

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 689 (Delegates Rosenberg and Stein)
Environment and Transportation

Maryland Environmental Policy Act - Consistency With National Environmental
Policy Act

This bill expands the Maryland Environmental Policy Act (MEPA) by aligning MEPA requirements with the national standards established under the National Environmental Policy Act (NEPA) as the federal regulations existed on January 1, 2020. **The bill is contingent on the adoption of the NEPA rule change proposed by the Executive Office of the President’s Council on Environmental Quality (CEQ) on January 10, 2020. If a specified notice of the federal rule change is received by January 20, 2023, the bill takes effect on the date the notice is received. If such notice is not received by that date, the bill does not take effect.**

Fiscal Summary

State Effect: If the bill’s contingency is met, State expenditures (multiple fund types) increase, potentially significantly, to expand MEPA standards to align with NEPA standards for State actions, as discussed below. State revenues are not directly affected.

Local Effect: If the bill’s contingency is met, the bill may result in a significant increase in local government project costs and lengthen project timelines. Local revenues are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: All State agencies (except where expressly prohibited by law) must (1) identify, develop, and adopt methods and procedures consistent with the regulations

implementing NEPA as the regulations existed on January 1, 2020, and (2) prepare an environmental effects report, in conjunction with each proposed “State action” that significantly affects the quality of the environment, that meets the requirements of the regulations implementing NEPA as they existed on January 1, 2020. The Secretary of Natural Resources must issue guidelines consistent with the NEPA regulations as they existed on January 1, 2020, to assist State agencies in the preparation of environmental effects reports.

The bill is contingent on the adoption of the NEPA rule change proposed by CEQ on January 10, 2020. Within five days of the adoption of the rule change, the Maryland Department of the Environment (MDE) must notify the Department of Legislative Services. If such notice is not received by January 20, 2023, the bill does not take effect.

Current Law:

Maryland Environmental Policy Act

MEPA requires State agencies to identify, develop, and adopt methods and procedures that will assure that (1) environmental amenities and values are given appropriate consideration in planning and decision making, along with economic and technical considerations; (2) studies are undertaken to develop and describe appropriate alternatives to present policies, programs, and procedures that involve significant adverse environmental effects or unresolved conflicts concerning uses of available resources; and (3) planning and decision making involving environmental effects are undertaken with the fullest practicable provision of timely public information and understanding and in coordination with public and private organizations and individuals within jurisdiction by law, special expertise, or recognized interest.

Additionally, MEPA requires State agencies to prepare an environmental effects report on “each proposed State action significantly affecting the quality of the environment.” A proposed “State action” is a request for legislative appropriations or other legislative actions that will alter the quality of the air, land, or water resources. The Secretary of Natural Resources must issue guidelines to assist State agencies in the preparation of environmental effects reports.

National Environmental Policy Act

NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA is broad and includes making decisions on permit applications, adopting federal land management actions, and constructing highways and other publicly owned facilities. NEPA requires a range of alternatives to be considered and the environmental impacts of each alternative to

be analyzed. Specifically, all federal agencies must prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. These statements are commonly referred to as Environmental Impact Statements (EIS) and Environmental Assessments (EA). Some of the basic steps to prepare these statements include a public scoping process, data collection, analysis of policy alternatives, and preparation of draft and final documents. The process involves numerous federal, state, and local partners; can take several years; and costs millions of dollars.

According to federal regulations, there are three classes of actions that have different levels of documentation required under NEPA. Class I actions require a full EIS; these include construction of new highways, fixed rail transit facilities, and other similar projects. Class II actions do not have a significant environmental effect and, therefore, do not require an EIS or EA; they include (1) actions that do not involve or lead to construction; (2) installation of noise barriers; (3) specified emergency repairs; and (4) and other specified actions. Class III actions are those in which the significance of the environmental impact is not clearly established and, therefore, require the preparation of an EA, which is a less rigorous analysis than an EIS.

According to a guidance document prepared by CEQ for federal NEPA practitioners, MEPA is similar to and modeled after NEPA, but the Department of Natural Resources' guidelines for MEPA specifically exclude the issuance of "individual licenses or permits or promulgation of regulations" from the environmental effects report requirement. Therefore, MEPA, unlike NEPA, does not apply to the administrative actions of State agencies.

Proposed Changes to National Environmental Policy Act Regulations

On January 10, 2020, CEQ announced a notice of proposed rulemaking titled [Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act](#). According to the [National Law Review](#), these are the first major proposed changes to NEPA in more than three decades. The changes are currently in a public comment period, which ends March 10, 2020. According to the National Law Review, a CEQ memo regarding the proposed action states that the "proposed rule would modernize and clarify the CEQ regulations to facilitate more efficient, effective, and timely NEPA reviews." Specifically, it is expected that the changes will (1) establish two-year time limits for EISs and one-year limits for the less intensive EAs; (2) strengthen the lead agency role and require senior agency officials to "timely resolve disputes that may result in delays"; (3) provide direction regarding the "threshold consideration" of whether NEPA applies; (4) require that public comments be "specific" and "timely submitted"; (5) clarify definitions such as "major federal action" to ensure they do not include projects with minimal federal funding or involvement; (6) clarify that "reasonable alternatives must be

technically and economically feasible”; and (7) allow companies to conduct their own environmental review “under the supervision of an agency.”

State Expenditures: If the bill’s contingency is met, the bill likely results in a significant increase in State expenditures (multiple fund types) due to an increase in administrative costs for State agencies to meet the expanded requirements. The bill likely affects many, if not all, State agencies. The bill not only results in an increase in the types of State actions that trigger MEPA oversight, but also more extensive environmental review requirements. Among other things, it is anticipated that issuance of State authorizations, permits, and certifications are subject to MEPA review requirements under the bill’s changes. For example, MDE’s Wetlands and Waterways Program anticipates that staffing costs increase by 25% to implement the additional oversight responsibilities encompassed by current NEPA regulations to its permitting activity.

Local/Small Business Effect: If the bill’s contingency is met, the bill may result in a significant increase in project costs for affected entities, including local governments and small businesses. Additionally, the bill likely lengthens project planning and approval timelines for affected projects, resulting in delays.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Maryland Association of Counties; cities of Salisbury and Westminster; towns of Bel Air and Leonardtown; Public School Construction Program; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Transportation; Maryland Energy Administration; Public Service Commission; U.S. Environmental Protection Agency; National Law Review; Executive Office of the President’s Council on Environmental Quality; *Washington Post*; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510