

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 96 (Senator Jackson)
 Education, Energy, and the Environment

Environment - Impact of Environmental Permits and State Agency Actions

This bill requires the Maryland Department of the Environment (MDE) to conduct a climate and environmental equity evaluation of a new permit application if, after reviewing an Environmental Justice (EJ) score review in accordance with current law, MDE determines that issuing an approval for the permit may impact an underserved community or an overburdened community. The bill establishes provisions relating to such an evaluation and establishes additional requirements for MDE regarding public input. MDE must adopt regulations and may charge a reasonable fee to cover implementation costs associated with the provisions described above; excess funds must be deposited into three MDE special funds. The bill also (1) alters existing provisions that require State agencies to review and report on their programs to identify and recommend actions to more fully integrate the consideration of Maryland’s greenhouse gas (GHG) reduction goal and the impacts of climate change and (2) delays a required MDE report by one year.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.7 million in FY 2025; out-years reflect annualization, inflation, and ongoing costs. State expenditures (all/multiple funds) may increase beginning in FY 2025. Special fund revenues and expenditures increase by \$0.4 million annually beginning in FY 2025. General/special fund revenues increase beginning in FY 2025 to the extent MDE establishes a fee, as discussed below.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4
GF/SF Rev.	-	-	-	-	-
GF Expenditure	\$1.7	\$1.0	\$1.1	\$1.1	\$1.2
SF Expenditure	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill may affect local governments as permit holders, as discussed below.
This bill may impose a mandate on a unit of local government.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Climate and Environmental Equity Permit Evaluations Required by the Bill

The bill requires MDE to conduct a climate and environmental equity evaluation of a new permit application if, after conducting an EJ score review in accordance with current law, MDE determines that issuing an approval for the permit may impact an underserved community or an overburdened community. The evaluation, which MDE must complete within 60 days of making the initial determination, must include an analysis of:

- existing environmental and climate data regarding the affected community, including monitoring, modeling, or any other data deemed appropriate;
- the applicant facility's compliance record; and
- potential methods to minimize or mitigate potential adverse effects in the affected community.

In addition, MDE, in coordination with the Maryland Department of Health (MDH), may conduct a health impact assessment of the permit. MDE may consider cumulative impacts, as specified.

The bill also requires MDE to regularly provide opportunities for State residents to opt in to text, phone, email, or regular mail notifications regarding any facility with a pending or final permit approval in or adjacent to the resident's census tract.

If an applicant is applying for more than one permit for the same facility, the bill allows MDE to conduct only one evaluation for the facility unless MDE determines that more than one evaluation is necessary, as specified. This provision does not limit MDE's authority to hold or require additional public hearings for a permit. MDE may deny or alter a decision or amend the conditions under a pending permit based on its findings under the above provisions.

MDE may charge a reasonable fee to cover the MDE's costs with implementing these provisions. Excess funds must be deposited into three MDE special funds: the Maryland

Clean Water Fund, the Maryland Clean Air Fund, and the State Hazardous Substance Control Fund.

“Applicant” means a person applying for a permit listed under § 1-601(a) of Title 1 of the Environment Article, which is discussed below.

State Agency Review and Reports on Progress Toward Greenhouse Gas Reduction Goal and Impacts of Climate Change

Mandatory Review and Recommendations: Current law requires each State agency to review its planning, regulatory, and fiscal programs to identify and recommend actions to more fully integrate the consideration of Maryland’s GHG reduction goal and the impacts of climate change. The review must include the consideration of (1) sea level rise; (2) storm surges and flooding; (3) increased precipitation and temperature; and (4) extreme weather events. The bill expands the required considerations to include whether agency decisions contribute to local deterioration of public health or increases in pollution associated with health and environmental burdens for underserved and overburdened communities.

Altered Annual Report Requirements

Under current law, 11 specified State agencies must annually report on the status of programs that support the State’s GHG reduction efforts or address climate change to the Maryland Commission on Climate Change (MCCC) and the Governor. The bill requires the report to be submitted by December 1 of each year, requires each State agency to make the report publicly available on its website, and adds the General Assembly to the list of report recipients.

Current law specifies that the annual report submitted by those agencies must include (1) program descriptions and objectives; (2) implementation milestones, and whether or not they have been met; (3) enhancement opportunities; (4) funding; (5) challenges; (6) estimated GHG emissions reductions, by program, for the prior calendar year; and (7) any other information that the agency considers relevant. The bill specifies that this required information must be for the immediately preceding 12-month period and requires the report to also include agency contributions or impediments to environmental justice.

One-year Delay in Report on Environmental Justice Policies and Goals

Current law requires MDE, in coordination with the Commission on Environmental Justice and Sustainable Communities, to (1) adopt a methodology for identifying communities disproportionately affected by climate impacts, as specified; (2) develop specific strategies to address geographical impact concerns, reduce emissions of GHGs and co-pollutants, and build climate equity and resilience within disproportionately affected communities; (3) set

appropriate goals for the percentage of State funding for GHG emissions reduction measures that should be used for the benefit of disproportionately affected communities; and (4) report the policies and programs developed to MCCC. The bill delays the deadline for these requirements by one year, from December 1, 2023, to December 1, 2024.

Scope of Title 1, Subtitle 6 of the Environment Article

Under current law, Title 1, Subtitle 6 of the Environment Article, which is unchanged by the bill, establishes the general public participation requirements for a number of permits issued by MDE. More specifically, the 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; (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; and (8) potable water reuse permits.

Environmental Justice Screening for Certain Environmental Permit Applications

Under current law, a person who is applying for a permit under § 1-601(a) of the Environment Article must include, as part of the permit application, the “EJ Score” from the “Maryland EJ tool” 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. MDE must 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.

Current law defines “EJ Score” to mean an overall evaluation of an area’s environment and existing environmental justice indicators, as defined by MDE in regulation, including pollution burden exposure, pollution burden environmental effects, sensitive populations, and socioeconomic factors. “Maryland EJ tool” means a publicly available [State mapping tool](#) that allows users to (1) explore layers of environmental justice concern; (2) determine an overall EJ Score for census tracts in the State; and (3) view additional context layers relevant to an area.

State/Local/Small Business Effect:

Maryland Department of the Environment Administrative Expenditures and Associated Fee Revenues

General fund expenditures for MDE increase by \$1.7 million in fiscal 2025, which accounts

for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring 10 employees (four regulatory compliance engineers, four natural resources planners, one toxicologist, and one geologist) to (1) establish standards and conduct climate and environmental equity evaluations prior to issuing affected permits; (2) expand opportunities for nearby residents to opt in to text, phone, or mail notifications about pending permit approvals; (3) incorporate the bill’s changes into the permitting process; (4) handle the additional permit review and issuance workload resulting from the bill; and (5) adopt implementing regulations. It includes salaries, fringe benefits, one-time start-up costs (including costs for contractual services to develop an assessment tool in order to compile the data required for the evaluations), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the cost incurred by the Massachusetts Department of Environmental Protection to hire a consultant to develop a similar assessment tool informed the estimate for contractual services (with assumed ongoing maintenance/update costs of 15% annually);
- an estimated 130 permits each year (30 issued by MDE’s Air and Radiation Administration, 50 issued by MDE’s Land and Materials Administration, and 50 issued by MDE’s Water and Science Administration) are subject to the bill’s climate and environmental equity evaluation requirements;
- the bill represents a significant increase in MDE’s permit workload, and, without additional staff, delays in permit review times will occur; and
- current staff do not have the expertise to conduct the required climate and environmental equity evaluations.

Positions	10.0
Salaries and Fringe Benefits	\$676,692
Contractual Services	900,000
Vehicle Purchase	24,593
Operating Expenses	<u>83,360</u>
Total FY 2025 MDE Administrative Costs	\$1,684,645

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including annual maintenance/update costs.

The bill authorizes MDE to charge a reasonable fee to cover its implementation costs and requires that fee revenues in excess of MDE’s implementation costs accrue to three special funds. It is unclear whether a fee that is set at a level high enough to cover MDE’s costs, let alone generate excess revenue, would be considered “reasonable.” Based on the estimated number of affected permit applicants and the estimated costs describe above, the

fee would need to be approximately \$13,000 per applicant in the first year and at least \$7,900 per applicant in the out-years. MDE indicates that it may set a fee but did not provide any information regarding a potential fee level. Nevertheless, to the extent MDE establishes a fee, general fund revenues, and potentially special fund revenues, increase accordingly.

Delaying the due date of an environmental justice report by one year has no material effect on MDE; the analysis required for the report is ongoing.

Maryland Department of Health

MDH advises that, to the extent MDE uses the authority provided by the bill to conduct health impact assessments, it anticipates the need for a part-time contractual employee to assist with this effort, at a cost of approximately \$39,000 annually. This analysis does not reflect such costs, as it is unclear to what extent MDE might choose to conduct such assessments. However, the Department of Legislative Services notes the potential for such costs should any health impact assessments be undertaken.

Effect on State Agencies from Expanded Evaluation and Reporting Requirements

Based on a limited survey of State agencies, it appears that most State agencies anticipate being able to review and report on the other additional information required by the bill with existing budgeted resources, despite operational impacts in some cases; however, two agencies quantified additional costs.

- The Alcohol, Tobacco, and Cannabis Commission anticipates additional evaluation costs of \$15,000 annually. Accordingly, general fund expenditures for the commission increase by \$15,000 annually beginning in fiscal 2025.
- The Public Service Commission (PSC) anticipates consultant costs of \$250,000 to \$500,000 annually to assist in evaluating its many decisions related to the utility and energy industries each year. PSC is funded through an annual assessment on the entities that it regulates. Accordingly, special fund revenues and expenditures for PSC increase by approximately \$375,000 annually beginning in fiscal 2025 for such costs.

Effect on Permit Applicants and Permit Holders

The bill's impact on any entity that applies for a new permit affected by the bill (which could include State agencies, local governments, and small businesses) is largely unknown and cannot be accurately assessed at this time. The ultimate impacts depend on a number of unknown factors, including how MDE makes a determination of impact on an

underserved community or an overburdened community, how many permit applications are ultimately affected, and whether MDE charges a fee to cover its costs.

However, given the fact that MDE may deny or alter a decision or amend the conditions under a pending permit based on its findings under the bill, for any permit application that triggers the evaluation requirement, there could be potentially significant permit delays and increased costs. The Maryland Department of Transportation, the Department of Housing and Community Development, and the University System of Maryland note these potential operational and fiscal effects. Any such impacts begin as early as fiscal 2025.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 743 and HB 840 of 2023.

Designated Cross File: HB 24 (Delegate Boyce) - Environment and Transportation and Economic Matters.

Information Source(s): Maryland Department of the Environment; Public Service Commission; Department of Natural Resources; Maryland Department of Transportation; Department of Commerce; Maryland Department of Emergency Management; Department of General Services; Department of Housing and Community Development; Department of Juvenile Services; Maryland Department of Labor; Maryland Department of Planning; Department of Public Safety and Correctional Services; Maryland Energy Administration; Maryland Insurance Administration; Maryland Department of Agriculture; Maryland Department of Health; Alcohol, Tobacco, and Cannabis Commission; Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland; Interagency Commission on School Construction; Anne Arundel and Montgomery counties; Department of Legislative Services.

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