

SENATE BILL 1088

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By: **Senator M. Washington**

Introduced and read first time: February 2, 2024

Assigned to: Education, Energy, and the Environment

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Public Participation in the Permitting Process – Alterations**

3 FOR the purpose of authorizing judicial review of certain environmental permitting and
4 license decisions by the Department of the Environment at the request of certain
5 persons who meet certain federal standing requirements under certain
6 circumstances; repealing a certain provision of law authorizing the Department to
7 consolidate certain meetings or hearings under certain circumstances; requiring a
8 person applying for a certain permit from the Department to request an EJ Score
9 from the Department for the census tract where the applicant is seeking the permit
10 for purposes of including the score in the permit application; altering notice
11 requirements relating to certain environmental permitting and license applications;
12 requiring, instead of authorizing, a certain permit applicant to attend an
13 informational meeting or public hearing to present information concerning the
14 application; repealing certain provisions of law requiring the Department to prepare
15 a certain tentative permit determination; altering the contents of a certain record
16 compiled by the Department or the Board of Public Works; requiring the Department
17 or the Board to make a certain draft permit or license available for public inspection
18 in a certain manner; altering the circumstances under which a permit applicant may
19 apply to the Department for a certain refund of an application fee; and generally
20 relating to public participation in the environmental permitting process.

21 BY repealing and reenacting, with amendments,
22 Article – Environment
23 Section 1–601, 1–601.1, 1–602, 1–603, and 1–605 through 1–607
24 Annotated Code of Maryland
25 (2013 Replacement Volume and 2023 Supplement)

26 BY repealing
27 Article – Environment
28 Section 1–604
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2023 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Environment

1–601.

(a) Permits issued by the Department under the following sections shall be issued
in accordance with this subtitle:

(1) Air quality control permits to construct subject to § 2–404 of this article;

(2) Permits to install, materially alter, or materially extend landfill
systems, incinerators for public use, or rubble landfills subject to § 9–209 of this article;

(3) Permits to discharge pollutants to waters of the State issued pursuant
to § 9–323 of this article;

(4) 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
pursuant to § 9–234.1 or § 9–238 of this article;

(5) Permits to own, operate, establish, or maintain a controlled hazardous
substance facility issued pursuant to § 7–232 of this article;

(6) Permits to own, operate, or maintain a hazardous material facility
issued pursuant to § 7–103 of this article;

(7) Permits to own, operate, establish, or maintain a low-level nuclear
waste facility issued pursuant to § 7–233 of this article; and

(8) Potable reuse permits issued in accordance with § 9–303.2 of this
article.

(b) For permits listed under subsection (a) of this section, a contested case hearing
may not occur.

(c) A final determination by the Department on the issuance, denial, renewal, or
revision of any permit listed under subsection (a) of this section is subject to judicial review
at the request of any person that:

(1) Meets the threshold standing requirements under federal law; and

(2) (i) Is the applicant; or

(ii) Participated in a public participation process through the submission of written or oral comments, unless [an]:

1. AN opportunity for public participation was not provided;
OR

2. **THE EJ SCORE FOR THE CENSUS TRACT WHERE THE APPLICANT IS SEEKING A PERMIT IS ABOVE THE 75TH PERCENTILE.**

(d) (1) Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates that:

(i) The objections were not reasonably ascertainable during the comment period; or

(ii) Grounds for the objections arose after the comment period.

(2) The court shall remand the matter to the Department for consideration of objections under paragraph (1) of this subsection.

(e) (1) Unless otherwise required by statute, a petition for judicial review by a person that meets the requirements of subsection (c) of this section shall be filed with the circuit court for the county where the application for the permit states that the proposed activity will occur.

(2) The decision of the circuit court may be appealed to the Appellate Court of Maryland.

(f) (1) [When this article requires more than one public informational meeting or public hearing, the Department may consolidate some or all of the meetings or hearings for the proposed facility with similar meetings or hearings.

(2) (i)] When this subtitle requires the Department to hold a public informational meeting or public hearing, the Department shall hold the meeting or hearing in accordance with the requirements of this paragraph.

[(ii)] (2) The Department may hold a public informational meeting or public hearing required under this subtitle using teleconference or Internet-based conferencing technology unless:

[1.] (I) An applicable provision of federal statute or regulation requires the meeting or hearing to be held in person; or

[2.] (II) Subject to [subparagraph (iv) of this paragraph]
PARAGRAPH (4) OF THIS SUBSECTION, any person makes a timely request within the

time [periods] **PERIOD** specified in [§§ 1–603(c)(1) and 1–604(a)(4)(i)] **§ 1–603(C)(1)** of this subtitle that the meeting or hearing be held in person.

[(iii)] **(3)** If the Department holds an in–person public informational meeting or public hearing, the Department shall hold the meeting or hearing at a location in the political subdivision and in close proximity to the location where the individual permit applies.

[(iv)] **(4)** To protect public health and safety, the Department is not required to hold an in–person public informational meeting or public hearing specified under [subparagraph (ii)2 of this paragraph] **PARAGRAPH (2)(II) OF THIS SUBSECTION** if an emergency declaration is issued by an executive authority of:

[1.] **(I)** The federal or State government; or

[2.] **(II)** The local government with jurisdiction over a county or municipality where the in–person meeting or hearing would otherwise be held.

1–601.1.

(a) **(1)** A person applying for a permit listed under § 1–601(a) of this subtitle shall [include in the permit application the EJ Score from the Maryland EJ tool] **REQUEST AN EJ SCORE FROM THE DEPARTMENT** for the census tract where the applicant is seeking a permit, unless the permit requires the applicant to use a tool developed by the U.S. Environmental Protection Agency.

(2) ON RECEIVING AN EJ SCORE FROM THE DEPARTMENT FOR THE CENSUS TRACT WHERE THE APPLICANT IS SEEKING THE PERMIT, THE APPLICANT SHALL INCLUDE THE EJ SCORE IN THE PERMIT APPLICATION.

(b) On receiving an application for a permit listed under § 1–601(a) of this subtitle, the Department shall, in accordance with regulations adopted under this section, review the EJ Score for the census tract where the applicant is seeking a permit [using the Maryland EJ tool to verify the applicant’s information] **FOR ENVIRONMENTAL IMPACTS ON PUBLIC HEALTH OR NATURAL RESOURCES BEFORE DETERMINING WHETHER THE APPLICATION IS COMPLETE.**

(c) The Department shall adopt regulations to implement this section.

1–602.

(a) Wherever this subtitle requires the Department to publish notice:

1 [(1) Notice shall be published at least once a week for 2 consecutive weeks
2 in a daily or weekly newspaper of general circulation in the geographical area in which the
3 proposed facility is located;]

4 **(1) THE NOTICE SHALL BE:**

5 **(I) PUBLISHED ON THE DEPARTMENT'S WEBSITE NOT LATER**
6 **THAN 10 DAYS AFTER RECEIPT OF A COMPLETED PERMIT APPLICATION;**

7 **(II) ON A QUARTERLY BASIS, E-MAILED TO THE APPROPRIATE**
8 **COUNTY OR LOCAL DEPARTMENTS OF PLANNING OR LAND USE AUTHORITY; AND**

9 **(III) PUBLISHED FOR 2 CONSECUTIVE WEEKS IN A NEWSPAPER**
10 **OF GENERAL CIRCULATION IN THE CENSUS TRACT WHERE THE PROPOSED FACILITY**
11 **IS LOCATED;**

12 **(2) THE NOTICE SHALL:**

13 **(I) BE INCLUSIVE AND CULTURALLY CONNECTED;**

14 **(II) ENSURE ACCESSIBILITY AND LINGUISTIC**
15 **RESPONSIVENESS; AND**

16 **(III) MAKE INFORMATION EASY TO FIND, UNDERSTAND, AND USE**
17 **BY INTERESTED PERSONS;**

18 **(3) The notice shall include:**

19 (i) The EJ Score for the census tract where the applicant is seeking
20 a permit, provided by the applicant under § 1–601.1 of this subtitle;

21 (ii) The address of the Department website for accessing the EJ
22 Score review conducted under § 1–601.1 of this subtitle; and

23 (iii) A description of the environmental justice indicators
24 contributing to the EJ Score of the census tract where the applicant is seeking a permit;

25 **[(3)] (4) The Department may require notice of an informational meeting**
26 **or a public hearing by mail to each person requesting the meeting or hearing or to their**
27 **authorized representatives; AND**

28 **[(4)] (5) The Department may provide additional notice by requiring the**
29 **notice to be posted at the proposed facility or at public facilities in the geographical area of**
30 **the proposed facility; and**

(5) The applicant shall bear all costs incurred by the Department in providing notice].

(b) (1) In addition to the requirements set forth in subsection (a) of this section and notwithstanding any other requirements in this article, wherever this subtitle requires the Department to publish notice of an application for a permit, the Department shall:

(i) Electronically post the notice of an application for a permit on the Department's website; and

(ii) Provide a method for interested persons to electronically request any additional notices related to an application for a permit.

(2) The notice required under paragraph (1) of this subsection shall include:

(i) The name and address of the applicant;

(ii) A description of the location and the nature of the activity for which the permit has been sought;

(iii) A reference to the applicable statutes or regulations governing the application process;

(iv) The time and place of any scheduled informational meeting or public hearing, or a description of where this information can be found;

(v) A description of where further information about the permit application can be found;

(vi) 1. The EJ Score for the census tract where the applicant is seeking a permit, provided by the applicant under § 1-601.1 of this subtitle; and

2. The EJ Score review conducted under § 1-601.1 of this subtitle; and

(vii) Any other information that the Department determines is necessary.

[(c) The Department may require the applicant to publish and send the notices required in subsection (a) of this section.]

1-603.

(a) The Department shall cause to be published notice of applications for permits.

(b) The Department shall assure that applications for permits shall be available to the public for inspection and copying.

(c) (1) [Upon] **ON** written request made within 10 working days after publication of a notice of application, [or in its own discretion,] the Department shall provide an opportunity for an informational meeting with respect to the application.

(2) [The informational meeting may be canceled if all persons who made timely written requests withdraw the requests prior to the meeting.

(3) Unless the notice of application contained a notice of the informational meeting, the] **THE** Department shall publish notice of the informational meeting.

(d) (1) The Department [may] **SHALL** require the applicant to attend an informational meeting or public hearing and present information concerning the application.

(2) If the applicant fails to appear and present information after a request from the Department, the application may be denied.

[1-604.

(a) (1) After the Department receives the permit application, the Department shall prepare a tentative determination, which shall include the following information:

(i) A proposal to issue or to not issue a permit;

(ii) Any proposed permit limitations and conditions;

(iii) A brief explanation of the Department's tentative determination;

and

(iv) Any proposed schedule of compliance.

(2) If the tentative determination is to issue a permit, the tentative determination shall include a draft permit, which shall be available to the public for inspection and copying.

(3) The Department shall publish a notice of the tentative determination. This publication shall allow 30 calendar days for public comment before the issuance of the final determination.

(4) (i) The Department shall schedule a public hearing on the tentative determination when a written request for a public hearing is made within 20 days of publication of a notice of the tentative determination.

(ii) The public hearing may be canceled if all persons who made timely written requests withdraw the requests prior to the meeting. In addition, the Department may schedule a public hearing on a tentative determination at its discretion.

(b) (1) The Department shall prepare a final determination if:

(i) Written comments adverse to the tentative determination were received by the Department within 30 days after the publication of the notice of tentative determination pursuant to this section;

(ii) Comments adverse to the tentative determination were received in writing at, or within 5 days after, the public hearing conducted pursuant to this section;

(iii) Comments adverse to the tentative determination were received orally at the public hearing conducted pursuant to this section and the Department prepared a transcript of the comments made at the hearing; or

(iv) The final determination is substantively different from the tentative determination and all persons aggrieved by the final determination have not waived, in writing, their right to request a contested case hearing.

(2) If the Department is required to prepare a final determination under this section, the Department shall publish a notice of the final determination.

(3) If the Department is not required to prepare a final determination under this section, the tentative determination is a final decision by the Department when the permit is issued or denied.]

1–605.

(a) A person petitioning for judicial review in accordance with § 1–601 of this subtitle or § 5–204 or § 16–204 of this article shall file the petition in accordance with the Maryland Rules.

(b) A party submitting a petition for judicial review shall file the petition within 30 days after publication of a notice of final determination.

(c) An action for judicial review brought in accordance with § 1–601 of this subtitle or § 5–204 or § 16–204 of this article shall be conducted in accordance with the Maryland Rules.

(d) **(1)** A party to the judicial review action may not challenge a facility's compliance with zoning and land use requirements or conformity with a county plan issued under Title 9, Subtitle 5 of this article. [However, nothing in this subtitle shall prevent a party from challenging whether the Department has complied with §§ 2–404(b)(1)(ii) and 9–210(a)(3) of this article, when applicable, nor does this subtitle prevent a party from contesting the compliance of the facility with zoning and land use or county plan

requirements in any proceeding brought in accordance with and under any applicable local laws.]

(2) A PARTY MAY CHALLENGE WHETHER THE DEPARTMENT HAS COMPLIED WITH §§ 2-404(B)(1)(II) AND 9-210(A)(3) OF THIS ARTICLE, WHEN APPLICABLE.

(3) A PARTY MAY CONTEST THE COMPLIANCE OF THE FACILITY WITH ZONING AND LAND USE OR COUNTY PLAN REQUIREMENTS IN ANY PROCEEDING BROUGHT IN ACCORDANCE WITH AND UNDER ANY APPLICABLE LOCAL LAWS.

1-606.

(a) (1) In this section the following words have the meanings indicated.

(2) “Board” means the Board of Public Works.

(3) “License” means a license under § 16-202 of this article.

(b) This section applies to:

(1) A permit listed under § 1-601(a) of this subtitle;

(2) A permit listed under § 5-204(f) of this article; or

(3) A license issued under § 16-202 of this article.

(c) Any judicial review of a determination provided for in accordance with § 1-601 of this subtitle or § 5-204 or § 16-204 of this article shall be limited to a record compiled by the Department or Board, consisting of:

(1) Any permit or license application and any data submitted to the Department or Board in support of the application;

(2) Any [draft permit or] license issued by the Department or Board;

(3) Any notice of intent from the Department or Board to deny the application or to terminate the permit or license;

(4) A statement or fact sheet explaining the basis for the determination by the Department or Board;

(5) All documents referenced in the statement or fact sheet explaining the basis for the determination by the Department or Board;

(6) All documents, except documents for which disclosure is precluded by law or that are subject to privilege, contained in the supporting file for any draft permit or license;

(7) All comments submitted to the Department or Board during the public comment period, including comments made on the draft application;

(8) Any [tape] **RECORDING** or transcript of any public hearings held on the application; and

(9) Any response to any comments submitted to the Department or Board.

(d) [(1)] When a draft permit or license [or tentative determination] is issued, the Department or Board shall:

[(i)] (1) Make available for inspection and copying [no later than] **10 DAYS BEFORE** the date the **DRAFT** permit[, OR draft license[, or tentative determination is issued] **IS SCHEDULED FOR ISSUANCE:**

[1.] (I) All permit or license applications;

[2.] (II) Documents submitted with a permit or license application; **AND**

[3. All documents relied on in making the tentative determination; and

4.] (III) A privilege log that identifies all documents not produced for inspection in accordance with subsection (c)(6) of this section and states the reasons for withholding each document; and

[(ii)] (2) Extend the public comment period by 60 days [on request by a person].

[(2) A request submitted to the Department or Board under paragraph (1)(ii) of this subsection shall be:

(i) Submitted in writing; and

(ii) Made before the expiration of the original comment period.

(3) A public comment period may not be extended more than once under paragraph (1)(ii) of this subsection.]

1 (a) (1) This subsection applies to applications for all licenses and permits
2 issued, or required to be reissued, by the Department.

3 (2) [On or before January 1, 1998, and each year thereafter, in] **IN**
4 consultation with interested parties, the Department shall publish expected review times
5 for each licensing and permitting program.

6 (3) [On or before January 1, 1998, for] **FOR** each licensing and permitting
7 program, the Department shall offer assistance and information to persons which may
8 include:

9 (i) Written lists of information and materials required with
10 applications;

11 (ii) Written lists of common application questions and mistakes;

12 (iii) Preapplication meetings with prospective applicants to address
13 technical issues;

14 (iv) Written receipts to the applicant [upon] **ON** submission of an
15 application; and

16 (v) The status of active applications.

17 (b) (1) This subsection applies to permits which are:

18 (i) Identified in § 1–601(a) of this subtitle; or

19 (ii) Issued under Title 5, Subtitle 9 of this article.

20 (2) The Department shall provide to the applicant:

21 (i) A notice of completed application; or

22 (ii) If the Department determines that the application is incomplete,
23 the reasons, in writing, that the application was determined to be incomplete.

24 (3) [(i) For permits identified in § 1–601(a) of this subtitle, the notice of
25 completed application shall include an estimated time for issuance of the tentative
26 determination if requested by the applicant.

27 (ii)] For permits issued under Title 5, Subtitle 9 of this article, the
28 notice of completed application shall include an estimate of the date by which the
29 Department will grant, deny, or condition the permit.

(4) A permit applicant may apply to the Department for a refund of all or a portion of the application fee if[:

(i) 1. For permits identified in § 1–601(a) of this subtitle, the Department fails to issue a tentative determination regarding the application within the estimated time provided in the notice of completed application; or

2. For permits issued under Title 5, Subtitle 9 of this article, the Department fails to grant, deny, or condition a permit within the time periods provided under § 5–906 of this article;

(ii) The] **THE** applicant demonstrates that the delay was caused solely by the Department and was not the result of procedures or requirements outside the control of the Department, including:

[1.] **(I)** Reviews by federal, local, or other State government agencies;

[2.] **(II)** Procedures for public participation; or

[3.] **(III)** The failure of the applicant to submit information to the Department in a timely manner[; and

(iii) 1. For permits identified in § 1–601(a) of this subtitle, the applicant applies to the Department within 60 days after the estimated time for issuance of a tentative determination; or

2. For permits issued under Title 5, Subtitle 9 of this article, the applicant applies to the Department within 60 days after the date by which the Department was to have granted, denied, or conditioned a permit under the time periods provided under § 5–906 of this article.

(5) The Secretary, or the Secretary’s designee, shall review the refund request and determine if a refund of any amount is appropriate].

[(6)] (5) If the Secretary denies the refund request, the Department shall provide the applicant a written explanation of the denial and of the procedures and requirements outside the control of the Department on which the denial was based within 60 days.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.