to rent public space. MDE will likely also realize minimal cost savings from lower postage costs. According to MDE, costs to publish public notices can range from \$80 to \$2,600 in larger publications.

Local Expenditures: Local governments are often applicants or interested parties for the permitting provisions affected by the bill. Similar to the State impact described above, local expenditures decrease minimally from the ability to hold certain required public hearings and public informational meetings electronically and from the ability to post requisite public notices electronically. Although local governments are generally still responsible for covering the costs to hold public meetings and hearings using teleconference or Internet-based conferencing technology, it is anticipated that any such costs are less than the costs incurred under current law to book and travel to a venue.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Office of Administrative Hearings; Department of Legislative Services

Fiscal Note History: First Reader - January 11, 2021
rh/lgc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment – Public Hearing and Notification Modernization Act

BILL NUMBER: SB 347

PREPARED BY: Maryland Department of the Environment
(Dept./Agency)

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

The bill would both increase and decrease the fiscal impact on a small business applicant applying for an environmental authorization subject to Title 1, Subtitle 6 or §§ 2-404, 5-204, or 9-234 of the Environment Article, Annotated Code of Maryland; however, the overall impact is expected to be minimal. Under this bill, MDE may choose to post a public notice on its website in lieu of publishing the notice in a newspaper, with the applicant being responsible for the cost of publication. The cost of newspaper publication is invoiced to the applicant at the time of the notice. The cost of the public notices can range from \$80 up to \$2,600 for larger publications. In instances where a program chooses to provide a public notice only through a website posting, the applicant would no longer be required to bear the cost of publishing the notice in a newspaper. However, depending upon the license or permit and the internet access of the locality, the Department may still require the notice to be published in a newspaper. Although the proposed change would have an overall positive fiscal impact on small business applicants, the extent of this impact will be reliant on other factors that may change depending on the license or permit application.

This bill would require an applicant, which could be a small business, to cover the cost of holding a public meeting or hearing using teleconference or internet-based conferencing technology. Currently, the applicant covers the cost of an in-person meeting or hearing. Unless an in-person meeting or hearing is requested, a small business applicant would save money when a public meeting or hearing is held using conferencing technology by no longer needing to book a venue space, hire a company to transcribe the proceeding, or travel to the meeting or hearing location.