



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 604

PRINTERS NO. 2906

PRIME SPONSOR: Fritz

COST / (SAVINGS)

FUND	FY 2021/22	FY 2022/23
General Fund; Special and Federal Program Funds	See Fiscal Impact	See Fiscal Impact

SUMMARY: House Bill 604, Printer's Number 2906, establishes requirements for processes, timelines and dispute resolutions relating to environmental general permits, general plan approvals and individual permits.

ANALYSIS: This bill amends the Administrative Code (Act 175 of 1929) to create Article XIX-C establishing requirements for the Department of Environmental Protection (DEP) related to processes, timelines and dispute resolutions for environmental general permits, general plan approvals and individual permits. It states that nothing shall be construed as limiting the rights of a municipality in the lawful performance of its functions.

Permits and approvals are based on current environmental law, which is defined as Commonwealth statutes and regulations promulgated for the protection of the environment, including the Clean Streams Law, Air Pollution Control Act, Dam Safety and Encroachments Act and the Solid Waste Management Act. It also includes federal statutes and regulations to the extent that the statute or regulation is administered or enforced by the Commonwealth.

The bill provides under Section 1903-C that an application for an individual permit or authorization to proceed under a general plan approval or general permit to be stamped by the DEP with the date of filing. An application shall be deemed to be filed on the date it is delivered to the department.

The bill establishes requirements related to filing and review of applications including time periods; administratively complete applications; administratively incomplete applications; informal dispute resolution; selection of referee; and approval of applications.

Section 1904-C. Time Period - The department must issue, modify renew, transfer or refuse to issue, modify, renew or transfer an individual permit or authorization to proceed under a general plan approval or general permit within 45 days of the application's date of filing, except that the time requirement may be modified if the application is administratively incomplete or is scheduled for informal dispute resolution.

Section 1905-C. Administratively Complete Application - An application is considered administratively complete if the application contains the necessary information or other information requested in the application. Disagreements between DEP and the applicant as to the substance or merits of the information provided in the application, will not cause the application to become administratively incomplete. An application accompanied by an affidavit by a licensed engineer shall presume the application to be administratively complete. DEP can rebut this presumption with clear and convincing evidence during the informal dispute resolution process.

Section 1906-C. Administratively Incomplete Application - An application considered administratively incomplete by DEP must be returned to the applicant within 15 days of the date the application was filed with a written statement of the necessary information to complete the application. Any omission of information not identified in the written statement will be deemed cured, and the time period shall be tolled from the date the application is returned until the date the application is refiled with the department.

Section 1907-C. Informal Dispute Resolution - An informal dispute resolution process applicable to disputes regarding administrative completeness of applications is established that can be submitted to a referee. The DEP must file a written response to the applicant's dispute within 10 days of the submission of the dispute. The referee must then render a decision, without a hearing, within 10 days of the filing of DEP's response or, if DEP fails to file a response, within 20 days of submission of a dispute by the applicant. If a referee fails to adhere to these timelines, the dispute will be deemed to be resolved in favor of the applicant.

Section 1908-C. Selection of Referee - The bill requires the Environmental Hearing Board (EHB) to develop a master list of referees, who are professional engineers and who have consented to serve as referees. When a dispute arises, the applicant may request a list of three referees. The referee that serves in any dispute is the individual who remains after the applicant and DEP each remove one name from the list.

Section 1909-C. Public Notice and Comment- The department shall hold public hearings or comment periods on permit applications if the hearings or comment periods are explicitly required by Federal or State law. The time period under section 1904-C(a) shall be tolled while the department completes statutorily required public hearings or comment periods, but shall not be tolled if the department conducts a hearing or comment period that is not required by statute. No tolling under this section shall extend a time period clearly established by a separate Federal law or law of this Commonwealth that requires the department to issue, deny or make a decision regarding a permit or authorization within a certain time period.

Sections 1910 & 1911-C. Approval of Application - The department shall approve the application if environmental laws are satisfied and an administratively complete application shall be deemed approved if any of the following apply:

- DEP fails to comply with the 45-day application timeline or a 45-day timeline that is tolled as permitted under this bill.
- If an administratively complete application is accompanied by an affidavit executed, under penalty of perjury, by a licensed professional engineer affirming that the contents of the application are true and correct and that requirements for the issuance of the permit or plan approval have been satisfied.

This legislation would take effect in 60 days upon enactment.

FISCAL IMPACT: DEP will use General, Special, Federal or other funds related to the permitting programs as a result of the bill's requirements, which could result in varying costs depending on the number and complexity of permit applications involved per project.

The DEP currently has established application review processes and timeframes as part of its Permit Decision Guarantee (PDG) Program under Executive Order 2012-1. House Bill 604 works to enhance and streamline the program's requirements by implementing a 45-day process from the application's date of filing for consistency across all programs (except that time requirements may be modified under certain circumstances). However, current permit review timeframes under the PDG Program range generally from 14 to 380 days for DEP air, water, waste, mining, and oil and gas program applications.

Also, as outlined in the bill, the Environmental Hearing Board (EHB) would be responsible for developing a master list of referees, who are professional engineers and agree to serve as referees for permitting disputes. It is unknown how or if referees would require any compensation or reimbursement for their dispute resolution service. The EHB is a small agency of 10 staff positions and limited budget of \$2.593 million for FY2021-22, so it is possible to incur some administrative costs to prepare and manage such a list. The EHB is completely independent from DEP based on the passage of the Environmental Hearing Board Act (Act 94 of 1988).

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Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.