

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 706

(Senator Benson, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

Environment - Permit Determinations - Cumulative Impact Assessments

This bill requires applicants for specified permits in an unincorporated community in Prince George's County that lies within specified boundaries and meets other criteria to submit to the Maryland Department of the Environment (MDE) a cumulative impact assessment before preparing a tentative determination on an application for one of the permits. The assessment must address the likely impact on the environment and on human populations that will result from the incremental impact of the activity or proposed facility authorized under the permit when added to the impact of other past and present sources of pollution. MDE must determine a timeframe for issuance of the assessment, review the assessment, and require additional assessment deemed necessary. On the basis of the assessment, MDE may make a determination to issue or to not issue a permit, or propose any permit limitations or conditions to mitigate adverse impacts on the environment and human populations. MDE must provide a summary of the results of the assessment in any tentative determination issued to the Prince George's County planning and zoning authority, and, for a specified air quality permit, must post the results on its website. MDE may adopt regulations to implement the bill.

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.

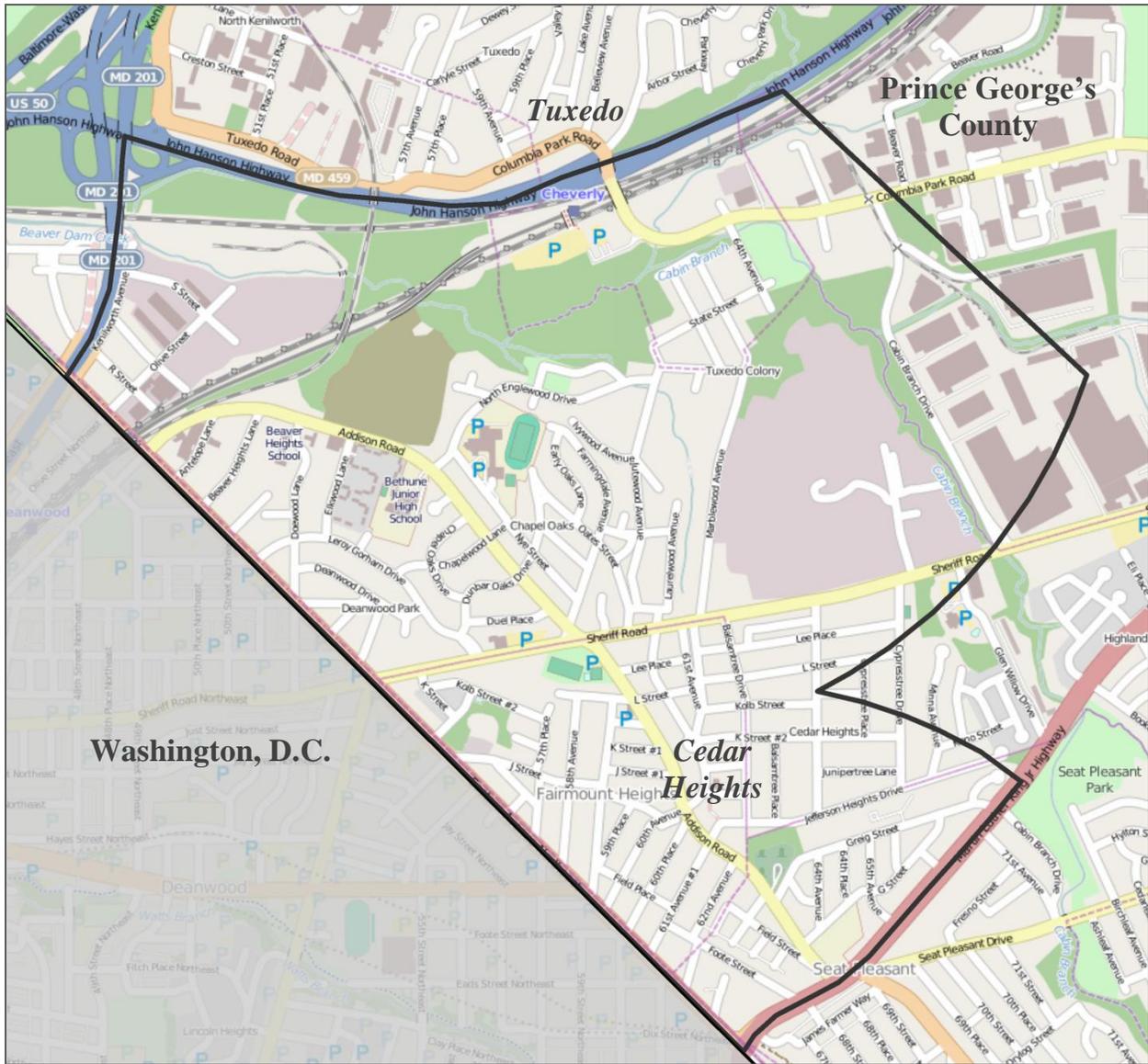
Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill applies to specified applications for (1) air quality control permits to construct; (2) permits to install, materially alter, or materially extend landfill systems, incinerators, rubble landfills, solid waste transfer stations, or solid waste processing facilities; (3) water discharge permits for new industrial facilities; (4) sewage sludge storage and distribution structure permits; (5) controlled hazardous substance facility permits; (6) specified hazardous material facility permits; and (7) permits for a new low-level nuclear waste facility. The bill defines “pollution” and “air pollution” with reference to existing definitions.

The bill only applies to an unincorporated community in Prince George’s County that is located with reference to several specified locations, as well as to other specified criteria. **Exhibit 1** shows the area described by the bill’s geographic applicability criteria but does not necessarily include areas that meet the other nongeographic criteria that relate to air quality and traffic.

Exhibit 1 Boundaries Described by the Bill



Source: Department of Legislative Services

Current Law: Upon receiving a permit application for the permits affected by the bill, MDE must prepare a tentative determination, which must include (1) a proposal to issue or to not issue a permit; (2) proposed permit limitations and conditions; (3) a brief explanation of the tentative determination; and (4) any proposed schedule of compliance. If the tentative determination is to issue a permit, it must include a draft permit made

available to the public for inspection and copying. MDE must publish a notice of the tentative determination, which must allow 30 calendar days for public comment before the issuance of a final determination. If a written request for a public hearing is made within 20 days of publication of a notice of the tentative determination, then MDE must schedule a public hearing.

“Air pollution” is defined as the presence in the outdoor atmosphere of any substance that is present in such quantities and is of such duration that it (1) may be predicted with reasonable certainty to be injurious to property or to human, plant, or animal life or (2) unreasonably interferes with the proper enjoyment of the property of others because of the emission of odors, solids, vapors, liquids, or gases.

“Pollution,” in the context of water pollution, is defined as every contamination or other alteration of the physical, chemical, or biological properties of any waters of the State. “Pollution” includes change in temperature, taste, color, turbidity, or odor of the waters of the State or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any waters of the State as will render the waters of the State harmful, detrimental, or injurious to public health, safety, or welfare, domestic, commercial, industrial, agricultural, recreational, other legitimate beneficial uses, or livestock, wild animals, birds or fish or other aquatic life.

Background: The hazards posed by the cumulative impacts of human activities or development have long been recognized in environmental law, most notably in the National Environmental Policy Act (NEPA), a federal law that requires federal agencies to consider the environment in all major federal actions and involves studying alternatives and evaluating various environmental impacts and mitigation measures. NEPA regulations define a cumulative impact as the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. The definition specifies that cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

NEPA has been a model for similar legislation around the world and among several states. For example, the Maryland Environmental Policy Act (MEPA), Chapter 702 of 1973, requires State agencies to prepare environmental effects reports for each proposed State action that significantly affects the quality of the environment. A “State action” is a request for legislative appropriations or other legislative actions that will alter the quality of the air, land, or water resources. MEPA is similar to NEPA.

In addition to state laws modeled after NEPA, Minnesota has enacted a law, applicable in one county only, that prohibits the relevant permitting authority from issuing a permit without analyzing and considering the cumulative levels and effects of past and current

environmental pollution from all sources on the environment and residents of the geographic area.

Small Business Effect: Any small businesses engaged in developing a project of a type that requires one of the permits affected by the bill may be meaningfully impacted by the requirement to conduct a cumulative impact assessment and due to any delays in the issuance of permits.

Additional Comments: It may be difficult for entities to determine whether they are subject to the bill's applicability criteria, which includes both geographic and other factors. For example, the bill refers to a "parkway" maintained by the National Park Service; while Interstate 295 is called the Baltimore-Washington Parkway and is maintained, in part, by the National Park Service, it is not one of the four National Parkways (although the nearby George Washington Parkway is). Additionally, the bill does not define a "metro station," and so it is uncertain whether Metro bus stations are also included. The bill also does not define an "unincorporated community," although further clarity could be provided through reference to communities that are identified by the U.S. Census Bureau or the U.S. Geological Survey. Finally, the bill's nongeographic applicability criteria may also result in confusion for entities potentially subject to the bill, as the bill does not define "air quality alert days," "sensitive populations," or "heavily trafficked." This fiscal and policy note makes several assumptions regarding the bill's applicability criteria in producing the map shown in Exhibit 1.

Additional Information

Prior Introductions: None.

Cross File: HB 1210 (Delegates Swain and V. Turner) – Environmental Matters.

Information Source(s): Baltimore, Carroll, Harford, and Montgomery counties; the City of Bowie; Maryland Department of Agriculture; Board of Public Works; Department of Natural Resources; Maryland Department of the Environment; Maryland Association of Counties; Maryland Municipal League; Northeast Maryland Waste Disposal Authority; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2014
ncs/lgc Revised - Senate Third Reader - March 26, 2014

Analysis by: Evan M. Isaacson

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