

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 121

(Senators Patterson and Benson)

Education, Health, and Environmental Affairs

Environment and Transportation

Zoning - Environmental Justice Considerations

This bill authorizes a local governing body to require a detailed statement and analysis of environmental and public health impacts to be prepared, upon receipt of an initial application for a special exception (or an application to extend or renew a special exception), to construct or operate a “permitted facility” in an area zoned for residential use. The statement and analysis is prepared at the expense of the applicant. A local governing body may deny or condition the approval of an application based on the actual or anticipated environmental or health impacts of the permitted facility on the surrounding community. The bill also requires the Commission on Environmental Justice and Sustainable Communities (CEJSC) to undertake a specified study and make specified recommendations by June 1, 2022. **The provisions related to the study and recommendations take effect June 1, 2021.**

Fiscal Summary

State Effect: The bill’s provisions relating to special exception applications do not directly affect State finances but may have an indirect effect, as discussed below. The Maryland Department of the Environment (MDE), which staffs CEJSC, advises that the study, development of recommendations, and reporting of the study’s findings and recommendations can be handled with existing resources.

Local Effect: The bill’s provisions relating to special exception applications do not directly affect local government finances but may have an indirect effect, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Permitted facility” means a facility for which any of the following environmental permits is required: (1) an air quality permit to construct or permit to operate issued under Title 2, Subtitle 4 of the Environment Article; (2) a refuse disposal permit issued under § 9-204 of the Environment Article; or (3) a controlled hazardous substance facility permit issued under § 7-232 of the Environment Article.

Detailed Statement and Analysis of Environmental and Public Health Impacts

Upon receipt of an initial application for a special exception to construct or operate a permitted facility in an area zoned for residential use, or an application to extend or renew such a special exception, a local governing body may require the preparation, at the expense of the applicant, of a detailed statement and analysis of the environmental and public health impacts of the permitted facility on the surrounding community. A local governing body may deny or condition the approval of an application based on the actual or anticipated environmental or health impacts of the permitted facility on the surrounding community.

Study and Recommendations

CEJSC must study and make recommendations regarding strategies for increasing State support of local governments and communities in addressing environmental justice concerns. The commission must report its findings and recommendations to the Governor and the General Assembly by June 1, 2022. CEJSC’s report must include specific recommendations regarding (1) regulatory, policy, and legislative changes necessary to authorize MDE to address environmental justice concerns in collaboration with local governments and communities and (2) options and strategies, including the identification of model ordinances, for incorporating environmental justice considerations into local land use and zoning decisions.

Current Law:

Definition of “Special Exception”

Under Division I of the Land Use Article of the Maryland Code (to which the bill’s provisions regarding special exception applications are added), “special exception” means a grant of a specific use that:

- would not be appropriate generally or without restriction; and
- must be based on a finding that (1) the requirements of the zoning law governing the special exception on the subject property are satisfied and (2) the use on the subject property is consistent with the jurisdiction’s land use, transportation, and

community facilities policies/plans and is compatible with the existing neighborhood.

Air Quality Permits to Construct and Permits to Operate

Title 2, Subtitle 4 of the Environment Article authorizes MDE to adopt regulations that require a person to obtain a permit or registration before the construction, modification, operation, or use of a source that may cause or control emissions into the air. MDE regulations define the types of sources that are subject to the permit requirements. MDE advises that various facilities can be subject to the requirements, ranging from industrial facilities to hospital, academic, and government facilities. Title 2, Subtitle 4 includes a requirement applicable to specified permits to construct a new source or significantly modify (or replace components of) an existing permitted source that documentation be submitted, which demonstrates compliance with all applicable local zoning and land use requirements.

Refuse Disposal Permits

Under § 9-204 of the Environment Article, a person must obtain a refuse disposal permit from MDE before installing, materially altering, or materially extending a refuse disposal system, which includes an incinerator, a transfer station, a landfill, a solid waste processing facility, and any other solid waste acceptance facility. MDE may not issue a permit to install, materially alter, or materially extend a refuse disposal system until, among other things, the county has completed its review of the proposed system and has provided to MDE a written statement that the refuse disposal system meets all applicable county zoning and land use requirements and conforms with the county solid waste plan.

Controlled Hazardous Substance Facility Permits

Section 7-232 of the Environment Article requires a person to hold a controlled hazardous substance facility permit before the person may own, establish, operate, or maintain a controlled hazardous substance facility in the State. “Controlled hazardous substance” means (1) any hazardous substance MDE identifies as a controlled hazardous substance or (2) low-level nuclear waste. “Controlled hazardous substance facility” means a disposal structure, system, or geographic area, designated by MDE for treatment, storage related to treatment or disposal, or disposal of controlled hazardous substances.

State/Local Fiscal Effect: The bill’s provisions relating to special exception applications do not directly affect State finances (since they apply to a local governing body) or local government finances (since the statements and analyses that local governments are authorized to require are prepared at the expense of the applicant). However, to the extent that statements and analyses prepared pursuant to the bill and/or the bill’s authorization for

denial of an application contribute to or result in a local government's denial of an initial application for a special exception, or an application to extend or renew a special exception, there may be indirect effects on the State and local governments.

For example, in the event an application to extend or renew a special exception for an existing landfill is denied as a result of the bill, MDE would need to review closure and post-closure plans for a landfill required to cease operations. In addition, MDE may need to review and approve an amended solid waste management plan for the affected county. An affected county likewise may need to amend its solid waste management plan, and any affected local governments may experience fiscal impacts associated with the closing of a landfill (*e.g.*, any increased costs incurred as a result of alternative solid waste management options).

Small Business Effect: To the extent that any small business is, or will be, involved in the construction or operation of a permitted facility in an area zoned for residential use and is responsible for the expense of a detailed statement and analysis of environmental and public health impacts, as the applicant, its costs increase. Costs may further increase to the extent that an application for a special exception is denied (or made conditional) as a result of the bill's provisions and more expensive construction or operations become necessary (*e.g.*, installing an alternative heating source that does not require an air quality permit from MDE). Any small business involved in the development of a detailed statement and analysis benefits from a potential increase in the demand for its services.

Additional Information

Prior Introductions: None.

Cross File: HB 51 (Delegate Turner) - Environment and Transportation.

Information Source(s): Anne Arundel, Garrett, and Montgomery counties; City of Laurel; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - January 19, 2021
rh/sdk Third Reader - April 1, 2021
Revised - Amendment(s) - April 1, 2021

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