

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 706 (Senator Benson, *et al.*)
Education, Health, and Environmental Affairs

Environment - Permit Determinations - Cumulative Impact Assessments

This bill requires the Maryland Department of the Environment (MDE) to conduct a cumulative impact assessment before preparing a tentative determination on an application for one of several specified 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 authorized under the permit when added to the impact of other past, present, and reasonably foreseeable future sources of pollution. 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 include a summary of the results of the assessment in any tentative or final determination issued. MDE must adopt regulations to implement the bill.

Fiscal Summary

State Effect: General and/or special fund expenditures increase by at least \$226,600 in FY 2015 for MDE to hire several staff and for contractual assistance in conducting cumulative impact assessments. Future year estimates reflect annualization and inflation. State expenditures (all funds) may increase for State agencies that apply for one of the permits affected by the bill. Revenues are not directly affected, as discussed below.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF/SF Exp.	226,600	266,100	274,700	283,700	293,000
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$226,600)	(\$266,100)	(\$274,700)	(\$283,700)	(\$293,000)

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

Local Effect: Local government expenditures may increase for jurisdictions that apply for one of the permits affected by the bill. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill applies to specified (1) air quality control permits to construct; (2) permits to install, materially alter, or materially extend landfill systems and incinerators; (3) water discharge permits; (4) sewage sludge storage and distribution structure permits; (5) controlled hazardous substance facility permits; (6) specified hazardous material facility permits; and (7) low-level nuclear waste facility permits. These are the same permits that are subject to several public participation requirements, including the tentative and final determination procedures, in the Environment Article. The bill defines “pollution” and “air pollution” with reference to existing definitions.

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.

State Fiscal Effect: General and/or special fund expenditures for MDE increase by at least \$226,637 in fiscal 2015, which accounts for the bill’s October 1, 2014 effective date. This estimate reflects the cost to hire one epidemiologist and one regulatory and compliance engineer to undertake risk assessments, coordinate with consultants, and otherwise ensure that cumulative impact assessments are conducted. The estimate also assumes that MDE expenditures increase by \$75,000 to contract with environmental and public health consultants with expertise in understanding the impacts that various permitted projects have on local communities and environments in the State. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$117,734
Contractual Services	75,000
Automobile Purchase/Operations	24,293
Other Operating Expenses	<u>9,610</u>
Total FY 2015 MDE Expenditures	\$226,637

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including ongoing contractual services. The estimate may significantly understate actual future expenditures to the extent that additional personnel are needed, or to the extent that the number of cumulative impact assessments conducted in any given year necessitates contractual expenditures of greater than \$100,000.

MDE advises that, because cumulative impact assessments are likely to significantly expand the scope of its permitting activities, the fees that MDE charges to applicants for the submission of a permit application may need to increase to recover the costs of issuing the permits. Thus, MDE special fund revenues likely increase, potentially significantly, beginning in fiscal 2015 for those permit fees that MDE can increase through regulation. Any future increase in special fund permit fee revenues for MDE may reduce the need for general funds to implement the bill.

State expenditures (all funds) may increase further to the extent that other State agencies must pay greater permit fees as an indirect result of the bill. Additionally, the bill may directly impact the amount of time needed for MDE to issue a permit; consequently, the bill may result in financial and operational impacts for other State agency permittees. Finally, to the extent that permittees are required to assist in the completion of a cumulative impact assessment, expenditures may increase further.

Local Fiscal Effect: Local government expenditures may increase to the extent that jurisdictions must pay greater permit fees as an indirect result of the bill. Additionally, the bill may directly impact the amount of time needed for MDE to issue a permit; consequently, the bill may result in financial and operational impacts for local government permittees. Finally, to the extent that permittees are required to assist in the completion of a cumulative impact assessment, expenditures may increase further.

Small Business Effect: Small businesses engaged in developing projects of a type that require one of the permits affected by the bill may be meaningfully impacted to the extent that the bill results in delays in the issuance of permits or to the extent that permittees are required to assist in the completion of cumulative impact assessments. Additionally, permit applicants may incur meaningful increases in costs resulting from any increase in permit fees. Small business environmental or public health consultants may realize meaningful increases in the demand for their services.

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

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mc/lgc

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