

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 171

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

Education, Health, and Environmental Affairs

Environment and Transportation

Environment - Public Participation Modernization Act

This departmental bill modifies public participation and notice requirements for several licensing, permitting, and regulatory promulgation sections of the Environment Article. Generally, the bill authorizes 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). 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 2023 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 2023. Local revenues are not affected.

Small Business Effect: The Maryland Department of the Environment (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. (The attached assessment does not reflect amendments to 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 and Meeting Requirements

Affected Permits and Licenses – Under current law and under the bill, Title 1, Subtitle 6 of the Environment Article establishes the general public participation requirements for a number of permits that are issued by MDE. More specifically, this subtitle establishes the general public notice and hearing requirements for (1) air quality control permits to construct; (2) permits to own, operate, establish, or maintain a controlled hazardous substance facility; (3) permits to own, operate, or maintain a hazardous material facility; (4) permits to own, operate, establish, or maintain a low-level nuclear waste facility; (5) permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills; (6) permits to discharge pollutants to waters of the State; 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.

Section 5-204 of the Environment Article contains consolidated procedures and notice and hearing requirements for Subtitle 5 (Appropriation or Use of Waters, Reservoirs, and Dams) and Subtitle 9 (Nontidal Wetlands) of Title 5 of the Environment Article (Water Resources) 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 makes a timely request pursuant to specified statutory provisions that the meeting or hearing be held in person. However, even upon a timely 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.

The bill makes conforming and clarifying changes to public hearing and informational meeting requirements throughout the affected statutes. Among other things, the bill repeals several site-specific requirements for holding a public hearing or informational meeting near where permit activity is located or proposed. Further, there are a number of places under current law where statute explicitly states that informational meetings or public hearings must be held in accordance with Title 1, Subtitle 6 of the Environment Article. The bill adds additional places where statute explicitly requires this standard to be followed.

In addition to these broader conforming and clarifying changes, the bill specifies that before MDE issues a controlled hazardous substance facility permit, both the department *and the applicant* must comply with Title 1, Subtitle 6 of the Environment Article (under current law, only the department must specifically comply with Title 1, Subtitle 6 of the Environment Article). Under § 9-234.1 of the Environment Article, current law requires MDE to hold a public hearing in accordance with *the Administrative Procedure Act* before issuing, amending, or renewing a permit to an applicant or permit holder to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge, as specified. Under the bill, MDE must hold the public hearing in accordance with Title 1, Subtitle 6.

Changes to Certain Public Notice Requirements

The bill repeals two obsolete provisions related to publishing notice in newspapers under § 2-303 of the Environment Article. Under the bill, MDE must still publish these notices in the newspaper, but obsolete dates and duplicative language are repealed. Under current law, pursuant to § 2-404 of the Environment Article, MDE must provide written notice to specified governing bodies and elected officials upon receipt of an application for certain ambient air quality control permits. The bill repeals the requirement that the notification be mailed using *certified mail*.

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 the department used standard mail for decades before statute was amended to require using certified mail to provide notice to specified governing bodies and elected officials upon receipt of an application for certain ambient air quality control permits. MDE anticipates that returning to standard mail service will result in cost savings without a negative impact on service.

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 repeal of the requirement to mail certain notices using certified mail. 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.

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.

Additional Information

Prior Introductions: SB 347 of 2021, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; City of Annapolis; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - January 17, 2022
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment – Public Participation Modernization Act

BILL NUMBER: SB 171

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, 9-234 or 9-324 of the Environment Article, Annotated Code of Maryland; however, the overall impact is expected to be minimal. 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 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.