

Department of Legislative Services
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FISCAL AND POLICY NOTE
Third Reader

Senate Bill 291
Finance

(Senator Rosapepe, *et al.*)

Appropriations

Maryland Environmental Service - Collective Bargaining

This bill gives the Maryland Environmental Service (MES) employees collective bargaining rights similar to those of most State employees by requiring MES to recognize and deal with an employee organization that is elected as an exclusive representative of MES employees.

Fiscal Summary

State Effect: MES is a nonbudgeted (*i.e.*, self-supporting) State agency, so any increase in expenditures as a result of collective bargaining agreements must be recovered through charging a higher overhead rate to clients. To the extent that MES employees elect to bargain collectively and that collective bargaining results in higher personnel costs for the agency, MES revenues and expenditures increase accordingly. Also, under the same conditions, expenditures (all funds) increase for State agencies that use MES's services. Nonbudgeted expenditures by MES increase by at least \$150,000 beginning in FY 2018 to hire additional staff to implement collective bargaining.

Local Effect: Potentially significant increase in expenditures to the extent local jurisdictions enter into projects with MES and MES charges a higher overhead rate to clients. Revenues are not affected.

Small Business Effect: Minimal. Only a small portion of MES projects are in the private sector, but to the extent that small businesses enter into projects with MES, small businesses are likely charged higher fees from MES.

Analysis

Current Law: MES is an independent State agency that provides technical services to clients for engineering, design, financing, construction, project management, and operation of water supply and wastewater treatment facilities. These technical services support water supply, wastewater treatment, and solid waste management to State agencies, counties, municipal corporations, and private entities. Among other things, MES has the authority to exercise eminent domain and establish and collect rates, fees, and charges for certain projects, products, and services.

MES has its own personnel system that is based on merit and compensates employees based on performance. MES may determine employee qualifications; appointment and removal procedures; terms of employment (including compensation, benefits, holiday schedules, and leave policies); and any other matter concerning employees. If State employees in general are authorized to enter into binding arbitration or binding collective bargaining agreements establishing wages, hours, pension rights, or working conditions for State employees, MES *may* enter into the same type of agreements for its employees.

State Employees and Collective Bargaining

Chapter 298 of 1999 established statutory collective bargaining rights for approximately 40,000 State employees; previously, collective bargaining was initiated under a 1996 executive order. Except as otherwise specified, the collective bargaining law currently applies to all employees of the:

- principal departments within the Executive Branch;
- Maryland Insurance Administration;
- State Department of Assessments and Taxation;
- State Lottery and Gaming Control Agency;
- Office of the Comptroller;
- State Retirement Agency;
- Maryland State Department of Education;
- University System of Maryland (USM), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC), except as specified; and
- Maryland Transportation Authority employees and police officers who are at the rank of first sergeant and below.

The following personnel are not included:

- Maryland Transit Administration employees;
- Legislative and Judicial Branch personnel;
- elected and appointed officials;
- the Governor's and Lieutenant Governor's staff;
- an employee assigned to, or with access to records of, the State Labor Relations Board;
- special appointees and executive service personnel in the State Personnel Management System (SPMS);
- senior administrators, faculty members, student employees, and other designated employees of USM, MSU, SMCM, or BCCC;
- the chief, deputy, or assistant administrator of a unit with an independent personnel system;
- temporary or contractual employees in SPMS;
- an employee who is entitled to participate in collective bargaining under another law;
- an employee whose participation in a labor organization is contrary to the State's ethics laws; and
- any supervisory, managerial, or confidential employee as defined by regulation.

Parties to the collective bargaining process must make every reasonable effort to conclude their negotiations by January 1 for any item requiring appropriation for the fiscal year that begins the following July 1. If the parties do not conclude negotiations for the next fiscal year before October 25, either party may request that a neutral fact finder be employed to resolve the issues. By November 20, the fact finder must make written recommendations regarding wages, hours, and working conditions and any other terms or conditions of employment that may be in dispute. Those recommendations must be delivered to the specified parties by December 1, but they are not binding. The outcome of collective bargaining must be incorporated into a memorandum of understanding.

Background: In fiscal 2016, there were 816 authorized positions within MES, and the Governor's proposed fiscal 2018 budget authorizes 854 positions.

State Fiscal Effect: MES is a fee-for-service public corporation that receives no direct operating appropriation. As a nonbudgeted agency, MES follows a business model that enables it to recover project costs. In its business model, direct expenses related to a project, such as hourly labor rates, are charged to the client so those costs are recovered. Indirect overhead expenses, such as fringe benefits and general administrative costs, are calculated annually as a percentage of labor performed. This overhead percentage is

applied to the total labor charges on each project invoice, so MES is able to recover costs that cannot be directly identified to a project, such as health insurance and rent.

Having MES employees engage in collective bargaining could increase MES's costs significantly, depending on the collective bargaining agreement. MES estimates it would need an assistant Attorney General and a human resource administrator to oversee collective bargaining, which increases MES expenditures by at least \$150,000. Any additional costs would depend on the terms of the collective bargaining agreement. For instance, MES does not have the same holidays and leave policies as State employees, so if the collective bargaining agreement required MES to adopt the same policies as State employees, MES would have to provide three additional holidays, eight additional sick days, and three additional bereavement days to each of its employees. MES estimates adopting a collective bargaining agreement with a leave policy similar to the one available to State employees increases its expenditures by \$1.8 million. As a result of these additional overhead costs, MES would have to charge clients 12.34 percentage points more in its overhead rate to recover its costs.

MES offers employees a 401(k) plan with employer contributions. Currently, MES has very limited participation in the Maryland State Retirement and Pension System. If it became necessary for MES to discontinue the 401(k) plan and join the State's pension system under a collective bargaining agreement, MES notes it would have difficulties recovering the additional costs, as it estimates it would increase the overhead rate by 34.85 percentage points.

MES provides services to State agencies, including the Department of Public Safety and Correctional Services, the Maryland Department of Transportation, the Maryland Department of the Environment, and the Department of Natural Resources. To the extent that MES charges higher overhead rates for its services as a result of collective bargaining agreements, State expenditures (all funds) increase. MES estimates that, if it increased leave days to those for State employees, MES would have to charge State agencies approximately \$1.9 million more to recover its costs. If MES provided a similar pension and leave policy to that of State employees, State expenditures could increase by \$5.2 million. However, the actual increase depends on the terms of the collective bargaining agreement, which are currently unknown.

Local Expenditures: MES provides services to counties and municipalities. To the extent that collective bargaining raises MES's overhead rate, expenditures for local jurisdictions that use MES's services increase. MES estimates charging an additional \$1.5 million annually to counties and municipalities if collective bargaining agreements lead to MES employees having a similar leave policy as State employees. If MES provided a similar pension and leave policy to that of State employees, expenditures for local jurisdictions

could increase by \$4.1 million. However, the actual increase depends on the terms of the collective bargaining agreement, which are currently unknown.

Additional Information

Prior Introductions: HB 795 of 2016 received a hearing in the House Appropriations Committee and was withdrawn. A similar bill, SB 447 of 2016, received a hearing in the Senate Finance Committee, but no further action was taken.

Cross File: HB 239 (Delegate P. Young, *et al.*) - Appropriations.

Information Source(s): Maryland Environmental Service; Department of Budget and Management; Department of Legislative Services

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