

SB1065/794635/1

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL 1065
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Senator Frosh” and substitute “Senators Frosh, Harrington, and Lenett”; in line 6, after “Department” insert “or the Board of Public Works”; and in line 12, strike “altering” and substitute “providing for”.

On page 2, in line 1, after “14-105(b),” insert “14-508(b),”; in the same line, strike “15-813(g),”; in line 2, strike “and”; in the same line, after “16-307(d)” insert “, and 16-309”; in line 7, after “1-606” insert “and 16-308”; and after line 19, insert:

“SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 16-308 of Article – Environment of the Annotated Code of Maryland be repealed.”.

On page 2, in line 20, strike “1” and substitute “2”.

AMENDMENT NO. 2

On page 3, strike beginning with “Notwithstanding” in line 10 down through “section” in line 14 and substitute “**FOR PERMITS LISTED UNDER SUBSECTION (A) OF THIS SECTION, A CONTESTED CASE HEARING MAY NOT OCCUR**”; in line 15, after “ISSUANCE,” insert “**DENIAL,**”; in line 20, strike “**RELATING TO FEDERAL ENVIRONMENTAL PERMITS**”; in line 21, after “**(2)**” insert “**(I) IS THE APPLICANT;**
OR

(II)”;

(Over)

strike beginning with “**FOR**” in line 24 down through “**(E)**” in line 26 and substitute “**(1)**”; in line 29, strike “**(1)**” and substitute “**(I)**”; in line 31, strike “**(2)**” and substitute “**(II)**”; and after line 32, insert:

“(2) THE COURT SHALL REMAND THE MATTER TO THE DEPARTMENT FOR CONSIDERATION OF OBJECTIONS UNDER PARAGRAPH (1) OF THIS SUBSECTION.”

On page 4, in lines 1 and 18, strike “**(F)**” and “**(H)**”, respectively, and substitute “**(E)**” and “**(F)**”, respectively.

On page 4, strike in their entirety lines 6 through 17, inclusive.

AMENDMENT NO. 3

On pages 4 and 5, strike beginning with “**ALLEGE**” in line 33 on page 4 down through “**fact**” in line 7 on page 5 and substitute “**FILE THE PETITION IN ACCORDANCE WITH THE MARYLAND RULES**”.

On page 5, in line 10, strike “15” and substitute “**30**”; and strike beginning with “**The**” in line 15 down through “**determination]**” in line 18 and substitute “**AN ACTION FOR JUDICIAL REVIEW BROUGHT IN ACCORDANCE WITH § 1-601 OF THIS SUBTITLE OR § 5-204 OR § 16-204 OF THIS ARTICLE, SHALL BE CONDUCTED IN ACCORDANCE WITH THE MARYLAND RULES**”.

AMENDMENT NO. 4

On page 7, in line 7, strike “**§ 16-204**” and substitute “**§ 16-202**”; in line 4, after “**(A)**” insert:

“(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “BOARD” MEANS THE BOARD OF PUBLIC WORKS.

(3) “LICENSE” MEANS A LICENSE UNDER § 16-202 OF THIS ARTICLE.

(B)”;

in line 8, strike “(B)” and substitute “(C)”; in the same line, strike “DEPARTMENT PERMIT DECISION” and substitute “DETERMINATION”; in line 11, strike “AND SHALL CONSIST” and substitute “OR BOARD, CONSISTING”; in lines 12, 14, 16, and 22, in each instance, after “PERMIT” insert “OR LICENSE”; in lines 13, 14, 15, 18, 20, 23, and 29, in each instance, after “DEPARTMENT” insert “OR BOARD”; and in line 21, after “DOCUMENTS” insert “, EXCEPT DOCUMENTS FOR WHICH DISCLOSURE IS PRECLUDED BY LAW OR THAT ARE SUBJECT TO PRIVILEGE,”.

On page 8, in line 1, strike “(C)” and substitute “(D)”; in lines 1, 4, and 5, in each instance, after “PERMIT” insert “OR LICENSE”; in line 2, strike “BY THE DEPARTMENT”; in the same line, before “SHALL” insert “OR BOARD”; in line 3, after “COPYING” insert “NO LATER THAN THE DATE THE PERMIT, DRAFT LICENSE, OR TENTATIVE DETERMINATION IS ISSUED”; in line 6, strike “AND”; strike beginning with “BY” in line 7 down through “DEPARTMENT” in line 8; after line 8, insert:

“4. A PRIVILEGE LOG THAT IDENTIFIES ALL DOCUMENTS NOT PRODUCED FOR INSPECTION IN ACCORDANCE WITH SUBSECTION (C)(6) OF THIS SECTION AND STATES THE REASONS FOR WITHHOLDING EACH DOCUMENT; AND”;

(Over)

in line 9, strike “ANY EXISTING” and substitute “THE PUBLIC”; in line 11, after “DEPARTMENT” insert “OR BOARD”; in line 13, strike “TO THE DEPARTMENT”; and after line 15, insert:

“(3) A PUBLIC COMMENT PERIOD MAY NOT BE EXTENDED MORE THAN ONCE UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.”

AMENDMENT NO. 5

On page 10, in line 33, strike “DECISION” and substitute “DETERMINATION”; in the same line, after “ISSUANCE” insert “, DENIAL”.

On page 11, in line 1, strike “§ 15-810, § 15-813” and substitute “§ 14-508, § 15-808”; in line 4, strike “PERTAINING TO FEDERAL ENVIRONMENTAL PERMITS”; in line 6, after “(II)” insert:

“1. IS THE APPLICANT; OR

2.”

strike beginning with “ALLEGE” in line 12 down through “FACT” in line 20 and substitute “FILE THE PETITION IN ACCORDANCE WITH THE MARYLAND RULES”; in line 21, after “(H)” insert “(1)”; in lines 24 and 26, strike “(1)” and “(2)”, respectively, and substitute “(I)” and “(II)”, respectively; and after line 27, insert:

“(2) THE COURT SHALL REMAND THE MATTER TO THE DEPARTMENT FOR CONSIDERATION OF OBJECTIONS UNDER PARAGRAPH (1) OF THIS SUBSECTION.”

On page 12, strike in their entirety lines 4 through 18, inclusive.

AMENDMENT NO. 6

On page 12, after line 22, insert:

“14-508.

(b) (1) The Secretary shall adopt regulations as provided in this subsection.

(2) Procedural regulations adopted under this subsection shall:

(i) Provide for notice to interested persons of any decision to issue or deny a permit;

(ii) Permit a person to **FILE A PETITION FOR JUDICIAL REVIEW IN ACCORDANCE WITH THE PROVISIONS OF § 5-204 OF THIS ARTICLE** [request a hearing under Title 10, Subtitle 2 of the State Government Article (Administrative Procedure Act – Contested Cases), if the person makes factual allegations with sufficient particularity to demonstrate that:

1. The person is aggrieved by the decision; and

2. The decision is:

A. Legally inconsistent with any provision of law applicable to the decision being challenged; or

B. Based upon an incorrect determination of a relevant and material fact;

(iii) Provide the Secretary with discretionary authority to stay the effectiveness of the decision pending the outcome of the hearing; and

(Over)

(iv) Provide that, if a request for a hearing is granted, the Secretary's decision on the application shall be based on the record made in the hearing, including the proposed findings of fact and conclusions of law recommended to the Secretary by the presiding officer]."

AMENDMENT NO. 7

On page 12, strike in their entirety lines 27 through 29, inclusive.

AMENDMENT NO. 8

On page 13, in line 22, strike "**RELATING TO FEDERAL ENVIRONMENTAL PERMITS**"; and in line 23, after "**(2)**" insert "**(I) IS THE APPLICANT; OR**

(II)".

AMENDMENT NO. 9

On page 13, after line 33, insert:

"16-309.

The court may order the State to pay court costs of any appeal in accordance with the provisions of § 16-306 [or § 16-308] of this subtitle if the court finds that the financial situation of the person appealing warrants this action."

AMENDMENT NO. 10

On page 14, strike beginning with "**RELATING**" in line 14 down through "**PERMITS**" in line 15.

AMENDMENT NO. 11

On page 16, in lines 28, 30, and 33, strike "2.", "1", and "3.", respectively, and substitute "3.", "2", and "4.", respectively.

On page 17, in line 5, after “association” insert “for the purposes of standing”; in the same line, strike “and”; in line 8, after “rulings” insert “; and”

(d) To assure that challenges to environmental determinations brought in State court and participation in proceedings under § 8-1808(d) of the Natural Resources Article, as enacted under Section 2 of this Act, are subject to the same standing requirements as applied to similar challenges to federal environmental permits filed in federal courts.

SECTION 5. AND BE IT FURTHER ENACTED, That when considering a motion for a stay in an action brought for judicial review as enacted under Section 2 of this Act, the court shall examine:

- (a) the likelihood the plaintiff will succeed on the merits;
- (b) the balance of convenience determined by whether greater injury would be done to the defendant by granting the stay than would result from its refusal;
- (c) whether the plaintiff will suffer irreparable injury unless its stay is granted; and
- (d) the public interest in granting the stay”;

and in lines 9 and 15, strike “4.” and “5.”, respectively, and substitute “6.” and “7.”, respectively.