

SENATE BILL 706

M3

4r2440
CF HB 1210

By: **Senators Benson, Madaleno, Manno, Pinsky, Ramirez, and Rosapepe**

Introduced and read first time: January 31, 2014

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2014

CHAPTER _____

1 AN ACT concerning

2 **Environment – Permit Determinations – Cumulative Impact Assessments**

3 FOR the purpose of requiring the Department of the Environment to require a certain
4 applicant to conduct and submit to the Department a cumulative impact
5 assessment before ~~preparing the Department prepares~~ a tentative
6 determination on a certain permit application; requiring a
7 cumulative impact assessment to address the likely impact on the environment
8 and on human populations that will result from certain incremental impacts;
9 authorizing the Department to take certain actions with respect to a permit on
10 the basis of a cumulative impact assessment conducted under this Act;
11 requiring the Department to ~~include~~ provide a summary of the results of a
12 cumulative environmental impact conducted under this Act in ~~certain tentative~~
13 ~~or final permit determinations~~ a certain manner under certain circumstances;
14 ~~requiring~~ authorizing the Department to adopt regulations necessary to
15 implement this Act; providing for the application of this Act; defining a certain
16 term; and generally relating to cumulative impact assessments.

17 BY repealing and reenacting, with amendments,

18 Article – Environment

19 Section 1–604

20 Annotated Code of Maryland

21 (2013 Replacement Volume)

22 BY adding to

23 Article – Environment

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 1-901 through 1-903 to be under the new subtitle "Subtitle 9.
 2 Cumulative Impact Assessments"
 3 Annotated Code of Maryland
 4 (2013 Replacement Volume)

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

7 **Article – Environment**

8 1-604.

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

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

13 (ii) Any proposed permit limitations and conditions;

14 (iii) A brief explanation of the Department's tentative
 15 determination; [and]

16 (IV) ~~A~~ **IF APPLICABLE, A BRIEF SUMMARY OF THE RESULTS**
 17 **OF THE CUMULATIVE IMPACT ASSESSMENT REQUIRED UNDER § 1-902 OF THIS**
 18 **TITLE; AND**

19 [(iv)] (V) Any proposed schedule of compliance.

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

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

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

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

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

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

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

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

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

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

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

18 SUBTITLE 9. CUMULATIVE IMPACT ASSESSMENTS.

19 1-901.

20 IN THIS SUBTITLE, "POLLUTION" MEANS:

21 (1) "AIR POLLUTION" AS DEFINED IN § 2-101 OF THIS ARTICLE;
22 AND

23 (2) "POLLUTION" AS DEFINED IN § 5-101 OF THIS ARTICLE.

24 1-902.

25 (A) ~~THIS SECTION~~ SUBTITLE APPLIES ONLY TO ONLY:

26 (1) TO APPLICATIONS FOR THE FOLLOWING PERMITS ISSUED BY
27 THE DEPARTMENT:

28 ~~(1)~~ (1) AIR QUALITY CONTROL PERMITS TO CONSTRUCT
29 SUBJECT TO § 2-404 OF THIS ARTICLE FOR A NEW SOURCE OR A MAJOR
30 MODIFICATION TO AN EXISTING SOURCE THAT IS SUBJECT TO 40 C.F.R. § 52.21
31 OR COMAR 26.11.17;

1 **(II) AIR QUALITY PERMITS TO CONSTRUCT SUBJECT TO**
2 **MINOR NEW SOURCE REVIEW;**

3 ~~(2)~~ **(III) PERMITS TO INSTALL, MATERIALLY ALTER, OR**
4 **MATERIALLY EXTEND LANDFILL SYSTEMS, INCINERATORS FOR PUBLIC USE, OR**
5 **RUBBLE ~~LANDFILLS~~ LANDFILLS, SOLID WASTE TRANSFER STATIONS, OR SOLID**
6 **WASTE PROCESSING FACILITIES SUBJECT TO § 9-204 OF THIS ARTICLE;**

7 ~~(3)~~ **(IV) PERMITS TO DISCHARGE POLLUTANTS TO WATERS OF**
8 **THE STATE ISSUED FOR NEW INDUSTRIAL FACILITIES IN ACCORDANCE WITH §**
9 **~~9-323~~ § 9-323(A) OF THIS ARTICLE;**

10 ~~(4)~~ **(V) PERMITS TO INSTALL, MATERIALLY ALTER, OR**
11 **MATERIALLY EXTEND A STRUCTURE USED FOR STORAGE OR DISTRIBUTION OF**
12 **ANY TYPE OF SEWAGE SLUDGE ~~ISSUED, RENEWED, OR AMENDED~~ ISSUED IN**
13 **ACCORDANCE WITH § 9-231 OF THIS ARTICLE;**

14 ~~(5)~~ **(VI) PERMITS TO OWN, ESTABLISH, OPERATE, OR MAINTAIN**
15 **A NEW CONTROLLED HAZARDOUS SUBSTANCE FACILITY ISSUED IN**
16 **ACCORDANCE WITH § 7-232 OF THIS ARTICLE;**

17 ~~(6)~~ **(VII) PERMITS TO OWN, ESTABLISH, OPERATE, OR MAINTAIN**
18 **A NEW HAZARDOUS MATERIAL FACILITY ISSUED IN ACCORDANCE WITH § 7-103**
19 **OF THIS ARTICLE; AND**

20 ~~(7)~~ **(VIII) PERMITS TO OWN, ESTABLISH, OPERATE, OR MAINTAIN**
21 **A NEW LOW-LEVEL NUCLEAR WASTE FACILITY ISSUED IN ACCORDANCE WITH §**
22 **7-232 OF THIS ~~ARTICLE~~ ARTICLE; AND**

23 **(2) WHEN THE PROPOSED FACILITY OR ACTIVITY AUTHORIZED**
24 **UNDER THE PERMIT WOULD BE LOCATED IN AN UNINCORPORATED COMMUNITY**
25 **IN PRINCE GEORGE'S COUNTY THAT:**

26 **(I) IS BORDERED TO THE NORTH BY A U.S. HIGHWAY AND**
27 **TO THE SOUTH BY A STATE HIGHWAY;**

28 **(II) IS WITHIN 2 MILES OF A PARKWAY MAINTAINED BY THE**
29 **NATIONAL PARK SERVICE;**

30 **(III) IS WITHIN 1 MILE OF A METRO STATION;**

31 **(IV) IS WITHIN 1.5 MILES OF THE DISTRICT OF COLUMBIA;**

1 **(V) HAS EXPERIENCED AIR QUALITY ALERT DAYS OF**
2 **DANGEROUS AIR QUALITY FOR SENSITIVE POPULATIONS; AND**

3 **(VI) IS LOCATED NEAR SEVERAL HEAVILY TRAFFICKED**
4 **STATE AND COUNTY ROADS THAT CARRY BOTH TRUCK AND AUTOMOBILE**
5 **TRAFFIC.**

6 **(B) (1) BEFORE PREPARING A TENTATIVE DETERMINATION ON AN**
7 **APPLICATION FOR A PERMIT LISTED UNDER SUBSECTION (A) OF THIS SECTION,**
8 **THE DEPARTMENT SHALL REQUIRE THE PERMIT APPLICANT TO CONDUCT A**
9 **CUMULATIVE IMPACT ASSESSMENT.**

10 **(2) THE CUMULATIVE IMPACT ASSESSMENT SHALL ADDRESS THE**
11 **LIKELY IMPACT ON THE ENVIRONMENT AND ON HUMAN POPULATIONS THAT**
12 **WILL RESULT FROM THE INCREMENTAL IMPACT OF THE PROPOSED FACILITY OR**
13 **ACTIVITY AUTHORIZED UNDER THE PERMIT WHEN ADDED TO THE IMPACT OF**
14 **OTHER PAST, PRESENT, AND REASONABLY FORESEEABLE FUTURE PAST AND**
15 **PRESENT SOURCES OF POLLUTION.**

16 **(3) THE APPLICANT SHALL SUBMIT THE CUMULATIVE IMPACT**
17 **ASSESSMENT TO THE DEPARTMENT WITHIN A TIME FRAME DETERMINED BY**
18 **THE DEPARTMENT.**

19 **(C) THE DEPARTMENT SHALL REVIEW THE CUMULATIVE IMPACT**
20 **ASSESSMENT SUBMITTED BY AN APPLICANT UNDER THIS SECTION.**

21 ~~(D)~~ **(D) ON THE BASIS OF A CUMULATIVE IMPACT ASSESSMENT**
22 **CONDUCTED UNDER THIS SECTION, THE DEPARTMENT MAY:**

23 **(1) REQUIRE ADDITIONAL ASSESSMENT, AS THE DEPARTMENT**
24 **CONSIDERS NECESSARY;**

25 ~~(2)~~ **(2) MAKE A DETERMINATION TO ISSUE OR TO NOT ISSUE A**
26 **PERMIT; OR**

27 ~~(3)~~ **(3) PROPOSE ANY PERMIT LIMITATIONS OR CONDITIONS**
28 **THE DEPARTMENT DETERMINES NECESSARY TO MITIGATE ADVERSE IMPACTS**
29 **ON THE ENVIRONMENT AND HUMAN POPULATIONS.**

30 ~~(E)~~ **(E) THE DEPARTMENT SHALL ~~INCLUDE~~ PROVIDE A SUMMARY OF**
31 **THE RESULTS OF THE CUMULATIVE IMPACT ASSESSMENT CONDUCTED UNDER**
32 **THIS ~~SECTION IN ANY~~ SECTION:**

1 **(1) WHEN ISSUING A TENTATIVE ~~OR FINAL~~ DETERMINATION**
 2 **ISSUED UNDER § 1-604 OF THIS ~~TITLE~~, TITLE; OR**

3 **(2) FOR A PERMIT ISSUED UNDER SUBSECTION (A)(1)(II) OF THIS**
 4 **SECTION, BY POSTING THE RESULTS OF THE ASSESSMENT ON THE WEB SITE OF**
 5 **THE DEPARTMENT FOR AT LEAST 2 WEEKS BEFORE ISSUING THE PERMIT.**

6 **(F) THE DEPARTMENT SHALL PROVIDE A SUMMARY OF THE RESULTS**
 7 **OF A CUMULATIVE IMPACT ASSESSMENT CONDUCTED UNDER THIS SECTION TO**
 8 **THE LOCAL GOVERNMENT PLANNING AND ZONING AUTHORITY IN THE**
 9 **JURISDICTION WHERE THE PROPOSED ACTIVITY OR FACILITY AUTHORIZED**
 10 **UNDER THE PERMIT WILL BE LOCATED, FOR REVIEW AND CONSIDERATION IN**
 11 **ANY FUTURE LAND USE DECISIONS.**

12 **1-903.**

13 **THE DEPARTMENT ~~SHALL~~ MAY ADOPT REGULATIONS NECESSARY TO**
 14 **IMPLEMENT THIS SUBTITLE.**

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
 16 construed to apply only prospectively and may not be applied or interpreted to have
 17 any effect on or application to any permit application submitted to the Department of
 18 the Environment before the effective date of this Act.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 20 October 1, 2014.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.