

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 203

Chairman ENV (Dept)
(Departmental – Environment)

Environmental Matters

Environmental Standing - Judicial Review - Title V Operating Permits

This departmental bill expands the parties who have standing to seek judicial review of Part 70 air quality permit decisions.

The bill takes effect July 1, 2001.

Fiscal Summary

State Effect: Failure to enact this bill could result in a decrease in special fund revenues of approximately \$4.2 million annually and a potential decrease in special fund expenditures.

Local Effect: Because the bill is not anticipated to significantly increase the number of cases brought for judicial review, the bill's changes could be handled with the existing budgeted resources of the circuit courts.

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below.

Analysis

Bill Summary: Except for an applicant for a permit, a final decision by the Maryland Department of the Environment (MDE) on the issuance, renewal, or revision of an air quality operating permit is subject to judicial review by a person who: (1) would have standing to sue with respect to the matter under applicable federal law; and (2)

participated in a public participation process through the submission of written or oral comments, unless a public participation process is not provided. Judicial review must be on the administrative record before MDE and limited to objections raised during the public comment period unless the petitioner demonstrates that it was impracticable to raise the objections during the comment period or that grounds for the objections arose after the comment period. An applicant for an air quality operating permit may seek judicial review in accordance with the Administrative Procedure Act – Contested Cases.

Current Law: Standing for judicial review of air quality operating permit decisions is governed by the Maryland Environmental Standing Act (MESA). Under MESA, the following persons have standing to bring and maintain specified actions in the courts of equity of this State: (1) the State, or any agency or officer of the State, acting through the Attorney General; (2) any political subdivision of the State or any agency or officer of it acting on its behalf; and (3) subject to some limitations, any other person, regardless of whether the person possesses a special interest different from that possessed generally by the residents of Maryland, or whether substantial personal or property damage to that person is threatened. Non-state residents and organizations that do not have an interest separate and apart from their members do not currently have standing for judicial review of air quality operating permit decisions. Under the Administrative Procedure Act, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision.

Background: Maryland received interim approval of its Clean Air Act Title V (Part 70) operating permit program from the U.S. Environmental Protection Agency (EPA) effective August 2, 1996. In order to receive full EPA approval of its Title V program, Maryland must submit a package of proposals to correct deficiencies identified in the interim approval. In its interim approval notice, the EPA stated that Maryland's standing provisions must be amended to provide standing to all persons who would have standing to seek judicial review under Article III of the U.S. Constitution. According to MDE, standing is the final issue that Maryland must address in order to obtain full approval of its Title V program. Maryland must submit a complete corrective package to the EPA by June 1, 2001. If the State fails to do so, the EPA must start an 18-month clock for mandatory sanctions. If the EPA has not granted full approval by December 1, 2001, it could implement and enforce a federal permits program for the State. The EPA has yet to enforce a federal permits program for any state.

State Fiscal Effect: Failure to enact this bill could result in the implementation and enforcement of a federal permits program for the State. If this occurs, Maryland would no longer be able to collect the fees currently paid for Title V permits. MDE collects approximately \$4.2 million in Title V permit revenues annually. Because EPA would assume permitting activities for the State, special fund expenditures could also decrease. However, because EPA has yet to assume a permit program for any state, it is unclear to

what extent MDE would still be responsible for any Title V activities. MDE advises that it would most likely still be responsible for planning, air monitoring, and enforcement activities under the Title V program. MDE also reports that because it currently combines federal requirements and State requirements in the Title V permit, if EPA assumes its permit program and replaces it with a federal permit, MDE would most likely still have to issue a State permit for some sources. Accordingly, a precise estimate of any decrease in special fund expenditures cannot be made at this time. Title V permit fees are paid into the Maryland Clean Air Fund.

Small Business Effect: Legislative Services notes that failure to enact this bill could result in a change in Title V permit fees if the EPA assumes the State's program. Because the EPA has yet to assume any Title V program, any change in permit fees is speculative and cannot be estimated at this time.

Additional Information

Prior Introductions: HB 8 of 1997 would have provided standing to appeal MDE permit decisions to entities that would have standing to appeal a final permit decision by the EPA. The House Environmental Matters Committee held a hearing on the bill, but no further action was taken. SB 488 of 1996 would have increased the number of persons and organizations that would have standing to appeal MDE permit decisions. The Senate Economic and Environmental Affairs Committee held a hearing on the bill, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Maryland Department of Environment, Department of Legislative Services

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