

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 893

(Senator Garagiola)

Finance

Appropriations and Economic Matters

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Maryland Clean Energy Center - Miscellaneous Provisions

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This bill makes specified changes to State law relating to the Maryland Clean Energy Center (MCEC), including: modifying criteria applicable to the number of members of the board of directors of the center that constitute a quorum and the number of votes needed for the board to act; making MCEC, its board, and employees subject to existing provisions that contain goals for minority business enterprise participation in procurement contracts and related requirements; and establishing specified immunity of center employees from being sued in courts of the State and from tort liability.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:**

*Board of Directors/Meetings*

The bill specifies that a majority of the appointed and qualified members of the board of directors is a quorum and that the board may act with an affirmative vote of a majority of the appointed and qualified members of the board.

### *Minority Business Participation*

The bill specifies that MCEC, its board, and employees are subject to provisions of the State Finance and Procurement Article that establish requirements of units and contractors aimed at achieving specified levels of participation by minority business enterprises in procurement contracts.

### *Employee Immunity*

The bill includes an employee or official of MCEC under the definition of “state personnel” under the Maryland Tort Claims Act, who have specified immunity from suit in courts in the State and from liability in tort.

**Current Law:** MCEC is a body politic and corporate and is an instrumentality of the State. The center’s purposes are to (1) promote economic development and jobs in the clean energy industry sector in the State; (2) promote the deployment of clean energy technology in the State; (3) serve as an incubator for the development of clean energy industry in the State; (4) collect, analyze, and disseminate industry data; and (5) provide outreach and technical support to further the clean energy industry in the State.

### *Board of Directors/Meetings*

MCEC’s board of directors manages the center and exercises its corporate powers. The board consists of nine members, including the Director of the Maryland Energy Administration (MEA), or the director’s designee, and eight members appointed by the Governor with the advice and consent of the Senate. The board determines the times and places of its meetings. Six members of the board are a quorum and the board may act with an affirmative vote of five board members.

### *Minority Business Participation*

Under the State Finance and Procurement Article, procurement procedures of a unit are required to be structured to try to achieve results of at least 25% of the total dollar value of each unit’s procurement contracts being awarded to minority business enterprises, including 7% to African American-owned businesses and 10% to women-owned businesses. Each unit is required to meet the maximum feasible portion of the goals by using race-neutral measures to facilitate minority business enterprise participation in the procurement process. Specified requirements also apply to contractors in their subcontracting activity to facilitate minority business enterprise participation. These provisions are subject to termination July 1, 2011.

MCEC is exempt from the general procurement laws of the State Finance and Procurement Article, including the above minority business enterprise participation provisions. The center is, however, subject to Title 12, Subtitle 4 of the State Finance and Procurement Article, under which it is required to have written policies and procedures for its procurements which must include, among other things, procurement goals, including minority business enterprise participation.

### *State Personnel Immunity*

Under the Maryland Tort Claims Act, State personnel are immune from suit in courts of the State and from liability in tort for a tortious act or omission that is within the scope of the public duties of the State personnel and is made without malice or gross negligence, and for which the State or its units have waived immunity under the Maryland Tort Claims Act, even if the damages exceed the limits of the waiver.

**Background:** MCEC was established under Chapter 137 of 2008. The board of directors began meeting in October 2008 and the center opened its headquarters at the Universities at Shady Grove Facility in Rockville in March 2009. The center, to this point, has been largely funded through a \$500,000 grant from Montgomery County and a \$400,000 loan from MEA. The center does not receive direct appropriations in the State budget, though the fiscal 2011 State budget requires \$1 million of funding appropriated to MEA from the American Recovery and Reinvestment Act of 2009 (federal funds) or the Strategic Energy Investment Fund (special funds) to be used to provide a grant to MCEC for specified purposes. MCEC advises that it currently works to include minority business enterprise participation in its procurements.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 908 (Delegate Feldman, *et al.*) - Economic Matters and Appropriations.

**Information Source(s):** Maryland Clean Energy Center, Department of Business and Economic Development, Department of Budget and Management, Maryland Energy Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2010  
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